

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

**JOINT MOTION IN ORDER INSTITUTING INVESTIGATION 18-07-009
FOR APPROVAL OF SETTLEMENT WITH KOREAN CHURCHES
FOR COMMUNITY DEVELOPMENT**

ROBERT SILVERMAN
Attorney for

Korean Churches for Community Development
269 South Beverly Drive
Suite 1358
Beverly Hills, CA 90212
Telephone: (213) 621-0878
Email: rms2979@aol.com

VANESSA M. BALDWIN
Attorney for

Consumer Protection & Enforcement
Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-3942
Email: vanessa.baldwin@cpuc.ca.gov

April 2, 2020

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I. INTRODUCTION

Pursuant to Rules 11.1(a) and 12.1(d) of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), the Consumer Protection and Enforcement Division ("CPED") and Korean Churches for Community Development¹ ("KCCD") hereby file this joint motion relating to the Commission's Order Instituting Investigation ("OII") 18-07-009 for approval of the settlement entered into by CPED and KCCD on March 20, 2020 ("Settlement"), attached herein as Attachment A.

II. BACKGROUND ON OII

On or about August 18, 2011, the NIU Coalition submitted an application for California Advanced Services Fund ("CASF") broadband consortia grant monies. The NIU Coalition is made up of the following members: 1) Asian Pacific Community Fund ("APCF"); 2) Black Business Association ("BBA"); 3) Community Union Inc. ("Community Union"); 4) Korean

¹ References to KCCD include the entity named, "Faith and Community Empowerment" which is a registered nonprofit or 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.

Churches for Community Development (“KCCD”); and 5) Soledad Enrichment Action – Charter Schools (“SEA”) (altogether herein “NIU Coalition”). The NIU Coalition’s application identified its leader as Mr. Larry Ortega, President/CEO of Community Union and Ms. Hyepin Im, President/CEO of KCCD as NIU Coalition’s fiscal agent.²

On February 21, 2012 the Commission approved a CASF grant of \$450,000 to the NIU Coalition for March 1, 2012 through February 28, 2015. NIU Coalition, as a grantee of CASF broadband consortia funds, is bound by the Action Plan, Work Plan and Consent Form (“CASF Grant”).³

Commission Decision (“D.”) 11-06-038 implements CASF broadband consortia grants. The goal is to promote widespread availability of advanced communications services for all Californians and provide funding for broadband deployment activities other than the cost of facilities. The Commission authorized grants to different regional consortia representing different regions of California. Resolution T-17355 authorized the grant to the NIU Coalition and required that the disbursement of funds be subject to the requirements set forth in D.11-06-038. Resolutions T-17355, T-17143, and T-17233 allow the Commission to demand the return of funds improperly disbursed to grantees.⁴

In November 2015, the California State Controller’s Office (“SCO”) issued a report of its audit of the NIU Coalition (“Audit”). The Audit determined that the NIU Coalition violated the CASF Grant. In addition to other issues, the Audit determined the NIU Coalition lacked proper safeguards, records, and documentation to substantiate program activities and costs. It found that, “absent accounting records and source documents for expenses charged other funds, we estimate that the CASF reimbursement should have been approximately \$170,983 rather than \$353,784, a potential overpayment of \$182,801.”⁵ Additionally, SCO found that the NIU Coalition failed to provide all the instructional training agreed upon in the terms of the CASF Grant.⁶

² *Assigned Commissioner’s Scoping Memo and Ruling*, dated December 18, 2018 at p.1.

³ *Id.* at 2.

⁴ *Assigned Commissioner’s Scoping Memo and Ruling*, dated December 18, 2018 at p. 2.

⁵ OII, Attachment B, *California’s State Controller’s Office, California’s One Million New Internet Users Coalition, Audit Report (March 1, 2012 – March 1, 2015)*, dated November 2015 at p. 21.

⁶ OII, Attachment B, *California’s State Controller’s Office, California’s One Million New Internet Users Coalition, Audit Report (March 1, 2012 – March 1, 2015)*, dated November 2015 at p. 2.

