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OFFICE OF CONSUMER ADVOCATE

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May 16, 2002

Office of the Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

Re: 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

Dear Secretary:

Enclosed please find an original and four copies of the National Association of State Utility Consumer Advocates Comments in the above-referenced matter. Please also note that these Comments have been filed with the Commission electronically.

Please indicate your receipt of this filing on the additional copy provided and return it to the undersigned in the enclosed self-addressed, postage prepaid, envelope. Thank you.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Joel H. Cheskis".

Joel H. Cheskis
Assistant Consumer Advocate

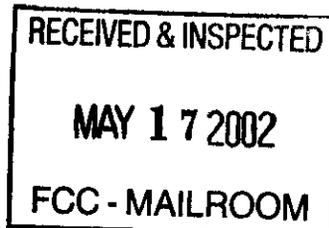
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION



In the matter of :
 :
Establishment of Rules Governing Procedures : CI Docket No. 02-32
to Be Followed When Informal Complaints Are :
Filed by Consumers Against Entities Regulated :
by the Commission :

COMMENTS OF THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

I. INTRODUCTION

The National Association of State Utility Consumer Advocates ("NASUCA") is an association of 42 consumer advocate offices in 39 states and the District of Columbia. Our members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. NASUCA is actively involved in representing consumer interests in telecommunications issues in these venues and is, therefore, familiar with the issues contained in this Memorandum Opinion and Order and Notice of Proposed Rulemaking ("NPRM").

On February 28, 2002, the Federal Communications Commission ("FCC") released the above-captioned NPRM seeking comments on its proposals regarding a unified, streamlined process for the intake and resolution of informal consumer complaints. The FCC issued this NPRM in order to promote maximum compliance

with the requirements of the Telecommunications Act of 1996 (“TA-96”) and the accompanying implementing rules and orders.¹ In this NPRM, the FCC requests that commenters address the FCC’s proposals regarding the creation of mechanisms to address informal consumer complaints against all entities regulated by the FCC. The FCC proposes to pattern these new mechanisms after the common carrier informal complaint procedures found at sections 1.717-1.718 of the FCC’s rules. In addition, the FCC also seeks comment on whether it should modify its existing common carrier informal complaint rules.

The NPRM states that current FCC complaint mechanisms require consumers to navigate an array of offices, rule provisions, and disparate procedures to file informal complaints concerning those entities whose business practices consumers believe violate TA-96, the rules of the FCC, or the orders of the FCC.² Here, the FCC proposes a consolidation and streamlining of informal complaint procedures, regardless of the regulated entity to which a complaint refers, and proposes to establish a single-source point of contact to handle informal consumer complaints within each regulated entity.³ The NPRM states that the objective of those modifications is to develop consumer–friendly informal complaint resolution procedures, and thus, provide a more effective informal complaint resolution mechanism.

1. NPRM at ¶1 (The FCC defines “informal complaints” as all those complaints filed outside the formal section 208 common carrier complaint process).

2. *Id.*

3. *Id.*

II. SUMMARY OF COMMENTS

NASUCA generally supports the FCC's proposal in this NPRM.

NASUCA submits that, in general, supply-side competition and diversity is in the public interest. In a diverse environment, however, the opportunities for market abuses and consumer confusion abound.

In an environment of increased competition and alternative regulation, therefore, it is vital that the FCC be responsive to consumer complaints. The rules and procedures recommended by these Comments directly address that responsiveness. As a regulatory agency, the FCC will promote competition and supplier diversity by bolstering consumer confidence in the integrity of its complaint resolution procedures, and thus, in the communications marketplace overall. As a corollary, NASUCA recognizes that not all consumer grievances require government intervention. Yet, consumer access to prompt and sure complaint resolution procedures will serve to encourage regulated entities to respond promptly and effectively to consumer concerns of their own accord. In support of the above, NASUCA submits Comments as follows:

- Consumers should have easy access to regulated entities so that consumers may attempt to resolve a complaint before approaching the FCC, but should not be required to approach a regulated entity before filing an informal complaint with the FCC;
- the FCC should assist in the serving of informal complaints on the subjects of those complaints;
- the form and content of the informal consumer complaints should be as expansive as possible and should not inhibit the filing of informal complaints;
- Companies should be required to respond to an informal complaint within thirty (30) days after receipt;

