

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

AT&T COMMENTS

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. §1.415, AT&T Corp. ("AT&T") submits these comments on the Notice of Proposed Rulemaking (FCC 02-46, released February 28, 2002) in this proceeding ("NPRM"), proposing the adoption of a "unified, streamlined process for the intake and resolution of informal complaints filed by consumers" against entities regulated by the Commission, including revisions to existing informal complaint rules for common carriers. (NPRM, ¶¶ 1-2).

AT&T supports improvements in the Commission's informal complaint process to promote resolution of consumer complaints and efficient utilization of the Commission's administrative resources. Many proposals in the NPRM will promote these dual objectives. However, as shown below, there is no basis for the NPRM's proposal (¶¶ 4-8) to extend the Commission's informal or formal complaint process to cover cable operators' non-common carrier services, which are already regulated by

local franchising authorities (“LFAs”) that are empowered to address customers’ concerns regarding cable services. Moreover, the Commission should reject the proposed rule revision (NPRM, ¶¶ 22-23) allowing formal complaints, for limitations purposes, to “relate back” to the Commission staff’s notification to parties disposing of the informal complaint. That change would create unjustified uncertainty that the Communications Act’s statute of limitations is intended to prevent, as well as impose additional unwarranted burdens on both the Commission and regulated entities.

I. INFORMAL COMPLAINTS SHOULD BE REQUIRED TO PROVIDE SUFFICIENT INFORMATION TO ALLOW EFFECTIVE INVESTIGATION AND RESPONSE TO THOSE CLAIMS.

The NPRM (¶¶ 11-12) proposes minimum criteria that all informal complainants should be expected to satisfy in order to provide defendants with sufficient basis for response to those claims. AT&T strongly agrees with the Commission that informal complainants should be required to provide all material information regarding their claims, including copies of any relevant documentation (e.g., customer bills or other correspondence with the regulated entity). Absent such information, regulated entities face unwarranted burdens in investigating these claims. As the NPRM (¶ 11) correctly observes, informal complainants have an obligation to exercise appropriate diligence in preparing and submitting their claims to provide such essential data.¹

¹ AT&T does not object to the NPRM’s proposal (¶ 11) that the Commission facilitate the filing of online complaints and other modes of transmission such as TTY, provided that appropriate measures are implemented for informal complainants to provide relevant documentation (e.g., by attaching scanned images).

Moreover, in the ordinary course the Commission should forward to the defendant the entire complaint, including associated documentation. Failure to supply such material makes it unduly difficult to investigate and resolve complaints accurately, and leads to customer dissatisfaction with both the regulated firm and the Commission.²

Regulated entities must also be afforded adequate time to investigate informal complaints. The thirty day period from service of the informal complaint to response currently specified in staff transmittals to regulated entities is ordinarily sufficient for this purpose, without prejudicing the right of informal complainants to prompt resolution of their claims. However, prescribing a fixed period for response in the Commission's informal complaint rules would unduly constrain the staff's flexibility to tailor this interval to specific informal complaints, and should not be adopted.

II. THERE IS NO BASIS TO EXTEND THE INFORMAL OR FORMAL COMPLAINT PROCESS TO CABLE OPERATORS.

Cable operators already are subject to the Section 208 complaint process when they provide telephony or other common carrier services. There is, however, no valid reason to subject cable operators' other offerings to an informal or formal

² AT&T agrees, however, that the Commission staff should retain the flexibility on a case-by-case basis to contact the regulated entity directly via telephone or email where such procedures will promote prompter resolution of an informal complaint. NPRM, ¶ 10. Absent a Commission staff directive to the contrary in a specific case, informal complaints should remain classified as "exempt" proceedings" under the Commission's ex parte rules, to facilitate information exchanges that may expedite resolution of these claims. NPRM, ¶ 25; 47 C.F.R. § 1.1205(b)(6).

complaint process patterned after that provision. There is simply no evidence that existing procedures are not adequately protecting the interests of cable customers – and no evidence that creating an additional layer of review at the federal level would substantially further the public interest.³

