

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

<p>Order Instituting Investigation on the Commission’s Own Motion into the California 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.</p>	<p>I. _____</p>
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ORDER INSTITUTING INVESTIGATION

I. INTRODUCTION AND STATEMENT OF PURPOSE

By this order, the California Public Utilities Commission (“Commission”) institutes a formal investigation to determine whether Respondents, California’s One Million New Internet Users Coalition (“NIU Coalition” or “Coalition”),¹ violated any provisions or provisions of the California Public Utilities (“PU”) Code, Commission General Orders or resolutions, decisions, or other applicable rules or requirements pertaining to the grant of funds from the California Advanced Services Fund (“CASF”). Pursuant to the Commission’s Rules of Practice and Procedure (“Rules”), Rule 5.1, the Commission opens this Order Instituting Investigation (“OII” or “Order”) on its own motion.

The Commission has authority to regulate entities, including corporations and individuals that provide a public service, to protect ratepayers, to enforce the constitution,

¹ Members of the NIU Coalition are: the Asian Pacific Community Fund, Black Business Association, Community Union, Inc., Korean Churches for Community Development, and Soledad Enrichment Action – Charter Schools. All members of the Coalition jointly applied for receipt of CASF broadband consortia grant monies.

statutes, and Commission rules, orders, decisions, requirements, and demands, and to remedy violations thereof.² The NIU Coalition is subject to the Commission's jurisdiction by virtue of their acceptance as a grantee of the CASF program and recipient of CASF grant funds. The Commission retains continuing oversight of the disbursement of grant funds³ to ensure that such funds are spent on authorized functions that were specified in the grantee's application and subsequently approved by the Commission.

This Order provides notice that the Commission will determine whether the NIU Coalition violated the PU Code, Commission decisions, resolutions and/or other applicable rules or requirements pertaining to grantees of the CASF consortia grants. This Order also directs the NIU Coalition to show cause as to why the Commission should not order the Coalition to return approximately \$244,385 of misappropriated CASF funds, impose penalties for violations of the grant's terms, and other remedies, including a prohibition against some or all of the members and officers of the NIU Coalition from benefitting from or participating in any Commission program for a period of at least ten years.

II. BACKGROUND

The NIU Coalition is a collection of five organizations operating primarily in the Los Angeles area. On or about August 18, 2011, the NIU Coalition submitted their Application for CASF funding. Mr. Larry Ortega, President/CEO of Community Union Inc., was identified as their leader. Ms. Hyepin Im, President/CEO of Korean Churches for Community Development ("KCCD"),⁴ serves as the Coalition's fiscal agent. On

² These provisions include, but are not limited to, Public Utilities Code § 701 (Commission may do all things whether specifically designated in this part or in addition thereto which are necessary and convenient to exercise its power and jurisdiction); § 281(e)(3), renumbered to § 281(f)(7) effective October 15, 2017, (Legislature enacted this section which brings under the Commission's jurisdiction non-telephone corporations); § 2111 (provides for remedies against a corporation or person other than a public utility and its officers, agents, or employees for failing to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission). See also, Cal. Const., art. XII, § 5.

³ D.11-06-038, p. 3.

⁴ References to KCCD include the entity named, "Faith and Community Empowerment." The entity, Korean Churches for Community Development, is not a registered nonprofit or a

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February 21, 2012 the Commission approved a CASF grant of \$450,000 to the NIU Coalition for the period of March 1, 2012 through February 28, 2015. To date, the Commission has disbursed to the NIU Coalition a total of \$368,747 in CASF grant funds.⁵

Over the grant period, the Commission's Communications Division identified numerous performance problems, including but not limited to:⁶

1. Inadequate and incomplete program recordkeeping by the NIU Coalition and its fiscal agent, the KCCD;
2. Failure to meet performance metrics set out in the Coalition's Work Plan, including an unapproved cutback in training hours from 40 to 21, and far fewer graduates than promised in their proposal; and,
3. Questionable accuracy of NIU's reporting.

Due to these concerns, the Communications Division engaged the State Controller's Office ("SCO" or "Auditor") to conduct an audit of CASF funds distributed to the Coalition, limited the Coalition's Year 3 budget due to their lack of performance, and withheld the remainder of their eligible grant funds in the amount of \$96,216 pending the audit's results.⁷ SCO's audit found the following primary issues documented in its Audit Report:⁸

1. The NIU Coalition lacked proper internal control safeguards to ensure that the consortia program functioned as intended and that the

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registered corporation, LP, or LLC according to the California Secretary of State's Business Search database and the State of California, Department of Justice, Office of the Attorney General's Registry of Charitable Trusts. The Registry of Charitable Trusts lists "Faith and Community Empowerment" as associated with the same mailing address and President and CEO as the Korean Churches for Community Development.

⁵ Utilities Enforcement Branch Staff Report titled "Investigation of California's One Million New Internet Users Coalition" (Staff Report), p. 1. A copy of the Staff Report is provided as Attachment A.

⁶ Staff Report, pp. 1-2.

⁷ Staff Report, p. 2.

⁸ California State Controller's Office, California's One Million New Internet Users Coalition, Audit Report (March 1, 2012 – March 1, 2015), November 2015 (Audit Report), p. 1. The State Controller's Audit Report is provided as Attachment B.

- accounting records and source documents properly substantiated program-related activities and costs.
2. The NIU Coalition provided only about 50% of broadband instructional training agreed upon in the CASF grant.
 3. The NIU Coalition did not provide complete records; this prevented the auditors from determining if any and all of the CASF reimbursed costs were also charged against other grants or funds.
 4. KCCD, NIU's fiscal agent, charged \$46,621 for unallowable consortia program activities.