- the FCC should coordinate its informal complaint process with those used by the states so that Federal and State regulators may quickly resolve and accurately monitor complaints;
- the content of informal consumer complaints should be made confidential, but general matter should be reported to the necessary regulatory bodies; and
- informal complaints should be given exempt status to aid expeditious resolution so long as all parties receive fair and equal treatment

III. COMMENTS

A. Introduction.

NASUCA commends the FCC for its efforts to establish consistent and effective procedures for the handling of all informal consumer complaints against all regulated entities.⁴ Although the complaints at issue are informal, they are vital to protect consumer interests and to the preserve consumer confidence in competitive telecommunications and media markets. NASUCA is particularly interested in this proceeding as it relates to common carriers. NASUCA notes that the FCC recognizes that complaints against common carriers comprise over 90% of the complaints received by the FCC's Consumer and Governmental Affairs Bureau ("CGAB").⁵

4. NASUCA uses the phrase "regulated entities" throughout these comments to refer to all those entities over which the FCC has jurisdiction.

5. NPRM at ¶4, footnote 9; *citing*, FCC Consumer Information Bureau Releases Quarterly Report on Complaints and Inquiries Processed, press release dated February 7, 2002. The Consumer and Governmental Affairs Bureau at the FCC was recently organized from the Consumer Information Bureau to which this NPRM refers. NASUCA uses the former term throughout these Comments.

NASUCA supports the FCC's tentative conclusion that it is in the public interest to provide consumers with an initial single point of contact at the FCC to deal with their complaints concerning all of the entities regulated by the Commission -- and not only common carriers.⁶ NASUCA also strongly supports the FCC's proposal that all regulated entities provide an initial single point of contact for all informal consumer complaints.⁷ In addition, that single point of contact should be conspicuous to both consumers and the FCC. Consumers should have easy access to the representatives of regulated entities not only for the purpose of the informal complaint process, but also in the normal course of business as well.

Effective informal complaint procedures are particularly important in light of the rapidly evolving nature of all entities regulated by the FCC. In particular, the telecommunications and information services industries require greater consumer protections in light of their increasingly competitive nature under alternative regulation. Therefore, it is key that the FCC provide consumers with a unified system of complaint resolution -- i.e., assistance with informal attempts at self-help, informal complaints, and formal complaints.

In addition, to the extent that the FCC assumes jurisdiction over a broader range of communications activities -- as it seeks to do over wireless broadband Internet access service⁸ -- it becomes even more important for the FCC to have an effective

6. NPRM at ¶5.

7. *Id.*

8. See, In the matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Notice of Proposed Rulemaking, CC Docket No. 02-33 (rel. Feb. 15, 2002). NASUCA does not necessarily agree with the FCC's assumption of jurisdiction.

complaint resolution mechanism. Further, as more and more communications take on a national scope, consumers will increasingly turn to the FCC for help.⁹

B. Consumers Should Have Easy Access To Regulated Entities So That Consumers May Attempt To Resolve A Complaint Before Approaching The FCC, But Should Not Be Required To Approach A Regulated Entity Before Filing An Informal Complaint With The FCC. (NPRM at ¶9).

In this NPRM the FCC seeks comment on what measures, if any, are required to ensure the cooperation of consumers and regulated entities in the resolution of grievances without resort to formal pleadings and adjudications.¹⁰ NASUCA largely concurs with the FCC's position that consumers should be encouraged to voice grievances directly to the responsible entity.¹¹ NASUCA generally encourages consumers, where appropriate, to informally express concerns or grievances about regulated products and services directly to the provider before filing a complaint with the FCC. NASUCA submits that this direct consumer contact is, in general, the most efficient means through which to resolve most consumer grievances. In addition, regulated entities engaged in competitive enterprise should have an interest in addressing the concerns of their customers. The FCC should, however, establish rules to assist consumers in the resolution of these informal complaints against regulated entities.