Indeed, a 1993 Commission order ruled that “it does not appear that Congress intended for the Commission to bear the responsibility of enforcing the new FCC [customer service] standards.⁴ That order went on to observe that establishing federal processes could actually “*hamper* effective local enforcement of customer service requirements.”⁵

The requirements of individual franchise agreements can vary widely even among communities in the same metropolitan area,⁶ making cable services ill-suited to an informal complaint process that is administered on a national level. To the extent that cable services are subject to specific federal standards affecting consumers,

³ If the Commission does opt to create an informal complaint process applicable to cable operators, AT&T agrees with the NPRM’s proposal (¶ 24) that such complaint files should not be available for public inspection. While it seems clear that a cable operator would be permitted to use personally identifiable information about a particular customer without that customer’s consent in order to defend against an informal complaint made by that individual, the Commission should seek to remove any uncertainty that might otherwise be created by the subscriber privacy provisions of 47 U.S.C. § 551.

⁴ *Implementation of Section 8 of the Cable Television Consumer Protection and Competition Act of 1992, Consumer Protection and Customer Service*, 8 FCC Rcd. 2892 ¶ 19 (1993).

⁵ *Id.* ¶ 21 (emphasis supplied)..

⁶ Commission rules specifically permit cable operators and LFAs to agree to customer service standards that are more stringent than those provided by federal law. 47 C.F.R. § 76.309(b)(1).

the Commission's regulations already provide for complaint procedures that essentially mirror those that the NPRM proposes to establish.⁷

Consumers who are aggrieved by the actions of their cable operator have a direct contractual relationship with that company, and are well aware of how to make their complaints known.⁸ The Commission's rules require monthly cable bills to include the name, address and phone number of each customer's LFA,⁹ and it appears to be a universal practice to also list a toll-free or local telephone number that subscribers can use to contact their cable operator. In addition, cable operators must provide each customer, at the time they install service and annually thereafter (as well as upon request) "[b]illing and complaint procedures, including the address and telephone number of the local franchise authority's cable office," and information about "procedures for resolution of complaints about" signal quality, including the address of the responsible official of the local LFA.¹⁰ Subscribers with concerns about their cable service plainly know how to reach both their cable operator and their LFA.

⁷ See, e.g., 47 C.F.R. §§ 79.1(g), 79.3(e). The NPRM's statement (¶ 4, n.14) that the Commission's closed captioning rules "do not contain informal complaint procedures" simply misses the point. While the complaint procedures specified in 47 C.F.R. § 79.1(g) do not mirror those for informal complaints under § 208, there is no basis to conclude that they are either procedurally burdensome to consumers or inadequate in any respect for the resolution of this type of disputes.

⁸ See NPRM ¶ 9.

⁹ 47 C.F.R. § 76.952.

¹⁰ 47 C.F.R. § 76.1602(b)(6) & (7).

Finally, AT&T strongly opposes the NPRM's suggestion that the Commission "establish a formal complaint process that is similar to that which applies to common carriers."¹¹ The Section 208 formal complaint process, with its extensive pleading and procedural requirements,¹² is rarely invoked by consumers. Rather, the vast majority of formal complaints against common carriers are filed either by a competitor or corporate customer of the defendant carrier. It is thus far from clear how the application of the formal complaint process would be of meaningful benefit to cable operators' customers. And while the NPRM is correct that there currently are no "formal complaint" rules as such that apply to cable operators, the Commission's rules already provide specific complaint procedures for the enforcement of the requirements governing relationships between cable operators and other multichannel video program distributors ("MVPDs"), as well as between operators and LFAs, broadcasters and programming services providers.¹³

¹¹ NPRM, ¶ 17.

¹² See 47 C.F.R. §§ 1.720-1.735.

¹³ See, e.g., 47 C.F.R. §§ 76.61, 76.65, 76.944, 76.950-962, 76.975, 76.1003.

III. THE COMMISSION SHOULD REJECT THE PROPOSED CHANGE TO THE BASIS FOR CALCULATING RELATION BACK OF FORMAL COMPLAINTS.

The Communications Act requires that all complaints against carriers must be brought within two years of the time the action accrues “and not after.”¹⁴ Under Section 1.718 of the Commission’s current informal complaint rules (47 C.F.R. § 1.718), complainants are afforded limited relief from that stringent bar by permitting formal complaints to relate back to the date of filing of an informal complaint for the same cause of action that was filed within the limitations period, provided that the formal complaint is filed within six months after the defendant carrier’s refusal to satisfy the informal complaint. If no formal complaint is filed within that period, that rule provides that “the complainant will be deemed to have abandoned the unsatisfied informal complaint.”

