Statement of
Commissioner Rachelle Chong
Item 28: Consumer Bill of Rights
March 2, 2006

I will not add to the suspense. I am voting today for Item 28 as proposed by President Peevey.

This general order sets a new direction for this Commission that is appropriate for a competitive telecommunications era. I will file a concurrence to explain my views in detail, but I will explain some of my reasoning now.

This truly is an era of competition. Ever since the Department of Justice broke up Ma Bell into AT&T and the Baby Bells, Congress passed the Telecommunications Act in 1996 mandating competition for local telecommunications, and the introduction of many new wireless carriers by the Federal Communications Commission, open and competitive markets has been the policy of the nation. For those of you who are criticizing the presence of competition in telecommunications, it is the law of the land. That train has left the station.

The choice we make today is whether to bring California consumer policies in line with these competitive markets and the resulting realities – as the Peevey decision does – or to extend rules fashioned in the time of monopoly local service to the new and dynamic areas of the telecommunications – as the Grueneich Alternate would do.

The Peevey decision offers a fair resolution to the many contentious issues before us today. This is a pro-consumer action, despite today's sound and fury. I respect the fact that others may have different views, but my good friend and colleague Commissioner Brown has not accurately described what is actually in today's order. I want to set the record straight about what today's revolutionary Commission order actually does.

This revised order sets forth a consumer bill of rights and freedom of choice. The order lets carriers know what is expected of them by this Commission. This decision commits the Commission to educate telecom consumers on their rights, to resolve consumer complaints in a timely way, and to root out fraud.

The order sets out in great detail the tremendous amount of laws, rules, and regulations that currently exist. We did not need new rules it turns out, because there is plenty of law on all the major issues of concern. The decision lists dozens of laws, rules and regulations. Instead of layering on dozens of new regulations, we carefully examined the data and evidence in the record to find out what were the real problems. We then carefully crafted new rules where they were necessary. We have not stripped consumers of any pre-existing rights.

Indeed, today's decision includes new and revised rules in areas like cramming and slamming to combat some problems that were clearly identified. It appears that there are problems involving unauthorized charges in phone bills, and it has taken too long for consumers to get a satisfactory resolution.

Section 2890 of the Public Utility Code already governs unauthorized charges on telephone bills. The new cramming rule in the Peevey decision makes it clear that billing disputes relating to unauthorized charges should be resolved in 30 days. Three-quarters of wireless complaints are about billing issues, so this rule will help us prevent complaints and resolve problems quicker. The rules we adopt clarify what carriers must do, and better implement this important statute. This new rule applies to all charges, whether communications or non-communications charges. The rules ensure that any complaints will be addressed quickly, regardless of whether the service was provided by the carrier or by some other party.

We have committed to a new proceeding to be completed in six months to address issues relating to marketing in a language other than English.

We have taken twenty-three initiatives to change our culture to make us more responsive to consumers. These initiatives address the real problems we found.

We have committed to greatly improve our consumer affairs efforts to work down a serious complaint backlog.

We will police any fraudulent actions by carriers or their representatives. Our new fraud unit will do it.

These are important measures that will protect consumers.

While I am new to this proceeding, I bring strong opinions based on decades of personal observation about the wireless telecom industry in California. This industry is competitive. It is vibrant. More people have wireless phones than ever before.

It astonishes me to find such a conflict within the Commission over this proceeding which has lasted over 6 years. It astonishes me that so many rules were being proposed for a very competitive market in such a sweeping manner. While well-intentioned, I believe that these rules would result in many serious unintended consequences.

What exactly is the problem here? If there was a problem in 1998 when the proceeding opened, is there still a problem in 2006? If there is a problem, do we impose the least intrusive rule to fix the problem, in order to keep the market as regulation-free as possible?

The complaint data do not demonstrate a problem. Between 2000 and 2004, the total number of wireless phones in California doubled. There are now more wireless

phones than wireline phones. Despite the rapid growth of wireless, for every single wireless complaint, there were 2.8 complaints concerning the wireline telephone service.[1] Complaints and inquiries to the Commission by wireless customers in 2004 are .04% of the entire universe of 23 million wireless customers in California. Why should we extend wireline regulations to wireless carriers if the complaint rate for them is almost three times lower? This makes no sense to me.

