

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

**COMMUNITY UNION, INC.'S PRE-TRIAL BRIEF TO EVIDENTIARY HEARING
SCHEDULED FOR AUGUST 24 – 27, 2020**

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I. INTRODUCTION

Community Union, Inc. (CU) submits this Brief pursuant to ALJ Zhang's Email Ruling on June 29, 2020, setting a 4 day Evidentiary Hearing to make clear the facts pertaining to Order Instituting Investigation (OII) 18-07-009. CU wholly disputes the manner and timing of the State Controller's Office (SCO) Audit, and its conclusions based on what can only be described as *shoddy*, with numerous errors and contradictory statements made in the Audit Report. The most blatant of these errors is on the cover page of the Audit Report. The cover page says "March 1, 2012 – March 1, 2015," to describe the time period of the Audit. The Audit period agreed to between Mr. Andrew Finlayson, SCO and Larry Ortega, CU, was September 1, 2012 through September 30, 2014. All information provided to the SCO by CU was based on that agreed to time period.

The premise for the Audit and its subsequent OII, CU will argue, is mostly due to the lack of experience of Communications Division relative to managing grants, knowledge and experience working in the field of "closing the digital divide", and no experience whatsoever working directly with Spanish, Korean and Chinese speaking communities in the area of technology or otherwise. CU will argue this, in part, is due to the blatant racism and cronyism within CPUC generally, but specifically with CD managerial staff.

CU has unprecedented success in the area of promoting broadband adoption, 30 million media impressions during the contract period CD obstructed the legislature's intent of California Advance Services Fund by freezing CU's funding mid-contract and **commencing an audit while CU was attempting to conclude the Activities outlined in the Work Plan.**

II. ARGUMENT – OTHER FUNDING

First CU would like to clarify the **Other Funding** disputed fact by offering the following. CPED and the SCO have been working to paint the picture of Other Funding received by CU as negative. CPED filed a Supplemental Report to the OII as if to say "*Aha! We have found you have Other Funding!*" To which CU's response is "*Of course,*" it was our contractual responsibility to find at least 61% of Other Funding to cover Expenses incurred in completing Activities of the Work Plan. Striking at CPED's credibility is the approved budget showing CU must find In-kind and/or cash contributions to cover 61% of the overall cost needed to complete

the Work Plan. CU presents the following:

Total Revenue (cash only) CASF and Other Funding is equal to \$713,979.57, source bank statements and G/L. Total (cash only) Expenses as stated sourced from CU bank statements and G/L's is equal to: \$694,166.90. Not included in this cash only amount are **In-Kind contributions** (and related Expenses) – and are part of the CASF Approved Budget, See Schedule provided below showing **Total Cash and In-kind Contributions relating to Revenue and Expenses**:

Approved CASF Budget Line Items noted in bullet points below (see CPED-01 Ex. 27) Not Included by Auditors(SCO) in their calculations of Revenue or Expenses

- *NIU Project Team* (Management Time),
- *NIU Sites* (Facilities, computers, Internet, desks, chairs, utilities, parking) and
- *Materials* (Manuals used in Training)

Schedule - Total Cash and In-kind Contributions Revenues and Expenses



The NIU Coalition was reimbursed \$353,784 according to the Audit Report. Per the formula setup and used by the SCO in their Audit Report, the 61% factor made the NIU Coalition eligible to receive \$604,602.14. Stated differently the NIU Coalition should have received payment for their Y3Q3 and Y3Q4 Reimbursement Requests. The difference between the full contract award of \$450,000 less the amount paid to date \$353,784.00 = \$96,216. This amount should be paid to the NIU Coalition (Korean Churches for Community Development) who should then be ordered to pay CU per its invoiced amounts for Y3Q3 and Y3Q4.

In CD's response to CU's Data Request they say:

"CD received and reviewed the reimbursement request for Y3Q3 and Y3Q4. However, as CD stated in the demand letter to NIU, dated April 18, 2016, ... [G]iven the seriousness of the audit findings, lack of compliance with program requirements, and absence or serious weaknesses of internal controls, CD's decision to withhold further grant payment is justified."

CU finds the SCO made critical errors in using estimates rather than actual documentation that was submitted to them. From the title of the Audit Report and several times within the Audit Report, SCO states that all expenses from March 1, 2012 – March 1, 2015 are included. This is false. CPED acknowledges this fact by way of citing CPED-03 Ex. 15 "Snapshot of General Ledger for missing Quarters". The Schedule incorporated above named: Total Cash and In-kind Contributions (related Expenses), completes what the Auditors missed and thereby reveals the conclusion made by the Auditors regarding overpayment is erroneous. The NIU Coalition was under-paid based on 61% SCO factor used in the Audit Report. CPUC owes the NIU Coalition for Y3Q3 and Y3Q4 Reimbursement Requests. When including missing quarters and in-kind contributions and related expenses it eliminates any "seriousness of audit findings" as CD attempts to use in their justification of not paying the NIU Coalition.

