

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 Investigation 18-07-009 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.**

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**Investigation 18-07-009**

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**DECLARATION OF LARRY ORTEGA**

My name is Larry Ortega. I am the President of Community Union, Inc. I have personal knowledge of the facts stated herein.

Mr. Wullenjohn has a history of being racist and unprofessional via his remarks and actions to CPUC subordinate staff and to the public (consortia members to whom he has managerial responsibility to ensure efficient and effective implementation of the legislature's directives in administering the CASF). We contend that Mr. Wullenjohn led the charge in blocking the remaining payment of \$80,000 that is due to California's One Million NIU Consortia (herein after referred to as Consortia) for work completed under the CASF contract.

It is our contention that Mr. Robert Wullenjohn is a racist. I make this statement based on my personal experience and interactions with him. His interaction with our One Million NIU team at break-time during the first CASF Learning Summit, March 12, 2013 in Sacramento, said everything in support of this claim. On the first day of the Learning Summit, I found Mr. Wullenjohn outside the event, smoking a cigarette. He was by himself. I said "Hi". His return response to me was cold. Other members of our Consortia were with me, specifically Deborah Janes and Neri Rivas. As I went to introduce my team to Mr. Wullenjohn, he refused to shake their hand. He did not acknowledge them with a salutation. He simply acted *as a racist would act*. I have experienced this type of condensing behavior - mostly on the basis of my race. Mr. Wullenjohn's interaction immediately gave me concern. This was early 2013.

I was extremely uncomfortable that Mr. Wullenjohn, the CASF *purse-string-holder* of our funds, was a racist by my understanding at that moment and - in a very apparent manner - a *non-friend* of our Consortia. Because of Mr. Wullenjohn, I feared we were going to have problems for the remainder of this CASF engagement. I discussed this behavior with a long time colleague of mine who frequented

CPUC hearings for nearly 2 decades. This person, who asked to remain anonymous, knew Mr. Wullenjohn personally, concurring - "Yeah, he [Robert Wullenjohn] once called me after a CPUC hearing and began to berate me with his comments. Because he did not agree with something I had written. I felt he was rude, arrogant and unprofessional and in my dealings with him and other CPUC Communications staff I definitely feel that there is a lot of institutional racism." It is our position Mr. Wullenjohn plays a key role in this institutional racism which has led to some ridiculous interpretations of the CASF contract with our Consortia. We believe Mr. Wullenjohn's racism was the driving force of switching the Audit from what was supposed to be a *performance audit*, to a financial audit. The CPUC itself distinguishes its audits between "performance" and "financial", see link to CPUC website here, bullet point 12, CASF 2nd Interim Performance and Financial Audit Report (Issued March 30, 2017) :

- <https://www.cpuc.ca.gov/General.aspx?id=9226>

This is not something our Consortia took lightly. In fact, we contend that Mr. Wullenjohn has in the past acted-out based on racism with CPUC subordinates and other CASF grant recipients. Community Union (CU) believes Mr. Wullenjohn's behavior toward past interactions with minorities will be part of his personnel file.

CPUC's intention for conducting the Audit was to determine performance matrix status. Mr. Dulin's letter to Ms. Im cited performance issues as being the reason why he was withholding payment to our Consortia. From this letter and in apparent contradiction to Mr. Dulin's directive, a subtle but critical twist from a performance audit to a financial audit was made. CU believes Mr. Wullenjohn was at the center of this switch from performance to financial audit. The auditors proceeded with a financial audit, totalling missing the original imperative of determining our Consortia's performance.

Mr. Wullenjohn, who neither recognized or was capable of understanding the amazing promotional work in monolingual non-English speaking communities our Consortia made: 1) because it was not in English and 2) he is a racist. Mr. Wullenjohn's racism blinded him from acknowledging and/or promoting our work on the CPUC website. We believe no other agency to date has done more to promote broadband awareness in the hardest of hard to reach communities. As such the TV coverage and the newspaper coverage, in-language, should be made available as a success story of ubiquitous promotion of broadband. But due to institutional racism CPUC has not.