In consideration of the Audit’s findings, the Commission’s Communication Division in a letter dated April 18, 2016, directed the NIU Coalition to return \$82,381 by July 18, 2016. The NIU Coalition did not comply with this request. The Communications Division thereafter referred the matter to CPED for further investigation. In May 2018, CPED issued an investigative report titled “Investigation of California’s One Million New Internet Users Coalition” (“Staff Report”).⁷

Based on the Audit and the Staff Report, on July 24, 2018 the Commission issued an order instituting investigation to determine whether the NIU Coalition violated any provisions of the California Public Utilities Code, Commission General Orders or resolutions, decisions, or other applicable rules or requirements pertaining to the CASF Grant.

The Commission held a prehearing conference (“PHC”) on November 14, 2018 to discuss the issues of law and fact, determine the need for hearing, and discuss the schedule for resolving the matter.⁸ On December 18, 2018, the Assigned Commissioner issued a Scoping Memo and Ruling identifying the issues to be determined in the proceeding and the category and schedule for the proceeding.

With the commencement of alternative dispute resolution (“ADR”), Administrative Law Judge (“ALJ”) Zhang extended the schedule for the proceeding in her February 15, 2019 ruling. Given the continued progress of ADR, the schedule for the proceeding was suspended.⁹ On or about February 19, 2020, ADR efforts ended when ALJ MacDonald notified ALJ Zhang that mediation has concluded, and that no further sessions would be held. The terms of this Settlement are a result of ADR with ALJ MacDonald.

III. THE SETTLEMENT SHOULD BE APPROVED

CPED’s investigation revealed that Mr. Ortega, founder of the NIU Coalition, controlled and managed the NIU Coalition’s CASF grant related activities. While some of the day-to-day activities were handled by other staff, Mr. Ortega was ultimately responsible for making decisions related to promotional activities, changes in class trainings, etc. which were all associated with CASF granted related activities.

⁷ Id. at 3.

⁸ *Assigned Commissioner’s Scoping Memo and Ruling*, dated December 18, 2018 at p. 3.

⁹ *See ALJ’s Ruling Suspending the Schedule*, dated May 9, 2019.

While in addition to acting as a fiscal agent, KCCD carried out its own technology training separate and apart from the training led by Mr. Ortega on behalf of the NIU Coalition, and CPED verified that all of KCCD's CASF-related expenses were appropriately supported KCCD's responsibility as the NIU Coalition's fiscal agent is at issue in this proceeding.¹⁰ However, as Ms. Hyepin Im indicated in the attached declaration, her access to information to carry out its duties as a fiscal agent were limited.¹¹ Mr. Ortega refused to give KCCD access to NIU's records despite knowing that KCCD was entitled to such documentation as the consortia's fiscal agent. Ms. Hyepin Im explains how KCCD's duties as a fiscal agent were compromised. Consequently, Mr. Ortega hindered KCCD's ability to obtain thorough and complete documentation regarding the CASF grant related expenses incurred by Mr. Ortega and his organization and affiliates. Because KCCD's actual role as a fiscal agent was limited to shepherding claims and whatever receipts or documentation from Mr. Ortega's organization to the Commission, a decreased degree of liability for KCCD is warranted. Furthermore, KCCD's cooperation with CPED also further justifies the reasonableness of CPED and KCCD's settlement.

A. CPED and KCCD's Settlement is Reasonable in Light of the Whole Record

While KCCD was obligated by the Commission's rules and requirements to maintain all documentation related to the NIU Coalition's grants, it was prevented from doing so by Mr. Ortega. Mr. Ortega possessed a majority of the NIU Coalition's financial records and refused to provide KCCD with access to financial and other business records related to CASF grant expenses. As CPED discovered, Mr. Ortega, alone, implemented and operated the activities and programs associated with CASF grant funds. Consequently, Ms. Im does not have knowledge of whether NIU received grant money from other sources for the same work or activities paid for with CASF grant funds.

