**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 |

**COMMUNITY UNION, INC.'S MOTION FOR DISQUALIFICATION OF COMMISSIONER CLIFFORD RECHTSCHAFFEN FOR CAUSE (BIAS/PREJUDICE) AND REQUEST FOR NEW EVIDENTIARY HEARING**

Pursuant to Rule 9.5 of the Rules of Practice and Procedure of the California Public Utilities Commission (CPUC), Community Union, Inc. respectfully makes a Motion for Disqualification of Commissioner Clifford Rechtschaffen of the California Public Utilities Commission for bias/prejudice (Motion).

By this Motion, Community Union, Inc. (CU) respectfully requests ALJ Zhang to disqualify Commissioner Clifford Rechtschaffen (Commissioner) for bias. Wherein the Commissioner has expressed a "preconceived opinion" and maintained a "predisposition to decide this matter a certain way, which does not leave the mind perfectly open to conviction", as defined in Black's Law Dictionary. In this Order Instituting Investigation (OII), the Commissioner has presupposed the "**misuse** [emphasis added] of California Advanced Services Funds" without the benefit of weighing into the investigation the enormous media coverage (over 30 million viewers seeing the impact of broadband adoption), Exhibit 1, brought by the One Million NIU Coalition; and the **undisputed facts,** Exhibits 2 and 3, on file with the

Communications Division (CD) – showing completion of all contractual requirements by One Million NIU Coalition (Coalition) per the goals set in the Work Plan. The Coalition's Quarterly Reimbursement Requests for Y3Q3 and Y3Q4 offer indisputable evidence that all contractual requirements of the Work Plan were achieved. The manner in how the OII was worded precluded – due to bias/prejudice – Community Union from due process.

**BACKGROUND**

Community Union, Inc., a named sponsored organization in the contract, assisted the Coalition in meeting and/or exceeding all goals stated in the Work Plan. The quarterly reports the Coalition submitted to the Communications Division showed all goals in the Work Plan had been met or exceeded. For example, the Coalition more than doubled the obligation of establishing 72 Empowerment Hubs in Activity II of the Work Plan. The Coalition established 142 Empowerment Hubs – the Work Plan only called for 24 annually in the approved budget. Not only was this fact not weighed by the Commissioner, but it was then prohibited from being introduced as evidence on the grounds that it was irrelevant. ALJ Zhang ruled – citing language the Commissioner used in the OII title and supporting filings - "performance" was not at issue. The facts of the investigation at their core absolutely show performance at the crux of this issue and that the requisite to define roles and responsibilities and performance against stated goals must be evaluated – in their entirety. The OII was worded in a manner that precluded due process, disallowing the Coalition to present the full body of evidence. The facts ascertained from the full body of evidence clearly show that not only were rate payers not cheated, but they received more than three times the original value of the contract the Coalition had committed to providing. The OII and ALJ Zhang's rulings precluded the introduction of this evidence – exemplifying bias and prejudice. Further, because the Commissioner was prejudiced by the email communication, see Exhibit 4 – the OII language found Community Union culpable without the benefit of examining the contract which clearly stated the fiscal agent assumed all liability relative to the administration and accounting of the CASF grant. The contract between the Coalition and the CPUC stated culpability is clearly defined to rest with the fiscal agent, Korean Churches for Community Development (KCCD), yet ALJ Zhang citing the OII - blocked the introduction of this evidence.

