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**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

**ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING**

This scoping memo and ruling sets forth the category, issues to be addressed, and schedule of the proceeding pursuant to Public Utilities (Pub. Util.) Code § 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure.

**1. Background**

On or about August 18, 2011, California's One Million New Internet Users Coalition (NIU Coalition) submitted an application for California Advanced Services Fund (CASF) broadband consortia grant monies. The members of 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 NIU Coalition jointly applied for the grant. The application identified as NIU Coalition's leader Mr. Larry Ortega, President/CEO of Community Union Inc. and as NIU

Coalition's fiscal agent Ms. Hyepin Im, President/CEO of Korean Churches for Community Development (KCCD). On 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. NIU Coalition, as the grantee of CASF broadband consortia monies, is bound by the Action Plan, Work Plan and Consent Form (CASF Grant).

Commission Decision (D.) 11-06-038 implements CASF broadband consortia grants. The goal of the grants 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.<sup>1</sup> Grants were authorized to different regional consortia representing different regions of California.<sup>2</sup> 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.

In November 2015, the California State Controller's Office issued a report of its audit of the NIU Coalition (Audit). The Audit determined that NIU Coalition violated the CASF Grant.<sup>3</sup> Among other issues, NIU Coalition lacked proper safeguards, records, and documentation to substantiate program activities and costs.<sup>4</sup> In addition, NIU Coalition failed to provide all the

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<sup>1</sup> D. 11-06-038, pp. 4 - 5.

<sup>2</sup> *Id.* at 2 fn.3.

<sup>3</sup> Order Instituting Investigation, I. 18-07-009, Attachment B, Audit Report, p. 1.

<sup>4</sup> *Id.*

instructional training promised as part of the CASF Grant.<sup>5</sup> Following the Audit, by letter dated April 18, 2016, the Commission's Communication Division directed

NIU Coalition to return \$82,381 by July 18, 2016. NIU Coalition did not comply with this request. In May 2018, the Commission's Consumer Protection and Enforcement Division, specifically the Utility Enforcement Branch (UEB), developed a report titled "Investigation of California's One Million New Internet Users Coalition." (Staff Report)

Based on the Audit and the Staff Report, on July 24, 2018 the Commission issued an order instituting investigation to determine whether NIU Coalition violated any provisions of the California Pub. Util. Code, Commission General Orders or resolutions, decisions, or other applicable rules or requirements pertaining to the CASF Grant. A prehearing conference (PHC) was held 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. After considering the responses and discussion at the PHC, I have determined the issues and schedule of the proceeding to be as set forth in this scoping memo.

## **2. Issues**

The issues to be determined are:

1. Whether the NIU Coalition violated provisions of D.11-06-038 and Pub. Util. Code § 281(f)(7) for failing to implement terms of the CASF Grant;
2. Whether NIU Coalition spent CASF Grant funds on items or expenses that were not authorized or allowable;

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<sup>5</sup> *Id.*

3. Whether the NIU Coalition violated D.11-06-038, Pub. Util. Code § 281(f)(7), and the CASF Grant for failing to produce and maintain records and documentation to substantiate their expenses;
4. Whether NIU Coalition's fiscal agent, the Korean Churches for Community Development (KCCD) failed its fiduciary responsibilities provided in the CASF Grant;
5. Whether KCCD is liable for NIU Coalition's violations of D.11-06-038, Pub. Util. Code § 281(f)(7), and the CASF Grant;
6. Whether KCCD improperly claimed administrative costs for NIU Coalition's CASF Grant in violation of Resolution T-17355, D.11-06-038, Pub. Util. Code § 281(f)(7), and the CASF Grant;
7. Whether NIU Coalition violated Pub. Util. Code § 2111 for refusing to return approximately \$82,381 as directed in the Commission's Communications Division demand letter dated April 18, 2016;
8. Whether the NIU Coalition violated D.11-06-038, Pub. Util. Code § 281(f)(7), and the CASF Grant for failing to provide sufficient documentation and detailed information for their other sources of grant funding;
9. Whether the NIU Coalition violated D.11-06-038, Pub. Util. Code § 281(f)(7), and the CASF Grant because expenses reimbursed by CASF Grant funds were also reimbursed from NIU Coalition's other funding sources;
10. Whether the NIU Coalition violated D.11-06-038 and Pub. Util. Code § 701 for failing to adequately respond to the UEB's data request dated July 21, 2017;
11. Whether the NIU Coalition violated Rule 1.1;

