

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 PREHEARING BRIEF**

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August 17, 2020

TABLE OF CONTENTS

	<u>Pages</u>
I. INTRODUCTION	1
II. STATEMENT OF THE CASE.....	1
III. DISCUSSION.....	2
A. CU FAILED TO IMPLEMENT THE TERMS OF NIU’S CASF GRANT	2
1. CU failed to implement program activities in accordance with the terms of the CASF grant.....	2
2. CU failed to provide sufficient documentation and detailed information for its other sources of grant funding	4
3. Expenses reimbursed from the CASF Grant were likely also reimbursed from CU’s other funding sources.	5
4. CU claimed expenses that are not allowable expenses under the CASF grant.....	7
5. CU failed to produce and maintain records and documentation to substantiate its expenses.....	10
6. CU failed to comply with the Communication’s Division’s demand letter.....	13
7. CU failed to adequately respond to CPED’s July 21, 2017 data request and provided incomplete and untimely responses to CPED’s February 21, 2020 data request.	13
B. CU AND MR. ORTEGA VIOLATED RULE 1.1.....	15
C. CU AND MR. ORTEGA SHOULD BE SUBJECT TO EQUITABLE REMEDIES BASED ON THEIR VIOLATIONS OF D.11-06-038 AND PUB. UTIL. CODE SECTION 281(F)(7) AND THEIR ACTIONS TO IMPEDE THE EFFICIENT ADMINISTRATION OF JUSTICE.....	17
IV. CONCLUSION.....	18

I. INTRODUCTION

Pursuant to Administrative Law Judge (ALJ) Zhang's July 16, 2020 Ruling, the Consumer Protection and Enforcement Division (CPED) files the following prehearing brief.

II. STATEMENT OF THE CASE

Under the rules of the California Public Utilities Commission (Commission), consortiums are authorized to fund activities promoting broadband deployment, access, and adoption using funds from the California Advanced Services Fund (CASF). Starting in 2012 for three years, the Commission authorized over one million dollars in CASF funds to seven different consortiums for their Year 1 activities and over three million dollars in budgeted allowance for Year 2 and 3 activities.¹ Along with the grant come responsibilities, a grant recipient of public funds must be accountable and responsible for the use of those public funds. While NIU agreed to comply with the terms of the broadband consortia grant, they repeatedly failed to do so. As the lead organization for the NIU Coalition, Mr. Larry Ortega (Mr. Ortega) and Community Union Inc. (CU), controlled and managed NIU's CASF grant activities including the preparation of records and source documents. Therefore, Mr. Ortega and CU should be held accountable for violating the terms of NIU's CASF grant, including not responsibly managing and accounting for nearly \$400,000 in public funds. CPED found that approximately \$197,764 should be returned to the Commission in improperly collected grant funds where CU failed to substantiate that its CASF expenses were only funded by CASF grant funds. Furthermore, throughout the audit and investigation of NIU, Mr. Ortega and CU have refused to fully cooperate, thereby impeding the California State Controller's Office's (SCO) ability to conduct an audit of NIU's CASF related program expenses to ensure that such costs were incurred in accordance with the terms of CASF's grant and CPED's investigation into the misuse of CASF grant funds disbursed to NIU. Even during the course of this proceeding, Mr. Ortega and CU disregarded the due dates in the Administrative Law Judge's schedule and the Commission's order and rules. As a result of Mr. Ortega and CU's failure to comply with the Commission's rules, decisions, and orders, the integrity of the Commission's processes was impugned, and they must be held responsible for their actions in harming the regulatory process. CPED recommends the Commission require NIU to return at least \$197,764 in improperly collected grant funds and assess penalties against

¹ Resolution T-17355 *Approval of Seven (7) Consortia Grants Under the California Advanced Services Fund's Rural and Urban Regional Broadband Consortia Grant Account Totaling \$1.05 Million for Year 1 Activities*, February 2012.

CU and Mr. Ortega for violations of the CASF's program requirements. Also, CU and Mr. Ortega should be sanctioned by the Commission for being in contempt in addition to other equitable remedies.

III. DISCUSSION

A. CU failed to implement the terms of NIU's CASF Grant

1. CU failed to implement program activities in accordance with the terms of the CASF grant

In the Commission's decision governing the submission of applications and the award of grants under the Rural and Urban Regional Broadband Consortia Grant Account (Consortia program), Decision (D.) 11-06-038, the Commission sets forth procedures and policies to ensure that grant funds are spent in a responsible and cost-effective manner.² In D.11-06-038, the Commission requires that all broadband consortia grantees be bound to the requirements and obligations set forth in their Work Plan, Action Plan, budget, and Consent Form.³ Any substantive changes to the Work Plan, Action Plan, or budget must be communicated to the Commission's Communications Division (CD) in advance of the anticipated change, and may be subject to CD's approval.⁴

The Commission authorized CASF grant funds to NIU to implement NIU's 7-step Parent Engagement Through Technology curriculum with one of the primary goals being to "[i]ncrease subscribership through the NIU training program that teaches parents how to use the internet."⁵ NIU's Work Plan set forth initial performance measures for each of the seven program activities.⁶ As required by the Commission's resolution approving NIU's grant, Resolution T-17355, NIU was required to submit Quarterly Progress Reports containing quarterly goals and performance results to ensure their activities fulfilled their approved Work Plan.⁷

During the course of NIU's grant, CU failed to complete its performance metrics for NIU's program activities in accordance with the terms of NIU's grant. Starting with the first year of the grant period, CU fell short of completing its performance metrics for Activity 5

² D.11-06-038, Finding of Fact 5, p. 33.

