

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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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 FOR DISMISSAL OF RESPONDENT TO ORDER
INSTITUTING INVESTIGATION 18-07-009**

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I. INTRODUCTION

Pursuant to Rule 11.1(a) of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), the Consumer Protection and Enforcement Division (“CPED”), the Korean Churches for Community Development¹ (“KCCD”), and the Asian Pacific Community Fund (“APCF” or “Respondent”) hereby file this joint motion for dismissal of APCF from the Commission’s Order Instituting Investigation (“I.”) 18-07-009.

Given APCF’s limited involvement with the NIU Coalition, good cause exists to dismiss APCF as a party to I.18-07-009.

II. BACKGROUND & PROCEDURAL POSTURE

On or about August 18, 2011, the NIU Coalition submitted an application for California Advanced Services Fund (“CASF”) broadband consortia grant monies. The members of NIU Coalition are: 1) APCF; 2) Black Business Association (“BBA”); 3) Community Union, Inc. (“Community Union”); 4) Korean Churches for Community Development (“KCCD”); and 5) Soledad Enrichment Action – Charter Schools (“SEA”) (altogether herein “NIU Coalition”).² Mr. Larry Ortega, President/CEO of Community Union, led the NIU Coalition and asked each of the members identified above to participate as a member of the NIU Coalition.

Mr. Ortega used Community Union’s training plan and program structure as a platform for the project proposal for the NIU Coalition’s CASF grant application.³ The mission of Mr. Ortega’s organization, Community Union, was to provide training from community based technology centers located in low-income neighborhoods to create

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.

² *Assigned Commissioner’s Scoping Memo and Ruling*, p.1.

³ See APCF’s Response to I.18-07-009 dated August 20, 2018, Attachment 1: APCF’s Debra Fong Declaration, Exhibit A. Exhibit A sets forth Community Union’s mission and strategy to bridge the digital divide through parent engagement in technology.

internet access points and internet training for the communities.⁴ Specifically, Community Union set forth a program called, “Parent Engagement through Technology (PE+T)” to “train community members to utilize on-line Internet resources to better guide their children to academic success using an Education/Graduation Plan they build during the PE+T course.”⁵ In their application, the NIU Coalition proposed a program that would “provide 790 parents annually with 40 hours of structured technology training at 5 NIU Empowerment Hubs . . . Each NIU Coalition member has identified one (1) NIU Site to conduct NIU Training . . . Each NIU Site will train an average of 40 parents per quarter for a total of 790 New Internet Users annually.”⁶

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. APCF then entered into a contractual agreement with Community Union to deliver CASF related services and educational initiatives from approximately March 22, 2013 through June 9, 2014.⁷ APCF organized four sessions for Community Union to conduct training and in return, it received approximately \$12,957 from Community Union.⁸ APCF withdrew from the NIU Coalition in 2014 citing difficulties in working with Community Union.⁹

In November 2015, the California State Controller’s Office 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

⁴ APCF’s Response to I.18-07-009 dated August 20, 2018, Attachment 1: APCF’s Debra Fong Declaration, Exhibit A, p. 6.

⁵ APCF’s Response to I.18-07-009 dated August 20, 2018, Attachment 1: APCF’s Debra Fong Declaration, Exhibit A, p. 6.

⁶ OII, Exh. 3, *Proposed Broadband Project Description*, p. 1.

⁷ APCF’s Response to I.18-07-009 dated August 20, 2018, Attachment 1: APCF’s Debra Fong Declaration, p.7-9.

⁸ APCF’s Response to I.18-07-009 dated August 20, 2018, Attachment 1: APCF’s Debra Fong Declaration, p.11.

⁹ APCF’s Response to I.18-07-009 dated August 20, 2018, Attachment 1: APCF’s Debra Fong Declaration, p.11.

activities and costs.¹⁰ Additionally, it found that the NIU Coalition failed to provide all the instructional training promised as part of the CASF Grant.

Because of the Audit's findings, the Commission's Communications Division in a letter dated April 18, 2016, directed the NIU Coalition to return \$82,381 by July 18, 2016. To date, the NIU Coalition has not complied with this request. Communications Division thereafter referred the matter to CPED for further investigation. In May 2018, the CPED, issued an investigative report titled "Investigation of California's One Million New Internet Users Coalition" ("Staff Report").¹¹

Based on the Audit and the Staff Report, on July 24, 2018 the Commission issued this OII to determine whether members of the NIU Coalition violated any provisions of the California Public Utilities Code ("Pub. Util. Code"), Commission General Orders or resolutions, decisions, or other applicable rules or requirements pertaining to the CASF Grant. Responses to the OII were filed by the APCF and KCCD. 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.¹² 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, in the ALJ's May 9, 2019 ruling the schedule for the proceeding was suspended.

On or about February 19, 2020, ADR efforts ended when ALJ MacDonald notified ALJ Zhang that mediation concluded and no further sessions would be held.