Furthermore, 97% of what the NIU Coalition asked for in their Reimbursement Requests were related specifically to Trainers', Lead Trainers' and Liaisons' Invoices. These were all presented in the form of invoices from the consultants working in the capacity as noted above. Exhibits from CPED-09 Att. 10, CPED-09, Att. 11 and CPED-09, Att. 12 all confirm from the

SCO's analysis, that said invoices from Trainers, Lead Trainers and Liaisons were allowable expenses. As such, statements from either the Auditor or CPED claiming that reimbursed expenses were not allowable contradict the Auditor's own Analysis in the cited Exhibits above.

III. ARGUMENT – 40 HOURS OF TRAINING – ACTIVITY V

SCO in their statement about CU providing only 50% of the 40-hours regarding the courses CU conducted is made without providing any substantive review of any data, and fails to provide any evidence as to how it reaches this conclusion. Again, this speaks to the *shoddy* work of the SCO in this Audit. In order to substantiate the contention the NIU Coalition did not provide 40-hours of training as being "major" it is necessary to first establish standards by which such a claim can be measured. Should not CD and the SCO be held to account as to whether every hour of the 40-hours of training must be in-class, and should they not be obligated to point-out where in the contract such a mandate is clearly delineated? CD and the SCO lack "major" credibility for example in that they do not articulate the following:

- Is there specific curriculum, tenants, or objectives outlining how the 40-hours would be allocated in meeting said tenants and/or objectives? And are they incorporated into the contract?
- Are there any standards incorporated into the contract that dictate all 40-hours are to be conducted in-class, or off-site as to encourage true broadband adoption?
- Do the SCO or CD possess any particular expertise relative to community-based technology training related to moving mono-lingual, non-English speaking members of the community to broadband adoption?

Community Union is one of the country's foremost authorities in community-based technology training, and have caused tens of thousands of novice users to move to broadband adoption since 1994. CU has been featured in many major news media outlets for their work in community-based technology training. There are no experts in the area of this specific niche market who can claim to know training delivery strategies that exceed the skill set CU brings. CU provides the following in substantiating its claim as being the foremost authority in the country relative to community-based technology Training:

- [Since 1994 CU has led \(trail-blazed\) the path to closing the digital divide \(click link here\)](#) ,

- [Over the period of the contract CU received over 30 million media impressions \(click link here\)](#),
- Since 1993, founder and president of Community Union, Mr. Larry Ortega has committed his life to increasing opportunity for low-income, non-English-speaking communities via technology training,

CU had reasonably concluded, absent any specific restrictions outlined in the contract (which there were none), they had broad discretion as to the delivery of the 40-hour Training Course. CU believed the tenants dictated in the Work Plan under Activity V – to be all inclusive, not just the 40-hours Training Course title. Per the Work Plan, the tenants to be accomplished are as follows. Using CPED-01 Ex. 23, under Activity V the following tenants are delineated:

- Annual number of Parents to complete the 40 hours of training 790
- Through pre and post surveys we will measure the following One Million NIU Benchmarks to be achieved by NIU graduates: a. 80% of parents become more engaged in their child’s education: 632
- b. 40% move to true adoption 316
- c. 10% of parents (NIU alumni) will enter the Train the Trainer program: 70
- d. 95% of parents get an email account, which is equivalent to a drivers license on the digital highway: 750
- e. 90% of parents improve their digital communication skills: 711

The titled program name “40-hours of Training” was more to describe that *training* would take place to accomplish the tenants as described in a. – e. in Activity V, than it was to say we were going to hold parents hostage for 40-hours of in-class keyboarding. The results of pushing-off 20 hours to *practical application* at home for participating parents allowed CU to double the number of stated empowerment hubs in Activity II. CU was able to double the number of empowerment hubs to 142 by using their understood broad discretion in the delivery of training, see CPED-04 Att. 2.

The SCO in their Audit Report has merely parroted what the CD has also without substantive evidence claimed relating to the 40-hour Training course.