³ D.11-06-038, Ordering Paragraph (OP) 18, p. 41.

⁴ D.11-06-038, OP 21, p. 42.

⁵ Resolution T-17355, p. 5.

⁶ CPED-06, p. 4, lns. 7-10.

⁷ Resolution T-17355, p. 10; D.11-06-038, p. 30; *See* CPED-06 Att. 1, p. 7.

(Trainers conduct 40 hour Parent Engagement through Technology sessions) and Activity 7 (NIU Alumni attend post-course graduate workshops). CU reported an 85% completion rate for Activity 5, specifically, the metric of “[n]umber of [p]arents to complete the 40 hours of training,” and 19% completion rate for the “percentage of the 790 NIU graduates [who] will complete 514 Modules/workshops (post-NIU Workshops).”⁸ NIU then proposed changes to Activities 2, 3, 5, and 7 in NIU’s Year 2 Work Plan for CD’s consideration. For instance, to make up for the shortfall in Activity 5, NIU added the “deficit number of graduates from the previous grant year to year 2’s total grant.”⁹ CD approved these updated performance metrics for Year 2 with the understanding that “NIU would catch up and make up for the targets they didn’t meet in Year 1.”¹⁰

Despite CD’s efforts to provide NIU with opportunities to adjust its performance metrics and make up for the shortfalls the following year, at the end of Year 2, Quarter 3, CU continued to lag in its performance, reporting 49% completion rate for Activity 5, 36% completion rate for Activity 7, and 58% completion for Activities 2 and 3. At the end of Year 2, CU fell short again in meeting Activity 5, specifically, the metric of “[n]umber of [p]arents to complete the 40 hours of training,” reporting an 84% completion rate.¹¹

Furthermore, CU did not fulfill Activity 5 in accordance with the terms of the CASF grant. CU changed the class design for Activity 5 without notifying and obtaining approval before implementing the change. Where CU reported at the end of Year 3 that it exceeded its performance metrics for all seven activities, CD had previously notified CU that in-class training for less than 40 hours did not meet the standards set forth by NIU.¹² CD discovered that CU unilaterally shortened in-class sessions from the agreed upon 40-hours of in-class training sessions to less than 40-hours.¹³ In some cases, CU conducted training sessions for as little as three-hours.¹⁴ Rather than notify CD in advance of making the change and requesting CD’s approval as required by the Commission, CU instead misrepresented to CD in every quarterly

⁸ CPED-06, p. 4, lns. 10-14; CPED-08 Att. 4, Year 1, pp. 2-3.

⁹ CPED-06 Att. 2, Letter from Hyepin Im to Zenaida Tapawan-Conway dated February 27, 2013.

¹⁰ CPED-06 Att. 2, Letter from Michael Amato dated March 4, 2013; CPED-01 Ex. 10, p. 3.

¹¹ CPED-08, Att. 4, Year 2, p. 2.

¹² CPED-08, p. 5, lns. 6-8; CPED-01 Ex. 18, p. 3.

¹³ CPED-07, p. 2, lns. 7-9.

¹⁴ CPED-02, p. 19.

report and in their Year 2 and Year 3 budget requests that they had been offering 40-hour in-class trainings.¹⁵

CU failed to implement its program activities in accordance with the CASF grant where: 1) CU failed to complete its quarterly performance metrics for the seven program activities; 2) CU did not fulfill Activity 5 because it offered less than 40 hours of in-class training which is the standard set forth in NIU's Work Plan, Action Plan and budget, and 3) CU did not seek and obtain approval for substantive changes to Activity 5 in advance of making the program change. CU and Mr. Ortega should be liable for penalties pursuant to Pub. Util. Code sections 2108, 2111, and 2112 for failing to comply with the Commission's requirements in D.11-06-038.

2. CU failed to provide sufficient documentation and detailed information for its other sources of grant funding

Ordering Paragraph 11 of D.11-06-038 provides, "[a]ny proposed consortium budget must expressly exclude any costs for activities or programs within the consortia region that are separately funded from any other sources in order to ensure that CASF grants do not duplicate funding from any other sources. Any proposed consortium budget must be accompanied by a description of any and all existing broadband adoption or deployment activities funded by any other state or federal grants or by any other sources within the region covered by the consortium application, together with supporting detail necessary to confirm that the CASF consortium budget does not duplicate any such funding."¹⁶ The administrative controls on approving Consortium grants and disbursement of grant funds as set forth in D.11-06-038 are necessary and appropriate to ensure that funds are spent in a cost-effective and responsible manner consistent with program goals.¹⁷

NIU's budget anticipated approximately \$709,959 from "other sources" or non-CASF grants or funds.¹⁸ However, to date, CU has not provided SCO or CPED the supporting documentation necessary to confirm that it did not receive duplicate funding for the same program expenses. Based on SCO's audit findings, SCO was unable to determine the proportion of program activities, costs, recordkeeping, and claims that may have been charged against

¹⁵ CPED-07, p. 2, lns. 7-11.

