United States Government Accountability Office

GAO

Report to Congressional Requesters

November 2009

TELECOMMUNICATIONS

FCC Needs to Improve Oversight of Wireless Phone Service

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GAO-10-34

November 2009

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Highlights

Highlights of GAO-10-34, a report to congressional requesters

TELECOMMUNICATIONS

FCC Needs to Improve Oversight of Wireless Phone Service

Why GAO Did This Study

Americans increasingly rely on wireless phones, with 35 percent of households now primarily or solely using them. Under federal law, the Federal Communications Commission (FCC) is responsible for fostering a competitive wireless marketplace while ensuring that consumers are protected from harm. States also have authority to oversee some aspects of service. As requested, this report discusses consumers' satisfaction and problems with wireless phone service and FCC's and state utility commissions' efforts to oversee this service. To conduct this work, GAO surveyed 1,143 adult wireless phone users from a nationally representative, randomly selected sample; surveyed all state utility commissions; and interviewed and analyzed documents obtained from FCC and stakeholders representing consumers, state agencies and officials, and the industry.

What GAO Recommends

To improve wireless phone service oversight, FCC should improve its outreach to consumers about its complaint process, related performance goals and measures, and monitoring of complaints. To improve coordination with states in providing oversight, FCC should develop guidance on federal and state oversight roles, seeking statutory authority from Congress if needed, and develop policies for communicating with states. FCC agreed with the recommendation on monitoring, took no position on the remaining ones, and noted actions that begin to address most of the recommendations.

View GAO-10-34 or key components. View the results of the GAO surveys online at GAO-10-35SP. For more information, contact Mark Goldstein at (202) 512-2834 or goldsteinm@gao.gov.

What GAO Found

Based on a GAO survey of adult wireless phone users, an estimated 84 percent of users are very or somewhat satisfied with their wireless phone service. Stakeholders GAO interviewed cited billing, terms of the service contract, carriers' explanation of their service at the point of sale, call quality, and customer service as key aspects of wireless phone service with which consumers have experienced problems in recent years. The survey results indicate that most users are very or somewhat satisfied with each of these key aspects of service, but that the percentages of those very or somewhat dissatisfied with these aspects range from about 9 to 14 percent. GAO's survey results and analysis of FCC complaint data also indicate that some wireless phone service consumers have experienced problems with billing, certain contract terms, and customer service. While the percentages of dissatisfied users appear small, given the widespread use of wireless phones, these percentages represent millions of consumers.

FCC receives tens of thousands of wireless consumer complaints each year and forwards them to carriers for response, but has conducted little other oversight of services provided by wireless phone service carriers because the agency has focused on promoting competition. However, GAO's survey results suggest that most wireless consumers with problems would not complain to FCC and many do not know where they could complain. FCC also lacks goals and measures that clearly identify the intended outcomes of its complaint processing efforts. Consequently, FCC cannot demonstrate the effectiveness of its efforts to process complaints. Additionally, without knowing to complain to FCC or what outcome to expect if they do, consumers with problems may be confused about where to get help and about what kind of help is available. FCC monitors wireless consumer complaints, but such efforts are limited. Lacking in-depth analysis of its consumer complaints, FCC may not be aware of emerging trends in consumer problems, if specific rules are being violated, or if additional rules are needed to protect consumers. FCC has rules regarding billing, but has conducted no enforcement of these rules as they apply to wireless carriers. This August, FCC sought public comment about ways to better protect and inform wireless consumers.

In response to GAO's survey, most state commissions reported receiving and processing wireless phone service consumer complaints; however, fewer than half reported having rules that apply to wireless phone service. Stakeholders said that states' authority to regulate wireless service under federal law is unclear, leading, in some cases, to costly legal proceedings and reluctance in some states to provide oversight. FCC has provided some guidance on this issue but has not fully resolved disagreement over states' authority to regulate billing line items and fees charged for terminating service early. State commissions surveyed indicated that communication with FCC about wireless phone service oversight is infrequent. As such, FCC is missing opportunities to partner with state agencies in providing effective oversight and to share information on wireless phone service consumer concerns.

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Abbreviations

1993 Act	Omnibus Budget Reconciliation Act of 1993
AAPOR	American Association of Public Opinion Research
ETC	eligible telecommunications carrier
FCC	Federal Communications Commission
GPRA	Government Performance and Results Act of 1993
RDD	random digit dialing

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United States Government Accountability Office
Washington, DC 20548

November 10, 2009

The Honorable John D. Rockefeller
Chairman
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Rick Boucher
Chairman
Subcommittee on Communications, Technology,
and the Internet
Committee on Energy and Commerce
House of Representatives

The Honorable Daniel K. Inouye
United States Senate

The Honorable Amy Klobuchar
United States Senate

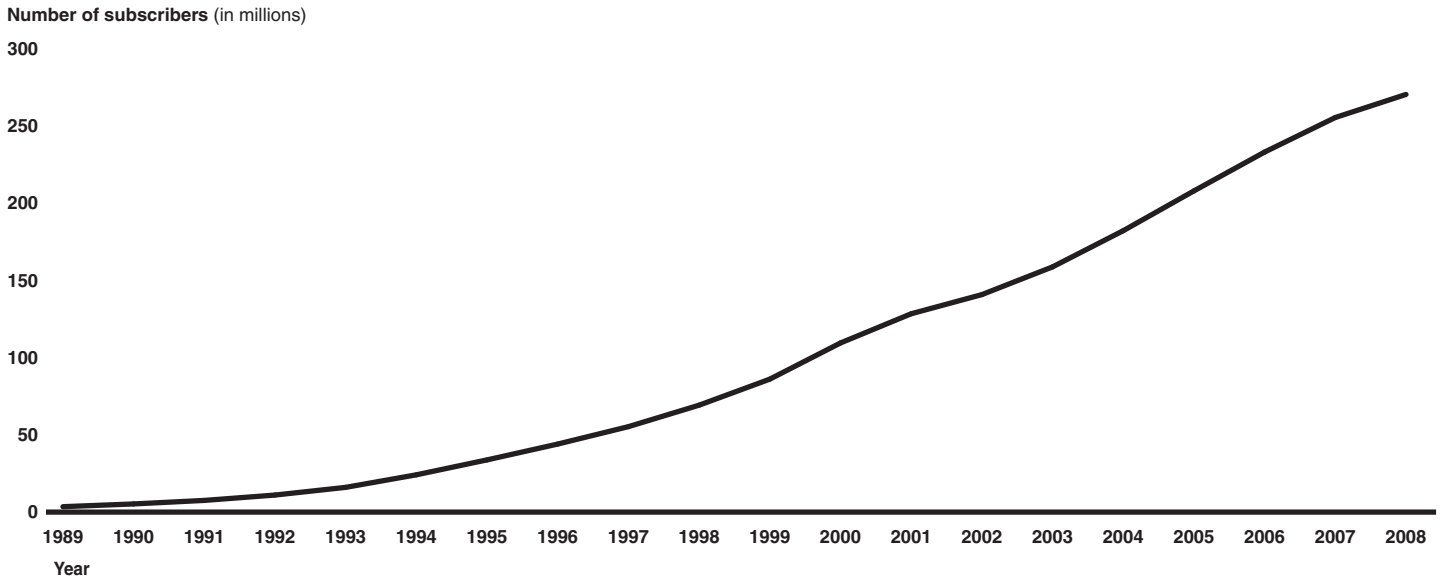
The Honorable Edward J. Markey
House of Representatives

Wireless phone use in the United States has risen dramatically over the last 20 years, and Americans increasingly rely on wireless phones as their primary or sole means of telephone communication. According to industry data, the total number of wireless phone service subscribers nationwide has grown from about 3.5 million in 1989 to about 270 million in 2008 (see fig. 1).[1] As a result of this rapid growth, today the vast majority of Americans are wireless phone service users. Although the actual number of wireless users is less than the number of subscribers—since some users

[1]For the purposes of this report, the term "wireless phone service" includes the provision of such service by cellular, broadband personal communications service, and digital specialized mobile radio carriers. Federal law and FCC regulations refer to wireless phone service as "commercial mobile service" or "commercial mobile radio service." This service may generally be referred to as wireless phone service, mobile phone service, or cellular (or cell) phone service interchangeably. CTIA–The Wireless Association, a nonprofit organization representing wireless carriers and other sectors of the wireless communications industry, estimated that there were 270.3 million wireless phone service subscribers in the United States as of December 2008. Since 1985, the association has surveyed its members semiannually about their subscriber numbers.

have multiple wireless phones—estimates indicate that about 84 percent of Americans 18 years of age or older use wireless phones.[2]

Figure 1: Estimated Growth in Wireless Phone Subscribers from 1989 through 2008



Source: CTIA-The Wireless Association, used by permission.

Note: Industry data count a subscriber as any person using a wireless phone under a paid subscription. Because an individual could have more than one wireless phone, such as separate phones for personal and professional use, the number of wireless phone service users is smaller than the number of subscribers.

Concerns have arisen in recent years about the quality of wireless phone service, including specific concerns about billing; customer service; and carriers' contract terms, such as the fees carriers charge customers for terminating their service before the end of the contract period (early termination fees).[3] In June 2009, we reported that such issues continued to

[2]This estimate of the percentage of adults that use wireless phone service was developed by Mediamark Research & Intelligence, a consumer research firm, based on its estimate that there were about 189 million adult wireless phone service users in the continental United States as of June 2009—a figure that excludes users in Alaska and Hawaii.

[3]Additionally, call quality—the ability to make and complete calls with good sound quality—has been a concern raised by some stakeholders. We examined this issue in 2003 and recommended that FCC include information about call quality in its annual report on competition in the wireless marketplace. FCC now includes this information. See GAO, *Telecommunications: FCC Should Include Call Quality in Its Annual Report on Competition in Mobile Phone Services*, GAO-03-501 (Washington, D.C.: Apr. 28, 2003).

be of concern to some consumers, as demonstrated by the results of our survey of wireless phone service users.[4] Under federal law, the Federal Communications Commission (FCC) is responsible for fostering a competitive wireless marketplace while ensuring that consumers are protected from harmful practices.[5] FCC's rules (or regulations) include procedures for handling consumer complaints.[6] States, which have traditionally regulated local telephone service through regulatory bodies known as state utility commissions, also retain some authority under federal law to regulate wireless phone service and many also process consumer complaints.

Citing concerns about the quality of wireless phone service, you asked us to examine consumers' concerns and government oversight in this area. This report discusses (1) consumers' satisfaction with wireless phone service and problems they have experienced with this service, as well as the industry's response to these problems; (2) FCC's efforts to oversee services provided by wireless phone service carriers; and (3) state utility commissions' efforts to oversee services provided by wireless phone service carriers.

