

**Before the
Federal Communications Commission
Washington, DC 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

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc. (SBC)¹ files these reply comments in response to the Notice of Proposed Rule Making released in this docket.²

Some commenters appear confused about the Commission's informal complaint process. What they fail to recognize is that this process is primarily an inexpensive and easy way of resolving "consumer complaints," which are generally more susceptible to resolution without the necessity of filing a formal complaint.³ Traditionally, the emphasis has been on *informality* and

¹ SBC is filing these comments on behalf of its common carrier affiliates. SBC itself is a holding company; however, for convenience, the affiliated common carriers will be referred to as "SBC."

² *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 Rule Making, CI Docket No. 02-32, CC Docket Nos. 94-93 and 00-173, FCC 02-46 (rel. Feb. 28, 2002) (*Notice*).

³ "The informal process is, as it sounds, an informal and simple vehicle to address the concerns of a more straight-forward nature." *Amendment of Rules Governing Procedures To Be Followed Where Formal Complaints Are Filed Against Common Carriers*, Report and Order, 3 FCC Rcd 1806 ¶ 55 (1988). The rules applicable to formal complaints are truly onerous. What's more, it may be beyond the reach of most to litigate a formal complaint in a distant forum like the nation's capital. Happily for complainants, they can choose the forum. In addition to the FCC, complainants can bring claims to their state commissions and to local federal district courts. Defendants, on the other hand, have no say in the selection of the forum.

negotiation, not formality and adjudication. This simple process cannot be re-tooled to correct every perceived ill or short-coming related to the regulated entities' relations with consumers. Increasing regulations, especially those not really related to the complaint process, will not make the informal complaint rules more user friendly or the process more efficacious.

While SBC supports an effort to improve the system and make the process more convenient to consumers,⁴ it believes that the effort to conform the rules to the needs of the non-carrier entities and their customers is misguided. As shown in the *Consumer & Governmental Affairs Bureau Quarterly Report on Informal Consumer Complaints and Inquiries Received*, Executive Summary, released May 7, 2002 (*CGB Report*), for both wireless and wireline telecommunications service providers, the majority of complaints filed pertained to “[b]illing and rate-related” matters. That same report shows, however, that this is not the case for non-carrier entities. Complaints against broadcasters, for example, are largely about indecency. More telling, however, is the fact that, in the first quarter of calendar year 2002, there were a total of 10,619 complaints, only four percent of which were non-carrier entities.⁵ Hence, it would appear that trying to make the carrier informal complaint rules conform to the needs of other regulated entities is a classic case of the tail wagging the dog.

Along this line, some commenters recommend that the Commission require all regulated entities covered by these rules to appoint a single point of contact to field complaints.⁶ It might

⁴ Most of the suggestions to improve (i.e., make more user friendly) the process relate to the Commission's own internal procedures and services. SBC will not offer comments on those suggestions.

⁵ Cable Service: 167 complaints; Radio and Television Broadcasting: 270. *CGB Report*, Summary of Top Consumer Complaint Subjects, Processed by the FCC's Consumer & Governmental Affairs Bureau, First Quarter – Calendar Year 2002.

⁶ National Association of State Utility Consumer Advocates (NASUCA) p. 4; Telecommunications for the Deaf (TFTD) p. 3; and Texas Office of Public Utility Counsel (TxOPUC) p. 2. These commenters cite paragraph 9 of the *Notice* for this proposal. Yet, it appears that the Commission was merely proposing that the Commission itself establish a single point of contact within the FCC for incoming complaints relating to various regulated entities. (“We tentatively conclude that it is in the public interest to provide consumers with an initial single point of contact to deal with their complaints concerning all of the entities regulated by the Commission, and not only common carriers.” ¶ 9).

make sense for radio and television broadcasters to have one single point of contact for consumers to call and complain. This is so because they, unlike telecommunications carriers and cable operators, do not have a contractual relationship with the consumer, involving billing and rate issues, and are not generally subject to multiple jurisdictions. This does not make sense for common carriers, especially incumbent LECs like SBC. Incumbent LECs do an excellent job of making the appropriate contact information available to customers — especially for billing and rate-related matters.⁷ They cannot, however, work from a single point of contact, because no one single point of contact can field questions applicable to all 14 different jurisdictions.⁸

With respect to informal complaints per se, it is only important that the Commission know how to contact the carrier and advise them of the complaint. Once contacted by the Commission, that carrier representative can then direct the complaint to the right person or persons within the carrier's organization to address the consumer's concerns. Like other common carriers, SBC already advises the Commission, pursuant to Commission rule § 1.47(h), of its agent for service of process and other appropriate contacts for resolution of complaints and other disputes. Requiring a single point of contact would not add consumer protection. Rather, such a regulation would in all likelihood impede consumer service because it would add at least another layer to the process.