CONSUMER PROTECTION AND ENFORCEMENT DIVISION (CPED) FOLLOWS COMMISSIONER'S LEAD – TRAMPLING DUE PROCESS

CPED latched-on to the Commissioner's lead by then presenting Briefs and Evidence that were loaded with arbitrary cut-off points, and distorted testimony *invalidating key allegations* – regarding *concern with performance*. In one instance CPED's witnesses, Ms Huang and Ms. Singh, testified that it was the Quarterly Reports that gave them concern about the Coalition's performance in meeting the goals stated in the Work Plan. When CU showed the Quarterly Reports for the end of Y2 and end of Y3 to Ms. Singh - it was her testimony the reports did in fact show that all goals stated in the Work Plan were met or exceeded. This directly contradicted CPED's contention that performance was at issue. Absent supporting evidence, CD ordered the State Controller's Office (SCO) to conduct an $85,000 Audit. The Quarterly Reports showed the Coalition meeting or exceeding goals in the Work Plan. The Audit appears to have been an excessive, unnecessary, expenditure. CU has had a chance to weigh the feebleness of the evidence presented therein; to Ms. Singh's words offered during her testimony in the evidentiary hearing – "they [CPUC] would have been better-off just paying the reminder of the contract to the Coalition." See Exhibit 5 where Ms. Singh recognizes the expense of Audit outweighs the balance owed to the Coalition on their contract.

CPED PLAYED *DIRTY* WITH THE EVIDENCE

On not less than 2 occasions CPED presented incomplete Quarterly Reimbursements Packages as evidence. CPED falsely represented in their evidence the original Quarterly Reimbursement Packages provided by the Coalition. CPED – via their exhibits presented in the Evidentiary Hearing of August 24-27 - showed there were no rosters of students and locations of courses taken in the Quarterly Reimbursement Packages. The Coalition submitted exhaustive list of students and courses provided during a particular quarter. CPED Exhibits were absent rosters and course lists that were included in the Coalition's original submission of this Quarterly Reimbursement Package. CPED cited the omissions as intended redactions – yet had not used this practice in other redacted documents. This was the first time CPED eliminated pages of the report completely, rather than showing the redacted versions of the pages.

**Then there was the data breach committed by CPED,** Exhibit 8**:** On or about July 29, 2020 CPED engaged in the disclosure of 34 confidential records being exposed to the public. CPED cited that this

mistake was done inadvertently and had apologized for their mistake – noting they had contacted everyone who had received the confidential data asking them to destroy the same. The biggest problem with this seemingly harmless mistake is that the most personal information on persons connected or served by CU were disclosed to the least trusted individual on the Distribution list - a one Steve Blum. Mr. Blum has written – in a virtual fantasyland style – about the work of the NIU Coalition. Mr. Blum is a mere *shill* for the telecommunication industry and the regulatory agency that, in Mr. Ortega's opinion, protects them. The data breach exposure could not have happened with a least trusted person. Of course, Mr. Blum gave his word that he deleted the personal data of clients served by the NIU Coalition, but given Mr. Blum prejudice in this matter – it is unknown what harm awaits our clients.

Small, seemingly honest, mistakes were part of an agenda to smear the credibility of the NIU Coalition, Community Union and Larry Ortega. These "honest mistakes", when viewed in isolation, seem harmless. However, when you combine the Commissioner's bias of not allowing for direct testimony on performance and CPED's questionable integrity in their presentation of evidence, and ALJ Zhang's active participation in blocking key evidence, we are left with an adjudicatory process that tramples due process – by the design of the OII.

**INTRODUCTION: WHY WOULD THE COMMISSION GO TO SUCH LENGTHS TO SMEAR LARRY ORTEGA AND THE NIU COALITION – THERE ARE SIX REASONS**

**FIRST – RACISM:** Based on Mr. Ortega's interaction with Robert Wullenjohn of the CD, Community Union believes that racism is at the core of this investigation. The NIU Coalition was the only minority led agency to be funded by the CASF grant of the original 18 agencies funded. Of all those initial 18 agencies that were funded, the NIU Coalition was the only agency to be audited. Mr. Wullenjohn approved an $85,000 audit of the NIU Coalition in an effort to block an $80,000 reimbursement request submitted by the Coalition. Testimony from the evidentiary hearing revealed instruments used by CD to determine the NIU Coalition performance - actually showed the Coalition having met or exceeded the goals of the Work Plan.

