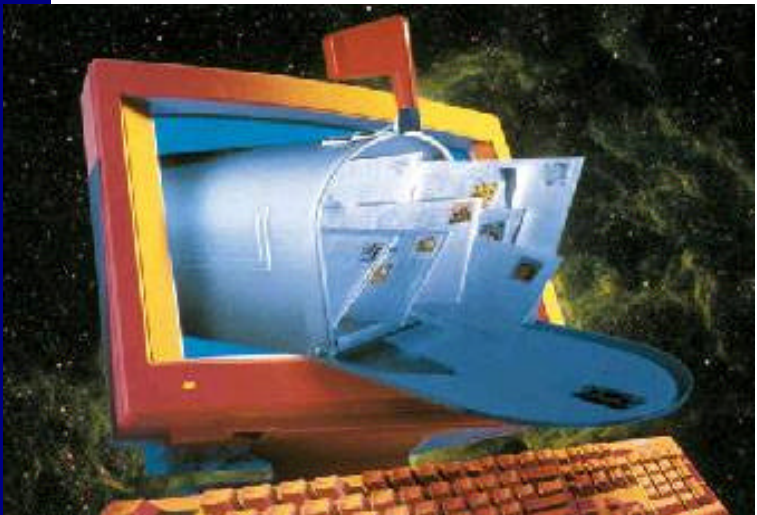




# The National Regulatory Research Institute

**The Enforcement  
Function Within the  
Consumer Affairs  
Department**



**THE ENFORCEMENT FUNCTION WITHIN THE CONSUMER AFFAIRS  
DEPARTMENT**

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## **EXECUTIVE SUMMARY**

The need for an enforcement component within the consumer affairs function is most salient when you examine state public utility commission complaint data. An examination of the prevalent data from individual state public utility commissions indicates that since the advent of competition the number of complaints, contacts and interactions with consumers has increased tremendously. Unfortunately, an examination of the enforcement actions of state public utility commissions indicates that despite enormous fines levied against companies the need for enforcement actions persists.

In 2002, the NRRI conducted focused interviews concerning the role and function of the enforcement functions of the following state public utility commissions: California, Connecticut, Georgia, Maine, New York, Ohio, Pennsylvania, Tennessee, Texas, Vermont and Washington

Section 1 presents an in-depth description of how the enforcement process is conducted at these 11 commissions. The section provides valuable insights regarding the significance of the enforcement function, the rationale for the enforcement function within the consumer affairs division, and the enforcement processes used at the commissions which were surveyed.

Section 2 focuses on descriptive responses to the following questions:

- What is the enforcement process at your commission?
- How do you monitor trends?
- How do you work with companies to monitor change?
- Are you able to fine companies?
- Are you able to take formal action against companies?
- How do you work with the office of the attorney general?

Results indicate that the upward spike in consumer complaints and interactions speaks to the need for commissions to place emphasis on strong enforcement functions. States which are considering adding an enforcement component to their consumer affairs function or are considering reorganization of their enforcement function should carefully examine the structure and function of enforcement within other consumer affairs departments.

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## **FOREWORD**

The enforcement function is a pivotal component of the state public utility commission's consumer protection mandate. The information presented in this report provides valuable insights regarding the impact of competition on the enforcement function and the challenges facing enforcement staff. The report also provides valuable insights regarding the evolution of the enforcement process at state public utility commissions.

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## **INTRODUCTION**

This report presents an overview of the enforcement function within the consumer affairs department of state PUCs. The report begins with an examination of the need for the enforcement function. Specific factors addressed include the following:

- The rise in consumer complaints
- Statistics related to enforcement fines
- Statistics related to slamming fines
- The status of residential competition in states participating in the survey

The report also presents an indepth description of how the enforcement process is conducted at eleven commissions. The report provides valuable insights regarding the significance of the enforcement function, the rationale for the enforcement function within the consumer affairs division, and the enforcement processes used at the commissions which were surveyed. The primary purpose of the report is to educate new commission employees regarding the function of the enforcement division. Although the report is primarily targeted toward commission employees who are not directly involved in the enforcement function, the report also provides valuable insights to commissions who are thinking about either starting an enforcement division within the consumer affairs department or are contemplating reorganizing their enforcement division.

In 2002, the NRRI conducted focused interviews concerning the role and function of the enforcement functions of the following state PUCs:

- California Public Utilities Commission (CPUC)
- Connecticut Department of Public Utility Control
- Georgia Public Service Commission
- Maine Public Utility Commission
- New York Public Service Commission
- Public Utilities Commission of Ohio (PUCO)
- Pennsylvania Public Utility Commission

- Tennessee Regulatory Authority
- Texas Public Utility Commission
- Vermont Department of Public Service and The Public Service Board<sup>1</sup>
- Washington Utilities and Transportation Commission (UTC)

The information that is presented in this report is based on the information that was communicated to us during the focused interviews. It is important to realize that each state is very unique—they are in different phases of the movement toward or away from competition, their population sizes vary, they have very different demographics and some of their consumers have been victims of fraud artists. Moreover, the size of the consumer affairs department varies significantly. Nonetheless, it is helpful to examine how other states handle the enforcement function. Similar to other best practices, applicable insights can be gained from this understanding. Specific topics addressed are as follows:

- What is the enforcement process at various commissions?
- Can the enforcement function fine?
- What are the day-to-day activities of the enforcement function?
- How are trends monitored?
- How does the enforcement function work with companies?
- Does the enforcement function work with the Office of the Attorney General?

