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**VIA Email**

September 11, 2006

Honorable Bob Foster  
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Re: Utility Users Tax

Honorable Mayor and City Council:

Our client, John W. McWilliams, a resident of 5971 Los Santos Drive, Long Beach, requests that we convey to you certain comments regarding the proposed

ordinance amending the Long Beach Utility Users Tax (UUT), which is listed as Item 27 on the council agenda for September 12, 2006.

We believe these comments should be considered as part of the Council's process in considering any potential amendments to the UUT. These comments are submitted without prejudice to Mr. McWilliams' claims on behalf of himself and all similarly situated taxpayers for a refund and cessation of improper collection of the UUT. Further, nothing in this letter should be construed as an admission that any amendments to the UUT will be properly adopted, or as a waiver of Mr. McWilliams' right to challenge such amendments if and when they are adopted.

Mr. McWilliams believes that the UUT has been, and under the proposed amendments will continue to be, applied to certain charges that should not be included in the tax base as charges for telephone communication services. Mr. McWilliams believes that the Council should specifically exclude from the definition of "charges made for [telephone communication] services"<sup>1</sup> any charges that do not amount to charges for telephone service consumed.

Many of the charges historically included within the tax base for calculating the UUT are the result of interpretations of the telephone tax under the Internal Revenue Code (IRC), which are no longer relevant to the UUT. The UUT as historically applied accepts the IRS General Counsel's designation of items as communications services which do not comply with criteria set forth in other documents including Sec 3.68.050 of the Municipal Code.

For example General Counsel Memorandum 39671, interpreting IRC Section 4252, states that the Subscriber Line Charge (SLC) is taxable as a communications service charge because it provides access to a telephone network. Mr. McWilliams believes that the SLC actually compensates local service providers for revenue lost when their long distance business was taken away. General Counsel Memorandum 39671 states that the SLC does not entitle the subscriber to make any local or toll telephone call or to access any facility or service, which obviously eliminates it as a communications service charge. Therefore, Mr. McWilliams believes the subscriber line charge should not be included in the UUT tax base.

Mr. McWilliams believes that the Council should limit the UUT to the amounts paid for genuine communications services. Thus, all fees and charges which amount to de facto taxes imposed by the federal government, the Public Utilities Commission, or other government entities should not be included in the UUT tax base as charges for communication services.

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<sup>1</sup> Long Beach Municipal Code § 3.68.050(A).

The UUT is meant to be applied to amounts paid for utilities consumed. Accordingly, Mr. McWilliams believes the UUT should only be applied to charges for actual telephone calls. He further believes that the UUT should specifically identify the charges to which the UUT applies.

Sincerely yours,

/s/

Nicholas E. Chimicles

Cc: Heather Mahood, Assistant City Attorney