First, direct contact between a consumer and a regulated entity requires that the consumer know whom to contact. Therefore, the FCC should require all

9. See, In the Matter of Federal-State Joint Board on Universal Service, CC Docket 96-45, *et al.*, Further Notice of Proposed Rulemaking, FCC 02-43 (rel. Feb. 26, 2002), at ¶ 12.

10. NPRM at ¶9.

11. *Id.*

regulated entities to designate a single-source contact solely to handle informal consumer complaints. Second, the FCC should require that regulated entities make that contact information a conspicuous feature within the public materials of that entity. The conspicuous notice would include placing that contact information within billing statements, websites, and other promotional materials. Third, the FCC should require that all regulated entities provide this informal complaint contact data to the FCC. The FCC should then make that information available to the public via the FCC website, and the FCC should also enter that data into its computer system so that this person calling the FCC can obtain the appropriate contact information for any regulated entity.

The FCC also seeks comment on what contact information and mechanisms regulated entities must provide.¹² NASUCA submits that the form and content requirements of this NPRM provide an effective starting point for the type of information that regulated entities must provide to the FCC. The FCC should require regulated entities to provide it with *all*:

- corporate names and addresses
- “dba” (i.e, doing business as) names used in marketing consumer products and services
- relevant telephone numbers
- relevant website addresses
- customer service locations
- names of informal complaint contact sources.

In the case of regulated entities that are corporations, the FCC should require those corporations to provide the state of that entity’s incorporation. Finally, the FCC should provide open access to this database such that consumers who visit its website, or who call the FCC’s toll-free number to speak with an FCC Consumer Advocacy and Mediation Specialist (CAMS), can access that database to obtain full information to assist in “self-help” complaint resolution.

12. *Id.*

The FCC specifically states that a consumer need not exhaust, or even attempt, “self-help” informal complaint resolution as a prerequisite to filing an informal or formal consumer complaint with the FCC. NASUCA strongly agrees that consumers need not attempt to resolve a dispute on their own before contacting the FCC for assistance. NASUCA further submits that any such procedural hurdles would be *against* the public interest. It may be difficult for consumers to contact the regulated entity against which they have a grievance. This is particularly true in the event of cramming, where telecommunications consumers have unauthorized charges added to their bill by a service provider whom they may not know. It should not be incumbent upon a customer, therefore, to determine the identity of the party responsible for the additional charge and then contact that party to express a grievance. Consumers may also have difficulty in contacting regulated entities that they intend to reach. Regulators are well acquainted with examples of the types of communication difficulties that occur between regulated entities and consumers, as discussed further below.

NASUCA recognizes that many consumer concerns can be resolved without FCC, or other regulatory intervention. NASUCA submits that the FCC should:

- 1) determine whether the complainant has contacted the respondent provider about the matter;
- 2) if the complainant has not made such contact, determine why not (unable to connect, contact unknown, etc.); and
- 3) if appropriate (i.e., a non-slamming concern) encourage the complainant to contact the provider directly.

Of course, the FCC should assist the consumer in making that initial contact with the service provider involved.

Yet, the avenues through which a consumer may choose to remedy a grievance – whether through self-help or an informal or formal complaint should remain the choice of the consumer. It is imperative that the FCC not establish a hierarchy of administrative remedies through which consumers must pass to obtain

relief. No informal or formal complaint should ever be dismissed because a consumer failed to first contact the entity that may be the cause of the problem.

Therefore, consumers should have easy access to the service provider so that they can attempt to resolve their complaint or grievance before filing an informal complaint with the FCC. Complaining consumers should *not be required*, however, to first contact the respondent service provider as a prerequisite to filing an informal or formal complaint with the FCC.

Although NASUCA suggests that the FCC may counsel consumers to first attempt to resolve their grievances through first-person contact, NASUCA also suggests that the FCC track those types of referrals. Excessive numbers of complaints, even those that consumers may resolve through self-help, may be symptomatic of larger issues that the FCC, state commissions, NASUCA members and the state attorneys general should be aware.

C. The FCC Should Assist In The Serving Of Informal Consumer Complaints On The Subjects Of Those Complaints. (NPRM at ¶10).