## **Background**

### The Rise in Consumer Complaints

Clearly, commission enforcement efforts have evolved as the environment has changed. In the past, enforcement efforts were tied to the role of the regulatory as a

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<sup>1</sup> In Vermont, the Consumer Affairs is part of the Department of Public Service (DPS). DPS works with the “commission,” which is called the board. The Board is a separate agency from the DPS. The Board is a quasi-judicial agency and the DPS is an executive branch agency, which includes Service Quality and some enforcement functions. The Board has the power to bring formal enforcement action against companies. DPS works with complaints, investigations and negotiates with companies when they have suspect business practices or complaints against them.

means of controlling potentially harmful monopolies. State commission focus was on ensuring that rates were fair and service was adequate.

Telecommunications was the first industry to experience competition. Local exchange companies in anticipation of competition began to downsize, which affected the number of outside plant technicians and customer service representatives. New telecommunications providers emerged and market abuses began to appear as new players vied for market share. In response, utility commission began to move the focus of regulation toward service quality, safety and market enforcement. In the old regulatory environment, commissions had more economic control over local exchanges (LECs). There was little enforcement action needed or taken as the LECs complied with commission directives. In the new environment, as a result of mergers and acquisitions, we now have multinational companies less willing to change business practices on request of state commissions.

Table 1 indicates which of the participating states have residential competition in the electric, gas, or telecommunications sectors. As indicated by the table, eight of the states, Connecticut, Maine, New York, Ohio, Pennsylvania, Tennessee and Texas currently have electric energy competition. Five of the states, California, Georgia, New York, Ohio and Pennsylvania have residential competition for natural gas. All 11 of the states have local telecommunications competition.

The language of the Federal Communications Commission's (FCC's) mission state speaks to the pivotal role that enforcement plays in the new regulatory environment:

Through firm, fast, flexible and fair enforcement of the Communications Act and the FCC's rules, promote competition, protect consumers and foster efficient use of the spectrum while furthering public safety goals.<sup>2</sup>

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<sup>2</sup> See the FCC website: <http://www.fcc.gov/eb/ebmission.html>

**TABLE 1  
STATUS OF RESIDENTIAL COMPETITION  
IN PARTICIPATING STATES**

State	Electric	Gas	Telecommunications
CA	Suspended	X <sup>3</sup>	X
CT	X		X
GA		X	X
ME	X		X
NY	X	X	X
OH	X	X	X
PA	X	X	X
TN	X		X
TX	X		X
VT			X
WA			X
Total	8	6	11

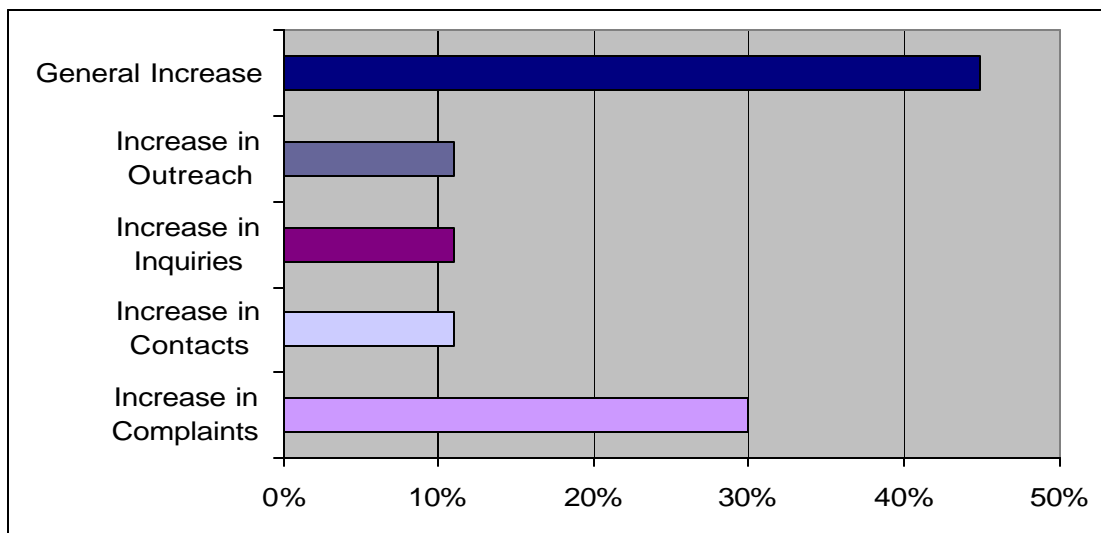
Source: Author's construct

Clearly, the need for an enforcement component within the consumer affairs function is most salient when you examine state PUC complaint data. Over the past five years, we have seen a tremendous escalation of consumer complaints, contacts and interactions. In the 1999 article, "State Commissions in Transition: The NARUC Consumer Challenge," former Commissioner William Gillis discusses the rise in consumer complaints in response to developing markets:

As market share began to develop, consumer complaints have grown. A survey of 28 states conducted by the NARUC Staff Subcommittee on Consumer Affairs found that between 1993 and 1997, telephone service complaints rose by 91%, electric complaints by 58% and gas complaints by 40%. The CPUC reports that consumer contacts increased by 65% between 1995-96 and 1997-98. It is not just regulatory commissions that are seeing the complaints. In Washington, our Attorney General's Consumer Protection Division reports that telephone related complaints (slamming, cramming and billing practices) are their largest category.<sup>4</sup>

<sup>3</sup> At the time of this writing, California has limited gas competition, and it does not apply to residential customers.

<sup>4</sup> Former Commissioner William Gillis, "State Commission in Transition: The NARUC Consumer Issues Challenge," *NRRRI Quarterly Bulletin* 0, no. 2 (1999): 171-176.



Source: Author's construct

**Fig. 1.** Changes in the consumer affairs workload

Moreover, an examination of the prevalent data from individual state PUCs indicates that since the advent of competition the number of complaints, contact and interactions with consumers has increased tremendously. In subsequent pages of this section, we will highlight the complaint data of individual states.