Prior to our Consortia's encounter at the 2103 Learning Summit with Mr. Wullenjohn outside the event, I had the displeasure of having him jump-out of his seat and begin *barking* at me during our very first conversation, ever, inside the event just as it was beginning. I had just met Mr. Wullenjohn and had no idea who he was at the time of this very first conversation with him. Meaning, I did not know if he was a fellow consortia member, or some elected official. I did not think he was with the CPUC, simply because of his hardlined support of mega-mergers. The topic of the proposed mega-merger between Time-Warner and Comcast came-up between Mr. Wullenjohn, myself and a third party. I made the statement that the merger between Time-Warner and Comcast was a terrible idea and should be blocked. I cited that Comcast had yet to deliver on its promises made during the mega-merger between them and NBC/Universal regarding connecting millions of families with

high-speed Internet. Mr. Wullenjohn, in a manner typically reserved for lobbyist or employees of Time Warner and Comcast, jumped out of his seat and got in my face. He argued that the merger should go through as proposed. Mr. Wullenjohn is part of a team whose position is to regulate these giant telecommunications institutions. I question how Mr. Wullenjohn, in his position, could take a hardlined advocacy approach on something not in the best interest of rate payers. This struck me as unusual.

In preparation for Community Union's responses in this matter, I researched the Internet to see if Mr. Wullenjohn had any claims filed against him for racism or discrimination against a CPUC staff member or other consortia funded by CASF. I typed in the following Google Search: "Robert Wullenjohn, racist". The following result appeared as the **number one result**, source - casetext.com: **Hines v. California Public Utilities Commission.**

- Link: <https://casetext.com/case/hines-v-california-public-utilities-commission-5>

In the complaint Ms. Hines, a Black female, alleges Mr. Wullenjohn committed the following (excerpts from the Summary Judgement in the Hines v. CPUC case):

- "Mr. Wullenjohn continually held her [Ms. Hines] responsible for the shortcomings of other staff members";
- "Mr. Wullenjohn allegedly began to harass and abuse Plaintiff, chastising and threatening her";
- "told Plaintiff [Ms. Hines] that he was using her as a guinea pig";
- "Defendant Wullenjohn used offensive gestures towards Plaintiff, i.e., `flipping the bird";
- "The only [other] employee to complain of the type of "abusive, hostile, bullying behavior" Plaintiff [Ms. Hines] had experienced, was African-American as well;
- "Plaintiff maintains that the evaluation constitutes an adverse employment action taken in retaliation for her complaints and was "grounded in racial animus";
- "She [Ms. Hines] asserts that this is because the CPUC lacks a bona fide merit-based system for evaluating, hiring, and promoting staff, which results in a disparate impact on African-American employee";
- Mr. Wullenjohn "often hovered over Plaintiff, barking at her in an aggressive, belligerent tone (I'm going to make you do `X'!! I'm going to make you do it, now!)"
- Mr. Wullenjohn "yelled out" while testifying at Plaintiff's SPB hearing, I'm going to beat you, Donna. I'm going to beat you . . . beat the aggression out of you";
- Defendants [Wullenjohn] in this Summary Judgement never deny or counter Ms. Hines testimony;

Mr. Wullenjohn's racist demeanor is the impetus behind his ignoring the significant impact our Consortia made in Chinese, Korean and Spanish-speaking media markets. As such, despite our Consortia bringing more media and promotion of CASF than all other Consortias combined, we were castigated, shamed (see Steve Blum's article link here),

- <https://www.tellusventure.com/blog/broadband-consortium-accused-of-making-false-reports-c-puc-wants-244000-back/>

and wrongfully accused of ripping-off rate payors (e.g. to include this OII), and the clients our Consortia served. We essentially were left for dead, financially-speaking. Through Wullenjohn's racist inspired actions - successfully blocked the final payment of \$80,000 to our Consortia for work completed. Our Consortia met and exceeded all benchmarks set in the Work Plan. We provide the following link as proof - **NIU Touches 30 Million lives:**