**SECOND – THE POPULATION SERVED BY NIU COALITION:** The population served by the NIU Coalition are low-income minorities who were articulating, on regional television and newspapers, success stories that were inspirational. CD sought to halt the positive influence to other minority communities by way of cutting-off funding to the Coalition. When CD made the conscious decision to not pay the reimbursements requests submitted by the Coalition, they effectively cut-off the positive

promotion of broadband adoption in low-income minority communities. The greatest question we hope ALJ Zhang will answer in this Motion is why would CD want to stop the very essence of the Coalition's accomplishments – which matched perfectly with the essence of Decision 11-06-038 "the ubiquitous promotion/adoption of broadband technology" in low-income and minority communities.

**THIRD - COMCAST:** Over the last 2 decades Larry A. Ortega has been an outspoken critic of the broken promises made by Internet Providers (a.k.a. telephone and cable TV providers). During a National Conference in San Francisco in 2014, Ortega called-out Comcast on their grossly inadequate Internet Essentials program that was to connect millions of low income children throughout America. It never happened. Mr. Ortega pointed this out in a very public forum held in San Francisco.

**FOURTH – CHARTER (Spectrum)**: Ortega on May 12, 2016 flew to Sacramento to testify against the Charter merger with Time Warner. Ortega asked the California Public Utilities Commission to make the promises made by Charter as conditions to their merger. Mr. Ortega asked the Commissioners to put in writing Charter's commitment to connect 53,000 low income households with high-speed Internet and make it enforceable – by way of unraveling the merger deal if Charter did not fulfill its promises. The Commission ultimately voted Ortega's proposal for accountability down, but these comments further put Ortega on the radar of the telecommunication industry.

The CPUC's *hands-off* protocol – in not enforcing promises made during mega-mergers - is what led us to the digital divide crisis we currently are experiencing. The telecommunications industry failing to deliver on promises is a very big deal. The embarrassment brought to Comcast, ATT and Charter via Mr. Ortega's testimony in public forum, is believed what is instigating the Commissioner to pursue an extremely feeble case against Community Union.

The worst case scenario is Community Union, Inc. helped the Coalition meet and/or exceed all goals stated in the Work Plan; Community Union tripled the Coalition's original commitment of cash and in-kind contributions to the contract - to over $1.2 million; Community Union, despite being abandoned by its fiscal agent, maintained the integrity of the commitment by staying in this adjudicatory process until the very end to ensure truth and justice were served for all those involved; CPED's .006% sample set from the Auditors investigation proved the *witch-hunt theory* that Mr. Ortega has maintained this entire adjudicatory process. Weak evidence combined with skewed due process now clearly support the witch-hunt theory.

**FIFTH: The IRREGULATORS estimate** that California rate payers have been overcharged about $1.75 billion in 2019 and about $2 billion in 2020. This public utility money - destined to close the digital divide - never made it to its destination, see any low-income community in the country. Ortega has been out-spoken writing about these activities in his blog several times over the last 5 years. The following represents excerpts pulled from Ortega's writings disclosing the short-comings caused by the Internet Service Providers (ISP's).

> *Let us stop acting like the* digital divide *came upon us unexpectedly like some tsunami or hurricane. Rather, let us be honest with ourselves and admit deregulation has once again failed us. Industry has once again taken advantage of the American consumer. Prices as low as $20 per month for 100mbps up and down in Europe and Israel have been available at least the last two years to consumers living in those regions.*
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> *Digital red-lining has netted ISP's enormous profit. The* digital divide by design, *was perfectly executed without interruption for nearly two decades. Then Covid-19 hit, distance learning was mandated and* viola *the farce that providers were connecting everyone - everywhere was revealed. With all the bad things that Covid-19 has brought to our neighborhoods, the upside is there is the political will to hold ISP's accountable and provide alternative funding methods to municipalities and school districts to close the digital divide once and for all.*

