December 5, 2018

President Michael Picker
Commissioner Martha Guzman Aceves
Commissioner Carla J. Peterman
Commissioner Liane M. Randolph
Commissioner Clifford Rechtschaffen
Executive Director Alice Stebbins

The California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

RE: WITHDRAW PROPOSED DECISION IMPOSING A TAX ON TEXT MESSAGING [Rulemaking 17-06-023]

Dear Commissioners:

Our organizations are providing public comments regarding Commissioner Peterman's Proposed Decision that creates a new California "tax" on text messaging that would harm consumers and disproportionately hit low-income consumers. This Proposed Decision is unnecessary, as the state's important Public Purpose Programs are currently well-funded. The Proposed Decision will result in the state unnecessarily relying on a legally dubious funding source when there are legally sound mechanisms available to ensure the continued viability of these programs. Our collective organizations respectfully disagree with the findings of the Proposed Decision, and we urge the Commission to hold this rulemaking based on the following areas.

California's Public Purpose Programs are sufficiently funded with a $1 billion budget. There is no current need for a California tax on texting, as the state's Public Purpose Programs are healthy and well-funded, with nearly $1 billion in the budget. Additionally, there already is a well-established process for the Commission, if needed, to increase funding by changing the surcharge percentage.

The CPUC does not have the authority to tax texting. Commissioner Peterman's Proposed Decision is predicated on the idea that the CPUC has regulatory jurisdiction over texting. It does not. Text messaging has long been recognized as an information service, not a telecommunications service. Without an explicit federal classification of text messaging as a telecommunications service, the CPUC cannot legally implement this Proposed Decision.

A tax on texting disproportionately harms low-income wireless consumers. The tax on texting outlined in the Proposed Decision would disproportionately hit low-income consumers. The Proposed Decision contends that "[l]ow-income customers enrolled in Lifeline are not subject to Public Purpose Program surcharges." While this is true, the proposal makes the false assumptions that 1) all low-income households are enrolled in Lifeline and 2) any household with a mobile consumer above the Lifeline eligibility requirements can absorb an increase on its wireless bill. Consider that a wireless household of two people making a combined income of $28,000—above the Lifeline eligibility threshold—would have to pay this new tax. Also, a household is allowed only one LifeLine discount, meaning other wireless phones in the household would pay the new tax.

A tax on texting double-charges consumers who already pay into Public Purpose Programs. The Proposed Decision would enact a tax on texting for consumers who already pay in to the CPUC's Public Purpose Programs via the current surcharge. The Proposed Decision does not broaden the base of customers, nor is it equitable to California consumers. Adding an additional tax to the same wireless consumers who already are paying into Public Purpose Programs is not the right way to increase funding for the programs, and it's not the right policy for California.

A tax on texting would cost California consumers tens of millions of dollars annually. The Proposed Decision would create a new cost burden for millions of California households. Data in a CPUC Communications Division Staff Report shows the new charges for wireless consumers would be approximately $44.5 million annually. If applied retroactively for five years—which would set an alarming precedent—it could amount to more than $220 million in taxes on California consumers.

Once again, this proposal is unnecessary, as the state's Public Purpose Programs are well-funded, and a tax on texting would only harm consumers, particularly lower-income households. Further, the CPUC simply does not have the authority to implement a tax on Californians' text messaging services. For these reasons, we strongly urge the Commission to hold this Proposed Decision and protect California consumers.

Sincerely,

TechNet
Silicon Valley Leadership Group
CompTIA
California Chamber of Commerce
Bay Area Council
CalAsian Chamber of Commerce
California Hispanic Chamber of Commerce
California Manufacturers & Technology Association
California Retailers Association
California State Conference of the NAACP
California Taxpayers Association