

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	)	CI Docket No. 02-32
By Consumers Against Entities Regulated by The	)	
Commission	)	

**COMMENTS  
OF  
THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association, Inc. ("PCIA"), pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, hereby respectfully submits its Comments in the above-captioned proceeding.

**I. INTRODUCTION**

PCIA is an international trade association representing the interests of both commercial mobile radio service ("CMRS") and private mobile radio service ("PMRS") users and businesses involved in all facets of the personal communications industry. PCIA's Federation of Councils include: the Mobile Wireless Communications Alliance, the Site Owners and Managers Association, and the Private System Users Alliance. In addition, PCIA is the FCC-appointed frequency coordinator for the Business Radio Service, the 800 and 900 MHz Business and Industrial/Land Transportation Pools, 800 MHz General Category frequencies, and for the 929 MHz paging frequencies.

## II. BACKGROUND

On February 14, 2002, the Commission issued a *Memorandum Opinion and Order and Notice of Proposed Rulemaking* in CI Docket No. 02-32, to create a unified, streamlined process for the intake and resolution of informal complaints filed by consumers.<sup>1</sup> The *Report and Order* proposed to establish a streamlined consumer complaint process that will be applicable to “all services regulated by the Commission that are not currently covered by the common carrier informal complaint rules.” The Commission explained that the new procedures would apply to any “entity subject to regulation by the Commission.” As PCIA represents a multitude of Commission licensees impacted by the proposed rule, it respectfully submits the following comments.

## III. COMMENTS

PCIA wishes to commend the Commission for advocating the reform of the informal complaint process. A unified and streamlined process that will allow consumers to voice complaints, grievances or other various issues before an objective governmental body will assuredly promote greater accountability to consumers and better quality of service on the part of communication providers.

The Commission regulates a variety of different communication services from multichannel video and cable television service<sup>2</sup> to international fixed public radio

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<sup>1</sup> 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 (released February 28, 2002) at 1 (“*Report and Order*”) citing Amendment of Rules to Be Followed When Formal Complaints Are Filed Against Common Carrier, *First Report and Order*, CC Docket No. 96-238, 12 FCC Rcd. 22497 (1977); see also In the Matter of Implementation of Sections 255 and 251(A)(2) of the Communications Act of 1934, as enacted by the Telecommunications Act of 1996, *Report and Order and Further Notice of Inquiry*, WT Docket 96-198 (1999).

<sup>2</sup> Part 76 of 47 C.F.R.

communication services.<sup>3</sup> The different characteristics of the each of the communications services warrant different levels of regulation. As an example of the varying characteristics, the Commission has cited the need for the growth of a particular service,<sup>4</sup> the promotion of local competition<sup>5</sup> and the requirement to repeal or modify any regulation that is not in the public interest<sup>6</sup> as some of the reasons for establishing or repealing service-specific regulations.

In the *Report and Order*, the Commission asserts that it relies on the informal complaint process to protect consumers and that the process must be expanded in order to be accessible and efficient.<sup>7</sup> The purpose of the expansion is to create a process that “emphasizes ease of filing by consumers and voluntary cooperative efforts by consumers and affected companies to resolve their differences.”<sup>8</sup>

#### **A. PCIA’s MWCA And PSUA Member Sections**

PCIA’s Mobile Wireless Communications Alliance (MWCA) members deliver product and service such as two-way radios, on-site paging and messaging systems, mobile data products, design, integration, programming and network services on radio systems typically classified as Part 90 Private Mobile Radio Systems (“PMRS”). Some interconnected systems are classified as Commercial Mobile Radio Systems (“CMRS”). All PMRS carrier systems and CMRS systems that do not meet the definition of “Covered SMR”<sup>9</sup> have end users whom receive

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<sup>3</sup> Part 23 of 47 C.F.R.

<sup>4</sup> Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, CC Docket No. 98-146, *Report*, 15 FCC Rcd 20913 (2000) at 21004 (“competition, not regulation, holds the key to stimulating further deployment”).

<sup>5</sup> 2000 Biennial Regulatory Review -- Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2, *Report and Order*, CC Docket No. 00-199, 24 CR 1410, (2001) at 207.