To determine consumers' satisfaction with wireless phone service and problems they have experienced in recent years, we surveyed a nationally representative, randomly selected sample of adult wireless phone users 18 years of age or older who had cell phone service in 2008. From this sample, we completed 1,143 interviews.[7] In addition, we interviewed FCC

[4]GAO, *Telecommunications: Preliminary Observations about Consumer Satisfaction and Problems with Wireless Phone Service and FCC's Efforts to Assist Consumers with Complaints*, GAO-09-800T (Washington, D.C.: June 17, 2009).

[5]47 U.S.C. § 332(c). The Communications Act of 1934 created FCC and authorized it to regulate interstate telephone service. As amended in 1993, federal law specifies that wireless phone service carriers are to be treated as common carriers under Title II of the act. A common carrier, such as a telephone company, provides communications services for hire to the public.

[6]47 C.F.R. § § 1.711-1.736.

[7]The response rate was calculated as 32 percent using a method accepted by the survey research industry; however, since response rates can be calculated in other ways, the response rate could be different. We conducted an analysis to examine whether there could be a potential bias among users that did not respond to the survey and found no obvious levels of bias in the estimates we present in this report (see app. I for more detailed information about the methodology we used in conducting our consumer survey). We use the terms "user" and "consumer" in our report. "User" refers specifically to the population sampled for our survey, while "consumer" is used more generally.

and stakeholders from organizations representing consumers, state agencies, and industry and reviewed documents obtained from these sources. We also analyzed consumer complaints about wireless phone service that FCC received from 2004 through 2008 and reviewed complaint data from other sources. To determine the industry's response to these problems, we interviewed industry officials from the four largest U.S. carriers, two smaller carriers, and two national associations. To evaluate FCC's efforts to oversee services provided by wireless phone service carriers—including the agency's efforts to process complaints, monitor sources of information to inform policy decisions, and create and enforce rules—we interviewed FCC officials responsible for such oversight, including those responsible for consumer issues and enforcement. We also reviewed relevant laws, regulations, and procedures and FCC's quarterly complaint reports, strategic plan, and budget, including the agency's performance goals and measures. To describe state utility commissions' efforts to oversee services provided by wireless phone service carriers, we surveyed state utility commissions in all 50 states and the District of Columbia about their wireless regulatory authority and efforts to oversee wireless phone service and process consumer complaints. All 51 commissions responded to our survey. We also interviewed officials and examined documents from state utility commissions, consumer advocate offices, and attorneys general offices in California, Nebraska, and West Virginia.[8] (See app. I for a more detailed description of our scope and methodology.) This report does not contain all of the results from the consumer and state utility commission surveys. The surveys and a more complete tabulation of the results can be viewed by accessing GAO-10-35SP.

We conducted this performance audit from September 2008 to November 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

[8]We selected these three states on the basis of their varying geographies, populations, regions, and approaches to providing wireless phone service oversight.

Background

The use of wireless phone service has grown rapidly in recent years. By the end of 2008, about 82 percent of adults lived in households with wireless phone service, up from 54 percent at the end of 2005. Furthermore, by the end of 2008, about 35 percent of households used wireless phones as their primary or only means of telephone service, of which about 20 percent had only wireless phones and the other 15 percent had landlines but received all or most calls on wireless phones.[9] Consumers' use of wireless phones for other purposes, such as text messaging, photography, and accessing the Internet, has also increased dramatically. For example, FCC reports that, while a subscriber's average minutes of use per month grew from 584 to 769 from 2004 to 2007, the number of text messages grew more than tenfold during the same period.[10]

Within the wireless phone industry, four nationwide wireless phone service carriers—AT&T, Sprint, T-Mobile, and Verizon—operate alongside regional carriers of various size. The four major carriers serve more than 85 percent of wireless subscribers, but no single competitor has a dominant share of the market. As recently as 2007, more than 175 companies identified themselves as wireless phone service carriers.[11]

To subscribe to wireless phone service, a customer must select a wireless phone service carrier and either sign a contract and choose a service plan or purchase prepaid minutes and buy a phone that works with the prepaid service. Most customers sign contracts that specify the service plan and the number of minutes and text messages the customer is buying for a monthly fee. Also, new customers who sign contracts for wireless phone service sometimes pay up-front fees for "network activation" of their phones and usually agree to pay an "early termination fee" if they should quit the carrier's network before the end of the contract period. In return for signing a contract, customers often receive wireless phones at a discount or no additional cost.

[9]These estimates are based on a survey conducted by the Centers for Disease Control and Prevention's National Center for Health Statistics. The survey, which seeks to collect information on health issues, also includes questions about household telephones and whether anyone in the household has a wireless phone. S.J. Blumberg and J.V. Luke, *Wireless substitution: Early release of estimates from the National Health Interview Survey, July-December 2008*, a report for the Centers for Disease Control and Prevention, National Center for Health Statistics, Washington, D.C., May 6, 2009.

[10]*Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Service*, Thirteenth Report, 24 FCC Rcd. 6185 (2009).

[11]24 FCC Rcd. 6185 (2009).

In 1993, the Omnibus Budget Reconciliation Act (1993 Act) was enacted, creating a regulatory framework to treat wireless phone service carriers consistently and encourage the growth of a competitive marketplace. Specifically, the law required FCC to treat wireless carriers as common carriers but gave FCC authority to exempt wireless service carriers from specific regulations that apply to common carriers if FCC could demonstrate that doing so would promote competition, that the regulations were unnecessary to protect consumers, and that the exemption was consistent with the public interest.[12] FCC has specific authority to regulate wireless phone service rates and market entry, while states are preempted from doing so; however, states may regulate the other "terms and conditions" of wireless phone service.[13]

The 1993 Act also directed FCC to require wireless carriers, like other common carriers, to provide service upon reasonable request and terms without unjust or unreasonable discrimination, as well as to adhere to procedures for responding to complaints submitted to FCC.[14] Subsequently, the Telecommunications Act of 1996 authorized FCC to exempt wireless service carriers from these sections;[15] however, in a 1998 proceeding to consider whether to exempt certain wireless phone service carriers from these requirements, FCC specifically stated that it would not do so, noting that these respective sections represented the "bedrock consumer protection obligations" of common carriers.[16] FCC's rules specify that the agency has both informal and formal complaint

[12]47 U.S.C. § 332(c). As noted previously, a common carrier, such as a telephone company, provides communications services for hire to the public.

[13]47 U.S.C. § 332(c)(3)(A). Preemption means that federal law supersedes state law. Federal law also provides that a state utility commission may not continue to apply or enforce any provision from which FCC has exempted carriers. *See* 47 U.S.C. § 160(e).

[14]47 U.S.C. § § 201, 202, and 208. Respectively, these provisions provide for service and interconnection upon reasonable request and terms, no unjust or unreasonable discrimination, and complaint procedures.

[15]47 U.S.C. § 160(a) authorizes FCC to exempt telecommunications carriers, including wireless carriers, from any of the provisions of the Communications Act of 1934 provided that doing so will enhance competition and the enforcement of such provisions is not necessary to protect consumers.

[16]*Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance for Broadband Personal Communications Services*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd. 16857 (1998).

processes.[17] FCC's informal complaint process allows consumers to file complaints with FCC that the agency reviews and forwards to carriers for a response. The formal complaint process, which is similar to a court proceeding, requires a filing fee and is rarely used by consumers.

State agencies also play a role in wireless phone service oversight. State utility commissions (sometimes called public utility commissions or public service commissions) regulate utilities, including telecommunications services such as wireless phone service and landline phone service. State commissions may also designate wireless phone service carriers as eligible telecommunications carriers (ETC)—a designation that allows carriers to receive universal service funds for serving consumers in high-cost areas.[18] Through this process, state utility commissions may place conditions on how wireless carriers provide services in those high-cost areas in order for them to be eligible for such funds. State attorneys general broadly serve as the chief legal officers of states while also representing the public interest, and their work has included addressing wireless consumer protection issues.[19] For example, in 2004, the attorneys general of 32 states entered into voluntary compliance agreements with Cingular Wireless (now AT&T), Sprint, and Verizon, under which the carriers agreed to disclose certain service terms at the point-of-sale and in their marketing and advertising, provide a service trial period, appropriately disclose certain taxes and surcharges on customers' bills, and respond to consumers' complaints and inquiries.[20]

[17]47 C.F.R. § § 1.711–1.736.

[18]Such high-cost areas include rural areas, where the cost of providing telecommunications services is higher than in urban areas. Universal service programs exist at both the federal and the state levels to support the provision of communications services to such underserved populations, including low-income individuals and those living in high-cost areas.

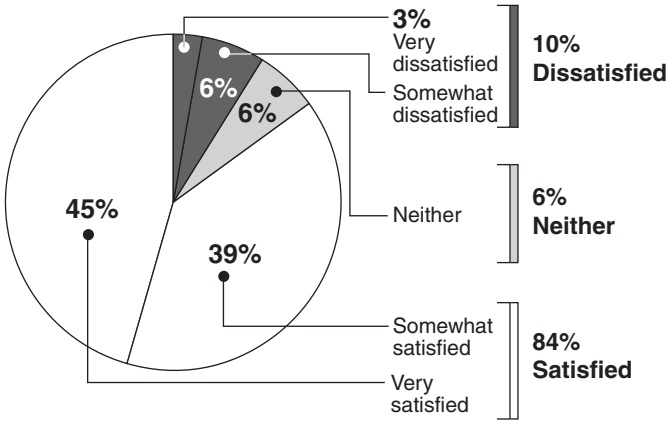
[19]While state attorneys general may play a role in protecting wireless phone service consumers, we focused our review of state efforts on state utility commissions, since they are responsible for providing regulatory oversight, making their role similar to FCC's. While we met with some attorneys general, including their national association, we did not attempt to ascertain the full scope of their involvement.

[20]Cingular Wireless LLC, *Assurance of Voluntary Compliance*, June 25, 2004; Sprint Spectrum, L.P., *Assurance of Voluntary Compliance*, June 25, 2004; and Cellco Partnership d/b/a Verizon Wireless, *Assurance of Voluntary Compliance*, June 25, 2004.

Most Consumers Are Satisfied with Their Wireless Phone Service, but Some Have Experienced Problems

According to our consumer survey, overall, wireless phone service consumers are satisfied with the service they receive. Specifically, we estimate that 84 percent of adult wireless users are very or somewhat satisfied with their wireless phone service and that approximately 10 percent are very or somewhat dissatisfied with their service (see fig. 2).[21]

Figure 2: Estimated Overall Satisfaction of Wireless Phone Users with Their Service



Source: GAO survey.

