Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	§	
	§	
Establishment of Rules Governing Procedures to Be Followed When Informal Complaints Are Filed by Consumers Against Entities Regulated by the Commission	§	CI Docket No. 02-32
	§	
Amendment of Subpart E of Chapter 1 of the Commission's Rules Governing Procedures to Be Followed When Informal Complaints are Filed Against Common Carriers	§	CC Docket No. 94-93
	§	
2000 Biennial Regulatory Review	§	CC Docket No. 00-175

TEXAS OFFICE OF PUBLIC UTILITY COUNSEL'S COMMENTS

The Office of Public Utility Counsel ("OPC") makes the following comments to the Federal Communications Commission's ("FCC") proposed amendments addressing the filing and processing of informal complaints[1] published at 67FR 18560.

I.
Introduction

The FCC's proposed rule amendments will benefit consumers by creating procedures responsive to consumer's needs such as centralizing and thereby simplifying the complaint process, establishing reply deadlines from the regulated entity(ies) who are the subject of the complaint and keeping personal information of consumers confidential. The proposed rule amendments also promote predictability through standardization and lead to greater operating efficiency for the FCC.

In the following paragraphs, OPC will make certain recommendations. OPC will refer to the relevant paragraphs in the FCC order under each paragraph heading. OPC urges the FCC to adopt its proposed rule amendments as adjusted with OPC's recommendations.

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[1] *In the Matter of Establishment of Rules Governing Procedures to Be Followed When Informal Complaints Are Filed by Consumers Against Entities Regulated by the Commission, Amendment of Subpart E of Chapter 1 of the Commission's Rules Governing Procedures to Be Followed When Informal Complaints Are Filed Against Common Carriers, 2000 Biennial Regulatory Review,* Memorandum Opinion and Order And Notice of Proposed Rulemaking, FCC Docket 02-46, CI Docket No. 02-32 (FCC February 14, 2002) ("Order" or "FCC Order")

II.
Centralized Filing
(Paragraphs 6&7)

OPC endorses a centralized filing of informal complaints. A centralized filing will alleviate the oftentimes burdensome task of navigating through a bureaucratic maze. This is particularly true in the case of complaint filing by telephone where consumers could be subject to numerous transfers thereby increasing the chances of being accidentally disconnected with each transfer.

The centralized filing system should not exclude any type of complaint. The FCC's order was concerned that differences in remedies would be great based on the disparate types of entities under the FCC's jurisdiction. While remedies may be different, the process of making a complaint should be the same. The benefits of a user-friendly system for filing complaints outweighs any concerns involving disparate remedies among the various entities regulated by the FCC ("regulated entity(ies)").

III.
Contacting the Regulated Entity
(Paragraphs 9&10)

In its Order, the FCC seeks comment on how best to encourage consumers to negotiate with the regulated entity(ies) on their disputes previous to filing an informal complaint. OPC recommends that the regulated entities be required to have a centralized phone number dedicated to consumer complaints, and that the entities also have a TTY or such other telephone device for the disabled readily accessible for handling consumer complaints. Too often consumers are thwarted in their attempts to informally settle a dispute because of the regulated entity's phone system that sets up a series of numerical or voice transfers. This is very frustrating to consumers who must suffer brief messages with each transfer. It also increases the chances that the consumer will be disconnected during the transfer.

In addition, the regulated entity should ensure the consumer is aware of the phone number. The number should be provided to consumers upon initiation of service and should be prominently displayed on the first page of the regulated entities' bills sent to their customers. The phone number should also be separately listed under the regulated entity's telephone listing in the telephone directory. Regulated entities should also clearly display the address the consumer is to use for filing complaints.

An internal dispute resolution process should be set up. The process should include: notification to the consumer of how the complaint will be processed; notification to the consumer that the consumers use of this process will not stop any deadlines the consumer may have to file a complaint with the FCC (statute of limitations); and provide for a reasonable time to process the dispute.