B. CPED and KCCD's Settlement is Consistent with the Law

CPED and KCCD's settlement is consistent with the law because KCCD provided sufficient information demonstrating that its level of culpability was not substantial where it was prevented from accessing complete financial records related to the CASF grant by Mr. Ortega.

¹⁰ Assigned Commissioner's Scoping Memo and Ruling dated December 18, 2018, pp. 4-5.

¹¹ Attachment B, Declaration of Hyepin Im dated September 25, 2019.

Furthermore, KCCD carried out its obligations as a fiscal agent to the extent possible. For instance, as the NIU Coalition's fiscal agent, KCCD agreed to take lead responsibility and legal authority to represent the NIU Coalition for the administration of its activities, including the receipt and disbursement of grant funds.¹² KCCD fulfilled this responsibility when it fully performed all required training and provided all backup invoices and financial records when seeking reimbursement under the Grant. However, KCCD's efforts to maintain all financial records were thwarted by Mr. Ortega's refusal to turn over any additional documents.¹³ KCCD made attempts to encourage Mr. Ortega to cooperate with the Commission's inquires and argued persistently for access to Mr. Ortega's financial records. All of KCCD's records backing up the training programs that it carried out, separate and apart from the trainings by Community Union and Larry Ortega, were submitted to the Commission. KCCD also fully complied with the State Controller's Office Audit and CPED's investigation. From the outset of the Commission's investigation, KCCD stated it desired to cooperate with CPED, settle and aid CPED's efforts. This commitment is ongoing.

C. CPED and KCCD's Settlement is in the Public Interest

CPED and KCCD's settlement is in the public interest because: 1) it will save time and resources in litigating this proceeding; 2) KCCD cooperated with Commission requests for information and provided all information that was available to it; and 3) KCCD continues to perform valuable services for underserved populations in Los Angeles communities.

IV. CONCLUSION

For the reasons set forth above, it is reasonable to approve CPED and KCCD's settlement because: 1) it is reasonable in light of the whole record; 2) it is consistent with the law; and 3) it is in the public interest.

It is appropriate for the Commission to approve CPED and KCCD's settlement.

¹² OII, Exhibit 7 (KCCD's Fiscal Agent Agreement dated August 18, 2011).

¹³ KCCD and the NIU Coalition were both responsible for maintaining all financial records relating to the CASF grant. OII, Exhibit 7 (KCCD's Fiscal Agent Agreement dated August 18, 2011).

Respectfully submitted,

/s/ ROBERT SILERMAN
ROBERT SILVERMAN
Attorney for

Korean Churches for Community
Development
269 South Beverly Drive
Suite 1358
Beverly Hills, CA 90212
Telephone: (213) 621-0878
Email: rms2979@aol.com

/ VANESSA BALDWIN
VANESSA BALDWIN
Attorney for

Consumer Protection & Enforcement Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-3942
Email: vanessa.baldwin@cpuc.ca.gov

April 2, 2020

ATTACHMENT A

BEFORE THE PUBLIC UTILITIES COMMISSION
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Investigation 18-07-009

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1. In accordance with Rule 12.1(a) of the California Public Utilities Commission ("Commission") Rules of Practice and Procedure ("Rules"), the Consumer Protection and Enforcement Division of the California Public Utilities Commission ("CPED") and the Korean Churches for Community Development ("KCCD") (altogether herein "Settling Parties") enter into this settlement agreement ("Settlement") for purposes of resolving certain matters in this proceeding, as specifically described herein.

1.2. The Settling Parties desire to resolve certain issues in this Settlement and, in consideration of the mutual obligations, covenants, and conditions contained herein, have reached the agreements set forth herein.

1.3. Since this Settlement represents a compromise by them, the Settling Parties have entered into each component of this Settlement on the basis that its approval by the Commission not be construed as an admission or concession by any Settling Party that its position on any issue lacks merit, or a claim by a Settling Party that its position has greater or lesser merit than the position taken by any other Settling Party. This Settlement is subject to the express limitation on precedent as provided in Commission Rule 12.5. Unless specifically stated otherwise herein, this Settlement and its terms are intended to remain in effect until the Commission issues a final decision in this proceeding. All issues among and between the Settling Parties have been resolved through this Settlement.