The NPRM (§§ 22) revives a proposal, first suggested in a now-terminated 1994 rulemaking proceeding,¹⁵ under which the period for relation back would instead be sixty days after the Commission staff “has informed the parties in writing of its disposition of the informal complaint.” The NPRM asserts (*id.*) that this revision “provides certainty and clarity” for consumers regarding the relation back period, although it also acknowledges (§ 23) that the “practical effect of the proposed

¹⁴ See 47 U.S.C. § 415.

¹⁵ See *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*, 9 FCC Rcd 4499 (1994) (“1994 NPRM”). In connection with the current rulemaking, the Commission has terminated CC Docket No. 94-93, in which the 1994 NPRM was issued, and has incorporated the record there into the current proceeding.

rule change would be to expand the time in which to file a formal complaint” in response to an unsatisfied claim under the informal complaint process.

This change in the Commission’s relation back rule is as seriously flawed today as when it was first proposed in the *1994 NPRM*, and should not be adopted. As with all statutes of limitation, the fundamental objective of Section 415 of the Communications Act is to provide defendants with certainty against potential litigation.¹⁶ The proposed rule revision would be to subject such parties to completely open-ended potential liability -- a result that is irreconcilable with the goal of repose embodied in the statute.

The NPRM identifies no basis for the rule change that could conceivably justify subjecting potential defendants to such additional exposure and uncertainty. The current procedure, measured from the date of a defendant’s report declining to satisfy an informal complaint, provides an easily applied standard for determining the expiration of the limitations period under the relation back procedure. Moreover, this criterion is eminently fair to all parties because Section 1.717 of the Commission’s rules (47 C.F.R. § 1.117) requires simultaneous provision of a copy of the report to the complainant and the Commission. The existing process therefore

¹⁶ Section 415 affords potential defendants especially strong protection against potential liability for stale claims. Like the Interstate Commerce Act, on which it is based, the Communications Act’s limitations period is a substantive and jurisdictional bar to prosecution of the complaint, and not merely a matter of affirmative defense that must be pleaded or otherwise may be waived. See *Tele-Valuation, Inc. v. AT&T*, 73 F.C.C.2d 450, 453-54 (1979); *Armstrong Utilities, Inc. v. General Tel. Co. of Pa.*, 25 F.C.C.2d 385, 389 (1970); *Thornell-Barnes Co. v. Illinois Bell Tel. Co.*, 1 F.C.C.2d 1247, 1251 (1965).

already provides for both parties the “predictability and certainty” for relation back purposes that is the stated objective of the rule revision (NPRM, ¶ 23).

The NPRM would significantly detract from, rather than promote, these goals because it would measure relation back from a written notice from the Commission staff to the parties at an indeterminate date concerning the staff’s “disposition” of the informal complaint. However, an unsatisfied informal complaint is not an adjudicative proceeding in which the Commission is authorized to make dispositive findings.¹⁷ And pending the receipt of the written notice, regulated entities will be subject for an indefinite period to the burden of retaining records and information relevant to the informal complaint, and uncertainty whether a formal complaint regarding that claim will be pursued -- exactly the converse of the result the NPRM (¶ 22) claims for the proposed revision. The proposal also places an unwarranted burden on the Commission’s resources to promptly issue written notice that it considers an informal complaint closed.¹⁸

¹⁷ *See Amendment of Subpart E of Chapter 1 of the Commission’s Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers*, 3 FCC Rcd 1806, 1813 (1988)(¶ 55).

¹⁸ In AT&T’s experience, Commission notification that informal complaints have been closed has sometimes been subject to substantial delays. For example, in April 2002 AT&T received notice that the Commission staff had closed some informal complaints dating as far back as January 2001, and in March 2002 it received notice regarding closure of some informal complaints that dated from January 2000.

Respectfully submitted,

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