

**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

**COMMENTS OF THE NATIONAL CABLE &
TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (“NCTA”), by its attorneys, hereby submits its comments in the above-captioned rulemaking proceeding. NCTA is the principal trade association of the cable television industry in the United States. Its members include cable television operators, programmers, equipment suppliers, and others interested in or affiliated with the cable television industry.

DISCUSSION

The Notice of Proposed Rulemaking (“NPRM” or “Notice”) proposes to “create a consumer complaint process patterned after our Section 208 complaint rules and to extend this process to all entities regulated by the Commission.”¹ The existing Section 208 complaint rules

¹ Notice at ¶4.

provide an avenue for common carrier customers to involve the FCC in resolving complaints.²

The Notice proposes that “consumer complaints filed against ... cable franchise operators,” among others, for the first time would be covered by this process.

The NPRM would apply these rules to “those informal consumer complaints concerning issues for which there is no established resolution procedure and which are not subject to the jurisdiction of another governmental agency....”³ The Notice does not identify any aspects of cable regulation that might fall into this category, and it is not clear what would constitute an “established resolution procedure” for these purposes. Nor does the Notice define the types of disputes about cable service that would warrant FCC involvement in customer complaints. It is, therefore, difficult to assess the impact of this proposal on cable.

However, as described below, the NPRM does raise some concerns that suggest that cable television is not an appropriate candidate for the wholesale importation of the FCC informal complaint rules. In many cases, the informal complaint process would duplicate existing procedures without any evidence that those processes have failed to work well to resolve customer concerns.

I. INFORMAL COMPLAINT PROCEDURES THAT APPLY TO COMMON CARRIERS ARE UNNECESSARY FOR CABLE OPERATORS

The Notice asks commenters to “describe differences in the characteristics of various communications-related services regulated by the Commission, and whether such differences

² To trigger agency involvement, a consumer would need to allege that the regulated company “has acted or failed to act as required by the Act or the Commission’s rules or orders,” or that he or she “disputes a rate or charge assessed by the defendant company.” Proposed rule, Section 1.715(c). The FCC will then forward the consumer complaint to the regulated company for resolution. The FCC typically considers an informal complaint in the common carrier area to be resolved satisfactorily when “the carrier in question has responded to the complaint by issuing a credit or refund to the consumer, and the consumer has not indicated to the Commission that he or she is unhappy with the resolution.” Notice at ¶2 n.5.

³ Notice at ¶4.

warrant different informal complaint procedures administered by the Commission.”⁴ As to cable, the existing structure of cable television regulation makes overlaying these informal common carrier complaint procedures inappropriate and in many cases unnecessary.

The regulation of the cable television industry has evolved over many decades. Cable operators have long been subject to a “deliberately structured dualism”⁵: regulated by the FCC in some respects, and by local franchising authorities (“LFAs”) in other respects.⁶ Certain aspects of cable operation are free from regulation altogether.⁷

Regulation of the cable industry differs from that applied to common carriers or to other industries regulated by the FCC. As members of the media, cable operators are generally free from government involvement in their programming content. While cable operators are in the business of providing video programming services to customers, those video programming services are not regulated by the FCC or any other governmental entity. Moreover, the charges for most cable service offerings are not regulated by the federal government. Because of this disparate regulatory posture, it is not at all clear what additional role the FCC could or should play in facilitating consumer complaints against cable.

Recent data suggest that cable is not a source of many FCC complaints. The FCC’s Quarterly Report on Complaints and Inquiries Processed for the first quarter of 2002 noted “as with previous quarters, relatively few cable-related and broadcast-related complaints were filed

⁴ Notice at ¶7.

⁵ Cable Television Report and Order, 36 FCC 2d 143, 207 (1972).

⁶ For example, the FCC establishes certain customer service standards that are enforced by local franchising authorities. 47 C.F.R §76.309(a).

⁷ See e.g., “FCC Fact Sheet on Where to File Complaints Regarding Cable Service” (July 2000)(<http://www.fcc.gov/mb/facts.complain.html>)(hereinafter “Fact Sheet”)(recognition that “with the exception of rules that require cable systems to carry certain local broadcast stations, cable systems decide which programming services to carry.”). Cable programmers are not subject to direct regulation by the FCC in any event.

with the FCC compared with wireline and wireless filings. With respect to cable-related complaints, billing and rate issues were by far the largest category.”⁸ These categories are under the purview of franchising authorities and not the FCC, according to the Fact Sheet. In the areas of billing and rates (which accounted for 88 out of a total of 167 complaints during the first quarter of 2002), application of a novel informal complaint process would lead to an unnecessarily duplicative layer of regulatory involvement.