¹⁶ D.11-06-038, OP No. 11, p. 40.

¹⁷ D.11-06-038, Conclusion of Law (COL) No. 10, p. 36..

¹⁸ Staff Report, p. 17.

NIU's other sources.¹⁹ While CU produced what it claims was a "general ledger," the SCO later identified the document as "in part, a check register"²⁰ that did not contain the proper information of a general ledger such as the segregation of funds from different sources. Therefore, this document could not be relied upon to determine that NIU's activities were not funded by other sources.

CPED's investigation in this proceeding revealed similar findings in that CU has withheld the necessary supporting documentation to determine the total amount of NIU's other sources of funds and the program expenses associated with these other sources.²¹ CU has instead made excuses claiming on May 26, 2020 that "it will take 3-4 hours to find the records from the 5 boxes of documents to provide a sample to MOU's and check stubs." To date, CU refuses to provide a complete response containing all supporting documentation for each of NIU's grants and funding sources.²²

CU and Mr. Ortega should be liable for penalties pursuant to Pub. Util. Code sections 2108, 2111, and 2112 for failing to comply with the Commission's requirements in D.11-06-038.

3. Expenses reimbursed from the CASF Grant were likely also reimbursed from CU's other funding sources.

Consistent with the Commission's requirement that NIU expressly exclude from its budget costs for activities funded from NIU's other sources and that NIU "perform in good faith,"²³ CU was also required to demonstrate that NIU's other funding sources did not also fund any of the same expenses paid for by the CASF grant. In SCO's audit of NIU, it found that the Commission reimbursed approximately \$182,801 in CASF funds for expenses that NIU may have charged to their other fund sources.²⁴ Because CU did not make available accounts and records for NIU's other funding sources or for NIU's total operations, the cost allocation for NIU's activities could not be established using actual historical amounts.²⁵ Only after SCO produced its initial audit findings, did CU produce what it claimed to be its accounting records.

¹⁹ Audit Report p.11.

²⁰ Audit Report, Attachment 1, Issue No. 30.

²¹ CPED-04, p. 17, lns. 36-39.

²² CPED-05, Att. 10 (data request #7).

²³ D.11-06-038, p. 27.

²⁴ CPED-02, p. 20.

²⁵ CPED-06, p. 12 lns. 7-11.

CU provided a document titled a “general ledger” which was not prepared in accordance with generally accepted accounting principles (GAAP). Instead SCO identified the document as a check register which only showed deposits and withdrawals from a checking account.²⁶ Without more information, the check register was insufficient and did not provide the universe of NIU’s transactions for SCO to determine the amount of CPUC-reimbursed program costs that were also charged against NIU’s other funding sources.²⁷ As a result of CU’s failure to provide any valid accounting records, SCO was forced to conclude that it could not determine whether the CPUC-reimbursed program costs were also charged against NIU’s other funding sources.²⁸

As part of CPED’s investigation in this proceeding, CPED found that CU received \$423,013 in revenue from non-CASF sources.²⁹ Some, if not all, sources provided NIU payment in a lump sum amount as oppose to a reimbursement program such as the CASF grant. Given that NIU has only provided \$438,419 in program costs,³⁰ it is very likely that CU sought reimbursement from the CASF grant for expenses that were already covered by CU’s other funding sources.

In addition, CPED found evidence of CU collecting funds from the CASF grant for activities already funded by NIU’s other funding sources. According to CU, NIU contracted with various school districts through Memorandums of Understanding (MOU) in addition to other funding sources to provide “61% [of the] obligation to the CASF budget commitment” whereas “CASF only covered 39%.”³¹ This is consistent with SCO’s findings that, “approximately 39% of Consortia Program expenses were anticipated by the NIU Coalition to be charged against the CASF grant, and 61% to be charged against other funds.”³² Essentially, according to CU, 61% of NIU’s other revenues covered NIU’s program expenses.

However, based on the documentation CU provided to CPED, this does not appear to be the case. Using the figures provided in CU’s claimed “general ledger,” CU received \$275,433 in

²⁶ CPED-06, p. 11 lns. 22-30.

²⁷ See CPED-06, p. 11, lns. 22-30.

²⁸ CPED-02, p. 20.

²⁹ CPED-04, pp. 3-4.

³⁰ CPED-01, p. 10; CPED-02, p. 20.

³¹ CPED-04 Att. 6, Updated Responses to CPED Data Requests from Community Union dated June 26, 2020.

³² CPED-02, p. 20.

CASF grant funds for program related expenses.³³ If \$275,433 accounted for 39% of CU's program expenses, then NIU's total program costs should total approximately \$706,238.³⁴ However, CU reported in its claimed general ledger (G/L) only \$574,159 in total expenses for the period of time that CD reimbursed NIU for its program expenses.³⁵ Based on the difference between what CU should have reported in CASF expenses and the actual amount reported in CASF expenses, CU failed to account for \$130,000 (\$706,238 - \$574,159). The only way to account for the shortfall is if CU charged both the CASF grant **and** NIU's other funding sources for the same expenses.