2. RECITALS

2.1. On July 24, 2018, the Commission issued an Order Instituting Investigation and Order to Show Cause to the NIU Coalition including each of its members, the Asian Pacific Community Fund, Black Business Association, Community Union, Inc. (“Community Union), Korean Churches for Community Development (“KCCD”) and Soledad Enrichment Action – Charter Schools (“SEA”) (altogether herein “NIU Coalition”).

2.2. On September 21, 2018, KCCD filed its response to the OII.

2.3. On November 14, 2018, Administrative Law (ALJ) Judge Zhang held a prehearing conference.

2.4. On December 18, 2018 the Assigned Commissioner issued a Scoping Memo and Ruling for this proceeding.

2.5. On May 9, 2019, ALJ Zhang suspended the schedule for the proceeding so that the parties could engage in settlement via the Commission’s alternative dispute resolution program.

2.6. On or about September 2019, CPED and KCCD reached a settlement in principle to resolve KCCD’s liability in this proceeding.

2.7. On or about February 19, 2020, ALJ MacDonald concluded alternative dispute resolution efforts indicating that CPED and NIU could not reach a settlement and have agreed to move forward with litigation.

2.8. This Settlement is contingent on Commission approval.

3. TERMS AND CONDITIONS

3.1. KCCD agrees to pay a **fifteen thousand dollar (\$15,000)** penalty to the State of California General Fund. Specifically, KCCD will pay **one thousand dollars (\$1,000)** within 30 days of the Commission’s approval of this Settlement (First Payment). In addition, starting with the first day of each quarter of the calendar year (e.g. Jan 1, April 1, July 1, October 1) following the First Payment, and for each quarter thereafter for a total of eight quarters, KCCD will pay the remaining \$14,000 in equal quarterly payments of **one thousand seven hundred and fifty dollars (\$1,750)** each quarter (Remaining Payments).

3.2. CPED agrees that KCCD should be dismissed from further liability in I.18-07-009.

4. OTHER PROVISIONS

4.1. Incorporation of Complete Agreement. The terms of this Settlement are to be treated as a complete package and not as a collection of separate agreements on discrete issues. The Settling Parties acknowledge that changes, concessions, or compromises by any Settling Party in one section of this Settlement resulted in changes, concessions, or compromises by the Settling Parties in other sections. Consequently, the Settling Parties agree to oppose any modification in each of the terms of this Settlement not agreed to by the Settling Parties who agreed on those terms. If the Commission does not approve this Settlement without modification, the Settling Parties shall promptly discuss the proposed modification and negotiate in good faith to achieve a resolution acceptable to the Settling Parties as set forth in Section 4.2 below, and shall promptly seek Commission approval of the resolution so achieved.

4.2. Regulatory Approval. The Settling Parties, by signing this Settlement, acknowledge that they support Commission approval of this Settlement and subsequent implementation of all provisions of the Settlement pursuant to a Commission order adopting this Settlement in this proceeding. The Settling Parties shall use their best efforts to obtain Commission approval of the Settlement. The Settling Parties shall jointly request that the Commission approve the Settlement without change, and find the Settlement to be reasonable, consistent with law and in the public interest. Should any Proposed Decision or Alternative Proposed Decision seek a modification of this Settlement (regardless of whether the Settlement has or has not been previously approved by the Commission), and should any Settling Party be unwilling to accept such modification, that Settling Party shall so notify the other Settling Party for the respective settlement within five business days of issuance of such Proposed Decision or Alternative Proposed Decision. The Settling Parties shall thereafter promptly discuss the proposed modification and negotiate in good faith to achieve a resolution acceptable to the Settling Parties, and shall promptly seek Commission approval of the resolution so achieved. Failure to resolve such proposed modification to the satisfaction of the Settling Parties, or to obtain Commission approval of such resolution promptly thereafter, shall entitle any Settling Party to terminate its participation from this Settlement through prompt notice to the other Settling Party.