NIU and their fiscal agent, KCCD, were overpaid \$325,638.² SCO's audit recommended the Commission take appropriate action on each of the issues identified, above.¹⁰

Based on the audit and pursuant to Decision (D.)11-06-038, which implemented CASF's broadband consortia grants, the Commission's Communications Division directed the NIU Coalition to return funds that lacked sufficient documentation and/or that it deemed ineligible.¹¹ The NIU Coalition refused to comply with the Commission's directive.¹² The Communications Division thereafter referred the case to the Consumer Protection and Enforcement Division's ("CPED") Utility Enforcement Branch ("UEB").¹³ UEB's investigation confirmed the SCO's findings and UEB staff developed a report titled "Investigation of California's One Million New Internet Users Coalition ("Staff Report"). Based on the Staff Report and the State Controller's Office Audit Report and related supporting evidence, the Commission finds it has more than sufficient evidence and good cause to commence a formal investigation to determine whether the NIU Coalition violated the rules and requirements of the CASF grant. By initiating this Order, the Commission seeks to investigate the NIU Coalition, including its members the

² Staff Report, p. 2.

¹⁰ Audit Report, pp. 11-24.

¹¹ Staff Report, p. 11.

¹² Staff Report, p. 11.

¹³ Staff Report, p. 3.

Asian Pacific Community Fund, Black Business Association, Community Union, Inc., KCCD, and Soledad Enrichment Action – Charter Schools, and address their non-compliance with the terms of the CASF grant, order the return of any misappropriated funds, and impose penalties and/or reparations for any wrongdoing found.

III. SUMMARY OF ALLEGED VIOLATIONS IN UEB’S STAFF REPORT

UEB verified the State Controller’s findings in its audit report.¹⁴ UEB alleges the following violations:

1. The NIU Coalition failed to provide supporting documentation and information necessary to determine that expenses reimbursed with CASF grant funds were not also reimbursed from the Coalition’s other funding sources.
2. The NIU Coalition failed to maintain and produce documentation necessary to verify that all expenses claimed were in fact spent in accordance with program requirements.
3. The NIU Coalition failed to produce documents and provide information to the Commission’s Utility Enforcement Branch.
4. The NIU Coalition failed to implement program activities consistent with the terms of their CASF Grant (i.e. provide 40-hour training; deliver training to 790 parents/year; conduct enough workshops at the rate provided).
5. The NIU Coalition misled the Commission by failing to inform the Commission of reducing parent training to at or around 20 hours but yet reporting in their annual Work Plans that they had provided 40 hour training programs.
6. The KCCD received \$53,165 of CASF funds for unallowable administrative costs.
7. The KCCD failed to fulfill its fiduciary responsibilities.
8. The NIU Coalition refused to comply with the Communication Division’s demand letter to return CASF funds to the Commission.

¹⁴ Staff Report, p. 3.

The table below summarizes relevant figures referred to in UEB's investigation¹⁵:

CASF Grant Payments

Total CASF Grant Awarded by the Commission	\$	450,000.00
Amount Withheld Pending SCO Audit	\$	96,216.00

Total Claims Submitted by NIU	\$	475,542.00
Amounts Disallowed by Communications Division	\$	(106,795.00)
Total CASF Grant Payments by the Commission	\$	<u>368,747.00</u>

Overpayments based on SCO's Findings

Audited Program Costs	\$	438,419.00
Allowable Program Costs Allocated to CASF	\$	170,983.00
CASF Grant Payments by the Commission	\$	368,747.00

Overpayment of CASF funds Above Allowable Costs	\$	197,764.00
Overpayment from Unsupported administrative costs	\$	46,621.00
Total Overpayment to be Returned to the CASF Fund	\$	<u>244,385.00</u>

A. The NIU Coalition Failed to Describe and Provide Supporting Detail Necessary to Find That Expenses Reimbursed with CASF Grant Funds Were Not Also Reimbursed From Other Funding Sources in Violation of D.11-06-038 Ordering Paragraph 11.

Ordering Paragraph 11 of the Commission's decision authorizing the implementation of the Broadband Consortia grant program (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

¹⁵ Staff Report, pp. 10-11.

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

As part of the SCO’s audit, NIU Coalition identified a total operating budget of \$1,159,959 claiming \$709,959 from “other sources” or non-CASF grants or funds.¹⁷ However, they failed to provide as part of their proposed budget every year, a description of the activities and related supporting details of these other funding sources, as required by D.11-06-038. This information is necessary to determine whether NIU’s budget duplicated funding from other sources. The State Controller’s Office was unable to obtain any accounting records or source documents to allow it to determine the proportion of program activities, costs, recordkeeping, and claims that may have been charged against other funds.¹⁸ While the NIU Coalition produced what it claims was a “general ledger,” the auditor’s later identified it as “in part, a check register”¹⁹ that did not contain the proper information of a general ledger such as the segregation of funds from different sources. Review of the check registers revealed approximately \$500,000 in proceeds from other sources (including an AT&T grant and contributions from surrounding school districts).²⁰ Without the information necessary to segregate the Coalition’s various fund sources, such as accounting records and source documents to authenticate the check registers’ recorded transactions, SCO could not verify if the expenses already charged and disbursed from the Commission’s CASF grant, totaling \$353,784, were also charged against these other funding sources.²¹ The Commission is

¹⁶ D.11-06-038, p. 40.

¹⁷ Staff Report, p. 17.

¹⁸ Audit Report p.11.

¹⁹ Audit Report, Attachment 1, Issue No. 30.

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

²¹ Audit Report, Attachment 1, Issue No. 30; SCO’s audit showed a total payment of \$353,784, however, SCO did not receive one check issued for start-up costs for \$14,983. UEB updated the total payment figure to \$368,747 (\$353,784 + \$14,983) to include the one check issued for start-up costs.

therefore prevented from ensuring that the expenses reimbursed from CASF funds were not also charged and reimbursed by the Coalition's non-CASF funding sources.