In fact, CPED observed examples where CU allocated 100% of program expenses to the CASF grant even though CU's records indicated another funding source. For instance, according to CU, El Rancho Unified School District was one of NIU's other funding sources.³⁶ On at least one occasion, CU charged 100% of a trainer's El Rancho Unified School District expenses to the CASF grant rather than recognizing a portion of those expenses as charged to the El Rancho Unified School District.³⁷ Given that El Rancho Unified School District's funded NIU for its activities, CU should not have also charged 100% of those expenses to the CASF grant.

CU and Mr. Ortega should be liable for penalties pursuant to Pub. Util. Code sections 2108, 2111, and 2112 for failing to comply with the Commission's requirements in D.11-06-038.

4. CU claimed expenses that are not allowable expenses under the CASF grant.

a) NIU must return at least \$197,764 in improperly collected grant funds back to the Commission

CPED relied on SCO's audit findings to determine that NIU should return approximately \$197,764 to the Commission. To derive this figure, CPED found that NIU submitted a total of

³³ CPED-04, p. 9, lns. 2-4.

³⁴ CPED-04, p. 9, lns. 5-8.

³⁵ CPED-04, p. 9 lns. 8-9.

³⁶ CPED-04, p. 8, lns. 19-22; See CPED-03 Ex. 17.

³⁷ CPED-04, p. 8, lns. 23-33.

\$475,542 in expenses for the time period CD accepted and paid NIU's reimbursement requests,³⁸ of which the Commission paid \$368,747 to NIU.³⁹

Given that CU failed to provide proper accounting records in order for SCO to validate a majority of expenses, rather than denying the entire amount paid by the Commission to NIU as SCO could have justifiably concluded,⁴⁰ SCO used the best available means to approximate the amount of NIU's program costs eligible for reimbursement.⁴¹ SCO estimated that only \$170,983 should have been reimbursed with CASF funds.⁴² SCO relied on NIU's budgets for 2012, 2013 and 2014 because as SCO explained, "we have only this budget as a sole source by which to determine how the Consortia Program costs would have been allocated by the NIU Coalition."⁴³ All three years of NIU's budget indicated that 39% of its expenses would be allocated to the CASF grant while 61% of its expenses would be allocated to NIU's other funding sources.⁴⁴ NIU's program budgeted \$1,159,959 in total expenses of which \$709,959 was attributed to NIU's other funding sources and \$450,000 was attributed to the CASF grant.⁴⁵

For the time period CD accepted and paid NIU's reimbursement requests, SCO reviewed the cancelled checks NIU provided, and took into consideration KCCD's records of administrative expenses, to find that NIU incurred a total of \$438,419 in expenses.⁴⁶ Based on NIU's budget for 2012 through 2014, SCO deemed that only 39% of this amount or \$170,983 should be attributable to the CASF grant.⁴⁷

CPED supports SCO's method for estimating the amount of expenses attributable to the CASF grant and SCO's finding of \$170,983 in CASF only reimbursements. CPED applied the

³⁸ CPED-06, p. 7, lns. 4-6 (CD terminated Y3Q3 and Y3Q4 payments to NIU).

³⁹ CPED-01, p. 10.

⁴⁰ SCO tested and determined that only \$12,371 of the submitted expenses to CD could be substantiated. Therefore, \$341,413 of the \$353,784 was deemed to be unsubstantiated costs due to the lack of source documents and accounting records. SCO recommended the Commission resolve and recover the unsupported CASF funds disbursed to the NIU. See, CPED-04 Att. 7, SCO WP 3D-1 Test of Payroll Expenses, p. 2.

⁴¹ CPED-02, pp. 20-21.

⁴² CPED-02, p. 21.

⁴³ CPED-02, p. 21.

⁴⁴ CPED-02, p. 21.

⁴⁵ CPED-02, p. 21.

⁴⁶ CPED-02, pp. 9-10.

⁴⁷ CPED-02, pp. 20-21.

total amount of CASF grant payments made to NIU or \$368,747 and subtracted the amount SCO found was attributable to CASF only reimbursement, approximately \$170,983, to conclude that NIU should return approximately \$197,764 in improperly collected grant funds.⁴⁸

b) Certain expenses claimed as CASF related expenses are another indication of CU’s lack of proper accounting and expense claim practices

CU further attempts to claim expenses that are not allowable under the terms of the CASF grant. In CU’s claimed G/L, CU alleged to have provided all of its program related costs during the time period of the CASF grant. Based on CPED’s review, at a minimum, more than \$7,000 in charges were not allowable under the terms of the CASF grant.⁴⁹ CU included a list of expenses in the category titled “Other CASF Related Expenses” of its claimed G/L which are personal expenses that are not reimbursable under the CASF program. Some examples include, over \$5,000 in dental costs, over \$1,200 in eye exam costs, \$108.99 charge to “Macy,” \$100 to “L A Fitness,” and a charge for “Netflix.”⁵⁰ The Commission specifically authorized CASF grant funds for expenses related to NIU’s 7-step Parent Engagement through Technology curriculum.⁵¹ Charges, such as those identified by CPED above are personal expenses. Therefore, CU’s personal expenses totaling at least more than \$7,000 should be excluded from NIU’s total allowable CASF expenses.⁵²