12. 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 Resolutions T-17143, T-17233, T-17355, D.11-06-038, Pub. Util. Code § 281(f)(7), and the CASF Grant;
13. Whether the assessment of penalties or other remedies are appropriate for the violations found;
14. Whether KCCD and its officers, as well as Mr. Larry Ortega, leader of the NIU Coalition, should be individually subject to other equitable remedies for violation of D.11-06-038 and Pub. Util. Code § 281(f)(7);<sup>6</sup>
15. Whether penalties and/or remedies pursuant to Public Utilities Code sections 2107 and 2108 are warranted; and if so, what amount is appropriate based on the facts and the law.

### **3. Need for Evidentiary Hearing**

Issues 1 through 15 are contested material issues of fact. The order instituting investigation determined that evidentiary hearings will be necessary.<sup>7</sup> No parties disagreed with the initial determination at the PHC. Accordingly, this scoping memo and ruling determines that evidentiary hearings are necessary.

### **4. Schedule**

The following schedule is adopted here and may be modified by the administrative law judge as required to promote the efficient and fair resolution of the order instituting investigation:

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<sup>6</sup> Order Instituting Investigation, I. 18-07-009, pp. 25-26.

<sup>7</sup> *Id.* at 26.

DATE	EVENT
November 14, 2018	Prehearing Conference
December 18 , 2018	Scoping Memo and Ruling
January 15, 2019 10:00 a.m.	Settlement Status Teleconference
February 22, 2019	NIU Coalition Opening Testimony Served
March 15, 2019	Consumer Protection and Enforcement Division Reply Testimony Served
March 29, 2019	NIU Coalition Rebuttal Testimony Served
March 29, 2018	Discovery Cut Off Date
April 8 and April 9, 2019 10:00 a.m.	Evidentiary Hearing 320 West 4th Street, Los Angeles, California 90013
April 19, 2019	Concurrent Opening Briefs Served and Filed
April 29, 2019	Concurrent Reply Briefs Served and Filed

The proceeding will stand submitted upon the filing of reply briefs, unless the assigned administrative law judge requires further evidence or argument. Based on this schedule, the proceeding will be resolved within 12 months as required by Pub. Util. Code § 1701.2(i).

##### **5. Category of Proceeding/*Ex Parte* Restrictions**

The Commission determined that this is an adjudicatory proceeding.<sup>8</sup> Accordingly, *ex parte* communications are prohibited pursuant to Article 8 of the Commission's Rules of Practice and Procedure.

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<sup>8</sup> *Id.*

## **6. Intervenor Compensation**

Pursuant to Pub. Util. Code § 1804(a)(1), a customer who intends to seek an award of compensation must file and serve a notice of intent to claim compensation by December 14, 2018, 30 days after the PHC.

## **7. Public Advisor**

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission's Public Advisor at 866-849-8390 or 415-703-2074 or 866-836-7825 (TYY), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

## **8. Service of Documents on Commissioners and Their Personal Advisors**

Rule 1.10 requires only electronic service on any person on the official service list, other than the administrative law judge (ALJ).

When serving documents on Commissioners or their personal advisors, whether or not they are on the official service list, parties must only provide electronic service. Parties must NOT send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

## **9. Assignment of Proceeding**

Clifford Rechtschaffen is the assigned commissioner. Zhen Zhang is the assigned administrative law judge and presiding officer for the proceeding.

**IT IS RULED** that:

1. The scope of this proceeding is described above.
2. The schedule of this proceeding is as set forth above.
3. Evidentiary hearings are needed.
4. The presiding officer is the assigned administrative law judge Zhen Zhang.

5. The category of the proceeding is adjudicatory.

Dated December 18, 2018, at San Francisco, California.

/s/ CLIFFORD  
RECHTSCHAFFEN  

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Clifford Rechtschaffen  
Assigned Commissioner