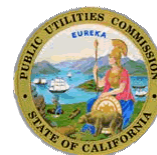


BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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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 RESPONDENTS
TO ORDER INSTITUTING INVESTIGATION 18-07-009**

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May 1, 2020

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

**JOINT MOTION FOR DISMISSAL OF RESPONDENTS
TO ORDER INSTITUTING INVESTIGATION 18-07-009**

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 Development ("KCCD"), the Black Business Association ("BBA"), and the Soledad Enrichment Action- Charter Schools ("SEA") (altogether herein "Parties") hereby file this joint motion for dismissal of BBA and SEA from the Commission's Order Instituting Investigation ("I.") 18-07-009.

In the course of CPED's investigation in I.18-07-009, it has determined it is appropriate to dismiss BBA and SEA from the OII given their lack of involvement with the activities of the NIU Coalition. BBA and SEA have not: 1) received any funds from the NIU Coalition; 2) taught any courses for the NIU Coalition; 3) hosted any events for the NIU Coalition; 4) provided or coordinated any events for the NIU Coalition; or 5) had any involvement in the management of operations or decision making of the NIU Coalition.

II. BACKGROUND AND 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) Asian Pacific Community Fund (“APCF”); 2) BBA; 3) Community Union, Inc. (“Community Union”); 4) Korean Churches for Community Development (“KCCD”); and 5) SEA (altogether “NIU Coalition”). 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.

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. The members of the NIU Coalition, as a grantees of CASF broadband consortia funds, are bound by the Action Plan, Work Plan and Consent Form (“CASF Grant”).¹

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. The Commission authorized grants to different regional consortia representing different regions of California. 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.²

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 NIU Coalition lacked proper safeguards, records, and documentation to substantiate

¹ Decision (D.)11-06-038, Ordering Paragraph 18, p. 41.

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

program activities and costs. Additionally, it found that 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 Communication Division in a letter dated April 18, 2016, directed KCCD and Community Union Inc. to return \$82,381 by July 18, 2016. To date, this request has not been complied with. Communication 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")³ recommending that the Commission require the NIU Coalition to return at least \$244,385 in CASF grant funds and impose penalties for violations of terms of the CASF grant.

Based on the Audit and the Staff Report, on July 24, 2018 the Commission issued an order instituting investigation to determine whether 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. 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.⁴ 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 a 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 had concluded and that no further sessions would be held.

³ OII, Attachment A, CPED Staff Report, pp. 2-3.

⁴ *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 I.18-07-009. 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 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, 2017.⁵ The Commission will also determine whether penalties and/or remedies pursuant to Pub. Util. Code sections 2107 and 2108 are warranted.

IV. IT IS REASONABLE TO DISMISS BBA AND SEA FROM I.18-07-009

The Parties agree that SEA and BBA should be dismissed as respondents to the proceeding.

A. Neither SEA nor BBA received CASF grant funds or were involved in CASF grant related activities.

CPED conducted discussions and propounded discovery upon BBA and SEA and determined that they had limited involvement with the activities of the NIU Coalition. BBA and SEA verify that they have not: 1) received any funds from NIU Coalition; 2) taught any courses for NIU Coalition; 3) hosted any events for NIU Coalition; 4) provided or coordinated any events for NIU Coalition; or 5) have not had any involvement in the management, operations or decision making of NIU Coalition.⁶

Given CPED's determination of BBA and SEA's lack of involvement with the NIU Coalition, the OII's scoped issues do not apply to SEA or the BBA. For instance, in regards to whether the NIU Coalition spent CASF funds on only CASF related activities

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

⁶ Attachment A, Declaration of Earl Skip Cooper II, BBA's President/CEO dated April 19, 2019; Attachment B, Declaration of Nathan Arias, CEO of Soledad Enrichment Action dated May 9, 2019.

or whether it conducted its activities in accordance with the grant requirements, because BBA and SEA never received CASF grant funds or were involved in any trainings, events, or other CASF related activities, their involvement is not material to the Commission's investigation. Therefore, it is proper and appropriate to dismiss them as respondents in I.18-07-009.

B. BBA's Declaration and Letter supports why the Commission should dismiss it from the OII.

Attachment A includes BBA's signed Declaration of Earl Skip Cooper II, BBA's President/CEO and BBA's Letter to CPED's Counsel Ms. Shek dated April 15, 2019 detailing their lack of involvement with the NIU Coalition. While Mr. Cooper admits that BBA agreed to be part of the NIU Coalition, BBA's involvement was limited.⁷ Additionally, BBA attests that it has never received any funds from Mr. Ortega or been involved in any CASF grant related activities or operations of the NIU Coalition, Community Union Inc., or Larry Ortega.⁸ Thus, BBA's lack of involvement in the activities and efforts of the NIU Coalition are a reasonable basis with which to dismiss BBA from I.18-07-009.

C. SEA's Declaration supports why the Commission should dismiss it from the OII.

Attachment B includes SEA's signed Declaration of Nathan Arias, SEA's Chief Executive Officer, which details its lack of involvement with the NIU Coalition. Specifically, SEA never received funds from the NIU Coalition, Community Union Inc., or Larry Ortega.⁹ In addition, SEA never engaged or was involved in CASF granted related activities or efforts.¹⁰ The parties believe it is reasonable and appropriate to dismiss SEA from I.18-07-009.

⁷ See Attachment A, Letter from Mr. Earl Skip Cooper II Cooper to Ms. Shek dated April 15, 2019.

⁸ Attachment A, Declaration of Earl Skip Cooper II, BBA's President/CEO dated April 19, 2019.

⁹ Attachment B, Declaration of Nathan Arias dated May 9, 2019.

¹⁰ Attachment B, Declaration of Nathan Arias dated May 9, 2019.