Absent any supporting documentation and a detailed description of the scope of activities covered by these other sources of funds, SCO performed an estimate of the grant amount that would cover the Coalition's expenses.²² The auditors noted that the Coalition's Action Plan proposed that "approximately 39% of consortia program expenses were anticipated by the NIU Coalition to be charged against the CASF program, and 60% to be charged against other funds."²³ SCO compared the initial grant amount of the \$450,000 awarded with their operating budget claimed at \$1,159,959, and estimated that the appropriate Commission's CASF grant awarded should only be 39% (\$450,000 / \$1,159,959).²⁴ Therefore, even though the Coalition submitted expenses totaling \$438,419, SCO found that only \$170,983 (39% of \$438,419) in expenses should be recovered through the CASF grant.

The failure to provide supporting detail and a description of the Coalition's other funding sources for its broadband activities is a violation of the Commission's requirements in Ordering Paragraph 11 of D.11-06-038. These program rules and requirements have been adopted by the Commission to prevent the fraud, waste, and abuse of public purpose money. The NIU Coalition must be held accountable for failing to meet the broadband consortia program requirements.

The NIU Coalition shall be ordered to show cause as to why a penalty pursuant to PU Code § 2111 shall not be imposed for the Coalition's failure to provide information related to its other sources of funds, which may have resulted in the Commission funding activities that were also paid for by the Coalition's other funding sources.

²² Audit Report, p. 21.

²³ Audit Report, p. 20.

²⁴ Audit Report, Schedule 1.

B. The NIU Coalition Failed to Produce Records and Documentation to Substantiate all of their Claimed Expenses in Violation of D.11-06-038.

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.²⁵ Each Consortia grantee shall make these records available to the Commission.²⁶ Detailed records of invoices and receipts of each program element must be kept by the Consortia.²⁷ Even after the NIU Coalition receives their reimbursement, the Commission has made clear in its payment letters that payment is continuously subject to audit and verification with the Commission's orders and directives.²⁸

During the State Controller's Office's audit, despite requests for accounting records and source documents, the NIU Coalition did not provide the auditors with the records or source documents allowing it to authenticate the Coalition's program activities and related costs.²⁹ When the auditors reviewed the invoices attached to the Coalition's quarterly report filings³⁰ the invoices lacked the necessary details and/or source documents to justify the reimbursements sought.³¹ SCO noted that the NIU Coalition had not maintained any required accounting records, such as a general ledger.³² After the NIU Coalition reviewed the State Controller's initial audit results, they produced what appeared to be time cards for their employees. However, the veracity of those time cards

²⁵ D.11-06-038, p. 29.

²⁶ D.11-06-038, p. 29.

²⁷ D.11-06-038, p. 17.

²⁸ Staff Report, p. 3, footnote 11.

²⁹ Audit Report, p. 12.

³⁰ D.11-06-038 provides that, "Quarterly progress reports, together with relevant invoices, receipts for the expenses sought for reimbursement are required before receiving payment." (p. 30.)

³¹ Audit Report, p. 15.

³² Audit Report, p. 12.

are suspect because none of the time cards were actually signed by the employee or trainer.³³ Additionally, there is no evidence to support that these timecards were created at the time the activities took place,³⁴ raising doubts with regard to the authenticity of these timecards. During SCO's exit conference with the NIU Coalition, an auditor asked for bank statements and cancelled checks and NIU agreed to provide these documents.³⁵ The Coalition never produced these documents.³⁶

The failure to produce and maintain supporting documentation when requested is a violation of the broadband consortia grant requirements. The lack of detailed and complete supporting documentation to authenticate the expenses claimed, seriously impairs the Commission's duty to prevent the fraud, waste, and abuse of CASF grant funds. A penalty is warranted to encourage grantees to comply with the Commission's rules and requirements and to deter future improper conduct of public purpose programs. Accordingly, the NIU Coalition shall be ordered to show cause pursuant to PU Code § 2111 as to why penalties should not be imposed for failing to comply with the CASF program requirements.

The Coalition should also be ordered to return amounts disbursed by the Commission that SCO ultimately determined it could not verify as only being charged to the CASF grant fund. Upon UEB's review of the record, UEB determined that the NIU Coalition return a total of \$197,764 in program related expenses to the Commission.³⁷ As explained in this Order, without accounting records, bank records, and source documents for its other broadband grants, SCO derived a methodology to estimate the amount that should have been properly disbursed to the Coalition, \$170,983 out of the total CASF grant payments of \$368,747 already disbursed.³⁸ With regard to the remaining \$197,764,

³³ Audit Report, Attachment 1, Issue No. 31.

³⁴ Audit Report, p. 12.

³⁵ Audit Report, Attachment 1, Issue No. 30.

³⁶ Audit Report, Attachment 1, Issue No. 30.

³⁷ Staff Report, p. 11.

³⁸ Audit Report, pp. 20-21.

without additional information from the Coalition, SCO could not determine whether the Coalition received payment from multiple sources of funds for these expenses. If the CPUC-reimbursed program costs were also charged to the Coalition's other fund sources the Coalition likely received double recovery for the same expenses.³⁹

Any reimbursed expenses that have not been sufficiently substantiated and verified as only charged against the CASF grant reimbursement shall be returned to the Commission. To uphold the integrity of the Commission's public purpose programs and enforce compliance with Resolution T-17355⁴⁰ and D.11-06-030, the NIU Coalition shall be ordered to show cause why they should not be ordered to return at least \$244,385, including interest.⁴¹

C. The NIU Coalition Failed to Produce Documents Responsive to the Commission's Utility Enforcement Branch Data Request in Violation of D.11-06-038 and Public Utilities Code § 701.

As a recipient of a grant funded by California ratepayers, the NIU Coalition is subject to the same Commission laws and requirements as a regulated entity. The Commission intended to enforce the requirements of the CASF program on non-telephone corporations to ensure grant recipients follow the same rules and requirements as telephone corporations.⁴² In its consent form, the NIU Coalition attested to "agree to comply with all grant terms, conditions, and requirements set forth in D.11-06-038 and Resolution T-17355."⁴³ The NIU Coalition is also obligated to comply with the later adopted Commission decision, D.14-02-018, which requires non-telephone corporations

³⁹ Audit Report, pp. 20, 24.

⁴⁰ Resolution T-17355, p. 11; D.11-06-030, p. 3.