4.3. Further Actions. The Settling Parties acknowledge that this Settlement is subject to approval by the Commission. As soon as practicable after all the Settling Parties have signed

the Settlement, the Settling Parties through their respective attorneys will prepare and file the Settlement Approval Motion. The Settling Parties will furnish such additional information, documents, or testimonies as the Commission may require for purposes of granting the Settlement Approval Motion and approving and adopting the Settlement.

4.4. No Personal Liability. None of the Settling Parties, or their respective employees, attorneys, or any other individual representative or agent, assumes any personal liability as a result of the Settling Parties executing this Settlement.

4.5. Non-Severability. The provisions of this Settlement are non-severable. If any of the Settling Parties fails to perform its respective obligations under this Settlement or takes or supports a position contrary to the provisions of this Settlement, the other Settling Parties may regard the Settlement as rescinded and seek appropriate action by the Commission.

4.6. Voluntary and Knowing Acceptance. Each Settling Party hereto acknowledges and stipulates that it is agreeing to this Settlement freely, voluntarily, and without any fraud, duress, or undue influence by any other Settling Party. Each Settling Party has read and fully understands its rights, privileges, and duties under this Settlement, including its right to discuss this Settlement with its legal counsel, which has been exercised to the extent deemed necessary. Accordingly, the Parties agree that any legal or equitable principles that might require the construction of this Settlement or any of its provisions against the party responsible for drafting this Settlement, will not apply in any construction or interpretation of this Settlement.

4.7. No Modification. This Settlement constitutes the entire Settlement among the Settling Parties regarding the matters set forth herein, which may not be altered, amended, or modified in any respect except as deemed necessary herein. All prior settlements, agreements, or other understandings, whether oral or in writing, regarding the matters set forth in this Settlement are expressly waived and have no further force or effect.

4.8. Counterparts. This Settlement may be executed in separate counterparts by the different Settling Parties hereto and all so executed will be binding and have the same effect as if all the Settling Parties had signed one and the same document. All such counterparts will be deemed to be an original and together constitute one and the same Settlement, notwithstanding that the signatures of all the Settling Parties and/or of a Settling Party's attorney or other

representative do not appear on the same page of this Settlement or the related Settlement Approval Motion.

4.9. Binding upon Full Execution. This Settlement will become effective and binding on each of the Settling Parties as of the date when it is fully executed. It will also be binding upon each of the Settling Parties' respective successors, subsidiaries, affiliates, representatives, agents, officers, directors, employees, and personal representatives, whether past, present, or future.

4.10. Commission Adoption Not Precedential. In accordance with Rule 12.5 of the Commission's Rules of Practice and Procedure, this Settlement is not precedential in any other proceeding before the Commission, except as expressly provided in this Settlement or unless the Commission expressly provides otherwise.

4.11. Enforceability. The Settling Parties agree and acknowledge that after issuance of a Commission decision approving and adopting this Settlement, the Commission may reassert jurisdiction and reopen this proceeding to enforce the terms and conditions of this Settlement.

4.12. Finality. Once fully executed by the Settling Parties and adopted and approved by a Commission decision, this Settlement fully and finally settles any and all disputes among and between the Settling Parties in this proceeding, unless otherwise specifically provided in the Settlement.

4.13. No Admission. Nothing in this Settlement or related negotiations may be construed as an admission of any law or fact by any of the Settling Parties, or as precedential or binding on any of the Settling Parties in any other proceeding, whether before the Commission, in any court, or in any other state or federal administrative agency. Further, unless expressly stated herein this Settlement does not constitute an acknowledgement, admission, or acceptance by any of the Settling Parties regarding any issue of law or fact in this matter, or the validity or invalidity of any particular method, theory, or principle of ratemaking or regulation in this or any other proceeding.


4.14. Authority to Sign. Each Settling Party who executes this Settlement represents and warrants to each other Settling Party that the individual signing this Settlement and the related Settlement Approval Motion has the legal authority to do so on behalf of the Settling Party.

