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June 30, 2020

Commissioner Liane M. Randolph
Commissioner Clifford Rechtschaffen
Committee on Policy and Governance
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94105

ATTN: Deidre Cyprian (Deidre.Cyprian@cpuc.ca.gov)

RE: June 17, 2020 Draft Enforcement Policy

Dear Commissioners Randolph and Rechtschaffen and Ms. Cyprian:

On June 17, 2020, the Commission's Committee on Policy and Governance ("Committee") circulated a document entitled "Draft Enforcement Policy" to the service list for notice of amendments to the Commission's Rules of Practice and Procedure and indicated that this Draft Enforcement Policy would be discussed at the Committee's virtual meeting on July 1, 2020. The Committee's cover email invites recipients to provide questions or feedback on the Draft Enforcement Policy in advance of the July 1st meeting.

On behalf of the California Cable & Telecommunications Association ("CCTA")¹ and its members, this letter submits some initial questions for consideration by the Committee regarding the Draft Enforcement Policy. At the outset, CCTA is unclear as to the underlying purpose of the Draft Enforcement Policy or how it will be considered and/or implemented outside of the Committee. CCTA's preliminary questions are as follows:

- ***To the extent the Commission moves forward with the Draft Enforcement Policy, will there be a formal rulemaking in which parties will have an opportunity to comment?***
 - If not, will all stakeholders impacted by the new policy be provided notice and an opportunity to comment?

The policy document was only served on the service list for notice of amendments to the Rules of Practice and Procedure, and many stakeholders that would be impacted by the new policy may not even be aware of the Draft Enforcement Policy. Currently, the Draft Enforcement Policy does not provide a vehicle for formal comment regarding any contemplated modifications to any existing

¹ Established in 1958 to represent California's cable television industry, CCTA is a trade association of California's incumbent cable television providers. Collectively, those providers have invested more than \$40 billion in California's broadband infrastructure since 1996 and deployed systems that pass 96% of California's homes.

rule. CCTA would appreciate further guidance from the Committee that, if this Draft Enforcement Policy were to move forward and become part of the Commission's enforcement practices, the necessary rule changes would be noticed in a rulemaking proceeding in which interested parties would be afforded a meaningful opportunity for written comments and advocacy.

- ***How does the Draft Enforcement Policy promote consistent application of enforcement authority?***
 - How will the Draft Enforcement Policy be applied to promote, rather than discourage, consistent enforcement practices and procedures?

Under the Draft Enforcement Policy, Staff would be empowered with delegated authority and given broad discretion to pursue enforcement actions, send warning letters, send cease and desist and stop/work orders, determine that a violation has occurred, establish penalty amounts for a violation, send an Administrative Consent Order, and, at the most extreme, "suspend, alter, amend, or revoke the license or certification of a regulated entity as permitted by the Public Utilities Act." CCTA believes clarification would be helpful as to how this process would promote or ensure consistent enforcement practices and be consistent with law.

- ***Would the draft enforcement policy require statutory authorization?***

Although the Commission has delegated authority more narrowly in the past, CCTA is unaware of any existing statutory authority that would support the broad and widespread delegation of the Commission's adjudicatory process as in the Draft Enforcement Policy. CCTA requests clarification of process to address this and related legal issues.

- ***How would the Draft Enforcement Policy, if adopted, ensure due process to entities subject to the policy?***
 - What appeal process would be in place to bring an enforcement proceeding to the full Commission?
 - While a matter is being appealed to the full Commission, what measures can be put in place to prevent accruing penalties during the appeal?

CCTA notes that the Draft Enforcement Policy currently does not provide a meaningful "off ramp" from the Staff enforcement route through a review and appeal process to the full Commission other than to request a hearing of an Administrative Enforcement Order. Even in that process, the party subject to the enforcement action appears to be required to perform corrective actions and would accrue additional penalties on a daily basis during the hearing process. CCTA would appreciate

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clarification of how due process protections would be provided under a delegated enforcement process pursuant to the Draft Enforcement Policy.

CCTA appreciates the opportunity to raise these initial questions to the Committee.

Respectfully,

Carolyn McIntyre

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President