<http://laortega.com/education-digital-equity/one-million-niu-touched-over-30-million-lives/>

CU asked an outside consultant specializing in media buys to estimate the value of our Consortia's media coverage. Stephan Chavez, a media buy expert, estimated the TV coverage CU obtained valued in excess of \$600,000. It is our contention that Mr. Wullenjohn never reviewed these non-English media activities that gave our Consortia (specifically the CASF grant program) regional, national and international TV and newspaper coverage in the hardest of hard to reach monolingual communities. We do not believe Mr. Wullenjohn understands Spanish, Chinese or Korean. We believe Mr. Wullenjohn's racist inclinations precluded him from doing his job. We contend Mr. Wullenjohn should have taken our media coverage and furthered the "ubiquitous promotion and adoption of broadband technology." Despite the magnificent media coverage, it cannot be found anywhere on the CPUC - CASF website. Instead, there is only the issue of California's One Million NIU Consortia being audited and subsequently investigated. We believe Mr. Wullenjohn has a long history of berating the public and his subordinates who are minorities. We contend it is absolutely relevant to show Mr. Wullenjohn subverts his authority, to which we intend to show is due to his racism. It is important to show there is a pattern indicative of Mr. Wullenjohn subverting his authority - which speaks to credibility of the entire Communications Division and their motives. The question of racism being at the center of Mr. Wullenjohn's *witch-hunt* against our Consortia can only be answered by way of showing whether or not he has a pattern of this type of behavior, ascertainable only via viewing his personnel file on such matters of racism and discrimination.

Ms. Baldwin asserts in her Law and Motion pleading that access to Mr. Wullenjohn's past transgressions related to racism and discrimination in his personnel file is irrelevant. We disagree. Unless Ms. Baldwin is willing to stipulate Mr. Wullenjohn is a racist, we see no other way of proving or disproving this very relevant fact, which lays the foundation of credibility for Communications Division.

Although Ms. Baldwin has completed a stellar job up and to this point of hiding (burying) Mr. Wullenjohn's role in this witch-hunt, it is not credible to believe Ms. Singh acted alone without direction from Mr. Wullenjohn. It is not credible to believe Mr. Prasad of the SCO - on his own volition - flipped the switch from performance audit to financial audit - laying burden to the member of the Consortia

(Community Union) who did not assume ultimate financial (records) responsibility vis-a-vie Attachment K of the CASF contract. Said financial responsibility was clearly designated with Korean Churches for Community Development - the fiscal agent. Mr. Finlayson and Mr. Prasad of the SCO falsely pushed a narrative in the Audit that Community Union's books represented the entire picture and housed ultimate financial responsibility. It did not, we did not, respectively. Though our financial records represented a significant portion of what would ultimately be the full accounting of our Consortia's financial narrative, we were counting on the fiscal agent to tie-up ours and their records to accurately report, per GAAP standards what transpired. The SCO never allowed this to play-out. The SCO opted to cut-short the records to which they analyzed: September 2012 - September 2014. The SCO then went on to misrepresent on the audit report's title page that the audit represented March 2012 - March 2015. It did not. These are subtle - yet fatal - errors regarding the SCO's credibility in that in one instance the Audit Report is thought to represent the entire contract period, vis-a-vie its title, wherein actuality it only represented a skewed picture financially based on 10 quarters, not 12/13 quarters as we clearly contested in our responses to the Audit Report - subsequent to it being published. Furthermore, it had nothing to do with performance. The SCO did not ask for performance records. We asked Mr. Prasad whether the audit was financial or performance in an email. We received no affirmative response one way or the other. Again, subtle but yet fatal errors as to what in actuality the audit was intended to ascertain - an answer as to our Consortia's performance - but only revealed a parroted-statement from what we believe came from Mr. Wullenjohn.