As indicated in Figure 1, results of a 2001 NRRI survey regarding the organization of the consumer affairs function indicated a significant increase in consumer interactions with commissions. When asked how the workload has changed within the past two years, 30% of the 26 state responding indicated an increase in consumer complaints.<sup>5</sup> Over 10% of the respondents indicated an increase in consumer inquiries and another 10% of the respondents indicated an increase in consumer contacts. Not surprisingly, 50% of the respondents indicated experiencing a general increase in workload; in all likelihood, this increase is a result of an increase in consumer interactions, including of course, complaints.

Many states have experienced a greater than 50% increase in consumer interactions in the past few years. An examination of consumer complaint/contact

<sup>5</sup> States responding to the survey included: Alabama, Arizona, Colorado, Connecticut, Florida, Georgia, Illinois, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Vermont and Washington.

information from Illinois, Georgia, Maine and Ohio indicates tremendous escalations in consumer contact.

- **Illinois Commerce Commission:**  
The Consumer Services Division served 10% more consumers in 2000 than in 1999. The number of consumers served has nearly tripled in the past five years while staffing has not quite doubled. The number of complaints received by email increased by 285% to 1,282 cases. Staff successfully worked with utilities to provide \$3.2 million to customers in savings or avoided costs. Customers have benefited greatly from the intervention of staff and cooperation of utilities.<sup>6</sup>
- **Georgia Public Service Commission:**  
During the calendar year of 2000, the consumer affairs department responded to 99,963 calls, letters, faxes, emails and walk-ins. This represented a 48.9% increase from the 67,127 contacts handled in 1999. Consumer Affairs received 23,744 telephone, gas and electricity complaints. This constituted a 35.4 increase from the 17,530 complaints received in 1999.<sup>7</sup>
- **Maine Public Service Commission:**  
In 2000, the Consumer Affairs Division (CAD) assisted 15,590 consumers, the largest number in CAD history. This was a 6% increase over 14,723 customers assisted in 1999 and a 73% increase over 9,021 customers assisted in 1998.
- **The Public Utilities Commission of Ohio (PUCO)**  
In their 1999-2000 report, the PUCO reported over a 40% increase in contacts for the past two years. Table 2 shows the PUCO's 1999 and 2000 contacts.<sup>8</sup>

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<sup>6</sup> Consumer Services Division, *2000 Annual Report*, Illinois Commerce Commission, 1.

<sup>7</sup> *2000 Annual Report*, Georgia Public Service Commission. It should be noted that over half the complaints received in the year 2000 were natural gas billing complaints. Subsequently, the commission adopted a gas billing rule which established provisions for billing time limits, billing accuracy, billing clarity, consumer remedies and sanctions.

<sup>8</sup> Contact numbers do not include direct calls to individuals, emails or letters.

**TABLE 2**  
**PUCO (1999 and 2000) CONTACTS VOLUME**

Consumer interactions	1999	2000
Consumer hotline (toll free)	246,288	385,964
Consumer hotline (local)	17,240	27,017
Gas choice infoline	22,519	114,404
Transportation hotline	3,506	2,981
<b>Total</b>	<b>289,553</b>	<b>530,366</b>

Source: Author's construct

Similarly, Table 3 presents statistics regarding the number of consumer interactions of 10 state PUCs. The information presented here is not meant to be an apples-to-apples comparison, in part because states have different methods of counting consumer interactions; rather it is presented as descriptive of the challenges that consumer affairs departments face with regard to volume. Of course, factors such as state size and status of competition play into the number of consumer interactions. As indicated by the table, consumer interactions range from 6,022 calls for fiscal year 2000-01 in South Carolina, to 530,366 calls in Ohio for fiscal year 2000. However, for most of these states, the data represents a significant escalation in consumer interactions.

On the national level, as indicated by Figure 2, FCC Armis data comparing consumer complaints regarding local telephone service quality for the years of 1991-2000 indicates an over 50% increase in consumer complaints for those years.<sup>9</sup> Although complaint levels dropped between 1996 and 1997 following an upward spike, they increased by over 50% between 1997 and 2000. Indeed, the general upward spike of FCC data for the period of 1991 to 2000 is in congruent with the upward spikes that the states have been experiencing.

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<sup>9</sup> Ibid.

**TABLE 3  
NUMBER OF CONTACTS/COMPLAINTS  
FOR SELECTED STATES**

<b>State</b>	<b>Number of Complaints and/or Contacts Received per Year by Commission</b>
California	For 2001, over 100,000 contacts
Colorado	In FY01-02, 18,683 calls; 8,387 closed contacts <sup>a</sup>
Florida	In FY00-01, 75,996 calls
Michigan	Approximately 22,000 complaints <sup>b</sup>
New Hampshire	In 2001, approximately 10,000 to 12,000 contacts <sup>a</sup>
New York	250,000 contacts a year including 35,000 complaints <sup>c</sup>
Ohio	In 2000, 530,366 contacts <sup>d</sup>
South Carolina	In FY00-01, approximately 6,022 contacts <sup>e</sup>
Washington	In 2001, approximately 33,200 calls and 6,500 complaints <sup>f</sup>
Wisconsin	In 2001, approximately 12,000 contacts including approximately 10,000 complaints <sup>g</sup>

Source: Author's construct

### Enforcement Statistics

The importance of the enforcement component within the marketplace has been emphasized by FCC Commissioner Kathleen Q. Abernathy. In an address to Indiana University, Commissioner Abernathy discussed a five-part regulatory philosophy that she said would guide her decision making as an FCC commissioner. One part spoke to the need for a strong enforcement component:

Where the FCC promulgates rules, it should ensure that they are clear and enforce them vigorously. Efficient markets depend on clear and

<sup>a</sup> Contacts include complaints and information requests received via email, letters, telephone calls and walk-in visits.