In the NPRM, the FCC proposes a rule that directs FCC staff to forward informal consumer complaints to the regulated entity that is the subject of that complaint, so long as the complaint meets the form and content requirements discussed below.¹³ The FCC also proposes an exception to that rule: The FCC staff will forward the informal complaint unless there is a more effective means to resolve the complaint through other types of notice (i.e., telephone contact or via e-mail).¹⁴ NASUCA supports such an exception, because it fosters the expedient resolution of informal consumer

13. NPRM at ¶10.

14. *Id.*

complaints. As discussed above, consumer complainants may have difficulty contacting the regulated entity of which they complain, or may not even know which entity is the subject of their complaint. Any informal, cooperative efforts on the part of FCC staff to forward an informal consumer complaint to the entity in question will certainly encourage successful resolution of that complaint.

NASUCA supports the FCC's adoption of a rule that provides FCC staff with discretion regarding the most appropriate method to provide notice, and thus effect a resolution, of informal complaints against regulated entities. The requirement of a single-source contact within each regulated entity cleanly and simply addresses the issue of notice from the perspective of the regulated entity. Having a single intake contact for informal consumer complaints will put a respondent on notice that the FCC has served it with an informal complaint. In addition, the date of service on that single-source contact will also provide a point of reference with which to measure all reply dates for the purposes of the informal complaint process.

D. The Form And Content of Informal Consumer Complaints Should Be As Expansive And Flexible As Possible And Should Not Inhibit The Filing Of Informal Complaints. (NPRM at ¶¶11-12).

In the NPRM, the FCC proposes that any informal consumer complaint filed with the Commission should include:

- (1) the name and address of the complainant;
- (2) the name and address of the company against whom the complaint is being made;
- (3) details about the product or service about which the complaint is being made;

- (4) a statement of facts supporting the complainant's allegation that the regulated entity has violated the Act, FCC rules or orders;
- (5) if applicable, a copy of the complainant's bill or other correspondence from the regulated entity that gives rise to the dispute;
- (6) the specific action by the regulated entity that is being sought by the complainant.¹⁵

The FCC states that its objective in establishing these requirements is to make it easy for consumers to file complaints, and for respondents to move promptly to satisfy meritorious complaints.¹⁶

NASUCA submits that these six informal complaint elements should not be mandatory such that exclusion of a single element would invalidate the complaint. As the FCC has recognized, rigid complaint criteria will necessitate diligence on the part of consumers in preparing and submitting complaints.¹⁷ NASUCA submits that rigid criteria may be too burdensome in the context of the informal complaint resolution procedures the FCC seeks to establish here. NASUCA acknowledges that consumers should exercise responsibility in filing informal complaints, and that some combination of the six criteria is necessary to address any particular informal complaint. NASUCA submits, however, that the FCC should not automatically reject an informal complaint if incomplete, particularly if the missing information is not necessary to resolve the complaint.

As indicated above, some basic information, such as the service provider's address, may be difficult for consumers to obtain. Furthermore, hard copies of bills or

15. NPRM at ¶11.

16. *Id.*

17. NPRM at ¶12.

other correspondence do not easily accommodate telephonic or electronic complaint submission.

In addition, the FCC's proposed rules would require consumers to allege a statement of facts to show that "the regulated company has acted or failed to act as required by the Act or the Commission rules or orders."¹⁸ It is the experience of the NASUCA members that consumers often do not know what facts are relevant, important, or would constitute such an allegation. In addition, consumers are neither familiar with TA-96 nor relevant FCC rules or orders. It is the experience of NASUCA that upon initial contact, consumers often voice complaints in terms of unfair treatment, unwillingness to resolve disputes, or outright frustration with a provider's services. NASUCA therefore submits that the FCC modify the criteria such that a complaint may be dismissed on a factual basis only if the complainant cannot allege facts sufficient to show that the regulated entity has acted or failed to act as required by TA-96, or the Commission rules or orders and, *upon inquiry by FCC staff*, the complainant cannot allege facts sufficient to show the same.