IV. ARGUMENT – CD and CPED ACTIONS TANTAMOUNT TO OBSTRUCTION

Communications Division (CD) is in breach of the contract by and between CPUC and NIU by not processing and/or destroying Reimbursement Requests for Y3Q3 and Y3Q4 and its supporting documentation submitted by California's One Million New Internet Users (NIU). It also appears that complete copies of said Reimbursement Requests for Y3Q3 and Y3Q4 were purposefully left out of Consumer Protection and Enforcement Division's (CPED) Exhibits, see I1807009 (Confidential) CPED Exhibits.pdf Submitted August 3, 2020 in preparation of Evidentiary hearing August 24th – 27th. In the 2,506 page document submitted by CPED as their Exhibit for the upcoming Evidentiary Hearing, complete packages of the Y3Q3 and Y3Q4 documents are missing. Whether on purpose or by accidental omission, CPED attempts to skew the record in apparent collusion with CD to hide and/or obstruct the investigation as to the Disputed Facts Subject to Cross Examination #4:**Did the Audit Report correctly include all allowable expenses in Quarters 11, 12 and 13?**

At no time was CD relieved of their contractual obligation to process NIU's Reimbursement Requests for Y3Q3 and Y3Q4. The action of CD not processing Reimbursement Requests and mysteriously losing key sign-in sheets in support of Reimbursement Requests is tantamount to obstruction. These 2 Reimbursement Requests packages proved the satisfactory completion of the contract and number of clients served. The contract by and between CPUC and NIU is clear in that CD will process the Coalition's Reimbursement Requests, which include quarterly progress reports relating to each of the Activities outlined in the Work Plan. Both for the purposes of obtaining status on metrics(goals of the Work Plan) as well as reconciling any contract discrepancies relating to value, dollars (due and paid), CD had/has the obligation of processing said Reimbursement Requests. Even if CD ultimately determined they were not going to pay the Reimbursement Requests, the value of the information relating to the Work Plan is critical to this Investigation. ALJ Zhang during the May 4, 2020 Hearing was clear in outlining the Disputed Facts relating to the Work Plan.

Teresa Cortes was a consultant to CU whom we would like to add to the witness list with ALJ Zhang's permission. Ms. Cortes prepared and mailed, by regular mail, hundreds of pages of sign-ins to CD in support of the Reimbursement Requests submitted for Y3Q3 and Y3Q4. Ms. Cortes will testify to the facts alleged herein regarding the sign-in sheets. Ms. Cortes will share how the last three quarters submitted for reimbursement included a process wherein she sent by

regular mail the original sign-in sheets representing NIU participants' attendance to the in-class hours of Activity V of the Work Plan.

V. ARGUMENT - AS TO THE TIMING OF THE AUDIT

The SCO descended onto CU's office in March 2015, in East Los Angeles to perform the audit. During this same time, CU was highly engaged in meeting and exceeding all of the goals outlined in the Work Plan. CU was in the middle of launching and managing 21 sites; engaged in performing 147 different Activities per the Work Plan; with a skeleton administrative crew of 4 including myself, and a financial gas tank running on fumes. See CPED-04, Att. 2 – subtitled Y3Q4 - for the list of 21 sites managed by CU during time of audit. CU's skeleton crew were counting on the Commission to honor its obligation of paying for services rendered under the CASF contract.

The SCO cites in their Audit as “CU not having documentation”. KCCCD (the fiscal agent in this matter) claimed “CU's unwillingness to provide the documentation”. This situation related more to the lack of disposable resources CU had available to dedicate and validate the integrity of the information submitted. It is more than reasonable that Community Union be allowed to perform the necessary steps to confirm the integrity of the information it intended to provide to the Auditor – **which CU inevitably did provide**. CU was delayed due to our contractual commitment under CASF to meet and exceed all the metrics(defined goals) in the Work Plan. In the Reimbursement Requests submitted for Y3Q3 and Y3Q4 we substantiated all goals of the Work Plan were met or exceeded.

Given the small size of CU's operation, where many of us wore multiple hats, it should not have been surprising to the Auditor that we would be delayed in providing detailed information. Yet there was *shock and awe* being communicated to CD by the SCO relating to documentation not being provided. The SCO led CD to believe during the course of this \$100,000 billed-to-the-rate-payers Audit, that CU was not providing documentation. A more accurate account would have been to say CU was merely delayed in providing the documentation. Given Ms. Singh “urgent approval” request to Mr. Wullenjohn, it can be inferred that SCO would not review the documentation NIU provided without a contract extension. See Exhibit 3, email between the SCO and CD dated 6/8/2015.

Furthermore, CPUC had already frozen Reimbursement for Y3Q3 - an amount equal to \$37,500 - that CU was highly dependent on receiving - but did not. As such, the action by CPUC to not pay the Y3Q3 Reimbursement Request added another layer of high-impact

challenges to our ability to respond in a timely manner to the SCO's requests.