<sup>b</sup> The complaint figure includes telephone calls only.

<sup>c</sup> Contacts and complaints include telephone calls, emails, letters, faxes and office visits.

<sup>d</sup> Call volume includes complaints and contacts such as information requests and general inquiries.

<sup>e</sup> Contacts are received through telephone calls, emails, faxes, letters or office visits.

<sup>f</sup> The 33,200 figure is only for telephone calls.

<sup>g</sup> Contacts (inquiries and opinions) and complaints are received via telephone calls, letters or electronically.



predictable rules, and a failure to enforce rules undermines the agency's credibility and effectiveness.<sup>10</sup>

Clearly, an examination of the consumer complaint/contact data of state and federal public utility commissions speaks to the need to have strong enforcement policies in place to deter "bad actors." Unfortunately, an examination of the enforcement actions of state PUCs indicates that despite enormous fines levied against companies the need for enforcement actions persists.<sup>11</sup>

The need for a strong commission-based enforcement component is most salient when you examine statistics regarding state enforcement actions. Just as consumer complaint data has spiraled upward in the past few years, so has the amount of enforcement fines levied against companies. In fact, at times it almost appears as though some companies regard these fines not as a "stop sign" but as a business transaction expense.

As indicated by Table 4, enforcement fines have the potential to reach unprecedented proportions. Unfortunately, these do not represent isolated incidents requiring the need to use stiff fines as a mechanism for enforcing the rules with "bad actors." As indicated by 2000-2001 NRRI research, which examined the slamming legislation and enforcement fines of 46 state PUCs, a high number of states do have substantial slamming fines in place.<sup>12</sup> As indicated by Table 5, slamming fines range from \$500 per incident to over \$100,000 for subsequent offenses.

Similarly, an examination of FCC enforcement statistics also speaks to the pivotal need for strong enforcement functions and stiff penalties as a means of enforcing commission rules.<sup>13</sup> FCC enforcement actions taken in the past year with regard to consumer protection include the following:

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<sup>10</sup> Commissioner Kathleen Q. Abernathy, "My View from the Doorstep of FCC Change," Address to the Indiana University, Mar. 4, 2002, as downloaded from: <http://www.fcc.gov/Speeches/Abernathy/2002/spkga206.html>. For information on the FCC enforcement process see: <http://www.fcc.gov/eb/FCCenforcement/p.html>.

<sup>11</sup> This is not to imply that fines are the only enforcement mechanism used by commissions. As will be discussed later, commissions use a variety of enforcement mechanisms.

<sup>12</sup> This research was conducted in 2000-2001. Results of the research are available at <http://www.nrri.ohio-state.edu/programs/caffairs.html>.

<sup>13</sup> See: <http://www.fcc.gov/eb/reports/yearone.html> as downloaded on Jun. 7, 2002.

**TABLE 4  
SELECTED STATE ENFORCEMENT FINES**

State/Example	Enforcement Activity
California	<ul style="list-style-type: none"> <li>• In March 2002, WorldCom agreed to pay the state \$8.5 million to settle a suit</li> <li>• In September 2001, the California Public Service Commission voted to fine PacBell \$25.6 million<sup>14</sup></li> </ul>
Pennsylvania	<ul style="list-style-type: none"> <li>• Fining activity began in 1980. There have been approximately 40 cases involving \$2 million in fines and \$10 million in contributions or restitution to customers.<sup>15</sup></li> </ul>
Tennessee	<ul style="list-style-type: none"> <li>• Year-to-date fines since 1994 are 617,800<sup>16</sup></li> </ul>
Texas	<ul style="list-style-type: none"> <li>• Recent fines include: \$50,000 to Quest;<sup>17</sup> <ul style="list-style-type: none"> <li>• \$50,000 fine to Sprint;</li> <li>• \$250,000 fine to MCI;</li> <li>• \$500,000 fine to AT&amp;T plus \$250,000 in calling cards to customers and \$250,000 to be spent on consumer education</li> </ul> </li> </ul>
Other Efforts	<ul style="list-style-type: none"> <li>• Twenty-three attorneys General and the District of Columbia Corporation Counsel reached a \$1.5 million settlement agreement with AT&amp;T, MCI WorldCom and Sprint resolving their claims that the three long distance companies advertised their long distance services for two cents or five cents a minute without adequately disclosing the extra fees customers would have to pay to take advantage of these offers.<sup>18</sup></li> </ul>

Source: Author's construct

<sup>14</sup> Interview with CPUC, spring 2002.

<sup>15</sup> Interview with Pennsylvania Public Service Commission, spring 2002.

<sup>16</sup> This figure represents only telecommunications fines as there have been no fines for electric or gas. Two years ago, the Tennessee General Assembly passed a law that mandates 25% of fines collected must be used for consumer education.

<sup>17</sup> Interview with Texas Public Utility Commission, spring 2002.

<sup>18</sup> As downloaded on June. 10, 2002, from: [http://www.naag.org/issues/20020222-multi-long\\_dist.cfm](http://www.naag.org/issues/20020222-multi-long_dist.cfm). The states included: Arkansas, Connecticut, Georgia, Idaho, Illinois, Iowa, Kansas, Maine, Maryland, Michigan, New Jersey, New Mexico, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Vermont and Wisconsin.