Note: We conducted our survey of adult wireless phone users from February 23, 2009, through April 5, 2009. All estimates presented in this figure have a margin of error of less than +/- 5 percentage points. The percentage of users very or somewhat dissatisfied with wireless phone service is 10 percent but appears smaller in the figure because of rounding. "Neither" refers to respondents who indicated that they were neither satisfied nor dissatisfied. Additionally, we estimate that fewer than 1 percent of users had no opinion or did not know about their overall satisfaction. Percentages may not sum to 100 because of rounding.

Stakeholders we interviewed identified a number of aspects of wireless phone service that consumers have reported problems with in recent years.[22] We identified five key areas of concern on the basis of these

[21]Estimates we present based on our consumer survey results have a margin of error of less than +/- 5 percent unless otherwise noted.

[22]The stakeholders we interviewed represent consumer organizations, state agencies in selected states, national organizations that represent state officials, wireless carriers, industry associations, and FCC.

interviews and our review of related documents, and we subsequently focused our nationwide consumer survey on these areas (see table 1).[23]

Table 1: Aspects of Wireless Phone Service Identified by Stakeholders as Key Areas of Consumer Concern

Key area of concern	Nature of concern
Billing	• Complexity of billing statements leads to lack of consumer understanding. • Bills contain unexpected charges and errors.
Terms of service contract or agreement	• Consumers are subject to fees for canceling their service before the end of their contract term (early termination fees), regardless of their reason for wanting to terminate service, effectively locking consumers into their contracts. • Consumers are not given enough time to try out their service before having to commit to the contract. • Carriers extend contracts when consumers request service changes.
Explanation of service	• Key aspects of service, such as rates and coverage, are not clearly explained to consumers at the point of sale (when they sign up for the service).
Call quality	• Consumers experience dropped or blocked calls, as well as noise on calls that makes hearing calls difficult. • Consumers experience poor coverage, which in rural areas may be the result of lack of infrastructure and in urban areas stems from lack of capacity to manage the volume of calls at peak times.
Customer service	• Consumers experience problems such as long waits, ineffective assistance, and insufficient resolution to problems.

Source: GAO analysis.

Based on our survey results, we estimate that most wireless phone users are satisfied with these five specific aspects of service (see table 2). For example, we estimate that 85 percent of wireless phone users are very or somewhat satisfied with call quality, while the percentages of those very or somewhat satisfied with billing, contract terms, carrier's explanation of key aspects of service at the point of sale, and customer service range

[23]Unsolicited telemarketing on wireless phones was also cited as a key area of consumer concern by the stakeholders we interviewed. Congress passed the Telephone Consumer Protection Act, as well as the Controlling the Assault of Non-Solicited Pornography and Marketing Act, to protect consumers against unsolicited telemarketing. Because such problems generally deal with telemarketers, not the services provided by wireless carriers, we did not include this issue within the scope of our review. However, from our survey, we estimate that unsolicited calls or text messages to users' wireless phones are not a problem at all for 48 percent of wireless phone users, a little problem for 24 percent, somewhat of a problem for 10 percent, and a moderate or major problem for 17 percent.

from about 70 to 76 percent.[24] Additionally, we estimate that most wireless phone users are satisfied with their wireless phone service coverage. For example, we estimate that 86 to 89 percent of wireless phone users are satisfied with their coverage when using their wireless phones at home, at work, or in their vehicle.

Table 2: Estimated Levels of Satisfaction with Specific Aspects of Wireless Phone Service

	Level of satisfaction			
Aspect of service	**Satisfied (very or somewhat)**	**Neither satisfied or dissatisfied**	**Dissatisfied (very or somewhat)**	**No opinion/no basis to judge**
Billing	76%	4%	12%	8%
Terms of service contract or agreement	72	6	14	8
Explanation of service	76	5	9	10
Call quality	85	4	11	<1
Customer service	70	6	12	12

Source: GAO survey.

Note: We surveyed adult wireless phone users from February 23, 2009, through April 5, 2009. All estimates presented in this table have a margin of error of less than +/- 5 percentage points. All respondents were asked about their level of satisfaction with each of these five aspects of wireless phone service. Respondents were also asked not to indicate a level of satisfaction if they had no basis to judge a particular aspect of service. For example, a respondent may have no basis to judge satisfaction with the contract terms if he or she did not sign the contract for the service. Percentages may not sum to 100 because of rounding.

While we estimate that about three-fourths or more of wireless phone service users are satisfied with specific aspects of their service, the percentages of those very or somewhat dissatisfied range from about 9 to 14 percent, depending on the specific aspect of service. For example, we estimate that 14 percent of wireless phone users are dissatisfied with the terms of their service contract or agreement. While the percentages of dissatisfied users appear to be small, they represent millions of people

[24]We did not include advertising disclosures in our table of consumer concerns because few stakeholders mentioned this as a problem and it is not an aspect of the services carriers provide to users; however, we did include a question in our consumer survey about whether users believe that carriers truthfully and accurately disclosed information about their services in their advertising and marketing. We estimate that 48 percent of users believe that carriers disclose such information truthfully and accurately to a large or very large extent, while 28 percent believe they do so to a moderate extent and 13 percent to a small or no extent. About 11 percent had no opinion or no basis to judge.

since, according to available estimates, the number of adult wireless phone service users is over 189 million.

Other results of our survey suggest that some wireless phone consumers have experienced problems with billing, certain service contract terms, and customer service recently—that is, during 2008 and early 2009. Specifically, our survey results indicate the following:

- *Billing.* We estimate that during this time about 34 percent of wireless phone users responsible for paying for their service received unexpected charges and about 31 percent had difficulty understanding their bill at least some of the time.[25] Also during this time, almost one-third of wireless users who contacted customer service about a problem did so because of problems related to billing.[26]

- *Service contract terms.* Among wireless users who wanted to switch carriers during this time but did not do so, we estimate that 42 percent did not switch because they did not want to pay an early termination fee.[27]

- *Customer service.* Among those users who contacted customer service, we estimate that 21 percent were very or somewhat dissatisfied with how the carrier handled the problem.

Our analysis of FCC consumer complaint data also indicates that billing, terms of the service contract, and customer service are areas where

[25]We estimate that about 83 percent of wireless users are responsible for paying for their wireless phone service. Some users are not responsible for paying their bills, such as a user on a family plan paid for by another family member. Respondents were asked about the extent of such billing problems since the beginning of 2008.

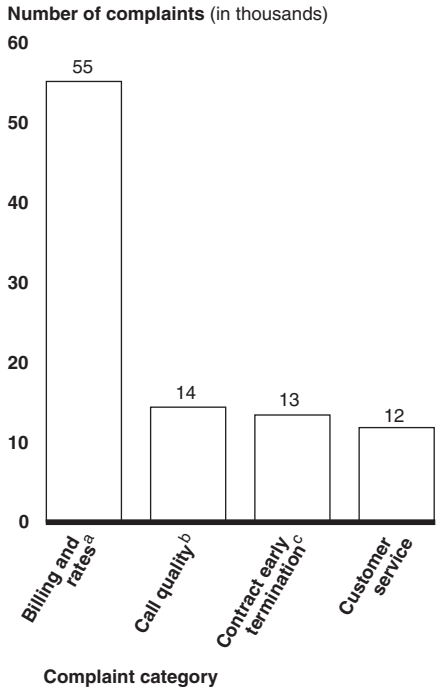
[26]We estimate that about 44 percent of wireless users contacted customer service about a problem during 2008 and early 2009.

[27]We estimate that about 19 percent of wireless users wanted to switch carriers during 2008 and early 2009 but did not do so. The 42 percent of these wireless phone users who wanted to switch but did not because of the early termination fee has a margin of error +/- 7.4 percent. Additionally, among the wireless users who did not indicate they were satisfied with the terms of their wireless phone service, we estimate that 25 percent were not satisfied because of early termination fees. Wireless users were asked about their satisfaction with the terms of their service in general, not specifically since the beginning of 2008. The margin of error for the estimate of wireless phone users that were not satisfied with the terms of their service because of early termination fees is +/- 6.7 percent.

wireless consumers have experienced problems in recent years.[28] Furthermore, FCC complaint data indicate that call quality is an area of consumer concern. Specifically, our analysis of FCC data indicates that the top four categories of complaints from 2004 through 2008 regarding service provided by wireless carriers were billing and rates, call quality, early termination of contracts, and customer service, as shown in figure 3 (see app. II for additional discussion of FCC wireless consumer complaint data).

[28]This analysis examined only FCC's informal complaints. FCC received over 125,000 informal consumer complaints from 2004 through 2008 about wireless phone service provided by carriers. Additionally, FCC received complaints about unsolicited telemarketing—including over 42,000 such complaints in 2008—however, we did not include complaints about telemarketing in our analysis, since they are not directly carrier-related.

Figure 3: Largest Categories of Consumer Complaints FCC Received Regarding Wireless Phone Service Provided by Carriers, 2004 through 2008



Source: GAO analysis of FCC complaint data.

Notes: Numbers rounded to the nearest thousand.

[a]Includes complaints about credits, adjustments, and refunds; line-item charges such as taxes and surcharges; charges for time spent talking on the phone; service plan rates; and unauthorized or misleading charges, among other issues.

[b]Includes complaints about lack of coverage, telephone reception, and specific problems such as dead spots, dropped calls, and busy signals due to network congestion.

[c]Includes complaints about termination of wireless phone service by the consumer or by the carrier. Most of these complaints were about termination by consumers prior to the end of a specified contract term, which could result in an early termination fee.

Our survey of state utility commissions also found that billing, contract terms, and quality of service were the top categories of consumer complaints related to wireless phone service that commissions received in 2008.[29] Specifically, among the 21 commissions that track wireless

[29]"Quality of service" is a broad term that generally includes call quality, as well as coverage, and may also include other service issues such as customer service and the use of proprietary consumer data.

consumer complaints, 14 noted billing, 10 noted contract terms, and 10 noted quality of service as among the top three types of complaints commissions received in 2008.[30] Additionally, 3 commissions specifically cited early termination fees as one of the top three categories of complaints they received in 2008.

In response to the areas of consumer concern noted above, wireless carriers have taken a number of actions in recent years. For example, officials from the four major carriers—AT&T, Sprint, T-Mobile, and Verizon—reported taking actions such as prorating their early termination fees over the period of the contract, offering service options without contracts, and providing Web-based tools consumers can use to research a carrier's coverage area, among other efforts. In addition, in 2003, the industry adopted a voluntary code with requirements for dealing with customers and, according to CTIA–The Wireless Association, the wireless industry spent an average of $24 billion annually between 2001 and 2007 on infrastructure and equipment to improve call quality and coverage. Also, carriers told us they use information from third-party tests and customer feedback to determine their network and service performance and identify needed improvements. (See app. III for additional information about industry actions to address consumer concerns.)