⁴¹ Staff Report, p. 3, footnote 11.

⁴² D.14-02-018, p. 34.

⁴³ Staff Report, p. 4.

to comply with all existing CASF program rules established by the Commission including those set forth in D.11-06-038.⁴⁴

By executing their consent form prior to receiving CASF grant funds, the NIU Coalition agreed to abide by the Commission's orders, including the terms, conditions, and requirements of D.14-02-018, D.11-06-038 and Commission Resolution T-17355, the resolution awarding the grant. The consent form signed by the NIU Coalition is evidence that they agreed to be subject to the Commission's jurisdiction with respect to all matters relating to the administration of the CASF grant.⁴⁵ The Commission's jurisdiction, while not unfettered, is expansive in that it is authorized to "do all things . . . which are necessary and convenient".⁴⁶ This expansive authority includes the authority to obtain information from non-regulated persons and entities (or non-utilities) that may be in furtherance of public utility regulation.⁴⁷ Ensuring ratepayer funds are properly spent for public purpose programs such as the California Advanced Services Fund, is in furtherance of public utility regulation. The Commission has made clear that it has the authority to enforce the terms and conditions of the CASF grant awards and to impose penalties in accordance with §§ 2111 and 2108 against non-utilities, including consortias.⁴⁸ The Commission's 2014 Decision authorized the right to conduct any necessary audit, verification, and discovery to ensure that grantees spend CASF funds in accordance with Commission rules and requirements.⁴⁹ Additionally, Resolution T-17233 which adopted application requirements and guidelines for non-telephone corporations provided that "The Commission has an obligation to oversee not only those

⁴⁴ D.14-02-018, p. 39, Order No. 1, Appendix 1, p. 2.

⁴⁵ D.11-06-038, p. 36.

⁴⁶ PU Code § 701.

⁴⁷ Resolution ALJ-195, pp. 2-3.

⁴⁸ D.14-02-018, Appendix 1, p. 3; D.14-02-018 p. 38, Conclusion of Law No. 3.

⁴⁹ D.14-02-018, pp. 22-23.

it has regulatory authority over but also . . . over any organization **who will benefit** from ratepayer monies.”⁵⁰

UEB began its investigation after the Commission’s Communications Division referred the case to enforcement in 2017. In exercising the Commission’s statutory authority and consistent with the authorizing decisions for the CASF program, UEB issued a data request to the NIU Coalition on July 21, 2017 as part of its investigation to determine whether NIU spent CASF funds in accordance with the terms of their CASF grant and with the Commission’s rules and requirements. The NIU Coalition’s response was due on August 4, 2017.⁵¹ Instead of producing responsive documents, Mr. Ortega, President of the NIU Coalition, objected to UEB’s data request and challenged UEB’s authority for issuing the request. After no response, UEB staff reached out to the NIU Coalition on July 28, 2017.⁵² Mr. Ortega ultimately responded to the data request by including a link to the State Controller Office’s Audit Report and without providing any further documentation, asserted that this “sufficiently responded to the request.”⁵³

UEB sent a Notice of Violation on August 23, 2017 to the NIU Coalition for failing to adequately respond and produce information responsive to the data request.⁵⁴ The Notice of Violation reminded the NIU Coalition of their obligation to respond to the data request and of the \$50,000 per day penalty for failing to do so.⁵⁵ As a recipient of CASF funds, the NIU Coalition is under the Commission’s jurisdiction and is obligated to respond to UEB’s data request. To date, the NIU Coalition has not complied.⁵⁶

Given the NIU Coalition’s refusal to cooperate, they should be ordered to show cause why the Commission should not impose a penalty, pursuant to PU Code § 2111,

⁵⁰ Resolution T-17233, p. 5 (emphasis added).

⁵¹ Staff Report, p. 12.

⁵² Staff Report, p. 12.

⁵³ Staff Report, p. 12.

⁵⁴ Staff Report, p. 12.

⁵⁵ Staff Report, p. 13.

⁵⁶ Staff Report, p. 13.

large enough so that they are deterred from again failing to cooperate with Commission data requests.

D. The NIU Coalition Failed to Implement Program Activities in Accordance with the Terms of the CASF Grant in Violation of D.11-06-038 and PU Code § 281(f)(7).

Public Utilities Code § 281(f)(7) provides that a non-telephone corporation may participate in the Commission’s broadband consortia grant program so long as a grantee “complies with program requirements established by the commission.” The Commission requires that all broadband consortia grantees be bound to the requirements and obligations set forth in their Work Plan, Action Plan, and Consent Form.⁵⁷ Any substantive changes to the Work Plan or Action Plan must be communicated to the Commission’s Communications Division and subject to the Communications Division’s approval.⁵⁸

In the NIU Coalition’s Action Plan and Work Plan, they identified tasks and objectives to be met with the CASF funds they received. The Work Plan set forth seven objectives. Two of the key performance metrics are:

1. Conduct the 40 hour-Parent Engagement through Technology sessions on school site, community-based organizations, community centers where computer labs are turned into Empowerment Hubs;
2. Conduct post One Million NIU Graduate workshops, where the parents and community members are involved in email exercises, mobilizing on current issues.⁵⁹

1. NIU failed to provide 40 hours of technology training.

The Coalition identified the facet of providing parents with technology training was a “key attribute” of their commitment to expand broadband.⁶⁰ In their Work Plan

⁵⁷ D.11-06-038, Ordering Paragraph 18, p. 41.

⁵⁸ D.11-06-038, Ordering Paragraph 21, p. 42.

⁵⁹ Staff Report, p 13.

submitted with their CASF grant application, the NIU Coalition committed to provide 40 hours of training to 790 attendees per year at 5 locations.⁶¹ Upon review of the NIU Coalition's Year 3 budget, the Communications Division noted that "despite NIU's claims that it is meeting performance targets, the majority of NIU's sessions are for less than the 40 hours stated in both the Work Plan and NIU's original application."⁶² A sample review of student attendance by the State Controller's Office revealed that the NIU Coalition only provided on average 21 hours of training to the sampled attendees (7 sessions of 3 hour classes).⁶³ The NIU Coalition failed to meet this performance metric, which is key to their efforts to expand broadband adoption to their communities.

