

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

**MOTION  
OF CONSUMER PROTECTION AND ENFORCEMENT DIVISION  
OBJECTING TO COMMUNITY UNION'S WITNESS  
AND EXHIBIT LISTS**

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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.

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**I. INTRODUCTION**

Pursuant to the *Administrative Law Judge's Ruling Confirming Dates, Times, and the Location of Evidentiary Hearing and Directing Prehearing Filings* filed on July 16, 2020, the Consumer Protection and Enforcement Division (CPED) respectfully moves to limit Community Union's (CU) list of witnesses.

**II. DISCUSSION**

California Evidence Code section 210 defines "Relevant Evidence" as "evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency to prove or disprove any disputed fact that is of consequence to the determination of the action." Rule 13.5 of the Commission's Rules of Practice and Procedure permit the presiding officer to limit the number of witnesses or time for testimony to avoid unnecessary cumulative evidence.

The evening of August 7, 2020, the Friday before prehearing motions are due, CU served its *Proposed Witness and Exhibit Lists*. In particular, CU identifies seven witnesses including, Monica Contreras, Nelson Flores, Magdalena Duran from El Proyecto, Tim Alan Simon, Rachelle Pastor, Juan Sandoval, and Diana MacArthur Park who all intend to provide testimony on the outcome, effectiveness, and/or impact of the California's One Million Internet New Internet User's Coalition's (NIU) program.

CPED objects to the appearance of witnesses who CU has identified as presenting testimony solely for the purpose of testifying to the overall impact, effectiveness, and/or outcome of NIU's program. Specifically, CPED objects to Monica Contreras who CU identifies as for the purpose to "articulate lasting impact of training received," Nelson Flores for the purpose of speaking to "outcomes to students," Magdalena Duran from El Proyecto for the purpose of speaking to the "[i]mpact to Community Assessment of Training Relationship," Tim Alan Simon who will speak to "Commissioners Perspective of Good of NIU's program," Rachelle Pastor to "[s]how copy of email Exhibits praising program and obvious impact to parents graduating from program," Juan Sandoval who CU identified to speak to the "[p]rogram at CU's direction had significant impact," and Diana MacArthur Park who CU identified to address the "success of parents adoption."<sup>1</sup>

CU is attempting to introduce testimony that is not relevant evidence because these witnesses do not appear to offer evidence that has a tendency to prove or disprove any disputed fact in this proceeding. Administrative Law Judge (ALJ) Zhang identified the disputed facts to be addressed at evidentiary hearings at the May 4, 2020 status conference.<sup>2</sup> None of the disputed facts ALJ Zhang listed pertain to the overall impact, effectiveness, and/or general outcome of NIU's program on program participants. In addition, such testimony is outside the issues scoped for this proceeding.<sup>3</sup> Despite CU's desire to generally defend the effectiveness or overall impact of its program, these are

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<sup>1</sup> Community Union's Proposed Witness and Exhibit Lists dated August 7, 2020, Exhibit 2: Witness Lists.

<sup>2</sup> Transcript, May 4, 2020 Status Conference, pp. 8-11.

<sup>3</sup> See *Assigned Commissioner in the Assigned Commissioner's Ruling Amending the Scope of the Proceeding* filed on July 20, 2020 and *Assigned Commissioner's Scoping Memo and Ruling* filed on December 18, 2018.

simply not among the issues to be addressed in the evidentiary hearings. Rather, what is at issue relates to CU's ability to maintain proper accounting records and documentation to support NIU's reimbursements from the Commission and whether the NIU program met the performance metrics initially established and reported by CU in NIU's Work Plan.<sup>4</sup>

NIU's program metrics were developed by CU in NIU's Work Plan, Action Plan and budget, and progress on each of its program activities were reported to the Commission's Communication Division (CD) on a quarterly and/or annual basis as required.<sup>5</sup> CU identified the following performance metrics:<sup>6</sup>

- Activity 1: number of conference/community meetings, number of key leaders to be invited to speak at the conferences, number of people drawn to conference/meeting because of key leaders confirmation;
- Activity 2: number of administrators to meet post-conference, number of administrators entering into memorandums of understanding (MOU) to establish Empowerment Hubs, number of parents that will have access to the Internet as a result of New Empowerment Hubs;
- Activity 3: number of parents NIU Coalition will have access to because of MOU with Empowerment Hub;
- Activity 4: number of trainers who completed the Train the Trainer program;
- Activity 5: annual target number of parents to complete the 40 hours of training, number of parents who become more engaged in their child's education, number of parents who move to true adoption, number of parents who will enter Train the Trainer program, number of parents who get an email account, number of parents who improve their digital communication skills;
- Activity 6: number of graduation ceremonies;
- Activity 7: number of graduates to complete post-NIU workshops.

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<sup>4</sup> Transcript, May 4, 2020 Status Conference, pp. 8-11.

<sup>5</sup> See Direct Testimony of Selena Huang dated July 7, 2020, p. 4, lns. 7-15.

<sup>6</sup> See Direct Testimony of Nina Enriquez dated July 7, 2020, Att. 4.

Unless CU is now attempting to claim that it had always met 100% of its performance metrics for all seven program activities for every quarter of NIU's grant, contrary to the figures it provided in its Work Plans, the actual performance measures reported by CU on a quarterly basis are not in dispute. Therefore, any testimony or evidence that CU intends to provide regarding the overall impact, effectiveness, and/or outcome of NIU's program, has no tendency to prove or disprove a fact in dispute and is irrelevant and immaterial to the issues scoped in this proceeding. As such, CPED objects to the testimony CU intends to offer of Monica Contreras, Nelson Flores, Magdalena Duran from El Proyecto, Tim Alan Simon, Rachelle Pastor, Juan Sandoval, and Diana MacArthur to the extent that they testify to the overall impact, effectiveness, and/or outcome of NIU's program.

### **III. CONCLUSION**

For the reasons set forth in this Motion, CPED respectfully requests that the ALJ grant CPED's request to exclude CU's testimony from Monica Contreras, Nelson Flores, Magdalena Duran from El Proyecto, Tim Alan Simon, Rachelle Pastor, Juan Sandoval, and Diana MacArthur as it relates to the overall impact, effectiveness, and/or outcome of NIU's program. If such testimony is deemed relevant, CPED requests that the number of witnesses be consolidated pursuant to Rule 13.5 to avoid unnecessary cumulative evidence. Furthermore, because CU has not provided all of CU's exhibits for CPED's review, depending on the nature and content of what is provided in CU's exhibits, CPED reserves its ability to object.

Respectfully submitted,

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