Ms. Baldwin's list of witnesses in this matter include subordinates to Mr. Wullenjohn, which include Mr. Robert Osborne, for Communications Division testimony. Mr. Osborne, to our understanding, reported to Mr. Wullenjohn sometime between 2012 and 2015 and is now Mr. Wullenjohn's boss. We believe Mr. Wullenjohn instigated a ridiculous interpretation of our Consortia's CASF contract in that - the contract is entirely based on Training (Activity V of the Work Plan). It is not. The contract via its Work Plan cites 7 specific and independently funded Activities. There is nothing in the Work Plan or the Budget that suggest the entirety of the contract is Training alone. Yet Mr. Wullenjohn has successfully subverted the contract's tenants with no supporting evidence; convinced the Auditor to parrot what we believe are his words alone - without the benefit of State Controllers Office (SCO - Auditor) conducting their own investigation relative to the specific relation of Activity V to the other Activities. Our Consortia finds itself in the battle of its life to correct this obvious misinterpretation. This issue goes to our contention that if we were a White-led organization - this matter would not have been hauled into an OII and would likely have been amicably resolved by and between the parties. But because we are a minority-led consortia and Mr. Wullenjohn is a racist, here we are.

Community Union believes it makes a strong argument for obtaining Mr. Wullenjohn personnel records relating to past racist or discrimination issues. We ask ALJ Zhang to compel Ms. Baldwin, per the California Code 1798.24 (o):

- To a law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes, unless the disclosure is otherwise prohibited by law.

Mr. Wullenjohn's personnel records are relevant in that his racism, discrimination and abuse of power complaints and/or accounts may show a pattern being duplicated with our Consortia. In this case, CU alleges, Mr. Wullenjohn orchestrated the misrepresentation of facts (which may be interpreted as fraud) in that these misrepresentations have deprived our Consortia of \$80,000 due it for completion of work on the CASF contract. Beyond racism and discrimination, CU needs to know if Mr. Wullenjohn's personnel records if there is a pattern abuse of power and authority.

Setting aside Community Union's racism and abuse of power allegations claim against Mr. Wullenjohn's intent (witch-hunt), we believe he and the entire Communications Division (CD) lack expertise in digital divide projects. This lack impedes their ability to fairly determine what works and does not work in meeting the legislature's intent of ubiquitous promotion and adoption of broadband high-speed Internet. CD did not have the qualified expertise on their team to determine what is or is not significant relative to closing the digital divide 2012 - 2015. The digital divide is synonymous to ubiquitous promotion and adoption of broadband.

Community Union, under my leadership, has 20 years experience building community technology programs in under-served communities throughout the state of California. CU is one of the country's foremost experts in the area of bridging the digital divide programs. CU does not believe Mr. Wullenjohn nor his staff from 2012 - 2015 had any experience working with community-based organizations in closing the digital divide. With CD having no track-record whatsoever, Community Union questions their credibility relative to their claim regarding what is a significant or insignificant impact on delivery of Training and Promotion for broadband adoption. CD, with no relevant expertise, claims of "significant impact" are misrepresentations of fact. How did the SCO arrive at a conclusion of "significant impact" without reviewing curriculum, tenets, objectives, etc. To CU's knowledge, the SCO drew no comparisons from clients served by our Consortia on the 40 vs. 20 hour curriculum. The idea that the difference in in-class hours somehow represented a "significant impact" is not substantiated anywhere in either the audit or communications from CD.