Reducing the duration of training in half is a substantive change that falls squarely within the Communications Division's authority to consider before the Coalition is permitted to implement such a change. For instance, reducing training hours in half raises concerns regarding whether the training is as effective. The NIU Coalition failed to seek Commission approval before reducing the number of training hours provided even though the CASF grant program requires that any substantive changes to the terms and conditions underlying the Commission's approval of the Consortium grant (e.g., changes to Action Plan, Work Plan, budget or designated Fiscal Agent, etc.) be communicated to the Communications Division Director at least 30 days before the anticipated change, and may be subject to approval by either the Director or by Commission resolution before becoming effective.⁶⁴ This part of the NIU Coalition's program was out of compliance with the Commission's requirements.

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⁶⁰ Staff Report, p. 4.

⁶¹ Staff Report, p. 14.

⁶² Staff Report, p. 7.

⁶³ Audit Report, pp. 20-21.

⁶⁴ D.11-06-038, Order No. 21.

2. The NIU Coalition failed to deliver training to the number of parents it committed to.

The NIU Coalition committed to providing 40 hours of training for 790 parents each year.⁶⁵ After the first year of the CASF grant, NIU only trained 671 parents, which was 85% of their annual objective.⁶⁶ On several occasions, Communications Division staff discussed its concerns with the NIU Coalition for their failure to meet the performance metrics it proposed. While the Communications Division approved the reimbursement of CASF grant funds to the NIU Coalition for Year 2, it was on the condition that the Coalition would catch-up to the goals it did not meet in Year 1.⁶⁷ To make-up for this shortfall, the NIU Coalition committed to training 909 parents in Year 2.⁶⁸ However, by the 3rd quarter of Year 2, the NIU Coalition only trained 446 parents, meeting only 49% of their Year 2 target.⁶⁹ The Communications Division expressed its concern to the Coalition about their failure to meet the target goals because parent training is a, “performance metric that represents the crux of what NIU’s funding is based upon.”⁷⁰ At the conclusion of the grant, the NIU Coalition reported they only held 125 classes during the 10 quarters of submitted claims.⁷¹ In the 125 classes, only 1,779 students were listed as having graduated from the program, which is only 75% of their objective.⁷² Because the Coalition continued to fall short of meeting their performance metrics, the Communications Division denied the grant payment for any additional expenses associated with this objective during Year 3.⁷³ The NIU Coalition therefore

⁶⁵ Staff Report, p. 14.

⁶⁶ Staff Report, p. 14.

⁶⁷ Staff Report, p. 7.

⁶⁸ Staff Report, p. 14.

⁶⁹ Staff Report, p. 15.

⁷⁰ Staff Report, p. 15.

⁷¹ Staff Report, p. 15.

⁷² Staff Report, p. 15.

⁷³ Staff Report, p. 7.

failed to carry out their obligation to train the number of parents pursuant to the performance metrics in their Work Plan.

3. The NIU Coalition failed to conduct workshops at a rate it committed to.

The NIU Coalition also committed to “[c]onduct post One Million NIU Graduate workshops where NIU Graduates engage in email exercises and mobilize on current issues.⁷⁴ According to their Work Plan, the Coalition targeted 65% of the 790 NIU Coalition graduates (514 NIU graduates) to enter the post-NIU workshops.”⁷⁵ However, at the conclusion of Year 1, the Communications Division determined that the NIU Coalition only achieved 19% of their goal.⁷⁶ Despite the additional flexibility and leniency the Communications Division allowed NIU to lower some of their performance metrics, only 36% of graduate workshops were completed by Year 2 Quarter 3.⁷⁷ In failing to meet this measurable deliverable, the Coalition did not perform in accordance with the expectations of its Action and Work Plans.

A grant recipient of public funds must be accountable and responsible for the proper use of those funds. The NIU Coalition, in exchange for becoming the recipient of CASF grant funds, agreed to comply with the terms of the broadband consortia grant which included meeting the performance metrics in their Work Plan and Action Plan. However, the NIU Coalition failed to meet several key obligations aimed at increasing broadband adoption.

The NIU Coalition shall be ordered to show cause why penalties should not be imposed for not substantially meeting their expected outcomes related to broadband deployment, access, and adoption.

⁷⁴ Staff Report, p. 15.

⁷⁵ Staff Report, p. 15.

⁷⁶ Staff Report, p. 15.

⁷⁷ Staff Report, p. 15.

4. Other Remedies are Appropriate.

In addition to penalties against the NIU Coalition, Mr. Larry Ortega should be held accountable for the NIU Coalition's failure to fully implement their Work Plan and Action Plan. Mr. Ortega was the leader of the NIU Coalition and also President/CEO of the Community Union Inc. Community Union Inc. exclusively ran the Train the Trainer Program, a key objective of the NIU Coalition's seven-step program.⁷⁸ The State Controller's Office found during its audit that "business decisions were made solely by its co-founder [Mr. Ortega]. The co-founder prepared and/or approved accounting records and source documents, including time cards, and maintained these records as well as prepared invoices that were submitted via KCCD to CPUC for reimbursement."⁷⁹ Given Mr. Ortega's role as the leader of the NIU Coalition and his extensive involvement to carry out the objectives in their Work Plan and Action Plan, the NIU Coalition shall be ordered to show cause as to why the Commission should not exercise its plenary authority under PU Code § 701 to impose equitable remedies such as banning Mr. Ortega for at least ten years from serving, managing, leading, assisting, benefitting any entity that receives public purpose funds from the Commission.

E. The NIU Coalition Misled the Commission in Violation Of Rule 1.1.

Pursuant to Public Utilities Commission Rule 1.1:

Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of the State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

⁷⁸ Staff Report, p. 5.

⁷⁹ Audit Report, p. 11.