**TABLE 5**  
**SLAMMING ENFORCEMENT FINES<sup>19</sup>**

<b>State Public Utility Commission</b>	<b>Amount of Slamming Fine</b>
Arkansas	\$500 per incident
Arizona	Up to \$7,500 for the first offense and up to \$15,000 for each subsequent offense
California	Not less than \$5,000 and not more than \$20,000 for each offense
Florida	Not more than \$25,000 for each offense
Maine	Not to exceed \$5,000 for each day the violation continues, up to a maximum of \$40,000 for a first offense and a maximum of \$110,000 for a subsequent offense.
Michigan	Not less than \$20,000 or more than \$30,000 for the first offense. For a second and any subsequent offense, the commission shall order the person to pay a fine of not less than \$30,000 or more than \$50,000. <sup>20</sup>
Montana	Not to exceed \$1,000 for each violation
Nebraska	Not to exceed \$2,000
New Hampshire	Not to exceed \$2,000 per offense
New Jersey	Not to exceed \$7,500 for the first violation and not to exceed \$15,000 per violation for each subsequent violation associated with a specific access line .
New Mexico	Fine of not more than \$1,000 for each unauthorized charge or change in telecommunications provider
Washington	\$1,000 per day

Source: Author's construct

<sup>19</sup> This table is presented as an illustration of the range of slamming fines; it is not presented as representative of all states. This table represents the slamming enforcement fines levied against companies. Individual states may have alternative remedies available as well.

<sup>20</sup> If the Commission finds that the second or any of the subsequent offenses were knowingly made in violation of Section 505 or 507, the Commission shall order the person to pay a fine of not more than \$70,000.

## Slamming

- Through fines or consent decrees, enforcement actions were taken against nine carriers and totaled over \$13 million.<sup>21</sup>
  - Actions included a historic consent decree with MCI WorldCom for \$3.5 million and major proconsumer changes in MCI WorldCom's operating practices.
- Third-Party Verification
  - Entered into a consent decree with Verizon for \$250,000 regarding maintenance of third-party verification records as required by the commission's anti-slamming rules; decree included enhanced assurance of proper verification of consumer carrier charges.
- Misleading Advertising
  - Joint-policy statement with Federal Trade Commission on truth-in-advertising for long distance industry. Entered into \$100,000 consent decree with MCI WorldCom regarding dial-around advertisements. This decree included modifications to advertising practices.

## Conclusion

An examination of state and federal enforcement statistics attests to the pivotal need for strong enforcement components within state and federal commissions. Although stiff fines and aggressive enforcement actions at both the state and federal level have worked together to significantly decrease complaint statistics in areas such as slamming and cramming, despite stiff enforcement fines and penalties, the upward spike in consumer complaints and interactions speaks to the need for commissions to place emphasis on strong enforcement functions.<sup>22</sup> Generally speaking, the enforcement function involves monitoring of trends and or companies, the investigative process, and the recommendation process.

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<sup>21</sup> This figure is more than the total of all prior FCC slamming enforcement actions combined.

<sup>22</sup> Of course, it should be remembered that not all consumer interaction escalations are due to complaints. Often they are attributed to the need for new information, particularly when a new industry is deregulated; other escalations are a product of aggressive consumer education which has alerted consumers to the option of contacting their commission for information.

## **THE ENFORCEMENT PROCESS**

### **Methods of Handling Enforcement**

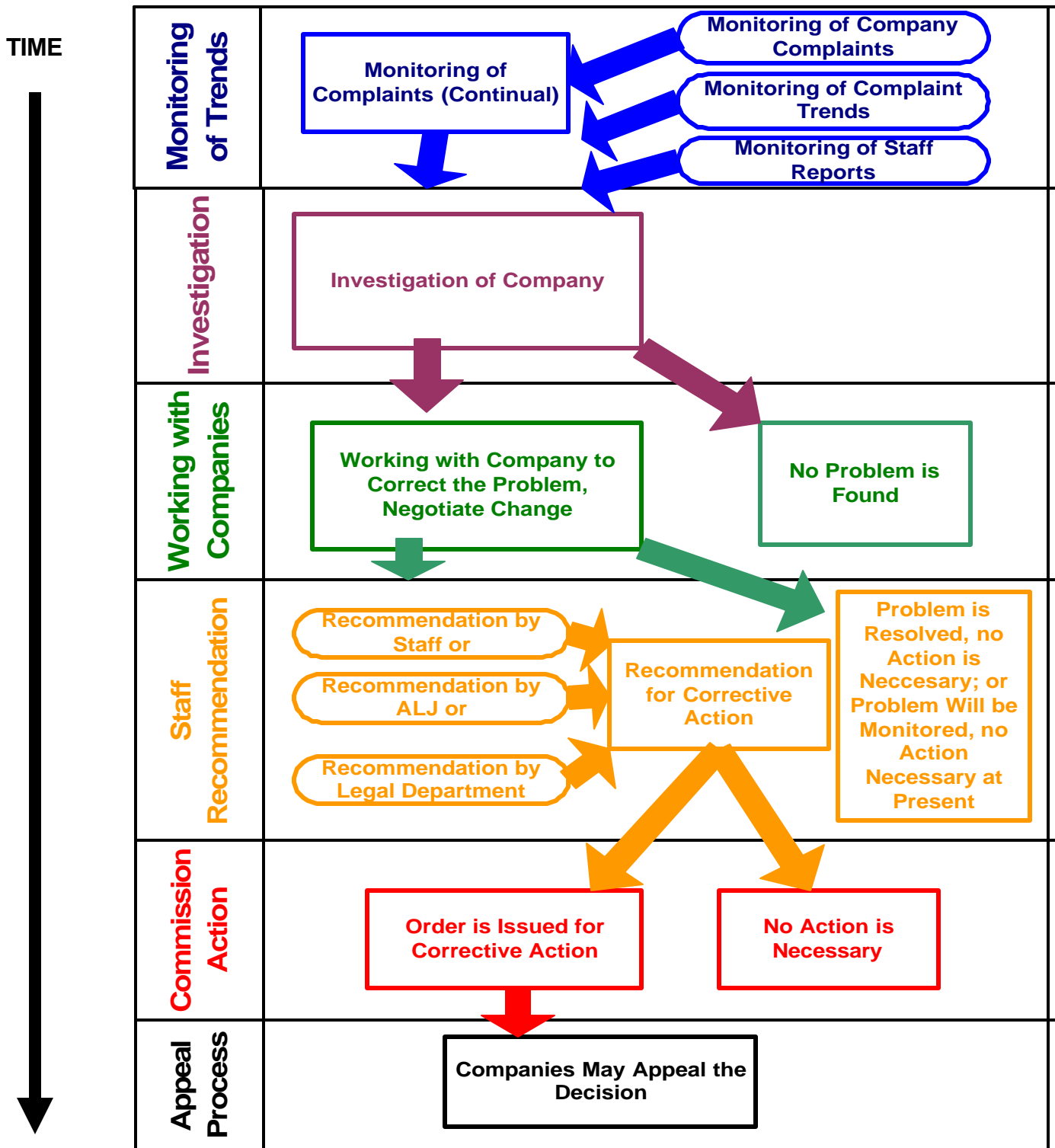
When setting up an enforcement function or seeking to reorganize your enforcement function, it is helpful to have knowledge of how the enforcement function is configured at other states. Of course, it is important to remember that each state is different. Each is in different parts of the cycle of implementation of competition, has different demographics, size and other characteristics.<sup>23</sup> Nonetheless it is helpful to examine how various states handle the enforcement function. Similar to other best practices, applicable insights can be gained from this understanding. This report will examine the following questions:

- What is the enforcement process at your commission?
- How do you monitor trends?
- How do you work with companies to monitor change?
- Are you able to fine companies?
- Are you able to take formal action against companies?
- How do you work with the office of the attorney general?

At most commissions the process is fairly similar: the commission will examine complaint data pertaining to specific trends or specific companies, and if the trend data crosses a threshold, it will either open a formal investigation or work with the company(ies) to first try to correct the problem. If this solution does not produce the desired results it will pursue a more formal method of resolution. Figure 2 shows an example of the general process that commissions utilize to investigate enforcement issues. Although each commission will have different variations on the investigative process, there are indeed many commonalities. What is important is that individual commissions find a process that best meets the goals and objectives for their enforcement functions.

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<sup>23</sup> As an example, in Vermont the enforcement function includes collaboration across divisions, including the Consumer Affairs Division, the substantive division for the industry in question and the Public Advocacy Division.



Source: Author's construct

Fig. 2. Overview of the typical enforcement process at state commissions.

A brief overview of the enforcement process at the California, Ohio, Pennsylvania, Tennessee and Washington PUCs is presented below.<sup>24</sup>

At the CPUC, as in most commissions, companies wishing to practice business in that state must go through a certification process. Information on the company, such as consumer complaints, is placed in a database so the commission can use the information when investigating complaints. The enforcement staff investigates informal and formal complaints against companies by gathering information from many sources. If a recommendation is made (by an administrative law judge), the commission will vote on whether or not the recommendation is approved. An appeal process is available to companies if they feel the recommendation is unjust. Types of penalties available to the division are citations, fines, restitution for thousands of customers, and suspension of operating authority for up to 40 months.

In Ohio, most of the violation procedures are informal. Usually, the staff and the company can reach an “assurance agreement” providing for compliance. Otherwise the staff can propose to open a formal commission-ordered investigation against a company.

In Pennsylvania, a Bureau of Consumer Services was created to receive and respond to complaints that are made about utility service and to advise the commission of the need for formal commission action on any matters brought to its attention by the complaints. Complaints are investigated, and the overwhelming majority are resolved by means of an informal complaint process. If any party is dissatisfied with the informal resolution, an appeal can be filed, and the matter can be resolved by a formal hearing. In the informal process, the staff works with the company to correct the problem. This is the more common method of resolution. The Bureau does not need the permission of the commission to initiate legal action if the Bureau and the commission’s Legal Bureau agree that a legal and a factual basis exists for enforcement action. The Bureau also evaluates samples of complaints that have been closed out, works out payment agreements to avoid service terminations, exercises initial administrative oversight of utility universal service programs and prepares reports on utility service.

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<sup>24</sup> The information was obtained during focused interviews with state public service commission enforcement staff during 2002.

In Tennessee, the enforcement staff addresses complaints and determines whether there is a need to enforce a rule and then notifies the company via written notice. Usually, corrective action is taken at this point. If the problem is not corrected or no solution is found, the enforcement staff prepares any legal documents necessary, assists with the drafting of show cause orders, attends hearings, obtains public witnesses, and provides expert testimony.<sup>25</sup> Usually, a settlement is reached when evidence is presented to companies.

The Washington UTC works with a fairly similar process. The enforcement branch of the Washington UTC is the Business Practices Investigations Section. This is the section that investigates and, when appropriate, recommends the commission issue sanctions against utility companies that have violated a law or rule. Business Practices works closely with Consumer Affairs staff to discover complaints. If a series of similar complaints are found, Business Practices staff analyzes complaints and determines whether an investigation is needed. Next, staff will investigate the issue and determine whether sanctions are needed. If so, staff will recommend an action to the commissioners, who are able to impose penalties. In many instances, informal negotiating settles the issue before a formal process is initiated.

### **Monitoring of Trends**

Monitoring of trends is really the heart of enforcement work. Analysis of complaint data provides valuable information regarding trends in service quality problems, market abuses or chronic problems with individual service providers. As an example, although most commissions do not have direct jurisdiction over wireless carriers, in response to the number of complaints that they have been receiving regarding wireless services, many commissions have begun to monitor those trends.