As of March 31, 1999, the FCC no longer may entertain consumer complaints regarding cable programming service rates. Only basic service tier and equipment rates remain regulated in certain areas – and only by local franchising authorities.⁹

Moreover, FCC rules already require cable operators to annually notify all subscribers of “billing and complaint procedures, including the address and telephone number of the local franchising authority’s cable office.”¹⁰ As to the remedies for these complaints, while informal common carrier FCC complaints “often seek monetary relief such as a refund or credit,”¹¹ in the cable area, these types of billing disputes are typically resolved at the local level.

Complaints regarding “service quality” (41 complaints) and “connections to cable TV systems” (10 complaints) are also covered by existing rules and procedures, and, again, are not directed to the FCC, according to the FCC Fact Sheet. Operators annually must advise subscribers “of the procedures for resolution of complaints about the quality of the television signal delivered by the cable system operator, including the address of the responsible officer of

⁸ “Quarterly Report on Informal Consumer Complaints and Inquiries Received,” FCC Consumer and Governmental Affairs Bureau (May 7, 2002).

⁹ See 47 U.S.C. §543(c)(4).

¹⁰ 47 C.F.R. §76.1602(b)(6).

¹¹ Notice at ¶7.

the local franchising authority.”¹² Again, this area does not seem ripe for the introduction of a new FCC-initiated informal complaint process.¹³

In short, cable customers already have ample notice of opportunities to address their complaints without the need for additional FCC involvement, given the FCC’s existing guidance.¹⁴ Given these existing well-understood means of contacting local cable operators, new complaint processes in these areas may unnecessarily confuse customers and impose additional, duplicative burdens on Commission and company resources.¹⁵ The Notice fails to identify any particular cable rules for which consumers are unable to have their complaints informally resolved under existing procedures.

II. THE INFORMAL COMPLAINT RULES THREATEN TO MODIFY SUBSTANTIVE RIGHTS THROUGH PROCEDURAL CHANGES

The Notice purports to carve out from its sweep rules that already provide for resolution of complaints informally, but it fails to identify any such rules. Instead, it confusingly holds up the closed captioning rules as an example where its new rules could apply.¹⁶ But the closed captioning rules already contain an informal complaint procedure, albeit one that differs from

¹² 47 C.F.R. §76.1602(c). In fact, the FCC recently reaffirmed an earlier decision that left complaint resolution regarding compliance with technical standards in the hands of LFAs. Order on Reconsideration, CS Docket No. 96-85, FCC 02-117 at ¶15 (rel. Apr. 22, 2002).

¹³ The other complaints noted were “broadband-related” (11 complaints), which apparently related to the “availability or quality of cable modem service.” 17 other complaints, although listed under cable service, in fact related to the Satellite Home Viewer Improvement Act. “Quarterly Report on Informal Consumer Complaints and Inquiries Received,” Summary of Top Consumer Complaint Subjects (1st Quarter – Calendar Year 2002).

¹⁴ This guidance suggests that the FCC already entertains informal customer complaints or inquiries as to a small number of cable regulations, such as EEO, signal leakage, cable home wiring, equipment compatibility, commercial limits for children’s programming, and indecency and obscenity. Fact Sheet at 2.

¹⁵ In fact, the 2000 Biennial Regulatory Review, which appear to be the genesis of this Notice, (see Notice at ¶3) suggested that the existing common carrier informal complaint procedure has its own inherent flaws: “Staff noted that, as currently written, these rules lead to repetitive filings from consumers, unnecessary costs to consumers, carriers and the Commission, as well as a lack of predictability for consumers and the industry.” 16 FCC Rcd. 1207, 1234 (2001).

¹⁶ Notice at ¶4 n.14.

that proposed in the Notice. Adoption of an informal complaint proceeding should not effect a wholesale modification of the procedures and the substantive burdens contained in existing rules which were established based on lengthy rulemaking proceedings.

In the closed captioning area, for example, the Commission-established complaint procedures require that prior to any FCC involvement, a viewer must contact the cable operator or other multichannel video programming distributor to try to resolve any disputes.¹⁷ This is consistent with the FCC's general guidance to cable consumers which suggests consumers "should always contact your cable company first when you have a complaint. In many cases, the customer service representatives at your cable company will be able to assist you and solve your problem."¹⁸ In other cases, the Commission has required a prima facie showing that a rule has been violated prior to requiring a regulated entity to respond to governmental inquiry on a customer's behalf.¹⁹ The Commission should not short-circuit these and other decisions by super-imposing a new informal complaint mechanism.