The NIU Coalition pledged in their Consent Form that they would comply with Rule 1.1. As explained above, the NIU Coalition set forth that they would conduct a 40-hour training program for parents in their grant application and in their annual Work Plan submissions. However, as later revealed, the NIU Coalition actually reduced instructions to around 20 hours. A sample review of student's attendance by SCO revealed that only an average of 21 hours of training of the sampled attendees (7 sessions of 3 hour classes) were provided.⁸⁰ This significant reduction in training hours occurred without notifying the Commission, a violation of the Commission's requirements in D.11-06-038.⁸¹ The Coalition misled the Commission by reporting that they were to conduct 40-hour training for parents when in fact, they had reduced training to around 20 hours but never reported this change to the Commission. Instead of correcting the number of hours of training to the Commission, they continued to report 40 hours of parent training in subsequent Work Plans that they submitted. The NIU Coalition's failure to disclose program changes is a significant offense against the self-reporting mechanisms that the Commission's regulatory program relies upon. Misrepresentations to the Commission, even unintentional, constitute Rule 1.1 violations.⁸² The NIU Coalition shall be ordered to show cause as to why the Commission should not impose penalties pursuant to PU Code § 2111.

F. KCCD Was Improperly Reimbursed for Unsupported Administrative Expenses in Violation of Resolution T-17355 and Decision 11-06-038.

Resolution T-17355 authorized a total grant of \$450,000 to the NIU Coalition and required that the disbursement of funds be subject to the requirements set forth in D.11-06-038 which includes the filing of periodic progress reports and supporting

⁸⁰ Audit Report, pp. 20-21.

⁸¹ Staff Report, p. 21.

⁸² See, *Pacific Gas & Electric Co. v. Public Utilities Com.* (2015) 237 Cal. App. 4th 812, 840-854.

documentation for payment reimbursement.⁸³ As the Coalition's fiscal agent, KCCD attested to perform certain administrative duties which are detailed in the consent form it signed.⁸⁴

KCCD claimed and received \$53,165 of CASF grant funds for administrative costs, but only provided documentation to substantiate \$6,544 of approved Consortia Program related costs.⁸⁵ The type of costs KCCD submitted reimbursement for related to planning, hiring staff, creating e-mail Blast, flyers/promotions, elected official certificates, graduation preparation and ceremony, creating and reviewing reports, and taking video and pictures.⁸⁶ KCCD provided additional documentation to attempt to substantiate their expenses; however, the documentation it submitted was associated with the costs of tasks approved as responsibilities of NIU and not attributable to KCCD's administrative expenses.⁸⁷ Therefore, KCCD improperly received approximately \$46,621 (\$53,165 - \$6,544) in unsupported administrative costs. Pursuant to Resolutions T-17143 and T-17233, which allow the Commission to demand the return of funds improperly disbursed, the NIU Coalition shall be ordered to show cause why they should not be required to repay \$46,621 to the Commission.

G. KCCD did not Fulfill its Fiduciary Responsibilities in Accordance with the Work Plan, Action Plan, and Consent Form.

KCCD, specifically Ms. Hyepin Im, served as the NIU Coalition's fiscal agent for the CASF program. As the fiscal agent, KCCD agreed to "sponsor the Project and to assume administrative, programmatic, financial and legal responsibility for the purposes

⁸³ Resolution T-17355, Order No. 4, p. 14. See also, D.11-06-038, Ordering Paragraph 17 ("The disbursement of funds awarded by grant shall be subject to the requirements and protocols for the production of periodic progress reports and supporting documentation for payment reimbursement.")

⁸⁴ Staff Report, p. 4.

⁸⁵ Staff Report, p. 20.

⁸⁶ Staff Report, p. 20.

⁸⁷ Staff Report, p. 20.

of the requirements of funding organizations [sic]. The Sponsored Organization agrees to implement and operate the Project [sic], in accordance with the terms of this agreement and with any requirements imposed by the Communications Division.”⁸⁸ KCCD signed the Consent Form stating that it is bound to the terms, conditions, and requirements of the CASF grant and that it has agreed to take the lead responsibility and authority for administration of all consortia activities.⁸⁹ KCCD’s specific responsibilities included:

- Verifying that CASF program activities are in compliance with the California Public Utilities Commission’s Resolution T-17355 and progressing according to the approved work plan milestones;
- Receiving and reviewing all claim requests for CASF reimbursement;
- Verifying CASF services rendered;
- Requesting program-related reimbursements and accepting payments from the CPUC;
- Maintaining all financial records; and
- Disbursing payments to the NIU Coalition.⁹⁰

As described above, the NIU Coalition did not fully implement their performance metrics in accordance with their Work Plan. They fell short of conducting NIU Graduate workshops, meeting only 19% of the Work Plan objective in Year 1 and 36% of the Work Plan objective in Year 2.⁹¹ Parent training objectives, a key component of this Coalition’s overall program goal to provide greater access to broadband, were also not met despite efforts by the Commission’s Communications Division to work collaboratively with the NIU Coalition leadership, including Hyepin Im, the Coalition’s

⁸⁸ D.11-06-038, p 25.

⁸⁹ Staff Report, p. 18.

⁹⁰ Audit Report p.11.

⁹¹ Staff Report, p. 6.

fiduciary.⁹² As responsible for the Coalition's programmatic activities, KCCD must be held accountable for not meeting the Coalition's performance metrics.

Additionally, as the fiscal agent responsible for the receipt and disbursement of grant funds, KCCD was obligated to maintain and provide the Commission with receipts, records, documents, and the like to substantiate the accomplishment of program activities and to provide proof that the amount claimed was the amount actually spent. KCCD was unable to produce the required accounting records during the audit by the State Controller's Office.⁹³ Moreover, during the UEB's investigation, KCCD stated it did not maintain any accounting records for NIU.⁹⁴

KCCD must be held accountable for the Coalition's weak internal controls and severely deficient recordkeeping. The lack of audited financial statements and lack of supporting documentation of expenses has rendered ineffective the Commission's ability to verify that the expenses the NIU Coalition incurred were related to CASF program activities and not covered by one of the Coalition's other grant sources.