**SIXTH - BOYLE HEIGHTS RESIDENTS AND FARMERS AGAINST TOXIC 5G CELL PHONE AND CELL TOWER RF WAVES:** Thus far the wireless industry has masterfully eluded basic safety obligations to the public to ensure no harm. They have skirted the requisites and refused to analyze/acknowledge conclusive studies showing negative health impacts caused by RF (radio frequency) waves. In 2016 Verizon's CEO Lowell McAdams disclosed there was more money to be made with deployment of wireless and despite commitments to build-out America's fiber-optic infrastructure, he was empowered by the regulatory agencies to ignore these obligations and other safety concerns. Verizon's CEO prioritized the company's ability to maximize profits. Again, Ortega wrote extensively about this issue, creating the Pueblito Fuerte webpage, see Exhibit 11, showing the chronological destruction of the Boyle Heights residents' right to be free from harmful RF Waves. Mr. Ortega has called on the FCC (Federal Communication Commission) to halt the deployment of 5G and other wireless towers until the

harmful effects of wireless technologies can be mitigated – especially to small children. Mr. Ortega has exposed the digital divide by design. Mr. Ortega wrote about a process where low-income and communities of color were *digitally-red-lined* - literally blocked from getting access to high-speed Internet. This allowed for the domination of the wireless – toxic – build-out of cell towers and small antennas harming small children, pregnant women and the elderly. Verizon during a commercial in yesterday's World Series game promoted the technological advances of 5G, without mentioning the extreme health concerns 5G technology brings to small children and the elderly – especially pregnant women.

These issues as cited in 1-6 above, by themselves may seem harmless, but when you combine their impact - the greed of the telecommunication industry is revealed and the need to silence and/or discredit voices speaking truth to these issues is heightened. Thus we have the OII as written by the Commissioner and as adjudicated by ALJ Zhang, in a blatant exhibit of blocking the truth, justice and due process.

There is ample evidence that the pursuit of CU in this adjudicatory process appears retaliatory - given the serious weakness of the evidence presented by CPED. The evidence presented by CPED was found to be grossly deficient in supporting the stated allegation of this investigation - "misuse of CASF funds." CPED hinged their entire case on three (3) key factors – stated below – wherein the Commissioner's bias and prejudiced dictated the scope of the proceeding:

1. The Auditor's testimony (the Audit Report) and its conclusion that only 20-hour sessions, not 40-hour sessions, were provided,
2. The CASF grant manager testimony that the NIU Coalition was having performance problems as concluded by one visit to NIU sites, and the reading of Quarterly Reports,
3. ALJ Zhang blocking testimony by Community Union, Inc. that defined who was responsible for accounting and overall grant management as articulated in the contract by and between KCCD and the CPUC (CASF grant administrator).

CPED's GROSSLY DEFICIENT EVIDENCE

One (1): Through the testimony of the Auditor (Mr. Prasad formerly of the SCO) during the evidentiary hearing of August 24th – 27th, it was discovered that the entire basis for the Auditor's conclusion on number of hours provided per session (20-hour vs. 40-hour) was based on a sample size

of .006%. The Auditor only interviewed 11 of 1,776 NIU graduates. The evidence used to reach said conclusion is grossly inadequate and should be dismissed in its entirety. However, the Commissioner moved forward with this OII. The Commissioner's bias is obviated by the extreme weakness of evidence presented in the Audit and the evidentiary hearing, e.g. less than .006% sample set, and the visit of 1 of 142 NIU sites to make broad conclusions unsubstantiated by the evidence.

Two (2): Ms. Singh of CD testified that performance was measured by one site visit and the reading of one specific Quarterly Report provided in the Quarterly Reimbursements Packets by the Coalition. In the Quarterly Report provided by One Million NIU Coalition for Y2Q4 it showed the Coalition had met or exceeded all goals stated in the Work Plan, leaving only the one NIU site visit as the sole measure on performance for Ms.Singh; again grossly inadequate evidence that should give rise to dismiss this concern; and furthered integrity challenges haunting CPED.

Three (3): The process of blocking relevant testimony and evidence helped lay culpability at the feet of Community Union without the benefit of hearing the facts. The manner in which the OII was written by the Commissioner endorsed a trampling of due process. It is for this reason the Commissioner should be disqualified from this proceeding. A new evidentiary hearing should be set, to allow for the evidence regarding culpability and the complete evaluation of the records provided by the Coalition showing contract completion. On not less than 4 instances during the Evidentiary Hearing, ALJ Zhang specifically cited the scope of the proceeding in precluding Community Union, Inc. from introducing evidence that delineated roles and responsibilities as dictated by the CASF contract between the fiscal agent, sponsored organizations and the CPUC. The court leapt to culpability of the sponsored organization (Community Union), in contradiction to the actual language of the contract, again shows prejudice and/or bias; initiated by the Commissioner's language in the OII.