Additionally, CU provided at least two lodging invoices⁵³ that violate California State Business and Travel Policy rules.⁵⁴ CU provided these invoices in response to CPED’s February 21, 2020 data request asking CU for “all supporting documentation relating to each respondents’ CASF related expenses from March 1, 2012 through March 1, 2015.”⁵⁵ The documentation shows that CU claimed lodging expenses for lodging that was located within 50 miles of CU’s

⁴⁸ In light of the proposed settlement with KCCCD, CPED revises the total overpayment amount to be returned to the Commission to \$197,764, which removes the amount attributable to KCCCD’s unsupported administrative costs of \$46,621. See CPED-01, p. 10.

⁴⁹ INCLUDE CITE

⁵⁰ CPED-04, p. 10, ln. 14.

⁵¹ See, Resolution T-17355, p. 5, CPED-01, Ex. 6, Coalition Grant Application Attachment H – Action Plan, pp. 1, 4.

⁵² CPED-04, p. 10, ln. 11-13.

⁵³ CPED-04, Att. 11.

⁵⁴ CPED-04, p. 11, lns. 1-5.

⁵⁵ CPED-04, Att. 4, Attachment L, CPED’s Data Request dated February 21, 2020, p. 4.

address. California's State Business and Travel Policy rules exclude reimbursement for "lodging, meal, or incidental expenses within 50 miles of his/her home or headquarters."⁵⁶ Therefore, CU's lodging expenses should also be excluded from NIU's total allowable CASF expenses. CU's improper claims for reimbursements are another indication of CU's lack of proper accounting and expense claim practices.

5. CU failed to produce and maintain records and documentation to substantiate its expenses.

A CASF grantee is obligated to maintain books, records, documents and other evidence sufficient to substantiate the expenditures covered by the grant, according to generally accepted accounting practices.⁵⁷ Each Consortia grantee shall make these records available to the Commission.⁵⁸ Detailed records of invoices and receipts of each program element must be kept.⁵⁹ Even after receiving reimbursement, the Commission's Communication Division has the authority to initiate any necessary audit, verification, and discovery of Consortium members relating to grant funding activities to ensure funds are spent in accordance with the Commission's adopted rules and standards.⁶⁰ The Communication's Division consistently reiterated this in NIU's payment letters. Specifically, payment was continuously subject to audit and other verification for compliance with the Commission's orders and directives.⁶¹

CU failed to maintain and produce records in accordance with the CASF grant requirements to substantiate its expenses. First, CU did not maintain its books and records in accordance with GAAP, as required. CU provided SCO and CPED with versions of a document titled "general ledger," which was not in-fact a general ledger or prepared in accordance with GAAP.⁶² SCO described this claimed "general ledger" as "in part, a check register" that did not contain the proper information of a general ledger such as the segregation of funds from different sources. Failing to maintain CU's books and records in accordance with GAAP effectively prevented SCO and CPED from determining the chargeable and allocable CASF program

⁵⁶ CPED-04, p. 11, lns. 2-4.

⁵⁷ D.11-06-038, p. 29.

⁵⁸ D.11-06-038, p. 29.

⁵⁹ D.11-06-038, p. 17.

⁶⁰ D.11-06-038, p. 29.

⁶¹ CPED-07 Att. 5, Communications Division Payment Packages.

⁶² CPED-04, pp. 12-13, lns. 1-6; CPED-02

expenses to the period in which the transaction occurred in order to determine whether expenses incurred by CU for its program activities were spent in accordance with the Commission’s requirements.⁶³ Second, CU did not follow the CASF program’s recommended best practice of establishing a bank account solely for CASF deposits and expenditures in order to avoid co-mingling of funds.⁶⁴ Instead, CU co-mingled its funds with its other funding sources.

Third, CU lacks the proper accounting records and evidence of timely-prepared source documents of program activities and costs. Upon SCO’s review of NIU’s payment requests to CD and the cancelled checks provided by CU, SCO found that “the total amount submitted on the Payment Request did not match the total amount of Cancelled Checks.” Cancelled checks totaled \$431,875 while invoices totaled \$310,050.⁶⁵ So while CU provided cancelled checks and claimed that those checks included what was billable to the CASF contract, the cancelled checks actually exceeded Payment Request invoices by \$121,825, indicating that the cancelled checks included payments to trainers beyond what was billable to the CASF contract.⁶⁶ Also, most of the cancelled checks were for partial payments of trainer invoices that did not match the time period for invoices.⁶⁷ The degree of discrepancies made it impossible to verify that expenses claimed as CASF grant related were in fact valid. Upon completion of SCO’s fieldwork, SCO concluded that it was unable to determine whether or not payments rendered to individuals were for work that was CASF grant related, as CU had presented.⁶⁸ SCO deemed \$341,413 of the \$353,784⁶⁹ in NIU’s payment requests was unsubstantiated due to the lack of source documents and accounting records. SCO recommended that the “PUC promptly act to resolve and recover unsupported CASF funds disbursed to the NIU.”⁷⁰

Fourth, CU did not make records available upon SCO’s initial request on February 6, 2015. At the time SCO initiated the audit, SCO sent a letter detailing the documents CU was

⁶³ CPED-04, p. 13, lns. 5-15.