KCCD did not fulfill its commitments and obligations that it swore to perform. As a general deterrent to prevent KCCD and any other organization from failing to serve as a responsible fiduciary, the NIU Coalition should also be ordered to show cause why the Commission should not impose equitable remedies on KCCD and/or Hyepin Im. These remedies may include banning KCCD and/or Hyepin Im from serving as a fiscal agent or as a recipient or grantee of any Commission program for a specified period of time.

H. NIU Coalition Failed to Return CASF Funds Received Pursuant to the Communication Division's Demand Letter in Violation of PU Code § 2111.

The Commission's resolution granting funds to the NIU Coalition requires that if a grantee failed to complete the project, the recipient must reimburse some or all of the

⁹² Staff Report, pp. 6-7.

⁹³ Audit Report, p.11-12

⁹⁴ Staff Report, p. 25.

broadband consortia grant money it received.²⁵ PU Code § 2111 also provides that every corporation or person who fails to comply with any part of any order or demand of the Commission is subject to a penalty from \$500 to \$50,000 for each offense. D.14-02-018 affirmed that the Commission had the authority to enforce the terms and conditions of the grant awards and to impose penalties pursuant to §§ 2111 and 2108.²⁶

A demand letter was issued by the Acting Deputy Executive Director, on behalf of the Commission, directing the NIU Coalition 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.²⁷ To date, the NIU Coalition has not returned any portion of the \$82,381 demanded.²⁸ The NIU Coalition should be ordered to show cause why they should not be subject to a penalty pursuant to PU Code §§ 2111 and 2108 for refusing to comply with the Commission's demand in 2016 that \$82,381 be returned.

IV. INITIATION OF INVESTIGATION

The Commission institutes this proceeding pursuant to Rule 5.1 of the Commission's Rules of Practice and Procedure ("Commission Rules"). We will consider the allegations in UEB's Staff Report and the State Controller's Office Audit Report to determine if the NIU Coalition violated any provisions of the PU Code, Commission decisions or resolutions or other applicable rules or requirements pertaining to recipients of CASF broadband consortia grant funds.

The State Controller's Office Audit Report, UEB's Staff Report and supporting evidence provide the Commission with more than sufficient evidence and good cause to commence a formal investigation to determine if such violations have occurred and, if so, to consider the proper remedy for such violations. We will specifically consider whether monetary fines are warranted and, if so, the appropriate amount of monetary fines. In

²⁵ Resolution T-17355, p. 11.

²⁶ D.14-02-018, pp. 31, 35, 38.

²⁷ Staff Report, p. 11.

²⁸ Staff Report, p. 11.

addition, we will consider whether other equitable remedies are appropriate, including whether the NIU Coalition must return \$244,385 to the Commission and whether the KCCD, NIU Coalition's fiduciary, Ms. Hyepin Im, and/or Mr. Larry Ortega should be banned for a specified period of time from serving, managing, leading, assisting, benefitting any entity that receives public purpose funds from the Commission.

This OII places the NIU Coalition on notice and provides an opportunity for them to be heard. The NIU Coalition may submit evidence, information or documents on their behalf in this proceeding.

V. ORDER TO SHOW CAUSE

The State Controller's Office Audit Report, UEB's Staff Report along with the exhibits attached to the Staff Report establish sufficient grounds for the Commission to order the NIU Coalition to show cause why they should not be required to: (1) return \$244,385 including interest back to the Commission; (2) pay penalties and/or other remedies for failing to comply with the terms of their CASF grant; (3) pay penalties and/or other remedies for failing to comply the Communications Division's demand letter directing the NIU Coalition to return CASF grant funds previously disbursed; (4) pay penalties for refusing to comply with UEB's data request; (5) pay penalties for violating Rule 1.1; (6) be subject to other equitable remedies against entities and officers of the members of the NIU Coalition.

This OII places the NIU Coalition on notice and provides an opportunity for the NIU Coalition to be heard. The NIU Coalition may submit evidence, information or documents on their behalf in this proceeding.

VI. PRELIMINARY SCOPING MEMO

Commission Rule 7.1(c) provides that an OII shall attach a preliminary scoping memo. The following discussion meets this requirement.

A. Issues

The scope of the issues to be determined in this proceeding shall be: (1) whether the NIU Coalition violated provisions of D.11-06-038 and PU Code § 281(f)(7) for failing to implement terms of the CASF grant; (2) whether the NIU Coalition violated

D.11-06-038 for failing to produce and maintain records and documentation to substantiate their expenses; (3) whether the KCCD failed its fiduciary responsibilities provided in NIU Coalition’s Action Plan, Work Plan and Consent Form; (4) whether KCCD improperly claimed administrative costs in violation of Resolution T-17355 and D.11-06-038; (5) whether the NIU Coalition violated PU Code § 2111 for refusing to return approximately \$82,381 as directed in the Commission’s Communications Division demand letter; (6) whether the NIU Coalition violated D.11-06-038 for failing to provide sufficient documentation and detailed information of their other sources of grant funding; (7) whether the NIU Coalition violated D.11-06-038 and PU Code § 701 for failing to adequately respond to the UEB’s data request; (8) whether the NIU Coalition violated Rule 1.1; (9) whether the NIU Coalition must return at least \$244,385 (\$46,621 in administrative costs and \$197,764 in program expenses) including interest back to the Commission pursuant to Resolution T-17143, T-17233, and D.11-06-038; (10) whether the assessment of penalties or other remedies are appropriate for the violations found; (11) whether KCCD and its officers, as well as Mr. Ortega, should be individually subject to other equitable remedies for violation of D.11-06-038 and PU Code § 281(f)(7).

B. Category of Proceeding and Need for Hearing

Commission Rule 7.1 (c) specifies that an “order instituting investigation shall determine the category of the proceeding [and] preliminarily determine the need for hearing.” This investigation is categorized as adjudicatory as defined in Rule 1.3(a). We expect disputed issues of material fact and therefore preliminarily determine that evidentiary hearings will be necessary.