Representatives of state agencies and various consumer and industry associations we interviewed expressed concern to us that many of the actions the industry has taken to address consumers' concerns are voluntary and have not effectively addressed some major consumer concerns. For example, officials from some state public utility commissions indicated that there are no data to support the effectiveness of the wireless industry's voluntary code and that this code lacks the level of oversight that state agencies can offer. Moreover, officials from state utility commissions and consumer associations we spoke with indicated that the industry's actions to prorate early termination fees may be inadequate because the fees are not reduced to $0 over of the course of the contract period. Furthermore, some representatives of state agencies and consumer groups suggested that the industry has taken voluntary actions

[30]In our survey, we provided a list of categories and asked state commissions that track and record wireless consumer complaints to select the three categories with the most complaints in 2008. Besides the categories noted above, five commissions included disclosure of terms and conditions at the point of sale among the top three categories of complaints received, one commission indicated advertising disclosures, and seven commissions selected "other."

such as adopting the voluntary code and prorating early termination fees to avoid further regulation by FCC. Industry representatives, however, told us that the voluntary approach is more effective than regulation, since it gives the industry flexibility to address these concerns.

FCC Processes Wireless Consumer Complaints but Has Conducted Little Other Oversight of Services Provided by Wireless Phone Service Carriers

FCC processes tens of thousands of wireless consumer complaints each year but has conducted little additional oversight of services provided by wireless phone service carriers because the agency has focused on promoting competition. The agency receives informal consumer complaints and forwards them to carriers for response; however, our consumer survey results suggest that most wireless consumers with problems would not complain to FCC and many do not know where they could complain. FCC has also not articulated goals and measures that clearly identify the intended outcomes of its complaint-processing effort.[31] Consequently, if wireless consumers do not know where they can complain or what outcome to expect if they do, they may be confused about where to go for help or what assistance they can expect from FCC. Additionally, FCC cannot demonstrate how well it is achieving the intended outcomes of its efforts. While FCC monitors wireless consumer complaints by reviewing the top categories of complaints received, it has conducted few in-depth analyses to identify trends or emerging issues, impeding its ability to determine whether its rules have been violated or if new rules may be needed.

[31]The information presented here represents a description of FCC's process for handling informal consumer complaints. The agency also has a formal complaint process, and consumers may file formal complaints if they are not satisfied with the results of filing an informal complaint. However, there is a cost for filing a formal complaint, the process for doing so is similar to a court proceeding, and this process is governed by specific rules about what information must be submitted. According to FCC, the formal complaint process is typically used by corporations, not consumers, and FCC has held one proceeding in response to a consumer's formal wireless complaint within the past 5 years.

FCC Processes Consumers' Wireless Complaints, but Many Consumers May Not Know They Can Complain to FCC

FCC receives about 20,000 to 35,000 complaints each year related to services provided by wireless carriers, which the agency forwards to carriers for response.[32] Given that our survey indicates that an estimated 21 percent of consumers who contact their carrier's customer service about a problem are dissatisfied with the result, FCC's efforts to process complaints are an important means for consumers to get assistance in resolving their problems. After reviewing a complaint received, FCC responds by sending the consumer a letter about the complaint's status.[33] If FCC determines that the complaint is valid, the agency sends the complaint to the carrier and asks the carrier to respond to FCC and the consumer within 30 days.[34]

Once FCC receives a response from the carrier, the agency reviews the response, and if it determines the response has addressed the consumer's complaint, it marks the complaint as closed.[35] According to FCC officials, if the response is not sufficient, FCC contacts the carrier again. FCC officials told us they consider a carrier's response to be sufficient if it responds to the issue raised in the consumer's complaint; however, such a response may not address the problem to the consumer's satisfaction. When FCC considers a complaint to be closed, it sends another letter to the consumer, which states that the consumer can call FCC with further questions or, if not satisfied with the carrier's response, can file a formal complaint. FCC officials also told us that if a consumer is not satisfied, the consumer can request that FCC mediate with the carrier on his or her behalf; however, the letter that FCC sends to a consumer whose complaint

[32]In addition to addressing informal complaints, FCC assists wireless consumers through outreach and education efforts, such as publishing fact sheets about wireless phone service issues and answering consumer inquiries. FCC reported receiving over 21,000 wireless inquiries in 2008.

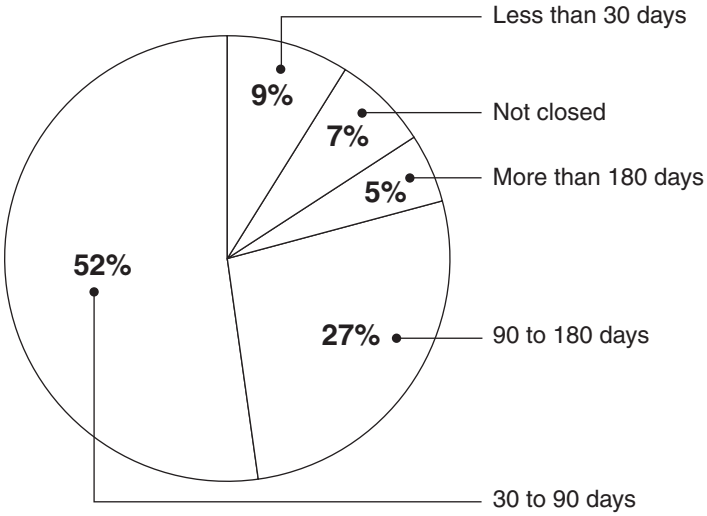
[33]FCC's Web site and fact sheets suggest that consumers first contact their carrier, although they are not required to do so before filing a complaint.

[34]According to FCC officials, a valid complaint that can be forwarded to a carrier must identify a particular carrier, allege harm, and seek relief. Carriers we interviewed told us they handle complaints forwarded from FCC and other government agencies separately from complaints from consumers that contact them directly. Likewise, FCC and the state utility commissions we interviewed told us they have specific contacts at each carrier that handle complaints the agencies forward to them.

[35]FCC may also close a complaint for other reasons and not forward it to the carrier, such as if a consumer does not submit complete information with the complaint; if the complaint is not related to an issue within FCC's jurisdiction; if the consumer withdraws the complaint; or if FCC rejects the complaint because it is invalid, incomplete, a duplicate, a false submission, or submitted on the wrong form, among other reasons.

has been closed does not identify mediation as an option. FCC closes most wireless phone service complaints within 90 days of receiving them. Specifically, according to FCC's complaint data, the agency closed 61 percent of complaints received in 2008 within 90 days (see fig. 4).

Figure 4: Amount of Time FCC Takes to Close Wireless Consumer Complaints, 2008



Source: GAO analysis of FCC complaint data.

Note: The figure depicts the percentage of wireless consumer complaints FCC closes within specific time frames, as measured by the number of days from when complaints are received to when they are closed. This analysis reflects FCC's data as of March 30, 2009, when the agency transmitted its complaint data to us. FCC may have subsequently closed complaints reflected here as not closed.

FCC uses several methods to inform consumers that they may complain to the agency about their wireless phone service and has taken steps to improve its outreach. According to FCC officials, the agency provides information on how to complain to FCC on its Web site and in fact sheets that are distributed through various methods, including its Web site. Also, in response to a recommendation from its Consumer Advisory Committee in 2003 to improve outreach to consumers about the agency's process for handling complaints, FCC switched from using one complaint form to having multiple forms for different types of complaints to make filing complaints easier for consumers. FCC also made its complaint forms and fact sheets available in Spanish and has distributed consumer fact sheets at outreach events and conferences. Furthermore, the agency created an e-mail distribution list for disseminating consumer information materials, which it used to inform consumers about the revised complaint forms. We have previously noted that it is important for an agency's consumer protection efforts to inform the public effectively and efficiently about its

role and how to seek redress.[36] Additionally, we have reported on various ways an agency can communicate with the public about its efforts, including how exploring multiple methods for communicating with the public may improve public outreach. Such outreach methods can include making effective use of Web sites, e-mail listserves, or other Web-based technologies like Web forums, as well as requiring relevant companies to provide information to their customers.[37] For example, many state utility commissions require landline carriers to include information on customers' bills about how to contact the commission with a complaint.

Despite FCC's efforts to improve its outreach, these efforts may not be adequately informing the public about the agency's role in handling consumer complaints. Specifically, based on the results of our consumer survey, we estimate that 13 percent of adult wireless phone users would complain to FCC if they had a problem that their carrier did not resolve and that 34 percent do not know where they could complain.[38] Therefore, many consumers that experience problems with their wireless phone service may not know to contact FCC for assistance or may not know at all whom they could contact for help. We reported these survey results in June 2009.[39] In August 2009, noting our survey results, FCC sought public comment on whether there are measures the agency could take to ensure that consumers are aware of FCC's complaint process, including whether

[36]See GAO, *OCC Consumer Assistance: Process Is Similar to That of Other Regulators but Could Be Improved by Enhanced Outreach*, GAO-06-293 (Washington, D.C.: Feb. 23, 2006) and GAO, *Consumer Protection: Federal Actions Are Needed to Improve Oversight of the Household Goods Moving Industry*, GAO-01-318 (Washington, D.C.: Mar. 5, 2001).

[37]See GAO, *Reexamining Regulations: Opportunities Exist to Improve Effectiveness and Transparency of Retrospective Reviews*, GAO-07-791 (Washington, D.C.: July 16, 2007) and GAO-01-318.

[38]Additionally, we estimate that among users, 38 percent would complain to the carrier again, 20 percent to the Better Business Bureau, 4 percent to another consumer organization, 5 percent to a state utility commission, 5 percent to a state attorney general, 3 percent to another state or local agency, 4 percent to the Federal Trade Commission, and 3 percent to another federal agency. Respondents could provide more than one answer.

[39]GAO-09-800T.