Certain non-carrier commenters support the proposal to limit the time to respond to an informal complaint to 30 days.⁹ One such commenter even proposed lowering the response time

⁷ As SBC pointed out in its initial comments, SBC tells its customers how to contact it by several means, including its telephone bills, web site information, and directories. Moreover, consumers can also contact the state commissions. SBC is unaware of any consumer being unable to contact it or to voice a complaint, either orally or in writing, and no commenter has proffered evidence of any such inability.

⁸ In total, SBC's incumbent LECs have 13 state jurisdictions and the Commission.

⁹ NASUCA p. 12-13; TxOPUC p. 4; TFTD p. 4-5.

to a mere 20 days.¹⁰ Like SBC, some responding carriers, who would actually have to live with any such rule, do not support this proposal.¹¹

As a general rule, the Commission gives the carrier 30 days within which to respond to an informal complaint. As the response time is not codified in regulation, the Commission is given freedom to adjust to the needs of the particular case. This freedom is appropriate to an informal process that is not aimed at creating an adversarial atmosphere, but rather a resolution of a perceived problem. If resolution cannot be achieved, the complainant also has the option of moving to a more formal and adversarial proceeding.

The commenters that support the 30-day limit appear to be under the misapprehension that the carriers are causing any perceived delay in the resolution process. This is not the case. As noted above, the carriers are typically given 30 days in which to respond. If delay is introduced into the process, it is not introduced by the carriers.¹² Interestingly, the commenters that support the codification of the 30-day response period do not cite any evidence that consumers are injured by the present arrangement, nor can they.

None of the responding carriers support the proposed change to the relation-back rule.¹³ The universal perception is that the proposal will cause, not cure, uncertainty as to when the date of the filing of the informal complaint tolls the statute of limitations. The Commission's proposal is wrong-headed and will create uncertainty by moving from a bright-line rule to a

¹⁰ Office of the People's Counsel for the District of Columbia (OPCDC) p. 6.

¹¹ AT&T Corp. (AT&T) p. 3; WorldCom, Inc. (WorldCom) p. 4.

¹² SBC is not suggesting that its telephone companies never ask for extensions of time to respond. To the contrary, from time to time, carriers do ask for extensions of time to respond; however, these brief extensions would not account for the time delays described by the commenters — one commenter mentioned response times up to “nine months.” *See* NASUCA p. 12. The commenters making these claims about delays in the process do not appear to have any first-hand, personal knowledge of the process and, therefore, cannot say what or who, if anything, caused any alleged delay.

¹³ AT&T p. 7-9; Verizon pp. 2-5; Verizon Wireless pp. 7-9; WorldCom pp. 5-6.

nebulous one.¹⁴ The Commission’s proposal will also unfairly undermine the statutory protections afforded carriers under section 415 of the Act.¹⁵

One commenter argues that “[r]efusing 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.”¹⁶ This is simply untrue. Under the present rule informal complainants have *six months* in which to decide whether to avail themselves of the formal complaint process. Upon receipt of the carrier’s response, informal complainants have all the information needed to make an informed decision about their claim. The alleged parade of horrors cited by this one commenter is baseless. Nothing in the 16-year history of the rule as presently formulated would support any allegations of doom and gloom cited by this commenter and the commenter offers no proof of these statements. The rights of the informal complainant are fully protected under the present rule, and the informal complainant loses nothing by leaving the relation-back rule unchanged.

To the contrary, changes to the relation-back rule would jeopardize the rights of carriers, not complainants. The statute of limitations — section 415 of the Act — was enacted to protect the rights of defendants from stale claims and the burdens of having to litigate an issue long after the events giving rise to the claim took place. Under the Commission’s proposal, it is the statute of limitations that is eviscerated.

¹⁴ AT&T is most certainly correct when it writes that “[t]he existing process . . . already provides for both parties the ‘predictability and certainty’ for relation back purposes that is the stated objective of the rule revision.” AT&T pp. 8-9.

¹⁵ AT&T p. 8 (“The proposed rule revision would be to subject such parties [defendants] to completely open-ended potential liability — a result that is irreconcilable with the goal of repose embodied in the statute [of limitations].”); Verizon p. 2 (“This proposal, if adopted, could extend a carrier’s liability and the uncertainty surrounding a complaint for and [sic] open-ended period that often lasts many months, or years.”).

¹⁶ TxOPUC p. 4.

Conclusion

Many of the comments made by some groups claiming to represent consumers either fall outside the scope of the *Notice* or are better addressed to state commissions or both. Any adjustments that ought to be made to the informal complaint rules should only be made if they truly improve that process. Adjustments to these rules ought not aim at correcting unrelated ills.

SBC contends that, by and large, the rules do not need adjusting. Certainly, the Commission does not need to inject formality into an informal process by codifying the response time as proposed. Moreover, there is no justification for changing the relation-back rule. Consumers are not being injured by it, and any such change will adversely affect the carriers' rights under section 415 of the Act.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I, Regina Ragucci, do hereby certify that on this 31st day of May 2002, Reply Comments of SBC Communications, Inc. in CI Docket No. 02-32; CC Docket Nos. 94-93 and 00-175, was served first class mail - pre-paid postage to the parties attached.

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