At the CPUC, the Strategic Targeting Team (STT) monitors trends. STT runs extraction reports on companies concerning the number of complaints and the types of complaints received. A “top 20 hit list” identifies companies that have a high number of complaints. The list is reviewed to determine whether enforcement action needs to be

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<sup>25</sup> A consumer initiating a complaint is an example of a public witness.



taken. The STT also queries the consumer services intake representatives to see if they have noticed any new trends.

In many states, sharing of information among staff members is an important component of monitoring of trends. As an example, at the Pennsylvania Public Utility Commission, staff members talk to each other on a day-to-day basis to share information. Company performance is carefully tracked so that companies can be compared to one another. The Consumer Services Bureau issues an annual report with complaint statistics, measurements, rates, etc.

Similarly, at the Texas Public Utility Commission, staff meets weekly to discuss trends in the call center. Staff will make recommendations to the legal department regarding specific problems. They can also alert the legal department to urgent issues on an individual basis rather than waiting for the weekly meeting.

In many commissions, the data generated by the call center—otherwise known as the intake function) is the key to data mining. As an example, in Washington monitoring of trends begins with the intake staff and data reporting from the consumer contact system. There is a “hot topics” board where staff can physically or electronically post trends that they notice. Joint staff meetings with the staff of Public Affairs, Business Practices Investigations and Consumer Affairs afford an opportunity to discuss about trends reported by the media and intelligence gathered from the intake function. Data is reviewed on a monthly basis. Data from the call center is used as a starting point for information monitoring and is used to trigger investigations.

In Vermont, the customer data base is also the key to monitoring of trends. Trend reports compare factors such as the number of complaints, type of complaints and how the trends differ from year to year. Inrateam communication and biweekly staff meetings afford an opportunity to discuss emerging trends. Lastly, there is a five-complaint threshold that triggers an investigation, which goes beyond complaint resolution.

In Connecticut, trends are monitored on a month-to-month basis. The data (which is broken down by industry, by year and by type of complaint, etc.) is placed on

their commission website as scorecards.<sup>26</sup> The call center intake staff extracts data from calls, letters, etc, and enters the information into a database. This information serves as a basis for scorecards.

Clearly, it is very important for the call center staff and the enforcement staff to work closely together. As an example, in Maine the call center and the investigative staff meet on a weekly basis with a supervisor and discuss observable trends. In Georgia, monitoring of trends begins with the dispute resolution staff. Generally, a discussion will occur to see if other staff observes similar behaviors being exhibited by a particular service provider. If the dispute resolution staff indicates that there is a problem with a particular service provider, the matter is referred to the enforcement unit. Staff in the enforcement unit use complaint data from the complaint database to determine if further actions are warranted.

### **Working with Companies to Negotiate Change**

Generally speaking, the first line of defense is to work with the companies to create a compliance plan. Usually, it begins with a fairly informal process, involving letters, face-to-face meetings, creation of formal compliance plans, and often monitoring of the company as a follow-up measure. As an example, in settlement negotiations with companies, Texas uses fines and informal processes, as opposed to formal hearings if there is an investigation. Often, Texas commission staff will work closely with the companies so that corrective action or remedies can be undertaken as quickly as possible. During an informal investigation, the Pennsylvania enforcement staff works with the companies so that corrective action or remedies can be undertaken as quickly as possible, too. Settlement agreements include terms that address or remedy violations or potential violations.

In California, the first line of defense is sending a letter or data request to the company, in which they are asked to respond to allegations against them. Often, if they admit errors, have made proper restitutions and state that they have procedures in place to correct the action, the plan of action will include monitoring them for a period of

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<sup>26</sup> The Connecticut complaint database is available at: <http://www.dpuc.state.ct.us/caiui/nsf/Customer+Complaint+information>.

time to ensure they are in compliance. Usually the enforcement staff will meet with the utilities to discuss the issues.

Washington also always tries to informally negotiate with companies prior to going to a hearing. Staff generally suggests penalties for violations that are lower than what the law allows. If the company then admits to violations and pays the penalties, they save the commission, staff and the company litigation time and costs. In addition, sometimes staff will try to counsel companies which have seemingly poor business practices, but are not necessarily in violation of rules. In this instance, the company will develop a compliance plan and the enforcement staff will follow up with the company (without formal action) to determine if it is working according to the plan.

Maine uses a mixture of formal and informal processes to achieve compliance. Informally, staff meets with the company to determine the cause of the problem and find a solution. Staff may even form a workgroup to examine a problem and develop solutions. Formal processes include violation notices and commission orders. If a company violates a rule or statute, staff sends a notice informing it of what it did wrong, what it needs to do to correct the problem and requires the company to respond to the notice by describing what changes it implemented.

New York also uses a variety of processes to achieve compliance. The Office of Consumer Services works with companies through an organization formed by the utilities called the "Complaint Management Users Group." Commission staff also visit visits with the companies on a regular basis, and mediation is used whenever possible.

## **Fines**

As indicated above, enforcement fines can be quite substantial. It is not uncommon for slamming fines to reach six figures. How does the fining process work? Although in some instances enforcement staff can fine the companies directly, usually what happens is that the staff will make a recommendation which is forwarded to commissioners for approval. As an example, in Connecticut, the staff recommends action to the commissioners who review the recommendation. Similarly, in Georgia staff can recommend fining actions, based on the statutes, but the action is approved or

denied by the commissioners.<sup>27</sup> In Pennsylvania, the staff does not directly fine. Civil penalties are assessed according to the statute. The statute sets the maximum amount of a civil penalty. Payment of a civil penalty may be part of a settlement agreement, or recommended by an administrative law judge in an initial decision sent to the commission for approval.