FCC should require carriers to include information for consumers on their bills about how to contact FCC with a complaint.[40]

FCC Lacks Goals and Measures That Articulate the Intended Outcomes of Its Efforts to Process Consumer Complaints

FCC's goals and measures related to its efforts to process wireless consumer complaints do not clearly identify the intended outcomes of these efforts. The Government Performance and Results Act of 1993 (GPRA) requires an agency to establish outcome-related performance goals for its major functions.[41] GPRA also requires an agency to develop performance indicators for measuring the relevant outcomes of each program activity in order for the agency to demonstrate how well it is achieving its goals.[42]

The key goal related to FCC's consumer complaint efforts is to "work to inform American consumers about their rights and responsibilities in the competitive marketplace." This key goal also has a subgoal to "facilitate informed choice in the competitive telecommunications marketplace." According to FCC officials, "informed choice" means consumers are informed about how a particular telecommunications market works, what general services are offered, and what to expect when they buy a service.[43] FCC's measure related to its efforts to process wireless consumer complaints under this subgoal is to respond to consumers' general complaints within 30 days, which reflects the time it takes FCC to initially

[40]*Consumer Information and Disclosure, Truth-in-Billing, and Billing Format IP-Enabled Services*, Notice of Inquiry, FCC 09-68 (2009). FCC's notice of inquiry sought comment on a number of issues discussed in this report, focusing on getting input about the information consumers need to make decisions about their telecommunications services, including wireless phone service, such as when choosing a service provider or a service plan. Specific topics FCC sought comment on included how carriers provide information to consumers about call quality, coverage, service terms, and rates and the effectiveness of the industry's voluntary code in protecting consumers.

[41]This act is the centerpiece of a statutory framework that Congress put in place during the 1990s to help resolve the long-standing management problems that have undermined the federal government's efficiency and effectiveness and to provide greater accountability for results. See GAO, *Results-Oriented Government: GPRA Has Established a Solid Foundation for Achieving Greater Results*, GAO-04-38 (Washington, D.C.: Mar. 10, 2004).

[42]31 U.S.C. § 1115.

[43]According to FCC officials, in addition to its complaint processing, the agency's efforts to respond to consumers' inquiries are an important part of the agency's work to inform consumers about telecommunications services.

respond to the consumer about the status of a complaint.[44] The measure does not clearly or fully demonstrate FCC's achievement of its goal to facilitate informed consumer choice. Instead, it is a measure of a program output, or activity, not of the outcome the agency is trying to achieve. Another subgoal is to "improve customer experience with FCC's call centers and Web site." While this subgoal does identify an intended outcome, FCC does not have a measure related to this outcome that pertains to consumers who complain about services provided by their wireless carrier. FCC officials told us that they do not measure customer experience with the agency's call centers and Web sites but sometimes receive anecdotal information from customers about their experiences.[45]

We have previously reported that to better articulate results, agencies should create a set of performance goals and related measures that address important dimensions of program performance. FCC's goals may not represent all of the important dimensions of FCC's performance in addressing consumer complaints. A logical outcome of handling complaints is resolving problems or, if a problem cannot be resolved, helping the consumer understand why that is the case. However, it is not clear whether resolving problems is an intended outcome of FCC's consumer complaint efforts. While FCC's goals in this area indicate that informing consumers is a goal of the agency, some information from FCC implies that another intended outcome of these efforts is to resolve consumers' problems. For example, FCC's fact sheets state that consumers can file a complaint with FCC if they are unable to resolve a problem directly with their carrier, which may lead consumers to believe that FCC will assist them in obtaining a resolution. However, FCC officials told us that the agency's role in addressing complaints, as outlined in the law, is to facilitate communication between the consumer and the carrier and that FCC lacks the authority to compel a carrier to take action to satisfy many consumer concerns. Thus, it is not clear if the intended outcome of FCC's complaint-handling efforts is resolving consumer problems, fostering communication between consumers and carriers, or both. Furthermore, FCC has not established measures of its performance in either resolving consumer problems or fostering communication

[44]This goal has a separate measure for responding to Telephone Consumer Protection Act-related complaints (junk fax and do-not-call list complaints) within 20 days.

[45]FCC officials told us that they do take steps to review the quality of their complaint-processing efforts internally, such as by having supervisors review complaints and monitor staff performance.

between consumers and carriers.[46] For example, FCC does not measure consumer satisfaction with its complaint-handling efforts. Without clear outcome-related goals and measures linked to those goals, the purpose and effectiveness of these efforts are unclear, and the agency's accountability for its performance is limited.[47]

As noted above, consumers may not know to contact FCC if they have a complaint about their wireless phone service. Additionally, because FCC has not clearly articulated the intended outcomes of its complaint-processing efforts, consumers may not know the extent to which FCC can aid them in obtaining a satisfactory resolution to their concerns, and since FCC's letters to consumers do not indicate that mediation is available, consumers may not know that they can request this service from FCC. Consequently, consumers with wireless service problems may be confused about where to seek assistance and what kind of assistance to expect if they do know they can complain to FCC.

FCC Has Few Rules That Address Services Provided by Wireless Phone Service Carriers

FCC has few rules that specifically address services consumers receive from wireless phone service carriers, and in general, the agency has refrained from regulating wireless phone service in order to promote competition in the market. FCC's rules include general requirements for wireless carriers to provide services upon reasonable request and terms and in a nondiscriminatory manner, and to respond to both informal and formal complaints submitted to FCC by consumers. FCC also has specific rules requiring wireless carriers and other common carriers to present charges on customers' bills that are clear and nonmisleading, known as

[46]Although not a performance measure that is linked to a goal, FCC does internally track its closures of consumer complaints and the amount of money that is refunded to consumers as a result of its complaint-handling efforts. Based on our analysis of FCC complaints received from 2004 through 2008, we estimate that FCC's efforts to resolve wireless consumer complaints resulted in over $10 million returned to consumers during that period.

[47]We have identified inadequate performance management practices as a recurring problem in our recent reviews of FCC programs. See GAO, *Telecommunications: Long-Term Strategic Vision Would Help Ensure Targeting of E-rate Funds to Highest-Priority Uses*, GAO-09-253 (Washington, D.C.: Mar. 27, 2009); *Telecommunications: FCC Needs to Improve Performance Management and Strengthen Oversight of the High-Cost Program*, GAO-08-633 (Washington, D.C.: June 13, 2008); *Telecommunications: FCC Has Made Some Progress in the Management of Its Enforcement Program but Faces Limitations, and Additional Actions Are Needed*, GAO-08-125 (Washington, D.C.: Feb. 15, 2008); and *Telecommunications: Weaknesses in Procedures and Performance Management Hinder Junk Fax Enforcement*, GAO-06-425 (Washington, D.C.: Apr. 5, 2006).

truth-in-billing rules.[48] Additionally, FCC's rules establish other consumer protections, such as requiring wireless carriers to provide enhanced 911 and other emergency services and number portability rules that allow customers to keep their phone numbers when switching between wireless carriers or between landline and wireless services.[49] While FCC has rules that cover billing, the agency has not created specific rules governing other key areas of recent consumer concern that we identified (see table 3).[50]

Table 3: FCC Rules Addressing Specific Aspects of Service Provided to Consumers by Wireless Phone Service Carriers

Aspects of service addressed by FCC rules	Aspects of service FCC rules do not address
• Billing (truth-in-billing) • Provision of enhanced 911 and other emergency services • Number portability • Hearing aid compatibility • Security of consumers' personal information	• Contract terms • Explanation of service terms • Call quality • Customer service

Source: GAO analysis of FCC rules.

Note: Besides these rules that address services provided to consumers, FCC has rules for wireless carriers covering public safety, licensing, and construction. FCC rules also address unsolicited telemarketing on wireless phones.

According to FCC, the agency does not regulate issues such as carriers' contract terms or call quality, since the competitive marketplace addresses these issues, leading carriers to compete on service quality and proactively

[48]47 C.F.R. §64.2401. FCC's truth-in-billing rules that apply to wireless phone service carriers include requirements for bills to be clearly organized; clearly identify the name of the service provider associated with each charge; clearly identify any change in the service provider; and include a plain-language description of billed charges that is clear, brief, and nonmisleading.

[49]Enhanced 911 is a capability that provides emergency responders with the location of, and a callback number for, a person calling 911.

[50]Legislation was proposed during the 110th Congress to require FCC to create additional consumer protections for wireless phone service. For example, S. 2171, introduced in 2007, required FCC to conduct a rulemaking to establish customer service and consumer protection requirements for wireless carriers. Another bill also introduced in 2007, S. 2033, included more specific requirements for FCC to regulate wireless carriers' service disclosures, billing practices, and early termination fees, as well as requirements for FCC to require carriers to report information about call quality.

respond to any related concerns from consumers. Additionally, having determined that exempting carriers from certain regulations will promote competition, FCC has used its authority under the 1993 Act to exempt wireless carriers from some rules that apply to other communications common carriers.[51] For example, in 1994, FCC exempted wireless carriers from rate regulations that apply to other common carriers.[52] FCC has stated that promoting competition was a principal goal of the 1993 Act under which Congress established the regulatory framework for wireless phone service oversight. As required by the 1993 Act, in exempting wireless phone service carriers from regulations in order to promote competition, as FCC has done, FCC must determine that such exemption is in the public interest and that the regulations are not necessary for the protection of consumers.

FCC officials told us that the agency has taken a "light touch" in regulating the industry because it is competitive and noted that carriers compete with one another to provide better service. FCC proposed rules in 2005 for wireless carriers to address further regulation of billing practices and, in 2008, to address carriers' reporting of service quality information such as customer satisfaction and complaint data.[53] FCC has received comments on both proposals but has taken no further action to date. In August 2009,

[51]In addition to its authority under the 1993 Act, another section of the law, 47 U.S.C. § 161, also provides FCC with authority to exempt carriers from regulation, which the agency has used. For example, in 2002, FCC exempted wireless carriers from a requirement to provide consumers with information showing where their coverage was reliable, concluding that competitive pressures were strong enough to ensure that wireless carriers would continue to supply consumers with information on coverage even after FCC removed the requirement. See *Year 2000 Biennial Regulatory Review–Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services*, Second Report and Order, 17 FCC Rcd. 18485 (2002).

[52]47 U.S.C. §203 requires communications common carriers to file tariffs for interstate services with FCC and prohibits carriers from charging, demanding, collecting, or receiving different compensation than specified in their filed tariffs. See 47 C.F.R. § 20.15(a)(c). A tariff is a document that describes a carrier's services and the rates to be charged for those services.