C. Schedule

Pursuant to Commission Rule 7.6, appeals of the categorization of this investigation, if any, are to be filed within 10 days of the date this OII is issued.

Within 30 days of the mailing date of this Order, Respondents shall file and serve a response to this OII.

Responses on this preliminary scoping memo may also be filed and served within 30 days of the date this OII is issued. Pursuant to Commission Rule 5.2, responses shall

state “any objections to the preliminary scoping memo regarding the need for hearing, issues to be considered, or schedule.” Replies to responses may be filed and served within 10 days of the due date for responses.

Pursuant to Commission Rule 7.2, the Assigned Commissioner shall set a prehearing conference for 45 to 60 days after the initiation of this proceeding or as soon as practicable after the Commission makes the assignment. The Assigned Commissioner will also issue a scoping memo setting forth the scope of the proceeding and establish a procedural schedule.

Appeal of Categorization	10 days after issuance of this OII
NIU Coalition’s response to OII	30 days after issuance of this OII
Responses on scope and issues in Preliminary Scoping Memo due	30 days after issuance of this OII
Replies to Comments on issues in Preliminary Scoping Memo due	10 days after Responses on scope and issues in the Preliminary Scoping Memo are due
Prehearing Conference	To be scheduled by the assigned Administrative Law Judge
Commission Decision issued	To be determined in the final scoping Memo

VII. PARTIES AND SERVICE LIST

The NIU Coalition, including its members, the Asian Pacific Community Fund, Black Business Association, Community Union, Inc., Korean Churches for Community Development,²⁹ and Soledad Enrichment Action – Charter Schools, are named as respondents to this investigation. The Commission’s Utility Enforcement Branch is named as a party to this proceeding. The initial service list for this proceeding is set forth

²⁹ References to KCCD include the entity named, “Faith and Community Empowerment.” The entity Korean Churches for Community Development is not a registered nonprofit or a registered corporation, LP, or LLC according to the California Secretary of State’s Business Search database and the State of California, Department of Justice, Office of the Attorney General’s Registry of Charitable Trusts. The Registry of Charitable Trusts lists “Faith and Community Empowerment” as associated with the same mailing address and President and CEO as the Korean Churches for Community Development.

in an Ordering Paragraph and includes the NIU Coalition, their members, and UEB. The official list may be updated with additional parties.

VIII. PUBLIC ADVISOR

Any person or entity interested in participating in this investigation who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor's Office in San Francisco at (866) 849-8390, or email public.advisor@cpuc.ca.gov. The TTY number is (866) 836-7825. Written communication may be sent to the Public Advisor, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102.

IX. INTERVENOR COMPENSATION

A party that expects to request intervenor compensation for its participation in this investigation shall file its notice of intent to claim intervenor compensation in accordance with Commission Rule 17.1.

X. EX PARTE COMMUNICATIONS PROHIBITED

Article 8 of the Commission's Rules of Practice and Procedure applies to all communications with decision makers and advisors regarding the issues in this proceeding. This proceeding is categorized as adjudicatory and Rule 8.2(b) prohibits all ex parte communications.

Therefore, **IT IS ORDERED** that:

1. In accordance with Commission Rule 5.1, the Commission institutes this Order Instituting Investigation on its own motion to determine whether the NIU Coalition or any of its member organizations violated any provision or provisions of the California Public Utilities Code, Commission decisions or resolutions, or other applicable standards, laws, rules or regulations in connection with the grant received from the California Advanced Services Fund. The NIU Coalition are ordered order to show cause why the Commission should not order them to: return at least \$244,385 of CASF funds (\$46,621 in administrative costs and \$197,764 in program expenses) including interest to the Commission, impose penalties for

violations of the grant's terms and of the Commission's rules and requirements, and impose other remedies, including a prohibition against Korean Churches for Community Development and Mr. Larry Ortega from benefitting from or participating in any Commission program for a period of at least ten years.

2. The NIU Coalition members, Asian Pacific Community Fund, Black Business Association, Community Union, Inc., Korean Churches for Community Development, and Soledad Enrichment Action – Charter Schools, are named Respondents to this Investigation.

3. The entities of the NIU Coalition shall file and serve a response to this OII within 30 days of the mailing date of this Order.

4. The preliminary scope of issues for this Investigation is as stated in the body of this Order.

5. The NIU Coalition members, Asian Pacific Community Fund, Black Business Association, Community Union, Inc., Korean Churches for Community Development, and Soledad Enrichment Action – Charter Schools, are hereby given notice that fines or other remedies may be imposed in this matter pursuant to Public Utilities Code §§ 2111 and 2108.

6. The NIU Coalition members, Asian Pacific Community Fund, Black Business Association, Community Union, Inc., Korean Churches for Community Development, and Soledad Enrichment Action – Charter Schools, are hereby given notice that the Commission may impose other remedies in this matter pursuant to Public Utilities Code § 701.

7. This proceeding is classified as adjudicatory, as that term is defined in Commission Rule 1.3(a). Under Commission Rule 7.6, this Order is appealable only as to category no later than 10 days after the date of this Order.

8. Parties shall file responses on the scope and issues identified in the preliminary scoping memo within 30 days of the date this Order is issued.

9. Parties may file replies to responses on the scope and issues identified in the preliminary scoping memo within 10 days of the date the responses are due.

10. The assigned Commissioner or Administrative Law Judge (ALJ) may adjust the schedule identified herein.

11. A party that expects to request intervenor compensation for its participation in this investigation shall file its notice of intent to claim intervenor compensation in accordance with Commission Rule 17.1.

12. Ex parte communications are prohibited as set forth in Commission Rule 8.2(b).

13. The Executive Director shall cause a copy of this Order to be served by certified mail on each Respondent and a hard copy to each person listed below:

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I. _____

L/VY2/ice

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This Order is effective today.

Dated _____, at San Francisco, California.