Therefore, the FCC should not reject informal complaints that fail to meet all six criteria listed above. Rather, informal complaints should proceed to the extent possible. Even if necessary information is missing, such as a statement of facts supporting the complainant's allegation, the FCC should instruct its staff to contact the complainant to obtain the missing information instead of rejecting the entire informal complaint for lack of completeness.

The FCC also seeks comment on whether it should modify its informal common carrier complaint rules with regard to the types of information and

18. NPRM at ¶11.

documentation required by section 1.716 of its rules.¹⁹ NASUCA submits that the FCC should modify section 1.716 by eliminating the requirement that informal complaints be in writing. The form requirements of section 1.716 should mirror the flexible requirements of this NPRM. Here, consumers may submit informal complaints “by any reasonable means.” The FCC should adopt that same language in section 1.716.

In addition, section 1.716 should also address the statement of facts issue raised above. Currently, that section is more narrow than that proposed in this NPRM. Section 1.716 requires consumers to allege that a carrier acted or failed to act in contravention of the Communications Act, and does not mention the FCC’s rules or orders. The FCC should amend section 1.716 such that it mirrors the requirements of the statement of facts proposed by NASUCA above.

The FCC also seeks comment on whether it should designate the development of an on-line complaint filing system as a priority.²⁰ NASUCA submits that the Internet has made communications between the FCC and consumers quicker and easier, and that on-line communications should be encouraged. The filing of informal complaints should not, however, be limited solely to an online method. NASUCA points the attention of the FCC to the fact that many Americans do not have

19. NPRM at ¶12. Section 1.716 of the FCC’s rules deals with informal complaints against common carriers. That rule section states:

An informal complaint shall be in writing and should contain: (a) The name, address and telephone number of the complaint, (b) the name of the carrier against which the complaint is made, (c) a complete statement of the facts tending to show that such carrier did or omitted to do anything in contravention of the Communications Act, and (d) the specific relief of satisfaction sought.

47 C.F.R. § 1.716.

20. NPRM at ¶11.

access to the Internet, or are not otherwise Internet savvy. The FCC should continue to accept informal complaints in writing or telephonically while at the same time encouraging consumers to file informal complaints electronically when feasible.

The FCC also seeks to make the informal complaint process more consumer-friendly and limit the burdens placed on complaining consumers.²¹ One of the prime factors to consider in this regard is consumer convenience. It is difficult for most consumers to address grievances with service providers during normal business hours. Therefore, the FCC should accommodate consumers within its existing interactive voice response system ("IVR") by providing consumers a readily accessible voice-mail option within the IVR system. That is, if consumers need assistance from an FCC complaint specialist, those consumers should be able to leave a message containing the relevant information, including contact information, on the IVR system. Additionally, the IVR should have a menu of specific issues regarding complaints such as "Press 1 for slamming, press 2 for cramming,..." This system would further be coupled with the ability to speak with a live person with the push of one button at any time.

In addition, the FCC should place its online complaint filing option instructions nearer to the first branch of the IVR tree. Directing consumers to that secure online complaint form will also assist consumers in addressing grievances with regulated entities. This would further expedite the resolution of informal complaints and also further the FCC's goals and objectives in this proceeding.

Next, the FCC should allow state agencies to forward complaints to the FCC. For example, some NASUCA offices operate call centers that perform many of the same services for their utility consumers that the FCC call center performs on a national level. It would assist in the resolution of consumer complaints if these NASUCA

21. NPRM at ¶12.

members call centers could forward germane complaints directly to the FCC in an on-line format. That way, state commissions, state attorneys general, and NASUCA members could assist consumers in the expeditious resolution of complaints that fall under the jurisdiction of the FCC. After the informal complaints are forwarded, the FCC's contact should be with the referring entity, rather than directly with the consumer. This process would be further aided by a separate toll-free number for use by government agencies, such as NASUCA members, to expedite their ability to resolve these cases. This toll-free number would be separate from the toll-free numbers for consumers to use.