V. CONCLUSION

For the reasons set forth above, it is reasonable to dismiss the Black Business Association and the Soledad Enrichment Action- Charter Schools in this OII because of their lack of involvement with the NIU Coalition. BBA and SEA have not: 1) received any funds from NIU Coalition; 2) taught any courses for NIU Coalition; 3) hosted any events for NIU Coalition; 4) provided or coordinated any events for NIU Coalition; or 5) had any involvement in the management of operations or decision making of NIU Coalition. It is appropriate for the Commission to grant this motion to dismiss BBA and SEA from this OII.

Respectfully submitted,

/s/ VANESSA BALDWIN
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Attorney

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/s/ NATHAN ARIAS
Nathan Arias
President

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May 1, 2020

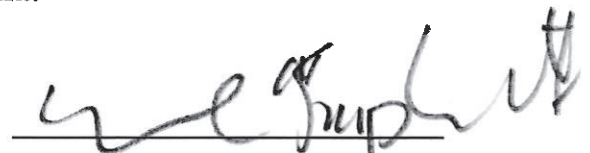
ATTACHMENT A

**DECLARATION OF EARL "SKIP" COOPER, II
ON BEHALF OF BLACK BUSINESS ASSOCIATION IN RESPONSE TO
ORDER TO SHOW CAUSE**

I, **EARL "SKIP" COOPER, II** declare and state as follows relating to the CASF Grant during the grant period, between March 1, 2012 and February 28, 2015:

1. I am the President and CEO of the Black Business Association ("BBA"). I have worked with the Black Business Association since _____.
2. BBA has not received any funds from the One Million Internet Users Coalition ("NIU"), Community Union, Larry Ortega or any of its affiliates.
3. BBA has not taught any courses for NIU, Community Union, Larry Ortega or any of its affiliates.
4. BBA has not hosted any events for NIU, Community Union, Larry Ortega or any of its affiliates.
5. BBA has not provided or coordinated any events for NIU, Community Union, Larry Ortega or any of its affiliates.
6. BBA has not had any involvement in the management of operations, decision making or the grant-seeking activities of NIU, Community Union, Larry Ortega or any of its affiliates.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 19th day of APRIL, 2019, in Los Angeles, California.



Earl "Skip" Cooper, II



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Reddock Law Group

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Swinerton Builders
Turner Construction Company
Union Bank
US Bank
Verizon
Wells Fargo Bank

April 15, 2019

Selina Shek, Attorney
CPED Counsel

Dear Ms. Shek:

On behalf of the Black Business Association (BBA), headquartered in Los Angeles, regarding the settlement for "One Million New Internet Users Coalition's misuse of California advance services grant funds".

It has been quite a challenge for me over the last several years, since I was diagnosed with Congestive heart failure in 2014. I am a 100% Disabled Veteran and have tremendously cut back on my meetings and travel and I have not been on a plane since 2014.

I would like to clearly state that the BBA nor I have had very little communications with Larry Ortega "The One Million New Internet User's Coalition", and the BBA has not received any financial benefit from the grant he received from the California Public Utilities Commission.

Prior to my health situation, I was a very active Member of the Greenlining Institute on behalf of the BBA and Mr. Ortega, also a Member of the Greenlining Institute, approached me to be supportive of his Million Dollar New Internet Program. Mr. Ortega requested my support since he needed a broader base of participation for his program in South Los Angeles.

As we agreed to be part of the Coalition support base, we received no directives, questions, updates, or marketing materials from Mr. Ortega or One Million New Internet Users Coalition. We had no meetings, conference Calls, Emails nor any other written information from Mr. Ortega over the last several years.

In closing, the Black Business Association respectfully would like to be resolved and exonerated from any involvement; in regard to the investigation of misuse of funds by the One Million New Internet Users Coalition.

Feel free to call me at (213) 910-8716 should you have any questions.

Sincerely,

Earl "Skip" Cooper, II
President & CEO
Black Business Association

AFFILIATE ORGANIZATIONS

Black Women's Network

California Black Chamber of Commerce

California Council of Black Chamber

Entrepreneur Educational Center, Inc.

National Black Business Council

The Greenlining Institute

The National Association of African American Chambers of Commerce

The National Black Chamber of Commerce

Recycling Black Dollars

The U.S. Black Chamber Of Commerce

Zambia-USA Chamber of Commerce

MEMORANDA OF UNDERSTANDING

Los Angeles Minority Business Opportunity Committee

National Association for Black Veterans, Inc. Los Angeles Chapter

Southwest Los Angeles County Small Business Development Center

U.S. Small Business Administration Los Angeles District Office

The Urban Leadership Project

Valley Economic Development Corporation

ATTACHMENT B

DECLARATION OF NATHAN ARIAS ON BEHALF OF SOLEDAD ENRICHMENT ACTION IN RESPONSE TO ORDER TO SHOW CAUSE

I, **NATHAN ARIAS**, declare and state as follows relating to the CASF Grant during the grant period, between March 1, 2012 and February 28, 2015:

1. I am the CEO of the Soledad Enrichment Action (“SEA”). I have worked with the SEA since 1992.
2. SEA has not received any funds from the One Million Internet Users Coalition (“NIU”), Community Union, Larry Ortega or any of their affiliates.
3. SEA has not taught any courses for NIU, Community Union, Larry Ortega or any of their affiliates.
4. SEA has not hosted any events for NIU, Community Union, Larry Ortega or any of their affiliates.
5. SEA has not provided or coordinated any events for NIU, Community Union, Larry Ortega or any of their affiliates.
6. SEA has not had any involvement in the management of operations or decision making of NIU, Community Union, Larry Ortega or any of their affiliates.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 9th day of May, 2019, in Los Angeles, California.



Nathan Arias