



520 S. El Camino Real, Suite 340 • San Mateo, CA 94402 • (650) 375-7840 • mail@consumercal.org

December 19, 2006

Senator Don Perata, Chair
Senate Rules Committee
State Capitol, Room 400
Sacramento, CA 95814

Re: Opposition to Confirmation of Rachelle Chong to California Public Utilities Commission

Dear Senator Perata:

The Consumer Federation of California is opposed to the confirmation of Rachelle Chong for a term as a member of the California Public Utilities Commission. In her brief tenure as a Commissioner, Ms. Chong has demonstrated a decision making pattern that is hostile to consumer interests. Ms. Chong's anti-regulatory ideology is fundamentally at odds with the CPUC's duty to assure that customers have safe, reliable utility service at reasonable rates, with protection against fraud.

Our concerns about Commissioner Chong go beyond differences of opinion on any specific CPUC matter. The CPUC must consider consumer as well as business interests, but Commissioner Chong has tipped the balance too far against consumers. Her rigid faith in the unregulated marketplace and the infallibility of corporate giants in protecting the public interest denies the existence of business fraud, deception and price gouging which California utility consumers confront every day.

Commissioner Chong professes that consumers can force an oligopoly of telecommunication giants to provide ever better services, lower prices and stronger protections against abuse. In one recent proceeding, Commissioner Chong stated "We have decided to not take a more regulatory approach that was better suited to monopoly days and ***instead to trust the carriers to do the right thing*** given the market will demand it."¹

These comments were made in the face of testimony provided to the CPUC regarding thousands of consumer complaints against telecommunications carriers that had been gathered by Communities for Telecomm Rights, a coalition of over thirty community based groups representing limited-English speaking phone users. Commissioner Chong's remark is startling in light of her admission at a CPUC hearing that the Commission had a backlog of 25,000 uninvestigated consumer complaints against telecommunications carriers.

¹ Remarks of Commissioner' Chong at March 2006 Consumer Education Workshop, San Francisco. (http://www.cpuc.ca.gov/.../Aboutcpuc/commissioners/05chong/statements/060330_chongcboreducationworshopremarks.pdf) (Emphasis added).

Commissioner Chong assumed office early in 2006. At that time the California Public Utilities Commission was already well on its way to a disgraceful sell out of California's telecommunication users by suspending, and then repealing, the Telecommunications Consumers Bill of Rights. The CPUC adopted the Bill of Rights in 2004 after an extensive four year hearing process. Shortly after adopting the Bill of Rights, new appointments to the Public Utilities Commission created a pro-industry, anti-consumer majority. Based on anecdotal complaints from telecommunication carriers about Bill of Rights implementation woes, the new CPUC majority rushed to dismantle these consumer protections. These protections included the right to cancel a new cell phone contract for the first 30 days without penalty, the right to receive phone bills that were easy to read and that clearly distinguished government fees from company imposed charges, and the right to rescind a phone contract if the company unilaterally increased fees during the term of the contract.

The CPUC had not developed any record to document telephone carrier claims that the Bill of Rights was damaging to the consumer marketplace. At one of her first CPUC meetings, without questioning the veracity of these carriers' dubious allegations, Commissioner Chong voted to repeal these vital consumer protections.

To conceal its abandonment of consumers, Commissioner Chong and the CPUC majority embraced an alternative "Consumer Protection Initiative". This initiative substituted consumer education for enforceable consumer rights. Commissioner Chong and the other members of the CPUC majority placed the burden on each consumer to learn how to decipher the fine print and dense legal disclaimers in phone company marketing materials and contracts.

The Consumer Federation of California supports consumer education, as a supplement to – ***not a substitute for*** – regulations to prevent fraud, deceptive marketing and other misconduct by utilities. Reliance on a consumer education program denies consumer behavior in the marketplace – behavior that telephone companies clearly understand. Cell phone marketing materials typically stress how many minutes a caller gets for a given price, and hide in the fine print the various methods that the companies employ to entrap the subscriber in an undesirable contract. Consumers lead busy lives, with hardly enough time to compare phone calling plans, let alone look into the arcane terms and conditions buried in a contract. A consumer education program may help the vigilant few, but it leaves millions of Californians with no protection should they fall victim to deceptive marketing practices.

Commissioner Chong rejected a call by consumer and community-based organizations to require carriers who market their products to limited-English customers to provide a contract in the same language used to sell the product. A modest proposal for carriers who lavish millions on advertising in Spanish, Mandarin and other foreign languages, in-language contracts would give limited-English consumers the ability to check to see whether the contract embodied the terms promised in non-English marketing materials.

Commissioner Chong's draft of CPUC regulations for granting state cable TV franchises under AB 2987, the Digital Infrastructure and Video Competition Act of 2006, fails to implement various requirement of the Act. The draft operates on the premise that the CPUC's job in granting state video franchises is a purely ministerial function. In her draft, if the applicant company fills out the form completely, the CPUC will grant the franchise. It denies the CPUC any oversight role in making sure that the franchise applicant complies with AB 2987 consumer and labor protection requirements. These include assurances that the video franchisee will not discriminate against low income consumers and will not cross subsidize its video services by gouging consumers of other lines of service. The draft rules do not include a process for consumer representatives to have standing before the CPUC to oppose a pending application or to raise questions about an applicant's compliance with AB 2987 requirements. The draft also eliminates the requirement that an applicant that purchases a unionized cable franchise honor the terms of the collective bargaining agreement as a condition for receiving a state franchise.

Commissioner Chong opposed a modest consumer protection bill, SB 440 (Speier), calling the legislation an unnecessary burden. SB 440 would have allowed a telephone subscriber to more effectively dispute charges for unauthorized calls on a lost or stolen cell phone.

Commissioner Chong voted to oppose AB 2622 (Ruskin) and AB 1010 (Ruskin) which would have reinstated a provision of the repealed Telecommunications Consumers Bill of Rights, granting cell phone users 30 days to cancel a new contract without penalty. Ms. Chong argued that one week is an acceptable free return period. At the time, the industry standard was a 14 day return policy, under terms of a settlement of a class action lawsuit filed by more than 30 state Attorneys General (not including California). That settlement agreement expires in 2007. In a study conducted in 2005, the US Public Interest Research Group found that early termination fees cost consumers over one billion dollars a year nationally and serve as a significant impediment to consumer choice in the marketplace. In a public opinion poll we conducted in 2006, the CFC found 87% of voters supported 30 day cancellation right legislation.

In her brief term of office, Commissioner Chong has demonstrated a consistent disregard for consumer interests and an animus towards a CPUC regulatory role. Her appointment caps a drive by giant utilities to seize control of an agency that should serve as a guardian of public, not private corporate interest. We urge you to oppose the confirmation of Commissioner Chong for a term on the Public Utilities Commission.

Sincerely,



Richard Holober
Executive Director

cc: Members of the Senate Rules Committee