⁶⁴ CPED-04, p. 13, lns. 17-32, See CPED-06 Att.1, Selena Huang Testimony dated July 7, 2020, p. 7.

⁶⁵ CPED-04 Att. 7, SCO WP 3D-1 Test of Payroll Expenses, p. 1.

⁶⁶ CPED-04, pp. 7-8; CPED-02, p. 3, lns. 23-26.

⁶⁷ CPED-04 Att. 7, SCO WP 3D-1 Test of Payroll Expenses, p. 1.

⁶⁸ CPED-04 Att. 7, SCO WP 3D-1 Test of Payroll Expenses, p. 1.

⁶⁹ \$353,784 is the amount SCO determined the CPUC paid to NIU.

⁷⁰ CPED-04 Att. 7, SCO WP 3D-1 Test of Payroll Expenses, p. 2.

required to provide.⁷¹ CU was not forthcoming and SCO had to make repeated requests to Mr. Ortega for documents.⁷² On February 10, 2015, CU provided some invoices for its staff/contractors; documents were missing for the first year of the grant.⁷³ No additional source documentation to substantiate costs claimed was provided. CU later provided cancelled checks claiming those reflected what was billable to the CASF contract. CU also made available a record of checking account activity.⁷⁴ However, NIU did not make available any accounting records or source documents (invoices, time records, and bank statements) during the course of the audit.⁷⁵ SCO noted that “Mr. Ortega stated that he had access to bank statements, but the documents were not available for auditors to review.”⁷⁶ Mr. Ortega further asserted that documents to substantiate costs associated with the program existed but they were “not available onsite and could be thousands of pages long.”⁷⁷ CU either refused to provide documents or promised to provide records by a date certain but then did not follow through.⁷⁸ It wasn’t until after SCO’s exit interview on September 2, 2015 when CU agreed to provide cancelled checks and bank statements for NIU’s other sources of funding. However, CU never made those records available.⁷⁹ CU instead provided a document titled “general ledger,” but as previously indicated, given that the document was not prepared in accordance with GAAP, SCO was unable to rely on the information contained in that document.

CU continues to withhold records to substantiate NIU’s expenses. To date, even after two data requests from CPED demanding all supporting documentation for CASF related expenses and the ALJ’s ruling granting CPED’s Motion to Compel and ordering CU to produce the information, CU has yet to provide a full and complete supporting documentation in response. Instead, for instance, CU promises that it would provide a sample of selected invoices

⁷¹ CPED-09, pp. 1-2.

⁷² CPED-09, p. 2, lns. 18-29.

⁷³ CPED-04 Att. 3, SCO interview notes with Larry Ortega, p. 1.

⁷⁴ CPED-09, p. 3, ln. 1-2.

⁷⁵ CPED-02, p. 12.

⁷⁶ CPED-04 Att. 3, SCO interview notes with Larry Ortega, p. 2.

⁷⁷ CPED-09, p. 3, lns. 1-3.

⁷⁸ CPED-02, p. 12.

⁷⁹ CPED-02, p. 24.

for selected quarters, which it also failed to follow through with.⁸⁰ CU and Mr. Ortega should be liable for penalties pursuant to Pub. Util. Code sections 2108, 2111, and 2112 for failing to comply with the Commission’s requirements in D.11-06-038.

6. CU failed to comply with the Communication’s Division’s demand letter.

Resolution T-17355 addresses program administration issues involving consortia program grantees. Specifically, the Commission has authorized the Communication’s Division to “withhold grant payments if the consortium grantee does not comply with any of the requirements in this resolution.”⁸¹ Resolution T-17355 orders that the disbursement of funds are “subject to the requirements set forth in Decision 11-06-038 including the submission of periodic progress reports and supporting documentation for payment reimbursement.”⁸² If a consortia grantee “fails to complete the project, in accordance with the terms of approval granted to the Commission, the recipient will be required to reimburse some or all of the CASF Consortia Grant Account moneys that it has received.”⁸³

In light of the results of SCO’s audit, the Commission issued a demand letter to KCCD and CU directing NIU to return \$82,381 (\$46,621 of insufficiently documented costs plus \$35,760 for training hours claimed but not provided) by July 18, 2016 to the program.⁸⁴ To date, CU has not returned any portion of the \$82,381 demanded.⁸⁵ Therefore, the Commission should sanction Mr. Ortega and CU for contempt and impose penalties under Pub. Util. Code sections 2108 and 2111.

7. CU failed to adequately respond to CPED’s July 21, 2017 data request and provided incomplete and untimely responses to CPED’s February 21, 2020 data request.

In fulfilling the Commission’s duty to ensure funds are spent in a cost-effective and responsible manner consistent with the CASF’s program goals, the Commission requires

⁸⁰ CPED-05, Att. 10, p. 2 (data request #6).