E. Companies Should Be Required To Respond To An Informal Complaint Within Thirty Days After Receipt. (NPRM ¶¶13-14).

The FCC seeks comment on whether it should set a specific period within which a company must respond to notification of an informal consumer complaint.²² NASUCA and the FCC recognize that it is equally important for consumers to have a simple, easily understood process for raising concerns with the FCC, and to require regulated entities to respond quickly and effectively to those consumer concerns.²³ In the past, consumers would dial a toll-free number and reach a recording that would instruct the consumer to write their complaint and mail it to the FCC. This would result in response times of sometimes nine months. The FCC should now reduce that period to only one month.

NASUCA submits that a thirty-day (30) period is an appropriate time within which a company must respond to the service of an informal consumer

22. NPRM at ¶14.

23. NPRM at ¶13.

complaint. Such a limit, however, should not delay the response to an informal consumer complainant, but should only set the outside time limit within which the company must respond. In the interest of flexibility, NASUCA suggests that, if the FCC allows extensions to this 30 day limit, regulated entities may request a single fifteen-day (15) extension within which to respond. NASUCA emphasizes the need to remedy informal consumer complaints quickly, particularly as some may involve ongoing monthly charges that could continue until the resolution of the complaint.

F. The FCC Should Coordinate Its Informal Complaint Process With Those Used By The States So That Federal and State Regulators May Quickly Resolve And Accurately Monitor Complaints. (NPRM at ¶21).

In the NPRM, the FCC seeks comment on whether it can better coordinate its complaint process with that used by state and local governments, and what efforts it can make to share information gathered by this coordination.²⁴ NASUCA submits that the FCC and the state commissions should reciprocally exchange information regarding complaint procedures and complaint data in their respective jurisdictions. It is vital that the states and the FCC share complaint information because consumers are often unaware of the resources to which they have access, and which agencies handle certain problems. NASUCA submits that consumers often contact state agencies regarding issues over which the states have little jurisdiction.

Coordination of FCC and state commission informal complaint procedures would help to alleviate these types of jurisdictional problems sometimes encountered by both informal and formal complainants. NASUCA submits that the FCC should gather the contact information for the state commissions, attorneys general, and NASUCA members for incorporation into its computer database. That way, the FCC

24. NPRM at ¶21.

will have accurate information to relay to consumers regarding what agencies within the consumer's home state may assist the consumer with its complaint. Likewise, the FCC should communicate contact information -- beyond that provided directly to consumers -- to the state commissions, NASUCA members, and attorneys general for the same purposes.

By gathering that information into the FCC's database, the FCC would further its goal to timely process and resolve consumer complaints. The great advantage of this holistic approach to the resolution of informal consumer complaints is that the FCC has already developed the personnel and computer systems required to enact it. NASUCA distinguishes this database from the pilot State and National Action Plan (SNAP) developed to log various slamming and cramming complaints.²⁵ Here, NASUCA suggests that the FCC develop the mirror of the SNAP database; rather than logging complaints, this database would provide a catalog of the appropriate consumer contacts for state commissions, NASUCA members, and attorneys general. That way, if a call received by the FCC is in fact within the jurisdiction of a state commission, the FCC may refer the complainant to the most relevant source of assistance. Although the FCC's consumer database may contain some of this information, NASUCA submits that it should be a complete record, and that the FCC should make an effort to widely publicize the availability of that database to state commissions and the public.

It would also be a valuable tool if state commissions and NASUCA members could access an aggregated complaint database similar to the FCC's ARMIS data. There, the state commission and NASUCA members could track complaints by state, and compare the performance within each state to other states. NASUCA submits that such data would prove invaluable to assist them in advocating consumer interests

25. Consumer Information Bureau, Federal Communications Comm'n, First Annual Report, (2000).

before the FCC and before state commissions. In fact, uniformly compiled complaint data is often extremely difficult to obtain, yet it is one of the most effective tools with which NASUCA members may focus their attention.

Finally, NASUCA submits that coordination between the FCC and state agencies would be aided with the addition of a toll-free number for only state agencies to use to contact the FCC such as the one discussed above in section D.

G. The Content Of Informal Consumer Complaints Should Be Made Confidential, But General Matter Should Be Reported To The Necessary Regulatory Bodies. (NPRM at ¶24).