CD by not paying Y3Q3 Reimbursement Request, used a classic "cold war" strategy in financially choking-off its opponent. Wherein the SCO/Commission cite as a wrong, CU's inability to deliver – caused by the Commission's non-payment of the Reimbursement Request in the first place.

Despite CU's financial challenges and the weight and strain the Audit put on our resources during the time we managed 21 sites, CU was still able to complete the contract, meeting and exceeding all goals set forth in the Work Plan. CD should complete the processing of NIU's Y3Q3 and Y3Q4 Reimbursement Requests and prepare payment, and update performance metrics relating to the Work Plan. CD should pay NIU, and order Korean Churches for Community Development to pay CU for invoices submitted on Y3Q3 and Y3Q4 work.

VI. COMMISSION ACTING IN BEST INTEREST OF RATE PAYERS - QUESTIONED

Based on CU's review of the emails provided by CPED in response to our Discovery requests of emails by and between the SCO (State Controller's Office) and CD; it appears that Ms. Devla Singh of the CD was duped by Mr. Chris Prasad from the SCO into believing SCO was uncovering hundreds of thousands of dollars in accounting inconsistencies. The email exchanges by and between Ms. Singh and Mr. Prasad revealed cost to the rate payers for the Audit were of little concern.

Ms. Devla Singh in an email to Mr. Robert Wullenjohn wrote "**we might as well have paid NIU out the rest of their [CASF] funding and not do this audit [on NIU] because it is ending up costing us [CD] more.**" See Exhibit 4 email from Ms. Singh to Mr. Wullenjohn. Upon review of CPED's production of responses to CU's data requests, we found a copy of an Agreement that shows the Commission entered into for \$100,000 to complete the audit on NIU. See Exhibit 5, State of California Standard Agreement Amendment, Agreement Number 14 IA5001. The Commission has clearly vacated its integrity relative to acting in the best interests of the rate payers, in large part, by this agreement for \$100,000 with SCO. The Commission's proposed Settlement Agreement with the fiscal agent in this matter, Korean Churches for Community Development (KCCD), is \$15,000. See Exhibit 6 Settlement Agreement by and between KCCD and CPUC. KCCD is the sole entity who has assumed all financial

responsibility in this matter per Attachment A of the CASF contract with CPUC, see Exhibit 7 and 7A. Initially the Commission had sought \$82,381 to be returned by NIU. Even if the Commission had collected the \$82,381 and the \$15,000 from KCCD's Settlement Agreement, the break-even point on behalf of the rate payers would not have been met, against the expense of the Audit alone. But the Audit is not the only expense in this matter. When adding the time Commission staff (CD and CPED) spent in ADR, this OII and its adjudicatory proceeding, a conservative estimate could be projected in the hundreds of thousands of dollars. Such a high cost to the rate payers for so little return, sends positions held by the Commission, CPED specifically, in this proceeding relating to rate payers' best interest - right out the window.

Knowing what we now know about the high cost of the Audit, \$100,000, it is no surprise that Mr. Wullenjohn would embrace the Audit report in the halls of CPUC after a meeting Larry Ortega and he attended, saying, "I have everything I need right in this report." The Commission no longer has standing in their contention of working in the best interest of the rate payers in this matter.

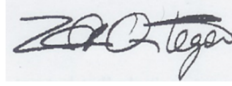
VII. CONCLUSION

The contempt held for the NIU Coalition by CD managerial staff is obvious. CD drove this entire effort, wasting rate payers' monies to chase a small non-profit organization into oblivion. If the SCO had not lied/made critical errors in their Audit Report; and had used actual data and took into account all the tenants of the Work Plan; and had done the due diligence in reviewing actual outcomes of the courses provided by the NIU Coalition; it is likely the Commission would not have initiated this OII. But lie, after error, after purposeful misinterpretation of the contract led to this waste of rate payers' monies. To reiterate what Ms. Singh acknowledged in her note to Mr. Wullenjohn, "they would have been better-off just paying NIU the remainder of their CASF contract balance." The NIU Coalition should be paid for Y3Q3 and Y3Q4 Quarterly Reimbursement Requests. And both CD and CPED should be sanctioned for their misuse of rate payers' monies in their role in pursuing this frivolous matter. The Commission should Reimburse Community Union, Inc. through payment to Korean Churches for Community Development for services rendered in Y3Q3 and Y3Q4 as submitted in their Reimbursement Requests.

By: Larry Ortega

Dated: August 18, 2020

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Larry Ortega", is displayed within a light gray rectangular box.

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