[53]See *Truth-in-Billing and Billing Format*, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, 20 FCC Rcd. 6448 (2005) and *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 23 FCC Rcd. 13647 (2008). Wireless phone service carriers are exempt from existing service quality reporting requirements. In 2008, FCC proposed exempting other common carriers from these requirements, while at the same time seeking comment on whether such reporting requirements should be extended to all common carriers, including wireless carriers.

as part of its effort to seek comment on a number of telecommunications consumer issues, FCC sought comment on the effectiveness of its truth-in-billing rules and whether changes in these rules are needed.[54]

FCC Has Conducted Limited Monitoring of Wireless Consumer Complaints and Has Not Enforced Its Billing Rules for Wireless Carriers

FCC monitors informal complaints submitted by consumers to determine whether further regulation is needed and if the wireless industry is complying with the agency's rules, but such monitoring is limited.[55] According to FCC officials, trends in consumer complaint data may alert them to the need for changes in regulation. Furthermore, FCC has acknowledged that when exempting telecommunications service providers, such as wireless carriers, from its regulations, the agency has a duty to ensure that consumer protection needs are still met. FCC's Consumer and Governmental Affairs Bureau reviews the top categories of complaints reported in the agency's quarterly reports of consumer complaints and looks for trends.[56] FCC officials said that the agency does not routinely conduct more in-depth reviews of the nature of wireless consumer complaints unless they are needed to support an FCC decision-making effort, such as a rulemaking proceeding. FCC does not document its monitoring of consumer complaints and does not have written policies and procedures for routinely monitoring complaints.

FCC has taken a number of actions to enforce its rules that apply to wireless phone service carriers, but the agency has conducted no enforcement of its truth-in-billing rules as they apply to wireless service. One of the agency's performance goals is to enforce FCC's rules for the benefit of consumers. According to representatives of FCC's Enforcement Bureau, trends in consumer complaints that identify potential violations of

[54]*Consumer Information and Disclosure, Truth-in-Billing, and Billing Format IP-Enabled Services*, Notice of Inquiry, FCC 09-68 (2009).

[55]FCC officials told us they also monitor other sources of information about wireless consumer concerns. For example, the agency's annual report on wireless industry competition summarizes information from third-party sources such as J.D. Power and Associates about call quality and consumer satisfaction. FCC also monitors the industry trade press and participates in monthly conference calls with state agencies, during which wireless issues may be discussed. Additionally, FCC has two advisory committees that examine intergovernmental and consumer issues and make recommendations to the agency.

[56]FCC's Consumer and Governmental Affairs Bureau is responsible for developing and implementing the agency's consumer policies, conducting consumer outreach and education, responding to consumer complaints and inquiries, and managing relationships with state, local, and tribal governments.

FCC rules may signal the need for FCC to conduct an investigation, which could lead to an enforcement action. For example, in reviewing complaint data, the bureau identified five wireless carriers that had not responded to consumer complaints, which in 2008, led the agency to initiate enforcement actions against these carriers.[57] However, Enforcement Bureau officials told us that they have not reviewed complaints to look for potential wireless truth-in-billing rules violations. Under the method it currently uses to categorize informal complaints, FCC cannot easily determine whether complaints may indicate a potential violation of FCC's truth-in-billing rules. For example, FCC officials told us that while the agency uses category codes to identify types of complaints related to billing, such as codes for rates, line items, and fees, FCC officials would have to review complaints individually to determine whether they revealed a potential violation of its truth-in-billing rules—an analysis FCC has not conducted. Furthermore, according to FCC officials, since the application of the agency's truth-in-billing rules to wireless carriers was expanded in 2005, the agency has conducted no formal investigations of wireless carriers' compliance with these rules because investigating other issues has been a priority and FCC has received no formal complaints in this area. Since our consumer survey indicates that about a third of consumers responsible for paying their wireless bills have had problems understanding their bill or received unexpected charges, the enforcement of truth-in-billing rules is important for the protection of consumers.

Lacking in-depth analysis of its consumer complaints, FCC may not be aware of trends or emerging issues related to consumer problems, if specific rules—such as the truth-in-billing rules—are being violated, or if additional rules are needed to protect consumers. Our standards for internal control in the federal government state that agencies should have policies and procedures as an integral part of their efforts to achieve effective results.[58] Without adequate policies and procedures for conducting such analyses of its consumer complaints, FCC may not be

[57]Subsequently, FCC entered into consent decrees with two of the carriers, which involved their making voluntary contributions to the U.S. Treasury. According to FCC officials, two of the other three carriers took appropriate corrective action, and the third carrier went out of business. FCC officials also told us that, since the beginning of 2004, the agency has taken enforcement actions against wireless carriers for violations of its rules regarding enhanced 911 services, the security of consumers' personal information such as calling records, hearing aid compatibility, and unsolicited telemarketing.

[58]GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: November 1999).

able to ensure that its decisions to exempt carriers from regulation promote competition and protect consumers.

State Utility Commissions' Efforts to Oversee Wireless Phone Service Are Varied, Their Regulatory Authority Is Unclear, and Communication with FCC Is Infrequent

Results of our survey of state utility commissions show that while most commissions process wireless consumer complaints, most do not regulate wireless phone service. Representatives of state utility commissions and other stakeholders we interviewed told us that states' authority under federal law to regulate wireless phone service is unclear, and this lack of clarity has, in some cases, led to costly legal proceedings and some states' reluctance to provide oversight. Additionally, based on the results of our survey, communication between these commissions and FCC regarding oversight of wireless phone service is infrequent.

Most State Utility Commissions Accept Wireless Consumer Complaints, but States' Efforts to Address Complaints Vary

In response to our survey of 51 state utility commissions, 33 commissions reported receiving complaints about wireless phone service, which they process in different ways. Specifically, 20 of these commissions work with the consumer and/or wireless carrier to resolve wireless complaints, while the other 13 commissions that accept complaints forward the complaint or refer the consumer to the relevant wireless carrier or another government entity. States that forwarded complaints or referred consumers to other government entities most frequently did so to FCC or a state attorney general, with some complaints also going to the Federal Trade Commission, a state consumer advocate, or another state agency.[59] State utility commission officials we spoke with in California, Nebraska, and West Virginia, which all accept complaints and work with carriers and consumers to resolve them, told us that they have access to higher-ranking carrier representatives than consumers who call the carriers directly. This access, they said, helps them resolve wireless consumer complaints in an effective and timely manner. Twenty-one of the 33 commissions that accept complaints reported recording and tracking the number and types of wireless phone service complaints they receive. Based on the responses

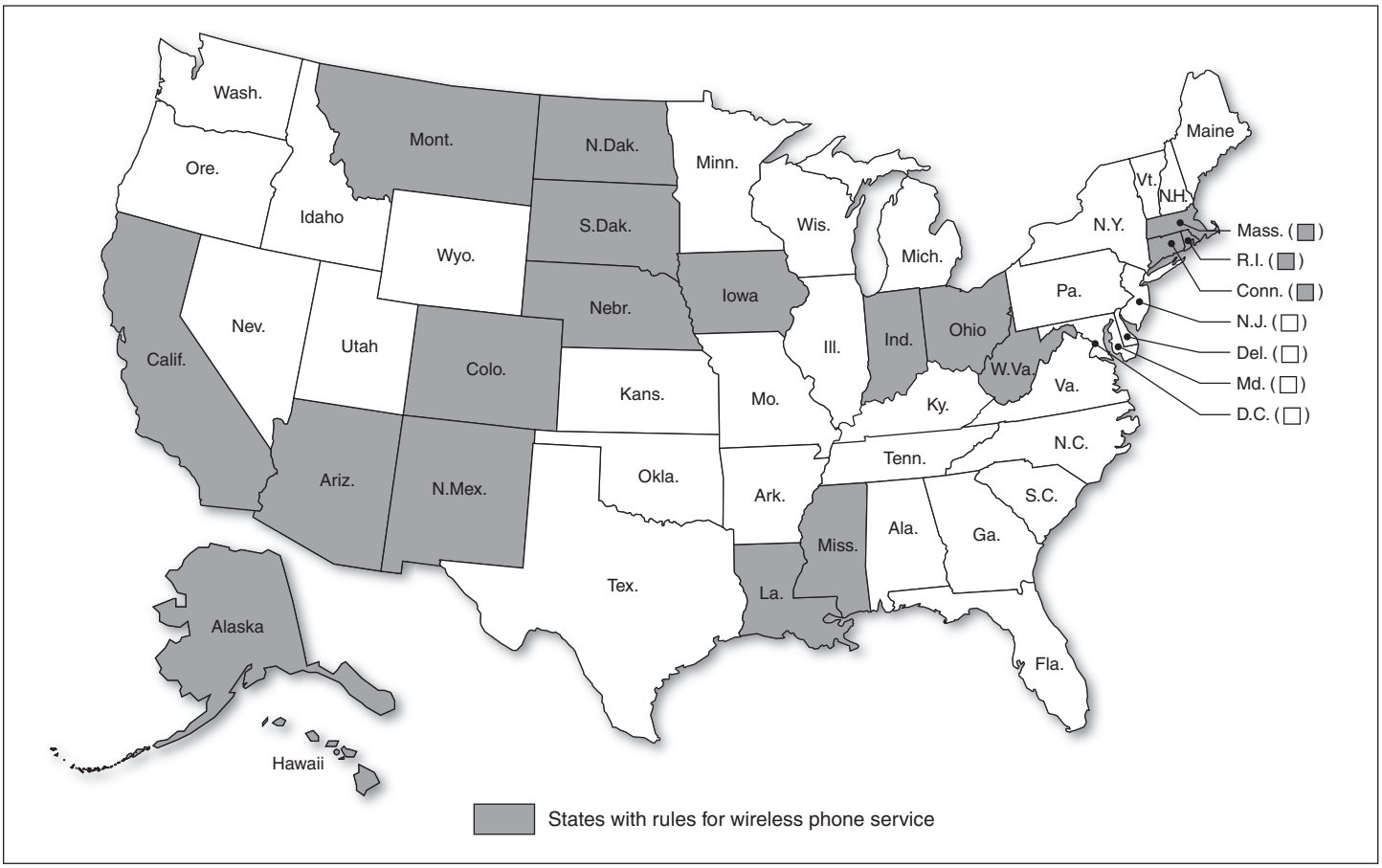
[59]Consumer advocates are state-level officials, often within a state utility commission or office of the attorney general, that are designated by law to represent the interests of consumers before the commissions and courts.

of commissions to our survey, they received a total of 8,314 wireless service complaints in 2008.

Most State Utility Commissions Do Not Regulate Wireless Phone Service

Most commissions do not regulate wireless phone service. As noted previously, under federal law, states may regulate "terms and conditions" of wireless phone service, although they are preempted from regulating rates and entry. In response to our survey, 19 commissions reported having rules (or regulations) for wireless phone service, either for telecommunications services generally, including wireless service, or wireless services specifically (see fig. 5).

Figure 5: States with Rules that Apply to Wireless Phone Service



Sources: GAO survey and Map Resources.

Note: We conducted our survey of state utility commissions from March 3, 2009, through April 1, 2009, using a Web-based survey and subsequent follow-up with some states. We received responses from commissions in all 50 states and the District of Columbia.