⁸¹ Resolution T-17355, p. 11.

⁸² Resolution T-17355, p. 14, Ordering Paragraph No. 4.

⁸³ D.11-06-038, p. 42, Ordering Paragraph No. 20.

⁸⁴ CPED-01, Ex. 18, pp. 3-4.

⁸⁵ CPED-01, p. 11.

Consortia grantees to make records available to the Commission upon request.⁸⁶ The Consortia grantee must provide access upon 24 hours' notice to evaluate work completed or being performed pursuant to the grant.⁸⁷ Given the results of SCO's audit and NIU's failure to return the \$82,381 demanded by the Commission, on or around 2017, CPED initiated an investigation into NIU's misuse of CASF grant funds. CPED issued its first data request to CU on July 21, 2017 asking for documents and communications related to its program activities and requiring responses by August 4, 2017.⁸⁸ After the commencement of mediation, CPED issued its second data request, with nearly identical requests to the first data request, to CU on February 21, 2020 with a deadline of March 6, 2020.⁸⁹

CU refused to provide responsive information and documents to UEB's data request issued on July 21, 2017. CPED made several attempts to follow-up, but was consistently met with CU's opposition; CU re-directed the focus to a list of questions it presented for CPED to answer⁹⁰ and challenged CPED's authority to issue data requests.⁹¹ CU ultimately provided a link to the audit report and claimed it "sufficiently responded to the request."⁹²

CU further challenged CPED's authority to issue the February 21, 2020 data request and then subsequently claimed that it never received the data request.⁹³ CU refused to answer CPED's data request until nearly three months later when the ALJ granted in part CPED's Motion to Compel at the May 4, 2020 status conference.⁹⁴ Despite agreeing to provide responsive documents by May 15, 2020 at the status conference, CU failed to do so and instead filed a motion requesting an extension of time asking to provide responses by May 18, 2020.⁹⁵ CU continued to delay until May 21, 2020 when CPED initiated a WebEx call with CU. Despite numerous efforts by CPED, CU has refused to provide full and complete responses to its

⁸⁶ D.11-06-038, p. 29.

⁸⁷ D.11-06-038, p. 29.

⁸⁸ CPED-05, pp. 1-2.

⁸⁹ CPED-05, p. 3, lns. 17-20.

⁹⁰ CPED-05, p. 2, lns. 24-26.

⁹¹ CPED-05, p. 2, lns. 34-37.

⁹² CPED-05, p. 2, lns. 34-37.

⁹³ CPED-05, p. 3, lns. 27-35.

⁹⁴ CPED-05, p. 4, lns. 3-17.

⁹⁵ CPED-05, p. 4, lns. 19-24.

February 21, 2020 data requests.²⁶ To date, even after two data requests from CPED demanding all supporting documentation for CASF related expenses and the ALJ's ruling granting the Motion to Compel and ordering CU to produce the information,²⁷ CU continues to withhold relevant information.

Thus, CU's failure to provide the records requested in CPED's data requests violates the Commission's requirement to do so. CU should therefore be liable for penalties pursuant to Pub. Util. Code sections 2108 and 2111. Mr. Ortega and CU should also be held in contempt of the Commission pursuant to Pub. Util. Code section 2113 for its failure to comply with D.11-06-038 and the ALJ's order granting CPED's Motion to Compel.

B. CU and Mr. Ortega violated Rule 1.1.

Rule 1.1 of Commission's Rules of Practice and Procedure provide that any person who signs a pleading or brief, enters an appearance, offers testimony at hearing, or transacts business with the Commission, by such act represents that he or she agrees to comply with the Commission's rules, maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges and never mislead the Commission or its staff by an artifice or false statement of fact or law.

CU and Mr. Ortega have violated Rule 1.1 numerous times. As described, above, CU and Mr. Ortega have withheld relevant information from CPED since August 2017. In doing so, CU has misled the Commission by only permitting it to review and analyze partial and incomplete information. In addition, CU's refusal to provide documents and information and its production of partial and incomplete records impeded CPED's investigation.

CU and Mr. Ortega also presented false statements of fact with regard to the commencement of the audit that misled CD. Despite never having requested CD to delay the audit, on or around February 19, 2015, CU and Mr. Ortega told SCO that he had "spoke with the managers at the CPUC and that the CPUC approved his request to delay the audit till March."²⁸ CU misled CD staff and SCO when it made false statements relating to the delay of the audit.

²⁶ CPED-05, pp. 4-6.

²⁷ Email Ruling Granting CPED's Motion to Compel Responses to Data Requests dated June 22, 2020.

²⁸ CPED-15, Emails dated February 23, 2015 between Robert Wullenjohn and Ryan Dulin regarding CU's claims of delaying the audit; CPED-18, Email from Robert Wullenjohn to Larry Ortega dated February 24, 2015.