18. Accepted to and agreed as of the Execution Date.

CONSUMER PROTECTION AND
ENFORCEMENT DIVISION

Dated: 4-3-2020

By:



Jeanette Lo
Branch Chief, Utilities Enforcement Branch

FRONTIER COMMUNICATIONS
CORPORATION; FRONTIER
COMMUNICATIONS OF AMERICA, INC., AND
FRONTIER CALIFORNIA INC.

Dated: April 3, 2020

By:



Kevin Saville
Senior Vice President and General Counsel

ATTACHMENT B

DECLARATION OF HYEPIN IM

I, Hyepin Im, declare:

1. I am a resident of Los Angeles, California and the President and CEO of Respondent Korean Churches for Community Development (KCCD). Based upon my personal knowledge, if called as a witness, I would competently testify to the truth of the following facts.

2. I make this declaration in support of KCCD's proposed Settlement with the Consumer Protection and Enforcement Division (CPED) at the California Public Utilities Commission (Commission) regarding the alleged violations in the Commission's OII, I.18-07-009. I founded KCCD in March 2001. Later, we changed KCCD's name to Faith and Community Empowerment.

OII CHARGES:

3. In conducting an audit of One Million New Internet Users Coalition & Korean Churches for Community Development (NIU), the California State Controller's Office auditors criticized KCCD by stating that it did not maintain a general ledger as part of its financial records. This is inaccurate; there is a Tab on our quick books that automatically generates a general ledger. However, KCCD has retained an outside Certified Public Accountant (CPA) who has suggested revisions to our financial record keeping. We have complied in full with the CPA's recommendations.

4. Larry Ortega was the President of NIU and performed most of the training activities on behalf of NIU. He therefore has possession of a majority of financial and other business records relevant to this proceeding. Initially, Mr. Ortega cooperated with

Commission requests, but when he received criticism for his classes being shortened and confronted by the Controller's audit, he resisted. Mr. Ortega refused to grant KCCD access to the financial and other business records of his company, Community Union, Inc. Mr. Ortega stated that his Board of Directors would not allow me to have access to the records of NIU in their possession. Consequently, I have no knowledge of whether Mr. Ortega has charged other grantors for the same work paid for by the CASF Grant.

5. I complained to Mr. Ortega that he must cooperate with the CPUC and produce all information requested. I also complained about his conduct in dealing with CPUC representatives.

6. KCCD cooperated fully with CPUC representatives and with the State Controller audit. We were hindered, however, by Mr. Ortega's refusal to allow KCCD to review NIU financial books and records

7. When the CPUC inquired about the in-training hours gradually being reduced from the NIU Plan's 40 hours, Mr. Ortega explained to me that alternate methods of training such as home study replaced in class training. I waited until the Commission notified us if it approved or disapproved of this Plan change.

8. KCCD served as the fiscal agent for NIU. It's also a member of NIU. KCCD performed program services such as conducting computer classes, graduation ceremonies, email blasts and advertisements. In addition, KCCD performed administrative services for NIU. No one at the CPUC ever stated that KCCD as a fiscal agent could not perform program services and be compensated with CASF Grant funds.

There are no rulings, orders or notices from the CPUC barring a fiscal agent from performing program services.

SETTLEMENT:

9. As soon as KCCD received the Commission's OII, my counsel and I met with CPED to discuss settlement and our offer to cooperate fully, including assisting and testifying at a hearing in this matter. KCCD's financial condition is not robust. We consequently offered a settlement of \$15,000 to be paid over eight calendar quarters (two-year period). At the recent settlement conference held in the Commission's Los Angeles office, CPED accepted this settlement offer along with our commitment to cooperate and support CPED at the hearing of this matter.

10. KCCD is a respected non-profit organization in our community. We perform valuable services to the community. It is our profound wish that our reputation remains intact and untarnished by this OII. It is respectfully submitted that the settlement has been made in good faith and is reasonable and just.

11. I am making this Declaration to support a settlement. This Declaration should not be interpreted as KCCD or my admission of any liability in this matter.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 25th day of September 2019 at Los Angeles, California.



Hyepin Im