Few commissions have rules within the following five main areas related to the terms and conditions of wireless service we asked about in our survey: service quality, billing practices, contract or agreement terms and conditions, advertising disclosures, and disclosure of service terms and

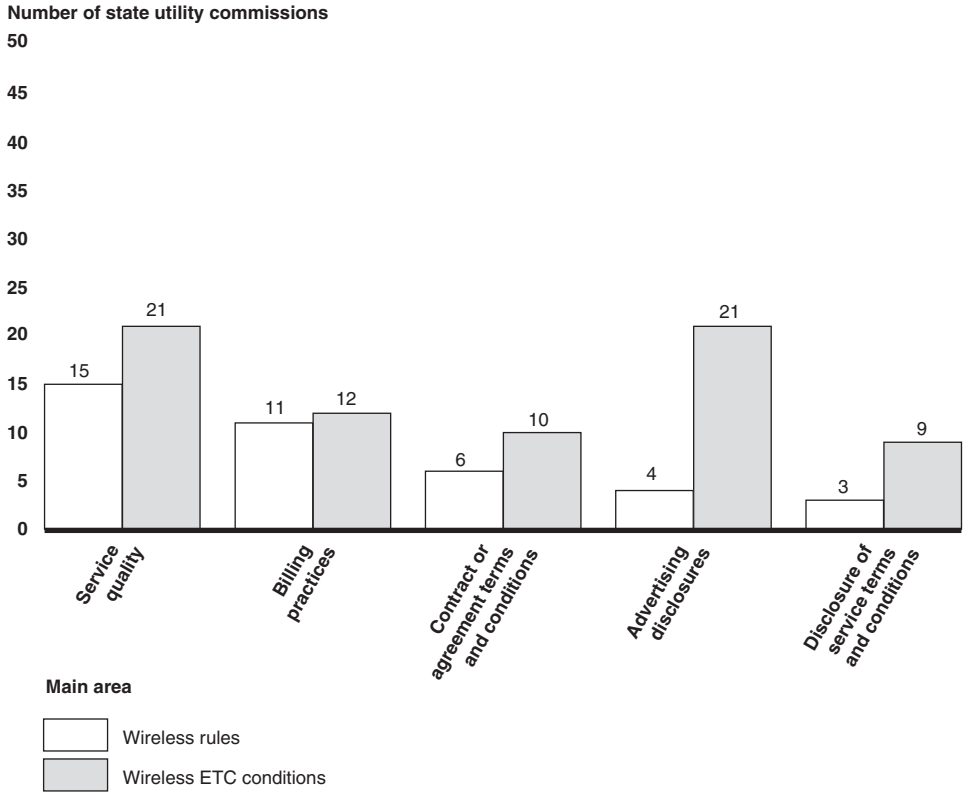
conditions.[60] Specifically, the number of commissions that have rules in these areas ranges from 3 that have rules about disclosure of service terms and conditions to 15 that have rules about service quality (see fig. 6).

While fewer than half of the commissions have wireless rules, most designate wireless carriers as eligible telecommunication carriers (ETC) to receive universal service funds for serving high-cost areas. Although ETC status is not required for a wireless carrier to operate in a high-cost area, it is required if the carrier wants to receive universal service funding. We previously reported that wireless carriers often lack the economic incentive to install wireless towers in rural areas where they are unlikely to recover the installation and maintenance costs, but high-cost program support allows them to make these investments.[61] Most commissions place conditions on receiving these funds related to various aspects of service. Specifically, 41 commissions in our survey reported having processes to designate wireless carriers as ETCs, and 31 reported placing such conditions on carriers to receive these funds. For example, the Nebraska state commission requires designated wireless ETCs to submit reports about coverage, service outages, complaints, and their use of universal service funding. For each of the five main areas related to the terms and conditions of service we asked about, more commissions reported having conditions for wireless ETCs than rules for wireless carriers (see fig. 6). Such conditions would not apply to wireless carriers generally—only to those carriers designated as ETCs to provide services in high-cost areas.

[60]Service quality includes call quality, coverage and network outage reporting requirements, and customer service, among other issues. We determined these categories based on input from the National Association of Regulatory Utility Commissioners and the National Association of State Utility Consumer Advocates about potential areas related to the terms and conditions of service where state utility commissions may have regulations. These categories are similar to aspects of service we surveyed consumers about; however, we used different terms since the survey was geared toward a different audience. Also, we did not include advertising disclosures as a key aspect of service in our consumer survey because it is not an aspect of service a carrier provides to a wireless phone service user.

[61]GAO-08-633.

Figure 6: Number of State Utility Commissions with Wireless Rules and Wireless ETC Conditions for Main Areas Related to Terms and Conditions of Service



Source: GAO analysis of FCC data.

Note: We conducted our survey of state utility commissions from March 3, 2009, through April 1, 2009, using a Web-based survey and subsequent follow-up with some states. We received responses from commissions in all 50 states and the District of Columbia.

Few state utility commissions—five—reported taking enforcement action against wireless phone service carriers since the beginning of 2004. According to national organizations representing state agencies, states' concerns about the cost of pursuing these issues in court have created a reluctance to do so.

State utility commissions generally cannot regulate wireless phone service unless they are granted authority to do so by state law. According to our survey of state utility commissions, many state commissions do not have authority to regulate wireless phone service, and most that do have authority indicated that it is limited. Specifically, 21 commissions reported having authority to regulate wireless phone service, with 5 commissions indicating they have authority to regulate in all areas related to the terms

and conditions of service (excluding those aspects of service preempted by federal law) and 16 indicating they have authority to regulate in some areas. Twenty-one commissions reported that they do not have wireless regulatory authority and another 9 commissions would not assert whether they did or did not have wireless regulatory authority for various reasons (see fig. 7).[62] As discussed in the next section, according to some state officials, the lack of authority or limited authority in many states to regulate wireless phone service may be due to concerns about the lack of clarity in federal law regarding states' authority to regulate wireless phone service.

[62]For example, some commissions indicated their regulatory authority was unclear because either state law is unclear or their authority provided by federal law is unclear. Additionally, one commission noted that until there is a specific federal statute or rule that clarifies state authority, the commission would not make a determination if or how it would regulate wireless phone service.

Figure 7: State Utility Commissions' Authority to Regulate Wireless Phone Service

Sources: GAO survey and Map Resources.

Note: We conducted our survey of state utility commissions from March 3, 2009, through April 1, 2009, using a Web-based survey and subsequent follow-up with some states. We received responses from commissions in all 50 states and the District of Columbia. Indiana is shown in this figure as not having authority to regulate wireless phone service but is shown in figure 5 as having rules that apply to wireless phone service. According to the Indiana Utility Regulatory Commission, the commission has limited rules for carriers' certification but does not have authority to regulate the terms and conditions of wireless phone service.

The Extent of States' Authority to Regulate Wireless Phone Service under Federal Law Is Unclear

State authority under federal law to regulate wireless phone service is not clear, based on the views of stakeholders we interviewed, court cases, FCC proceedings, a 2005 FCC task force report, and comments in our survey of state utility commissions. As discussed earlier, in 1993, Congress developed a wireless regulatory framework that expressly prohibited states from regulating the market entry or rates charged by wireless phone service carriers, while retaining states' authority to regulate other "terms and conditions" of wireless service. In an accompanying report, Congress stated that "terms and conditions" was intended to include billing practices and disputes, as well as other consumer protection matters.[63] The report further stated that examples of service it provided that could fall within a state's lawful authority under "terms and conditions" were illustrative and not meant to preclude other matters generally understood to fall under "terms and conditions."[64] Despite this guidance, whether specific aspects of service are considered "rates" or "terms and conditions" has been the subject of disputes at FCC, in state regulatory bodies, and in the courts. For example, courts have recently been grappling with cases about whether billing line items and early termination fees are defined as "rates," and are therefore not subject to state regulation, or as other "terms and conditions," which may be regulated by states. Such cases have not resolved the issue, as courts have reached different conclusions about the meaning of these terms or await action by FCC. (See app. IV for examples of legal proceedings that address states' authority to regulate terms and conditions of wireless phone service.)

FCC has provided limited guidance about the meaning of "terms and conditions." The agency did offer preliminary observations in response to petitions states filed with FCC seeking to continue regulating wireless rates and in a few other proceedings.[65] For example, in 1995, FCC noted that while states could not set or fix wireless rates in the future, they could process consumer complaints under state law because "terms and

[63]H.R. Rep. No. 103-111 (1993).

[64]H.R. Rep. No. 103-111 (1993).

[65]Under the 1993 Act, states were allowed to petition FCC for authority to regulate wireless phone service rates. Shortly after the 1993 Act was enacted, eight states sought the right to continue regulating wireless rates. FCC denied all petitions from states seeking this authority.

conditions" was flexible enough to allow states to continue in this role.[66] FCC has also said that states may designate wireless carriers as ETCs and that states may impose consumer protection requirements on wireless carriers as a condition for ETC designation.[67] In 1999, FCC concluded that billing information, practices, and disputes fall within these other terms and conditions.[68] Subsequently, in 2005, as part of its truth-in-billing proceeding, FCC concluded that regulation of line items by states constituted rate regulation, thereby preempting state authority; however, this conclusion was rejected by the Eleventh Circuit Court of Appeals.[69] In this proceeding, FCC also asked commenters to address the proper boundaries of "other terms and conditions" and to describe what they believe should be the roles of FCC and the states in defining carriers' billing practices. However, this proceeding is still open, and FCC has taken no further action to define the proper role of states in regulating billing practices.

The lack of clarity regarding states' authority to regulate wireless service has led to delays in deciding some legal matters and some states' reluctance to provide oversight. In some instances, when hearing cases involving early termination fees, courts have halted proceedings pending FCC's resolution of its own proceedings examining whether such fees

[66]In denying Connecticut's petition to regulate wireless rates, FCC noted that consumer complaints may concern carriers' practices separately and apart from their rates, such as customer billing practices, billing disputes, and other consumer matters, and therefore viewed "terms and conditions" as being flexible enough to allow the state to continue processing complaints related to such matters. See *Petition of the Connecticut Department Public Utility Control to Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers in the State of Connecticut*, Report and Order, 10 FCC Rcd. 7025 (1995).

[67]*Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd. 12208, 12255, (2000) and *Federal-State Joint Board on Universal Service*, Report and Order, 20 FCC Rcd. 6371 (2005).

[68]*Southwestern Bell Mobile Systems, Inc. Petition for a Declaratory Ruling Regarding the Just and Reasonable Nature of, and State Challenges to, Rates Charged by CMRS Providers when Charging for Incoming Calls and Charging for Calls in Whole-Minute Increments*, Memorandum Opinion and Order, 14 FCC Rcd. 19898 (1999).