**AUGUST 3, 2016 EMAIL TO MR. RECHTSCHAFFEN – IN CONFIDENCE**

The Commissioner was enabled to skillfully block the Coalition's evidence and arguments because Larry Ortega of Community Union, Inc. had reached out to Mr. Rechtschaffen prior to his appointment to the California Public Utilities Commission (CPUC). Mr. Ortega had disclosed, in confidence, to Mr. Rechtschaffen the injustices that were being exacted on the Coalition – seeking his help and influence from the Governor's office. Mr. Ortega had disclosed the tremendous press coverage and the success stories *vis-à-vis* links to Univision, ABC7 and Telemundo news agencies' coverage, Exhibit 1. The Commissioner was able to block positive testimony regarding contract completion

because he had the private – confidential – communication from Community Union's Larry Ortega. For this reason Community Union was not allowed to present their significant accomplishments showing contract completion or contractual responsibility. Mr. Ortega was referred to Mr. Rechtschaffen by the Greenlining Institute's former General Counsel, Mr. Sam Kang. The email was titled in the subject line as follows: Referred by Sam Kang: CPUC acting in bad faith, Hurts Low-income Families, See Exhibit 4, included herein as an attachment. In this email, Mr. Ortega went into great detail regarding the positive impacts re: media and graduates the Coalition had accomplished during the grant. Mr. Ortega included links for Mr. Rechtschaffen to view on-line for himself. Specifically, Mr. Ortega referred the Commissioner the website One Million NIU, see Exhibit 6, which includes the many NIU sites served by the Coalition; and direct testimonials from graduating students, see Exhibit 1, 30 Million people touched by the NIU Coalition.

**OTHER TRAMPLING OF DUE PROCESS**

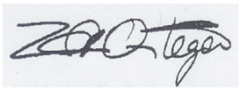
Because of the wording of the OII, ALJ Zhang prohibited CU from presenting the separation of duties that was clearly articulated by Ms. Clark of CU - during her testimony given at the evidentiary hearing. CU prepared the reports and sent them to KCCD, the fiscal agent – for final approval. Once approved by KCCD, CU would forward the reimbursement package to CD. Every quarter KCCD was paid to perform this function. Every quarter KCCD performed this function by signing the Declaration, see Exhibit 10 incorporated herein as an example of the 12 separate Declarations signed by KCCD. The adjudicatory proceeding was manipulated - disallowing the presentation of KCCD's role. Despite overwhelming evidence as to the culpability of KCCD, the Commissioner chose to ignore the facts, and even caused evidence to be blocked. CU was precluded from introducing evidence because of the Commissioner's bias and prejudice.

During the Evidentiary Hearing ALJ Zhang sustained CPED's objection at every opportunity when CU attempted to introduce *the impact* of the program and how 100's of mom's, previously stay at home moms, were now moving into the workforce in the field of technology. How nearly 40 college students used the training they performed with the NIU Coalition as launching pads to become teachers. There was an abundance of success stories shared by each of the moms (more than 3,000) participating in the NIU Coalition programs who shared as parents' how the relationship with their children improved as a re sult of learning the technology skills taught by CU. None of this was evidence was permitted to be introduced in the evidentiary hearing, yet it represented the most obvious indicator relating to what

CPUC's (the rate payers') investment in the NIU coalition got them…

For the foregoing reasons Community Union respectfully requests ALJ Zhang grant the Motion by disqualifying the Commissioner and setting a new date for an Evidentiary Hearing, free from bias and prejudice of the Commissioner as requested herein.

Respectfully submitted,



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By: Larry Ortega
For Community Union, Inc.
Tel:(909) 629-9212
Email: LA@LAOrtega.com
PO Box 364,
Pomona CA 91769

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