In consumer complaints filed with the FCC, the FCC is recommending that its staff be allowed to contact the regulated entity by telephone or e-mail. OPC agrees with this proposal but would recommend that contact by telephone be secondary to e-mail contact. E-mail is more efficient. It also provides for a record detailing the progress of the complaint.

IV.
Filing and Format on Informal Complaint
(Paragraphs 11, 12, & 20)

The proposed rule is recommending that an informal complaint can be filed through a variety of means with the FCC. OPC concurs with this proposal. Allowing a variety of means of communicating complaints to the FCC will enhances the consumer's ability to file his/her complaint. It recognizes that a consumer will wish to complain utilizing the means of communication most comfortable to him/her. OPC recommends that the FCC consider specifically addressing its public interest responsibilities to the disabled community. An amendment to the purpose section of the proposed rule may be the most appropriate place to place a statement that the informal process will be completely accessible to the disabled community.

The Order also seeks comments on the form the informal complaint should take. While OPC believes that the information called for in the proposed rule are all relevant considerations in processing a complaint, the requested information may hinder the good faith filing of consumer complaints. The first hurdle for consumers would be the formal language used in the rule. OPC would recommend that the rule include a sample FCC complaint form that uses plain English. The second hurdle is calling for information the consumer may not know. For instance, the consumer may not know the address of the entity subject of his/her complaint. An example would be a radio station. This information should be encouraged but not required.

The third hurdle is requiring the consumer to tie his/her complaint to the relevant law. Most consumers are not going to be knowledgeable of the law. Consumers will know they have been wronged They will have the ability to articulate the perceived wrong. It should be up to the FCC to determine that the wrong stated by the consumer in his/her complaint can or cannot be righted by the FCC. The fourth hurdle is the mandatory requirement that a complaint over billing be accompanied by the complainant's bill. OPC does not disagree that copies of any information the consumer may deem relevant should be encouraged to be provided the FCC. It should not be mandatory. This was the position taken by the FCC in its notice of proposed rulemaking relating to the procedures to follow in informal complaints in 1994.[2]

Comments filed in that proceeding recommended that documentation be made mandatory in the filing of a consumer complaint.[3] AT&T's comments and the proposed rule's requirement that documentation be a mandatory component of the complaint is obviously unworkable when the complaint is filed by telephone or by e-mail (unless the consumer has a scanner). Requiring a copy of the consumer's bill will slow down what should be a prompt resolution of the complaint. The regulated entity already has a copy of the bill. OPC recommends that the documentation language used in the NPRM replace the proposed rule's current documentation requirements.[4]

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[2] *In the Matter of Amendment of Subpart E of Chapter 1 of the Commission's Rules Governing Procedures to Be Followed When Informal Complaints Are Filed Against Common Carriers,* FCC No. 94-211, CC Docket No. 94-93 (FCC August 11, 1994) ("NPRM")

[3] See Comments of AT&T filed in NPRM.

[4] The language in the NPRM rule is, "When a complainant is disputing a bill, the complainant is encouraged to file a copy of the bill."

The Order also seeks comments about whether the rule should include a statute of limitations time period for filing. OPC recommends that there be no statute of limitations for the filing of an informal complaint. OPC recognizes there is one for formal complaints and agrees that a limitation is needed to avoid stale claims. Informal claims, however, provide the FCC with valuable information about the marketplace. It also will allow the FCC to educate the consumer about his/her rights in the marketplace. OPC would note that regulated entities should not be required to keep records for an indefinite time period.

V.
Deadlines
(Paragraphs 14, 17 & 22)

The proposed rule amendments establish a thirty-day time limit for regulated entities to respond to informal complaints forwarded to them by the FCC. OPC concurs that this is a reasonable time. [5] OPC would recommend the FCC consider amending the rule to require the regulated entity to "promptly respond to the complaint but no later than thirty days after receipt of the complaint from the FCC." Regulated entities can resolve many complaints such as billing in less than thirty days and the entities should be encouraged to do so.

