

October 26, 2020

Rachel Peterson
Acting Executive Director
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94105

**Re: Comments of CTIA on Draft Resolution M-4846 Adopting
Commission Enforcement Policy**

Ms. Peterson:

In accordance with Public Utilities Code Section 311(g) and Rule 14.5 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), CTIA¹ respectfully comments on Draft Resolution M-4686 (the “Draft Resolution”), issued on October 2, 2020.

The Draft Resolution would adopt the Commission Enforcement and Penalty Assessment Policy (“Enforcement Policy”). One of the stated purposes of the Enforcement Policy is to:

address other actions to advance the goals of *consistent*, firm, meaningful, and timely enforcement that *is transparent to regulated entities and the residents of California*, and tailored to address the needs of disadvantaged communities, while adhering to due process and other legal obligations.²

It is with these goals of consistency and transparency in mind that CTIA offers the following comments and requested modification to the Draft Resolution and associated Enforcement Policy.

¹ CTIA – The Wireless Association® (“CTIA”) (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st -century connected life. The association’s members include wireless carriers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry’s voluntary best practices, hosts educational events that promote the wireless industry, and co-produces the industry’s leading wireless tradeshow. CTIA was founded in 1984.

² Draft Resolution, p. 2 (emphasis added).

The Draft Resolution states that the Enforcement Policy provides staff the option of resolving an alleged violation “through an Administrative Consent Order or issuing a proposed Administrative Enforcement Order, instead of issuing a citation.”³ The Draft Resolution further clarifies that an “Administrative Enforcement Order is an alternative to a citation.”⁴ Given the intended alternative nature of Administrative Enforcement Orders and citations, coupled with the Enforcement Policy goals of advancing consistency and transparency in enforcement actions, the provisions governing the accrual of penalties should be uniform under these two enforcement mechanisms. They are not.

Specifically, with respect to Administrative Enforcement Orders, the Enforcement Policy provides that:

....The amount of the penalty shall continue to accrue on a daily basis until the violation is corrected or until the appeal, rehearing, and judicial review process is fully concluded, a penalty is found to be appropriate, and the penalty is paid in full.⁵

The Draft Resolution states that “[t]his guidance is consistent with past Commission actions, Pub. Util. Code sections 451 and 2108, and the Enforcement Policy principles, especially those related to protecting public health and safety.” The fact is, however, that the accrual of a penalty subsequent to the filing of a Notice of Appeal is *inconsistent* with past Commission actions and has not been found necessary for the protection of public health and safety.

Specifically, in Resolution SED-3, which established citation procedures for the enforcement of safety regulations by the Safety and Enforcement Division (“SED”) for violations regarding communications facilities, the Commission provided that, in issuing a citation, SED must inform the respondent that:

....payment of a citation or filing a Notice of Appeal does not excuse the Respondent from curing the violation, that the *amount of the penalty may continue to accrue until a Notice of Appeal is filed*, and that penalties are stayed during the appeal process[.]⁶

In adopting the citation program applicable to telecommunications providers, the Commission found that the program is “reasonable, and will facilitate achieving compliance with Commission decisions and orders to protect public safety and will help to deter future

³ *Id.*, p. 11.

⁴ *Id.*

⁵ *See* Draft Enforcement Policy, Section III. 9. c.

⁶ Resolution SED-3, Appendix A, “Citation Rules - Procedures and Appeal Process Applicable to Communication Providers’ Facility Violations,” Section I. B. 6. (emphasis added).

violations.”⁷ Thus the Commission determined that a citation program that provides for penalties to stop accruing once a Notice of Appeal is filed is reasonable and will facilitate achieving compliance with Commission orders to protect public safety.

The Draft Resolution fails to explain why the continued accrual of penalties subsequent to the filing of a Notice of Appeal of an Administrative Enforcement Order is necessary to protect public health and safety when the Commission has previously determined the opposite with respect to Resolution SED-3. The Commission should resolve this incongruity by modifying Section III. 9. c. of the Enforcement Policy to provide that:

...The amount of the penalty shall continue to accrue on a daily basis until the violation is corrected or until a Notice of Appeal is filed, ~~the appeal process, rehearing, and judicial review process is fully concluded, a penalty is found to be appropriate, and the penalty is paid in full~~

Respectfully submitted,



Jeanne B. Armstrong

Counsel for CTIA

cc: Service List, General Order 96-B
Service List, Commission's Rules of Practice and Procedure

3100/005/X220607.v1

⁷ Resolution SED-3, Finding No. 13.