¹⁰ 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.

¹¹ APCF's Response to I.18-07-009 dated August 20, 2018, Attachment 1: APCF's Debra Fong Declaration, p. 3.

¹² *Assigned Commissioner's Scoping Memo and Ruling*, p.5.

III. ISSUES TO BE DETERMINED IN THE OII

The Assigned Commissioner's Scoping Memo and Ruling determined fifteen issues to be decided in this OII. The issues range from determining whether and to what extent the NIU Coalition violated provisions of D.11-06-038, Pub. Util. Code § 281(f)(7), and other Commission requirements for conduct ranging from failing to maintain records and documentation for expenses related to the CASF grant, refusing to return approximately \$82,381 in grant funds as directed by the Commission's Communications Division, to refusing to fully and completely respond to CPED's data request dated July 21, 2017.¹³ The Commission will also determine whether penalties and/or remedies pursuant to Pub. Util. Code sections 2107 and 2108 are warranted.

IV. GOOD CAUSE EXISTS TO DISMISS APCF FROM OII 18-07-009

A. APCF's involvement in the NIU Coalition was limited.

As a member of the NIU Coalition from approximately March 22, 2013 through June 9, 2014, APCF had limited involvement with the activities of the NIU Coalition. APCF's receipt of CASF funds in the amount of approximately \$12,956.57 from Community Union¹⁴ was de minimis compared to the total amount of the CASF grant of \$450,000. Further, APCF has provided documentation demonstrating that the sum it received from Community Union was used in a manner consistent with the purposes of the CASF grant. APCF used the funds to pay for translating Community Union's course materials into Mandarin, to pay trainers to participate in the "Train the Trainer" classes conducted by Community Union, and to cover the costs to hold, through its affiliate, four PE+T programs between the months June through October 2013. Thereafter, APCF decided that it would terminate its membership in the NIU Coalition due to difficulties in working with Community Union.¹⁵

¹³ The complete list of scoping issues is identified on pages 3-5 of the *Assigned Commissioner's Scoping Memo and Ruling*.

¹⁴ APCF's Response to I.18-07-009 dated August 20, 2018, Attachment 1: APCF's Debra Fong Declaration, p.8.

¹⁵ APCF's Response to I.18-07-009 dated August 20, 2018, Attachment 1: APCF's Debra Fong

Given APCF's minimal involvement and ability to substantiate its expenditures of the limited funds it received under the CASF grant and its termination from the NIU Coalition, good cause exists to dismiss APCF from this OII. The issues to be resolved in this OII are pertinent to Community Union's involvement, not APCF. In the MOU delegating responsibility between APCF and Community Union, Community Union agreed to, conduct the training to train the trainers, pay the trainers, and conduct the necessary CASF grant related reporting.¹⁶ The OII's issues regarding whether the NIU Coalition implemented terms of the grant and whether appropriate recordkeeping and documentation for all related expenses relate to KCCD's role as the fiscal agent and Larry Ortega and Community Union's role as the creators who envisioned and implemented the Train the Trainer program for each of the Coalition's members. Throughout the time that APCF was involved in NIU Coalition activities and programs, Larry Ortega of Community Union led the effort in running the NIU Coalition. Therefore, Community Union, not APCF, was accountable for ensuring that the CASF funds APCF received were related to activities authorized under the terms of the CASF grant.

APCF terminated its relationship with the NIU Coalition a little more than a year after signing a memorandum of understanding the Community Union. On or about June 9, 2014, Ms. Fong sent a letter on behalf of APCF to Larry Ortega to confirm a conversation that she had with him a few weeks prior, stating that APCF would no longer be participating in NIU Coalition.¹⁷

Given APCF's limited responsibility and involvement in the NIU Coalition, it is proper and appropriate to dismiss APCF from this OII.

Declaration, p.11.

¹⁶ APCF's Response to I.18-07-009 dated August 20, 2018, Attachment 1: APCF's Debra Fong Declaration, Exhibit 1 (Memorandum of Understanding), p.3.

¹⁷ APCF's Response to I.18-07-009 dated August 20, 2018, Attachment 1: APCF's Debra Fong Declaration, p. 11.

V. CONCLUSION

For the reasons set forth above, it is reasonable to dismiss APCF from this OII because of its limited involvement with the NIU Coalition and its ability to justify its expenditures of funds it received as part of the CASF grant. APCF received a de minimis amount of \$12,956.57 in payment from Community Union. Community Union, not APCF, was responsible for ensuring that the CASF grant funds were spent in accordance with the terms of the Commission's grant. After having paid translators, and trainers, and conducted four PE+T programs and after a year of having entered into a memorandum of understanding with Community Union, APCF discontinued its relationship with Community Union and the NIU Coalition.

Accordingly, the Parties request the Commission dismiss APCF from this OII.

Respectfully submitted,

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