The Order also asks for comments about whether the rule should contain a requirement that a consumer dissatisfied with the outcome of the informal complaint would have sixty days from notification of the outcome to file a formal complaint. OPC urges the Commission to place this requirement within the rule. This requirement was part of the proposed rule concerning informal complaint procedures in the NPRM.[6] A commentator[7] in that proceeding urged the Commission to do away with this procedure contending it was contrary to the two year statute of limitation involving formal complaints.

The Commentator additionally argued that processing of an informal complaint can take up to a year thereby making the filing of a formal complaint stale contrary to the purposes of a statute of limitation. Refusing to provide the consumer sixty days from the date s/he is informed of the outcome of his/her informal complaint would eviscerate the Commission's informal complaint process. Consumers should not be required to choose between an informal complaint process and the formal complaint process. Given the choice consumers would in all likelihood choose the formal process that provides them more protections and the right to appeal. The responsiveness and the economy of the informal complaint process would as a practical matter not be available to consumers. The greater number of formal consumer complaints that would be filed would increase regulatory costs, consumer costs and the costs to regulated entities in

[5] Since OPC recommends that there be no timeline be placed on the filing of informal complaint, OPC would only recommend a reasonable time for complaints filed more than two years after the perceived wrong.

[6] That language read, "When an informal complaint has not been satisfied pursuant to Sec. 1.717, the complainant may file a formal complaint with this Commission. Such claim will be deemed to relate back to the filing date of the informal complaint; Provided, that the formal complaint: (a) is filed within sixty (60) days after the date the Commission's written notification to the complainant of the Commission's review and disposition of the informal complaint is mailed; (b) makes reference to the date of the filing of the informal complaint; and (c) is based on the same cause of action as the informal complaint. The complainant will be deemed to have abandoned the unsatisfied informal complaint if no formal complaint has been filed within the sixty (60) day period."

[7] See Comments of AT&T filed in NPRM.

processing these claims. Penalizing consumers who utilize the informal process will result in less confidence in the marketplace and in regulation. Consumers expect quick resolutions. The informal complaint process is responsive to this expectation. Consumers would quickly lose confidence in the market and in regulation if forced through the more costly and timely formal hearing process.

The proposed rule allows the FCC to close an informal complaint file without contacting the consumer if the FCC determines that the consumer is satisfied. OPC disagrees with the granting of this discretion. OPC believes that every consumer should receive notice of the results of the investigation and receive notice of his/her right to request a formal hearing. This would not be onerous. A form letter could be used. OPC would encourage the FCC to consider that any FCC required notice be able to be e-mailed upon consumer request. Using the consumer's requested form of communication provides greater assurance that the consumer will be notified. It also has the added benefit of reducing the FCC's use of paper.

VI.
Coordination with State and Local Government
(Paragraph 21)

The Order seeks comments on whether the FCC's informal complaint process should be coordinated with State and Local governments. OPC strongly urges the FCC to work with State and Local governments to develop standardized reporting of complaints. Also the FCC should work with State and Local governments to develop an information and referral database broken out by state. The database should be interactive. This would enable the FCC and State and Local government officials to quickly analyze a consumer's articulated problem and make a referral based on that problem. Centralized databases would enhance market oversight. They would also promote consumer confidence in the marketplace and in regulation.

VII.
Confidentiality of Information
(Paragraph 24)

The proposed rule amendments include a provision that informal complaints would not be available for routine inspection. OPC concurs with this provision. OPC would recommend the Commission consider a level of confidentiality that would not even allow identification of the complainant to the regulated entity subject of the complaint. Complaints brought by whistleblowers would be an example of the type of complaints that would fall under that level of confidentiality.

VIII.
Staff Ex Parte Contacts
(Paragraph 25)

The proposed rule amendments provide that staff members can talk ex parte with consumers and the regulated entity the subject of the complaint. OPC agrees with this proposal. The proposal furthers the informal complaint process's purpose that consumers should have a quick resolution of their complaints.

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Respectfully submitted,

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