Robert Wullenjohn's statements relating to why CASF exists and what it is designed to do are words that show lack of understanding of the facts. With absolutely no apparent knowledge of the history of the telecommunication industry raising prices in a deregulated market on landline customers. Mr. Wullenjohn makes the following claim:

- Source: Cooper, White and Cooper Summary of CPUC Meeting November 6, 2008: "Robert Wullenjohn from the Communications Division introduced the resolution[CASF] and provided some statistical background. On average, the total cost per customer of the six projects is \$288. Mr. Wullenjohn stressed the importance of the fund [CASF] in extending the reach of broadband to these previously unserved areas. He emphasized that the high cost of installation makes projects in such areas more expensive, so carriers would not be likely to initiate such endeavors on their own. According to Mr. Wullenjohn, the projects would only have a positive net present value with the 40% matching funds."

This statement as reported by the law firm, affirms Mr. Wullenjohn is pedaling the narrative that the

telecommunication industry is pushing. When in fact according to dozens of filings with the FCC (Federal Communications Commission) the telecommunication giants Verizon and AT&T et al have been paid billions of dollars to connect the entire country with fiber optics. The phone companies have already been paid to connect everyone according to Irregularities' Mr. Bruce Kushnick. See 2 links provided below, wherein Mr. Kushnick describes the economic gouging telecommunication giants have leveled against consumers under the auspices of connecting everybody, but never delivering. And although the data is from Verizon New York, in the expert opinion of these data analysts, the same has been exacted on California consumers under CPUC's watch - (Mr. Wullenjohn):

- <http://irregularities.org/wp-content/uploads/2019/08/factsheet3localservice.pdf>
- <http://newnetworks.com/wp-content/uploads/VerizoNYoverchargeIRREGULATORS-1.pdf>

Not only does CU allege Mr. Wullenjohn is a racist and was motivated to this witch-hunt via his positions held against minorities, but that he is ignorant, uneducated or simply unaware that his comments made in 2008 during the CPUC meeting are not supported by the facts; and that they are in contradiction and complicit with a narrative that allows carriers to rip-off consumers by not delivering on what has already been paid for - not as Mr. Wullenjohn suggests, "so carriers would not be likely to initiate such endeavors on their own."

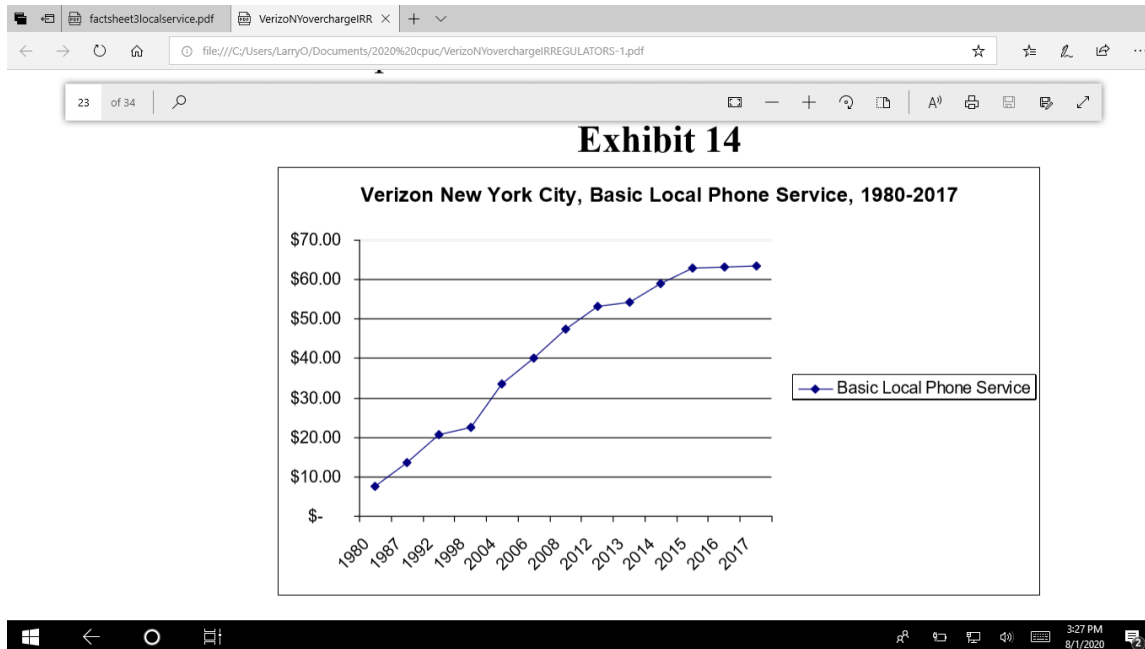
Alleged accomplices like Mr. Wullenjohn enabled carriers (Internet Providers) - which has now been revealed because of Covid-19 and distance learning mandates - to digitally red-line American cities throughout the country based on race and income levels. Dr. Galperin, USC professor, performed a study showing via maps of Los Angeles county, that carriers missed Pomona, El Monte, East L.A. and South L.A. in their deployment of fiber-optics to the home and now children (40%) cannot do distance learning:

- Map: <https://www.arcgis.com/home/webmap/viewer.html?webmap=c45a0ff797aa4814b6043fd662157fe5&extent=-119.629,33.5794,-116.5474,34.9481>
- Report: <http://arnicusc.org/publications/>

Mr. Wullenjohn's witch-hunt with CU served to seriously impact the success that our Consortia was accomplishing. Arguably on purpose and by design, or just by dumb-luck, Mr. Wullenjohn halted the most successful program funded by CASF moving Latinos and Asians to broadband awareness and adoption. Were it not for Covid-19 and the distance learning mandate the collusion, again either by design or just dumb-luck, by and between the carriers and staff within the regulatory agency would have successfully continued to squash opportunity for minorities and low income communities, e.g. Pomona, El Monte, East L.A. and South L.A.

The data, see chart below, speaks for itself and shows that the carriers should have delivered fiber-optics to the home based on their increased rate charges to landline customers, but never did because of lack of enforcement by the regulatory agency - in this case the CPUC. Source: Bruce

Kushnick, 35 year Data Analyst from filings submitted to the FCC: see Exhibit 1 The Kushnick Report. Mr. Kushnick is a veteran data analyst graduated from Harvard and MIT and has filed 100's of comments with the Federal Communication Commission over his 35 year career.



The Communications Division, during the period of March 2012 - March 2015, lacked the necessary expertise in the area of ubiquitous deployment and adoption of high-speed Internet. This contention was further supported by CPUC President Michael Picker during a Greenlining meeting held at the CPUC in San Francisco in late 2014. It is our intent to subpoena Mr. Picker to articulate what exactly he meant by his comment during this meeting on the issue of CPUC not being the ideal entity to manage the CASF.

CD's perpetuation of institutional racism combined with their lack of expertise in the area of the ubiquitous promotion and deployment of broadband, puts CU on solid ground in their request to see Mr. Wullenjohn's personnel file as it relates to racism, discrimination and abuse of authority complaints; and their request of emails by and between CD staff from March 2013 - October 2015. We believe the corrupt intents relating to the witch-hunt against the California's One Million NIU consortia, led by Mr. Wullenjohn, will be revealed upon review of CD's emails relating to our Consortia or Larry Ortega personally. These emails should not be limited between CD staff, and other Consortia members like Mr. Steve Blum of the Central Coast Broadband Consortia.

Ms. Baldwin and CPED has thus far failed to notify clients served by CU regarding the data breach Ms. Baldwin caused in her disclosure of CU's 34 databases provided to CPED during Discovery. These databases contain names, addresses, phone numbers, schools attended by children and other personal demographic information. We are concerned that Ms. Baldwin has not taken steps to notify about the data breach the approximately 700 clients listed in 34 databases.

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



correct to the best of my knowledge.

Executed on August 3, 2020, at Pomona, California.

Respectfully submitted,

\_\_\_/s/ Larry A. Ortega\_\_\_

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August 3, 2020