In Ohio, the commission can issue civil forfeitures of up to \$1,000 per day per violation against utilities, railroads, household goods carriers, competitive gas and electric suppliers. The commission can also assess \$10,000 per day per violation for gas pipeline safety, hazardous materials transportation safety and motor carrier safety. For certain regulatory provisions, the staff may propose limited civil forfeitures for regulatory violations without commission approval.

In Tennessee, fines can only be assessed after a commission hearing. Staff can initiate enforcement action, and most of the time, enter into settlements. However, settlements must be ratified by the commissioners.

### **Initiation of Formal Action**

In most states, formal action is initiated by a recommendation by staff and then approved by the commissioners. As an example, at the Ohio commission, staff may prepare recommendations to the commission, such as to open a formal complaint proceeding, but staff cannot open a proceeding without approval from the commission. Similarly, in Pennsylvania the Consumer Services Bureau works with the commission's Law Bureau to conduct an informal investigation and, if the Law Bureau determines violations have occurred and formal action is warranted, the Law Bureaus can initiate formal action without approval from the commission. In Texas, as in most states, formal action is pursued only if informal negotiation fails. In this instance, the Legal Department files for a hearing upon receipt of a staff request. The case then goes to an administrative law judge. It is important to note that both formal and informal settlements need to be approved by the commissioners. In Washington, staff recommends to commissioners that the commission initiate formal action, but staff does

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<sup>27</sup> Currently, fines are assessed only for the telecommunications industry.

not initiate the formal action. The staff often will negotiate a matter and then recommend to the commissioners that they approve a settlement that has been informally negotiated with the company. However, in Tennessee, staff can initiate formal action.

### **Collaboration with the Attorney General**

The process of working with the attorney general's office varies somewhat from state to state. In some states, the enforcement function will have a cooperative arrangement with the attorney general's office that encompasses either the sharing of information and complaints or the referring of cases to the attorney general's office. In other states, the enforcement function will include staff attorneys who are actually representatives of the state attorney general's office. In still other instances, the attorney general's office will actually provide legal representation and advice to the enforcement function.

In California, Texas, Vermont and Washington, the enforcement function and the attorney general's office work closely together to share information and complaints. In California, the enforcement staff will contact the attorney general during an investigation to see if they have any cases or complaints about the company that is under investigation. Through the use of a shared-complaint agreement, the commission and the attorney general's office can then share complaints. Texas, Vermont and Washington also have processes in place where information is shared with the attorney general's office. In Texas, the enforcement staff works very closely and cooperatively with the attorney general. The attorney general attends all of the public PUC meetings. Usually, the consumer protection staff does the groundwork for the attorney general and then passes cases along to the attorney general. This relationship is beneficial to both parties for many reasons, including the fact that the attorney general's office can have press conferences while the PUC typically does not.

On a quarterly basis, the Vermont enforcement function interacts with the attorney general's office to discuss hot issues, share information and refer cases to each other. This eliminates any duplication of efforts and ensures that no complaint

issues are overlooked. Although the Washington enforcement staff does not do joint investigations with the attorney general's office, they do keep each other apprised of current events and share information.

In Connecticut, Georgia, New York and Ohio there is a direct relationship between the enforcement function and the attorney general's office. In Connecticut, most state agencies have attorney general representatives inside the agency to advise the agency regarding legal matters. Although Connecticut's enforcement function has a staff of approximately a dozen attorneys in the adjudication division, who are assigned to cases and advise the commissioners on dockets, there are also two additional attorneys in the division, who are part of the attorney generals' staff who advocate for consumers in some proceedings. In Georgia, the attorney general provides legal representation and advice when the staff handles cases before the commission. In New York, cases, such as fraud, are referred to the attorney general. Staff from other commission offices will call the attorney general with questions about complaints, requests for statistics or other information. This information is used in rate cases and other commission proceedings. In Ohio, the commission is represented by a division of the attorney general's office. In addition, Consumer Services shares information with the Consumer Protection Division of the attorney general's office.

## **RECOMMENDATIONS**

Our recommendations are presented below. Most recommendations flow directly from the observations gleaned from the state experiences in organizing the enforcement function.

1. States which are considering adding an enforcement division to their consumer affairs function or considering reorganization of their enforcement division should carefully examine the structure and function of enforcement divisions within other consumer affairs departments.
2. The NARUC Staff Subcommittee on Consumer Affairs should consider collecting best practices in the enforcement function from state PUC consumer affairs departments and from other state and federal agencies. Areas that best practices might address may include the following:
  - Monitoring of trends
  - The investigative process
  - Working with companies to negotiate change
  - Working with other state and federal agencies, such as the attorney general
  - Consumer education—educating consumers regarding the role and function of the enforcement division
3. As the market evolves and states move toward or away from a competitive arena, it will be important for commissions to periodically conduct management audits to review the organization, role and mission of the enforcement function.
4. In most states, consumer complaints are first lodged at the company level. The NARUC Staff Subcommittee on Consumer Affairs should consider drafting model rules for company complaint-handling processes.
5. The Staff Subcommittee on Consumer Affairs should consider regularly collecting state-specific data regarding enforcement fines and penalties for specific market abuses so that other states which considering revising their fines and penalties will have a comparative benchmark.

6. Consumer education is an integral part of the enforcement function. Clearly, commissions rely on feedback from consumers to obtain information regarding the effectiveness of enforcement rules and policies, as well as identification of “bad actors.” It will be important for commissions to continue to educate consumers regarding the following:

- The role and function of the enforcement function
- Consumer rights
- The complaint-handling processes
- Red-alerts concerning market abuses



## **CONCLUSION**

The enforcement division is a salient component of the commission's consumer protection mandate. Statistics presented in this report indicate both a rise in market abuses and a rise in the amount of enforcement fines. As we move forward within the "new regulatory environment," enforcement will continue to be a key consumer protection issue.