III. THE COMMISSION SHOULD NOT LAYER ITS FORMAL COMPLAINT PROCEDURE ON TOP OF ITS COMPLAINT PROCEDURES IN THE CABLE AREA

In the midst of a section titled "Review and Disposition of Informal Consumer Complaints," the Commission proposes "... to establish a formal complaint process that is similar to that which applies to common carriers."²⁰ Under this proposal, formal consumer

¹⁷ See Closed Captioning and Video Description, 13 FCC 19973 (1998). The Commission affirmed this procedure on reconsideration, explaining that "in many cases requiring the complainant to go to the video programming distributor first will allow the parties to move quickly and satisfactorily resolve the dispute." Id. at 20025.

¹⁸ Fact Sheet at 1.

¹⁹ See, e.g., 47 C.F.R. §76.206(d) (placing burden of proof on candidate requesting equal opportunities that complainant is a legally qualified candidate for public office); id., §76.975(b) (requiring complainant alleging unreasonable leased access rates to obtain a determination of a cable operator's maximum permitted rate from an independent accountant prior to filing a petition for relief with the Commission).

²⁰ Notice at ¶17 (citation omitted).

complaints against broadcasters and other “non-common carriers” would need to comply with pleading and other filing requirements similar to the formal complaint procedures applicable to common carriers. The Enforcement Bureau or other relevant bureau will deal with these complaints.

The formal complaint process established pursuant to Section 208, 47 U.S.C. §208, for common carriers should not be extended to cable-related complaints. Doing so would be analogous to undertaking major surgery when over-the-counter remedies are all that is required.

Congress adopted Section 208 of the Communications Act for communications common carriers. The provision provides a vehicle by which any person, municipal organization, state commission or body politic may complain to the Commission regarding “anything done or omitted to be done by any common carrier” subject to the Act and in contravention of the Act’s provisions. Related Section 209, 47 U.S.C. §209, empowers the Commission to award money damages, if warranted, “after hearing on a complaint.”²¹ The Commission recognized less than five years ago, as part of the implementation of the 1996 Telecommunications Act, that the common carrier complaint process was a procedure uniquely suited to common carriers.²²

Indeed, as the Commission then explained, the origins of Section 208 extend back to the Interstate Commerce Act of 1887 and had even earlier origins in common law:

Section 208 was derived from Section 13 of the original Interstate Commerce Act of 1887. This legislation grew out of the Granger movement’s drive to give “to agriculture relief from discriminatory and excessive charges in the transportation and handling of produce.” The legislation was declaratory of and codified

²¹ 47 U.S.C. §209.

²² Implementation of the Telecommunications Act of 1996, Amendment of Rules to Be Followed When Formal Complaints Are Filed Against Common Carriers, 12 FCC Rcd 22497 (1997). (In accordance with the main goals of the Telecommunications Act of 1996, deadlines are established “... for the Commission’s resolution of certain complaints filed against the Bell Operating Companies (“BOCs”), local exchange carriers (“LECs”), and other telecommunications carriers that are subject to the requirements of the Act.” Id.

existing common law obligations of railroads as common carriers so that they could not exercise their powers arbitrarily.²³

Applying the formal Section 208 procedures to cable services and other non-common carrier communications services would have none of the well-established policy rationales that have underpinned the common carrier complaint process. It would apply the detailed procedures contained in eighteen pages of common carrier formal complaint regulations to cable services.²⁴

The common carrier formal complaint regulations contemplate potentially time-consuming, expensive and burdensome processes. These include document discovery,²⁵ depositions,²⁶ written interrogatories,²⁷ status conferences,²⁸ motion practice,²⁹ and concluding briefs.³⁰ Subjecting cable consumer complaints to these and related processes would be inappropriate. It would upset, for no apparent reason, the procedures that cable companies and their customers have successfully relied upon for many years.

²³ Id., 12 FCC Rcd at 22502, n. 16.

²⁴ See 47 C.F.R. §§1.720-1.736.

²⁵ 47 C.F.R. §1.729(h).

²⁶ Id.

²⁷ 47 C.F.R. §1.729(a)-(e).

²⁸ 47 C.F.R. §1.733.

²⁹ 47 C.F.R. §1.727.

³⁰ 47 C.F.R. §1.732.

CONCLUSION

Cable operators serve more than 70 million customers. Prompt satisfaction of customer complaints is a vital part of our business, and we welcome ways to improve upon it. This proposal is not one of those ways, however.

The existing procedures for resolving customer complaints – at both the local and federal level – appear to be well defined. No right seems untethered to a procedural remedy. Adoption of new informal complaint rules for cable could serve consumers less well, leading to more confusion about how to obtain satisfaction. At the same time, it would impose unnecessary costs on cable operators and government.

Respectfully submitted,

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