

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion into the California's One Million New Internet Users Coalition's Misuse of California Advanced Services Fund Grant Funds; and Order to Show Cause Why the Commission Should Not Impose Penalties and/or Other Remedies for Violating Terms of Their Grant and for Refusing to Return Funds Previously Demanded by the Commission's Division.

Investigation 18-07-009

**CONSUMER PROTECTION AND ENFORCEMENT DIVISION'S
COMMENTS ON SCOPING RULING**

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I. INTRODUCTION

Pursuant to Assigned Commissioner Clifford Rechtschaffen's July 10, 2020, *Assigned Commissioner's Ruling Amending the Scope of the Proceeding* (ACR) in Order Instituting Investigation (I.) 18-07-009, the Consumer Protection and Enforcement Division at the California Public Utilities Commission (CPED) submits the following opening comments.

II. CPED SUPPORTS THE ADDITIONAL ISSUES IN THE ACR

The ACR includes the following issues in the scope of this proceeding:

1. Did Larry Ortega and Community Union violate Decision (D.) 11-06-038 and Pub. Util. Code §§ 2111, 2112 and 2113 by providing incomplete and untimely responses to CPED's data request dated February 21, 2020?
2. Did Larry Ortega and Community Union violate Rule 1.1?
3. Are Larry Ortega and Community Union in contempt of the Commission, in violation of Pub. Util. Code § 2113?
4. Are Larry Ortega and Community Union liable for penalties pursuant to Pub. Util. Code §§ 2108, 2111 and 2112?
5. Are Larry Ortega and Community Union subject to equitable remedies based on their violation of D.11-06-038, Pub. Util. Code § 281(f)(7), and their actions to impede the efficient administration of justice?

The ACR appropriately tailors the new issues to identify solely Larry Ortega and Community Union as opposed to California's One Million New Internet Users Coalition (NIU Coalition)¹ and incorporates issues that address facts that have come to light since the Assigned Commissioner's initial Scoping Ruling issued on December 18, 2018 with regard to Larry Ortega's and Community Union's conduct.

Stemming as far back as when the State Controller's Office (SCO) was retained by the Commission's Communication Division to audit NIU in or around 2014, Larry Ortega and Community Union have repeatedly used delay tactics and have chosen to

¹ The NIU Coalition consists of five members including the Asian Pacific Community Fund, Black Business Association, Community Union, Inc., Korean Churches for Community Development, and the Soledad Enrichment Action – Charter Schools.

provide incomplete and/or partial responses to requests for information and documents.² CPED explains in its Opening Testimony that despite the Administrative Law Judge's (ALJ) Ruling granting CPED's motion to compel³ and the numerous attempts by CPED to work cooperatively to obtain the information requested for in CPED's February 21, 2020 data request, Larry Ortega and Community Union have not provided full and complete responses.⁴ Additionally, CPED finds that Larry Ortega and Community Union did not disclose to SCO at the time of the audit the \$366,684 of additional revenues listed on their general ledger.⁵ Despite numerous attempts and efforts by the Commission to verify whether NIU's costs were charged appropriately and not against NIU's other grants, Larry Ortega and Community Union have thwarted both SCO's and CPED's efforts, thereby impeding the Commission's investigation and enforcement action. Therefore, it is reasonable and appropriate to include scoping issues, as the Assigned Commissioner has done in the ACR, to consider whether Larry Ortega and Community Union are in contempt of the Commission's requirements and whether penalties and other equitable remedies are appropriate.

III. SCHEDULE

CPED agrees with the ACR's proposed schedule to extend evidentiary hearings by one additional day.

If Larry Ortega and Community Union decide to resume settlement discussions with CPED, CPED encourages the current litigation schedule remain in place and not be postponed or suspended. The parties previously negotiated for more than a year, with CPED having considered and presented many settlement options to Larry Ortega and Community Union, yet no agreement was reached. By keeping the litigation on schedule,

² See CPED's (Redacted) Direct Testimony of Vicky Zhong, p. 11, lns. 22-29.

³ See ALJ's *Email Ruling Granting CPED's Motion to Compel Responses to Data Requests* dated June 22, 2020.

⁴ See CPED's Direct Testimony of Brian Hom, pp. 1-6.

⁵ See CPED's (Redacted) Direct Testimony of Vicky Zhong, p. 8, lns. 7-12.

CPED remains hopeful that this will aid the facilitation and timely resolution with any settlement negotiations that take place with Larry Ortega and Community Union.

Respectfully submitted,

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