The wireless complaint rates do not show that there is a serious problem that warrants so many new rules, particularly in a period in which the number of California wireless phones has almost doubled.

In one of my first briefings as a new Commissioner, the head of the complaint division told me that this Commission has a backlog of about 25,000 unresolved telecom complaints or inquiries. The staff is trying hard to work down the backlog, but has had to reduce the hours of our complaint hotline to 10 AM to 3 PM. As a result, it is difficult to reach the Commission; those who do must wait months to have their complaints resolved.

This backlog is a real problem. Eliminating it will truly accomplish something real for 25,000 consumers. The proposed Peevey decision makes this a top priority.

In looking at real problems, I also look for the least intrusive regulatory solution. The alternate would set a 30-day period in which unsatisfied customers can terminate new wireless phone service. Already, market forces have caused all carriers to allow a free return period, without an early termination fee.

The return policies, however, differ. Carriers have set return deadlines of 30 days, 15 days, 14 days, and 7 days for their free return periods. Metro PCS, a low-cost wireless carrier, has a 7-day return period.

Is this reason for concern? I don't think so. If one is a low cost carrier, consumers understand there may be tradeoffs for "no frills" low cost kind of service. If one flies standby economy status, you don't expect the filet mignon meal that another passenger gets in first class who paid a lot more. The government should not dictate this type of detail in a competitive market.

What would increasing the free return period to 30 days for all carriers do? The alternate does not discuss this. A uniform 30-day rule will surely drive up the costs of the low-cost carrier, and lead to an increase in prices for these wireless customers. Imposing this one-size-fits-all rule that pre-empts consumer choice is the type of intrusive regulation that I oppose. Moreover, it is not needed. If a customer values a 30 day test period, he can simply buy from the carrier that offers it. The Peevey proposal got it right – no rule is needed where the market is working.

[1] In the last six years, the Commission received 145,818 complaints or inquiries concerning wireline phone service, and 52,121 complaints or inquiries concerning wireless phone service.

Let's turn to the issue of whether to require all wireless carriers who market in a foreign language to offer materials in that language. I think that this is a topic that merits more study. The record is weak on this issue so we were not able to decide this matter. The Peevey decision decides that further study is necessary to see if there is a problem that can be fixed without unintended consequences.

Is this a reasonable thing to do? Well, we currently apply an "in-language" rule to wireline phone carriers, including new entrants. What happens in real life because of this requirement?

Consider Comcast Cable. It offers TV packages of foreign language programs in California, including a package in Armenian. Comcast markets the availability of these video services in Armenian, even though the contracts and support information are available only in English. It reaches out to this community in its own language.

How does Comcast market its phone service in light of the regulatory requirements we now have? It markets only in Spanish and English. If it were to market in Armenian, it would have to translate all its support material into Armenian. In light of these costs, it declines to do so.

What will happen if we extend these "in-language" rules to wireless carriers? Some carriers have said that in response to such a requirement, they would impose English-only rules on their sales staff to avoid the costly translation costs. I want to make sure that such a rule in practice won't act as a gag order.

Let's not discourage wireless carriers from marketing in foreign languages to smaller communities like the Chinese, Russian, Vietnamese, Cambodian, Armenian and Hmong communities. I therefore support a 6 month study period. Let's get carriers, community-based organizations, and consumer groups into a room to hammer out sensible voluntary agreements – and rules if necessary -- that will encourage and not discourage carriers from reaching out to non English-speaking communities.

In conclusion, this Commission can best serve California consumers by acting on their complaints in a timely matter, educating them about their market choices, and stamping out consumer fraud.

We've lived with the fiction that regulations automatically equal consumer protection. In a competitive world, regulations can simply drive companies out of California. Carefully crafted rules for real problems make more sense, and that is what the Peevey decision adopts. That is why I support it.

Thank you, Mr. President and colleagues.