<sup>6</sup> 1996 Act §202(h).

<sup>7</sup> *Report and Order* at Appendix A.

<sup>8</sup> *Id.*

<sup>9</sup> “Covered” SMR providers have been defined to include providers that offer “real-time, two-way switched voice services that are interconnected with the public switched network utilizing in-network switching facilities, enabling

communications services from the aforementioned licensees, and these end users are small to large-sized professional entities. The business relationships between the licensees and the professional entities are most often dictated by the terms and conditions specified in contractual arrangements, which are individually negotiated. Any issues or differences that develop between the two contracting parties are normally resolved amongst themselves or, in the extreme cases, a court of law.

The members of the PCIA's Private System Users Alliance (PSUA) are licensees of private wireless communications systems, including transportation, insurance, utilities and business radio. A typical licensee, an airline company, uses the wireless communications systems for employee-to-employee communications. Therefore, there is no "consumer" that the Commission is seeking to protect with the proposed expansion of the informal complaint process.

**B. The Impact On PMRS And Certain CMRS Licensees**

The creation of an additional mechanism for mobile wireless communications services and private wireless communication systems via the Commission's proposed informal complaint process would be burdensome on a number of levels, and is contrary to the Commission's goal of easing regulatory burdens on licensees.

An expanded informal complaint process applied to the mobile wireless communications service may require the Commission to review a diverse pool of contracts governed by various State laws. The Commission resources that would be necessary to adequately address State specific concerns would monopolize valuable Commission resources. Furthermore, the

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the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. *Forbearance From Applying Provisions Of The Communications Act To Wireless Telecommunications Carriers, First Report and*

expanded informal complaint mechanism ignores the already existing protections: the full range of State laws, Better Business Bureau type claims, and deceptive practices claims.<sup>10</sup> A separate federal recovery mechanism on top of the aforementioned recovery mechanisms will create instances where disparate treatment, inconsistent decisions and forum shopping occurs.

In addition to the burdens that the Commission will likely endure, there is the unnecessary burden that licensees in the mobile wireless communications services industry will face. The end users of these services are currently protected by separate and distinct contractual arrangements, a characteristic not found in a majority of typical communications services utilized by “consumers” at large. As contracts are individually negotiated agreements that are tailored to the needs and desires of the parties to the agreement, a Commission decision in favor of a party in one agreement may have the unintended result of negatively limiting the protections of another party in an unrelated agreement. A licensee has the ability to forecast, with some level of certainty, the entity’s potential exposure from state court actions. The financial costs that will be borne by licensees who will be required to defend minor claims in this additional and unnecessary venue will have the chilling affect of crippling this already economically depressed industry by dissuading potential licensees from obtaining licenses in this service.

Lastly, the users of private wireless communications systems stand to gain the least amount of benefit for an expanded informal complaint process. In the *Report and Order*, the Commission inquires whether the expanded informal complaint process should include the Section 255 accessibility complaint rules which provide that manufacturers and service providers

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Order, WT Docket No. 98-100, 15 FCC Rcd 17414 (2000).

<sup>10</sup> The complaining party also may seek redress before the Commission with the filing of a formal complaint in the event a section of the Communications Act and/or order and/or regulation of the Commission is alleged to have been violated. See 47 C.F.R. §1.721(a) (4).

must maintain a point of contact or agent of service for receiving complaints and inquiries.<sup>11</sup> This represents an additional and unnecessary burden upon the private wireless community. As the users of the service do not meet the Commission's concept of "consumers" that the expanded informal complaint process is intended to protect, the recovery mechanism is unnecessary and wasteful.

Therefore, due to the distinct and unique characteristics of the mobile wireless communications and private wireless communications services, it is respectfully requested that the Commission exclude Part 90 PMRS and "non-covered" CMRS systems from the expanded informal complaint process.

#### **IV. CONCLUSION**

WHEREFORE, the premises considered, it is respectfully requested that the Commission act in accordance with the views expressed herein.

Respectfully Submitted,

**PERSONAL COMMUNICATIONS  
INDUSTRY ASSOCIATION**

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<sup>11</sup> Report and Order at 5.