In the NPRM, the FCC seeks comment on its proposal to amend the rule provisions that designate informal complaints as records routinely available for public inspection.²⁶ The FCC seeks to amend that portion of its rules to comply with the Privacy Act because informal complaints include personal information relating to consumers, i.e., the consumer's name, address, and phone number.²⁷

NASUCA supports this amendment of informal complaint procedures and also support the protection of the privacy interests of consumers who file complaints with the FCC. NASUCA submits that the FCC should employ a three-tier privacy scheme to informal complaints.

- At the lowest level of protection, documents are open to public inspection.
- At the next level, the documents are open for public inspection, but with a redaction of all personal information.
- At the third and highest level, the FCC would treat the complaint as confidential.

26. NPRM at ¶24.

27. *Id.*

The FCC would apply these levels of privacy protection as described below.

The lowest level, or no protection, would be available upon the request of the complainant or the respondent pertaining to their respective information. That level would permit persons or parties to use certain complaints for whatever purposes they chose. The second level would protect privacy by removing all personal, identifying information from a complaint before the FCC would release the complaint. Per the proposal of the FCC in the NPRM, the second level would be the default privacy protection applied to informal complaints. The third, or highest level, would provide the complaint with the most privacy protection – the informal complaint would be confidential. That level of protection would be available to consumers upon request. Confidential treatment is necessary, for example, in those cases involving state or federal whistleblower complaints because the complainant may be filing a complaint against his or her employer.

Applying privacy protection to informal complaints will ensure the submission of relevant information by consumers and responding companies without fear of dissemination of information that is confidential and proprietary.²⁸ NASUCA supports such an amendment to the FCC's rules. Of course, that amendment must be such that the respondent can identify and communicate with the consumer filing the complaint, and should not be construed to limit a party's access to information except in cases of confidential complaints.

An open issue in this area is that of governmental access to complaint data. NASUCA submits that state commissions, NASUCA members, and attorneys general should have access to the information contained within informal complaints. Also, confidential treatment should not prevent the accurate public reporting of the

28. *Id.*, citing, Privacy Act, 5 U.S.C. §552a.

complaints in aggregate form, or protect the disclosure of non-identifying facts. It is important that the appropriate regulatory bodies have access to complaints.

Therefore, NASUCA submits that the FCC should protect the confidentiality of personal identifiers contained within informal consumer complaints. The FCC should preserve access, however, to the general facts and resolutions of those complaints to the necessary regulatory bodies.

H. Informal Complaints Should Be Given Exempt Status To Aid Expeditious Resolution So Long As All Parties Receive Fair And Equal Treatment. (NPRM at ¶25).

Finally, the FCC proposes that informal complaints be deemed “exempt” proceedings so that the Commission and its staff can meet or communicate with either the complaining consumer or the regulated entity, as well as third parties, on an *ex parte* basis to discuss matters pertaining to the complaint and related compliance issues.²⁹ The FCC further proposes that if an informal complaint later becomes formal, the complaint proceedings will be treated as restricted for the purposes of *ex parte* rules.

NASUCA supports the exempt treatment of informal complaints to further expedite their amicable resolution. NASUCA agrees that the FCC should retain the *ex parte* protections that apply to formal complaints, including the “permit but disclose” rules, such that parties remain appropriately apprised of *ex parte* discussions.

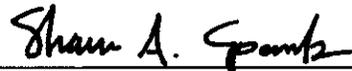
Therefore, NASUCA submits that informal complaints should be given exempt status so that they may be resolved in an expeditious manner as long as all parties receive fair and equal treatment.

29. NPRM at ¶25.

IV. CONCLUSION

WHEREFORE, the National Association of State Utility Consumer Advocates respectfully submits that the Federal Communications Commission consider these Comments when revising its informal complaint procedures concerning common carriers.

Respectfully submitted,



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May 16, 2002

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the matter of :
: :
Establishment of Rules Governing Procedures : CI Docket No. 02-32
to Be Followed When Informal Complaints Are :
Filed by Consumers Against Entities Regulated :
by the Commission :

I hereby certify that I have this day served a true copy of the foregoing document,
National Association of State Utility Consumer Advocates Comments, upon parties of record in
this proceeding dated this 16th day of May, 2002.

Respectfully submitted,



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