Furthermore, throughout NIU's grant period, CU misrepresented the hours of its Parent Engagement through Technology sessions or Activity 5 of its Action Plan and Work Plan. NIU's Action Plan specifically identified Activity 5 of its seven step program as "[t]rainers conduct the 40 hour Parent Engagement through Technology sessions from school sites, community-based organizations, and community centers where computer labs are turned into Empowerment Hubs."⁹⁹ During all three years of NIU's grant, CU submitted Work Plans stating Activity 5 was to "[c]onduct the 40-hour Parent Engagement through Technology sessions..."¹⁰⁰ And, in each of NIU's twelve quarterly reports, CU specifically reported the number of parents who had completed the "40 hours of training."¹⁰¹ Even after CD stated that a reduction of training hours represented a fundamental change to NIU's Work Plan and would require CD approval,¹⁰² CU continued to report conducting 40-hour trainings in all of their quarterly reports throughout the grant period.¹⁰³ CU misled CD staff by claiming every quarter that 40-hour training classes were conducted when, in fact, it had unilaterally reduced class hours, in some cases, down to only three-hour sessions.¹⁰⁴

CU and Mr. Ortega also violated Rule 1.1 where NIU misrepresented their schedule of classes. In an effort to conduct a site visit to observe how NIU conducts the parent training classes, CD staff contacted NIU on October 6, 2014 to obtain NIU's scheduled classes for that month.¹⁰⁵ According to the October schedule, NIU was to provide training at Edison Elementary School every day from October 13, 2014 through November 19, 2014, starting at 8:30 a.m.¹⁰⁶ However, when CD staff Devla Singh arrived on October 15, 2014 at Edison Elementary, what CU identified on the schedule as the third day of instruction, no classes were in session.¹⁰⁷ Subsequently, Devla Singh learned that NIU's Vice President or Lead Trainer, Neri Rivas, did

⁹⁹ CPED-01 Ex. 6, Coalition Grant Application Attachment H – Action Plan, p. 4.

¹⁰⁰ CPED-07, p. 8, lns. 9-13.

¹⁰¹ CPED-07, p. 8, lns. 23-28.

¹⁰² CPED-07, Att. 1.

¹⁰³ CPED-07, p. 2, lns. 7-11.

¹⁰⁴ CPED-02, p. 19.

¹⁰⁵ CPED-07 Att. 7, "NIU Calendar for October".

¹⁰⁶ CPED-07 Att. 7, "NIU Calendar for October".

¹⁰⁷ CPED-07 Att. 7, p. 1.

not contact Edison Elementary to schedule classes until October 8, 2014.¹⁰⁸ CU misled CD staff by providing NIU's schedule of classes purported to show that classes were already scheduled when, in fact, classes had not even been coordinated yet with Edison Elementary.

Mr. Ortega and CU should be held in contempt of the Commission pursuant to Pub. Util. Code section 2113 for violations of Rule 1.1.

C. CU and Mr. Ortega should be subject to equitable remedies based on their violations of D.11-06-038 and Pub. Util. Code section 281(f)(7) and their actions to impede the efficient administration of justice.

Like all other Consortias in the CASF program, CU was required to meet all of the performance metrics that it agreed to perform. CU failed to do so. In fact, CU unilaterally changed one of its program activities specific to the furtherance of broadband adoption; CU reduced some of its parent trainings to less than half of the number of training hours it agreed to provide.¹⁰⁹ CU has also demonstrated that it is unfit to maintain and keep proper records and accounting for the \$368,747 in public funds that NIU received. Both CPED and SCO found that CU's operations and recordkeeping lacked appropriate internal controls to ensure that its program activities were performed in accordance with the CASF grant requirements. CU never maintained financial statements in accordance with GAAP as required.¹¹⁰ CU was also unable to show that expenses submitted to the CASF grant were not also paid for by NIU's other funding sources. And, despite being given ample opportunities to provide complete source documents to substantiate the expenses billed to the CASF grant, to date, CU has failed to do so. Instead, CU has spent much effort to stall and delay SCO's and CPED's discovery efforts, including refusing to provide full and complete responses in spite of the ALJ's order directing CU to do so.

Additionally, as summarized in the Assigned Commissioner's amended scoping ruling, CU violated ex parte rules, submitted last minute requests to reschedule status conferences, and failed to meet deadlines, including its own requests for extensions of time related to responding to CPED's data request.¹¹¹

¹⁰⁸ CPED-07 Att. 7, p. 1.

¹⁰⁹ CPED-07, p. 2, lns. 7-9.

¹¹⁰ CPED-04, p. 12.

¹¹¹ Assigned Commissioner's Ruling Amending the Scope of the Proceeding, dated July 10, 2020,

In keeping with the Commission's goal of preventing fraud, waste, and abuse of its public purpose programs, CU and Mr. Ortega should be subject to equitable remedies including banning CU and Mr. Ortega from applying, serving, managing, leading, assisting, or participating in any other Commission public purpose program.

IV. CONCLUSION

CU took public funds for a public purpose. To preserve and uphold the integrity of the CASF consortium program and the Commission's regulatory process, CU must be held accountable for failing to abide by the Commission's requirements and obligations as a CASF grantee. The Commission should require NIU to return at least \$197,764 in improperly collected grant funds to the Commission and liable for penalties for violating CASF program requirements. Also, CU and Mr. Ortega should be sanctioned by the Commission for being in contempt in addition to other equitable remedies.

Respectfully submitted,

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August 17, 2020