[69]*National Association of State Utility Consumer Advocates v. FCC*, 457 F.3d 1238, *modified on reh'g* 468 F.3d 1272 (11th Cir. 2006), *cert. denied sub nom. Sprint Nextel v. National Association of State Utility Consumer Advocates*. 128 S. Ct. 1119(2008).

should be defined as "rates" or "terms and conditions."[70] For example, in 2008, rather than issue a ruling, a U.S. District Court in the state of Washington deferred to FCC a case against a wireless carrier involving early termination fees, citing FCC's primary jurisdiction over the issue.[71] According to FCC officials, when courts defer cases to FCC, the agency does not automatically address the issue, but requires that a party file a petition asking FCC to do so. Officials of national organizations representing state agencies and officials from state agencies we interviewed told us that some states are reluctant to regulate wireless phone service until their authority is clarified. This is due, in part, to the potential legal costs that could be incurred if their authority is challenged in court by the industry. Such reluctance may lead to less consumer protection in certain states that otherwise might issue regulations.[72]

As we have previously reported, to develop an efficient and effective regulatory framework, the appropriate roles of participants, including states, should be identified.[73] Because of the lack of clarity noted above, various stakeholders have expressed a desire for clearer roles for FCC and the states in providing wireless phone service oversight. For example, officials of national organizations representing state agencies, as well as officials from state agencies we interviewed, told us that clarity from Congress or FCC about the scope of state authority in regulating wireless phone service is needed.[74] Some industry representatives also told us that there should be better guidance on the respective roles of state and federal

[70]Under the doctrine of primary jurisdiction, courts may refer a matter extending beyond the conventional experiences of judges or falling within the realm of administrative discretion to an administrative agency with more specialized experience or expertise.

[71]See *Greene v. T-Mobile USA, Inc.*, Case No. C07-1563RSM, 2008 U.S. Dist. LEXIS 12605 (Feb. 7, 2008) citing *Brown v. MCI WorldCom Network Servs., Inc.*, 277 F.3d 1166, 1172 (9th Cir. 2002).

[72]In a December 2008 letter to the presidential transition team, the National Association of Regulatory Utility Commissioners wrote that FCC should not limit states' ability to address new consumer abuses or marketplace issues as they arise, saying states are almost always the first to provide relief when new abuses of individual or marketplace participants emerge.

[73]GAO, *Financial Regulation: A Framework for Crafting and Assessing Proposals to Modernize the Outdated U.S. Financial Regulatory System*, GAO-09-216 (Washington, D.C.: Jan. 8, 2009).

[74]These organizations are the National Association of Regulatory Utility Commissioners, the National Association of State Utility Consumer Advocates, and the National Association of Attorneys General.

agencies. A report by the FCC Wireless Broadband Access Task Force in 2005 recommended that FCC further clarify states' authority to regulate "terms and conditions," saying ambiguity about this authority has resulted in several disputes at FCC, in state regulatory bodies, and in the courts, and has caused significant regulatory uncertainty that will adversely affect investment in and deployment of wireless networks and other services. In 2005, CTIA–The Wireless Association petitioned FCC to declare that early termination fees are rates, and FCC sought comment on the petition.[75] Recently, when CTIA–The Wireless Association withdrew its petition, four consumer groups opposed its withdrawal, hoping that FCC would offer some clarity on whether early termination fees are subject to state laws and regulations in order to help resolve some pending state lawsuits.

State, consumer, and industry stakeholders hold varying views about how the meaning of "terms and conditions" should be clarified, which would affect states' authority to regulate wireless phone service. Industry representatives argue that "terms and conditions" should be defined narrowly, which would preempt states' ability to regulate aspects of wireless phone service that fall outside the definition. For example, industry representatives have stated that early termination fees and billing line items should be considered "rates," rather than "terms and conditions," which would preclude state utility commissions from regulating these aspects of service. In general, industry representatives have supported regulation at only the federal level, which they claim would avoid inconsistent state regulatory requirements they say would add to their costs. In contrast, state agency representatives and some consumer organizations have supported clarifying the meaning of "terms and conditions" to broadly encompass various aspects of wireless phone service, since they oppose efforts to preempt states' regulatory authority. For example, state consumer advocates and consumer organizations have argued that aspects of service such as early termination fees and billing line items should fall within the definition of "terms and conditions" of service that states have authority to regulate. These representatives argue that states should have authority to create and enforce wireless phone

[75]Additionally, SunCom, a wireless carrier, filed a similar petition in 2005 that FCC later dismissed at the carrier's request. Another petition was filed by an opposing party who also joined in the request for dismissing the petitions.

service regulations, since they claim states are better positioned to effectively address consumers' problems.[76]

FCC's Communication with State Utility Commissions Regarding Oversight of Wireless Phone Service Is Infrequent

Based on the results of our survey of state utility commissions, communication between FCC and state commissions about wireless phone service oversight is infrequent. Eleven state commissions indicated they had communicated with FCC about wireless phone service oversight issues during the last 6 months of 2008, and 33 commissions reported they had no contact with FCC about wireless phone service oversight during that time.[77] Four of the 11 state commissions reported having communication with FCC during that 6-month period about wireless phone service complaints the state commissions had received from consumers. State utility commission officials we interviewed in California, Nebraska, and West Virginia said there was a need for better communication between FCC and the states regarding wireless phone service oversight, and the National Association of Regulatory Utility Commissioners has called for more focused and routine dialogue between FCC and the states, including a formal process to discuss jurisdictional issues.

While FCC officials told us they routinely coordinate with state utility commissions about the handling of wireless complaints, they have no written policies or procedures on how they communicate with the states about wireless phone service oversight issues. FCC officials do participate in monthly conference calls with state utility commissions and state attorneys general during which wireless phone service oversight issues can be discussed. However, the state utility commission organizer of this conference call told us that wireless issues are rarely discussed, in part because few states actively regulate wireless phone service.

[76]Legislation proposed in Congress in 2007 sought to address the appropriate role of states in overseeing wireless phone service. For example, S. 2171 provided that states would not have authority to regulate wireless phone service terms and conditions, except pursuant to a law or regulation generally applicable to businesses in the state, while S. 2033 provides states with authority to enforce the federal standards the bill would create and expressly does not preempt states from providing additional protections to wireless phone service consumers.

[77]State utility commissions were asked about their communication with FCC during the 6-month period of July through December 2008. An additional seven commissions reported that they did not know if there had been communication with FCC about wireless phone service oversight.

Communication between federal and state agencies that share oversight of a particular industry—such as between FCC and state utility commissions—can be useful for sharing expertise and information, such as data on consumer complaints that could be used to identify problems that may warrant regulatory oversight. As noted earlier, federal law provides that oversight of wireless phone service is a responsibility shared by FCC and the states. Also FCC, in issuing its rules for implementing the wireless regulatory framework created by the 1993 Act, agreed with a suggestion by the National Association of Regulatory Utility Commissioners that state and federal regulators should cooperate in monitoring the provision of wireless services and share monitoring information.[78] We previously reported that collaboration between agencies tasked with shared responsibilities produces more public value than independent actions by such agencies.[79] These practices include identifying and addressing needs by leveraging resources to support a common outcome and agreeing on roles and responsibilities in agency collaboration. Additionally, we have recently developed a framework with characteristics of an effective system for providing regulatory oversight.[80] One characteristic of this framework is a systemwide focus—among both federal and state regulators—with mechanisms for identifying consumer concerns that may warrant regulatory intervention, while another characteristic is an efficient and effective system within which the appropriate role of the states has been considered, as well as how the federal and state roles can be better harmonized. Without effective communication between FCC and state regulators, FCC may not be able to ensure such focus and clear delineation of the federal and state roles.

Without written policies and procedures for how FCC communicates with states about wireless phone service oversight, FCC may be missing opportunities to work with its state partners in conducting oversight, such as sharing complaint data that could be used for monitoring trends. This lack of communication may also limit FCC's awareness of issues the states are encountering in their oversight of wireless carriers. Additionally, without clear awareness of state-level efforts, FCC may not be aware of

[78] *Implementation of Sections 3(n) of the Communications Act Regulatory Treatment of Mobile Survey*, Second Report and Order, *9* FCC Rcd. 1411 (1994).

[79] GAO, *Results-Oriented Government*, *Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, GAO-06-15 (Washington , D.C.: Oct. 21, 2005).

[80] GAO-09-216.

inconsistencies among state oversight efforts that could indicate a need for changes in its regulations.

Conclusions

Although the percentages of consumers dissatisfied with various aspects of their wireless phone service are small, these small percentages represent millions of people. By emphasizing its responsibility under the law to foster a competitive marketplace for wireless service, FCC has contributed to the industry's growth and to innovative products and services that have benefited consumers. Nevertheless, FCC's responsibility to protect consumers from harm remains critical, particularly given the growing numbers of wireless service consumers and the limited number of requirements governing key aspects of service that are currently of concern to consumers.

FCC's processing of consumers' informal complaints may be an important means for dissatisfied consumers to get help, but as long as FCC lacks clear outcome-related goals and measures for this process, consumers do not know what they can expect from it, and FCC cannot demonstrate its effectiveness in assisting consumers who need help. While most states accept wireless consumer complaints, many do not work with the carrier and the consumer to resolve those complaints, making FCC's efforts an important resource for consumers in those states that do not accept or work to resolve complaints. However, if, as our survey of wireless users suggests, most consumers are not aware they can complain to FCC, those with problems may not know how to seek a fair resolution. Furthermore, without policies and procedures to monitor consumers' concerns and thereby identify problems that may warrant regulatory or enforcement action, the FCC cannot ensure that consumers are adequately protected under the competitive deregulatory framework the agency has fostered.

Finally, without clear guidance for states on the extent of their regulatory authority under federal law, or policies and procedures for how to communicate with states about wireless phone service oversight, FCC could be missing opportunities to partner with state agencies in developing an effective regulatory system. The lack of clarity about states' authority may discourage some states from taking action to protect consumers. While FCC does have efforts to assist consumers, leveraging state resources by clarifying state authority would better ensure that identified problems can be addressed effectively at either the state or the federal level. Additionally, policies and procedures to guide how FCC and the states communicate would help ensure that FCC and the states are sharing information to guide their oversight. Improved communication

between FCC and state regulators could help both parties ensure they are providing effective oversight with a systemwide focus and clearer roles enabling them to better identify trends in complaints and emerging consumer concerns that may warrant changes in regulation.

Recommendations for Executive Action

We are making the following five recommendations to the Chairman of the Federal Communications Commission:

To improve the effectiveness and accountability of FCC's efforts to oversee wireless phone service, direct the commission to

1. clearly inform consumers that they may complain to FCC about problems with wireless phone service and what they can expect as potential outcomes from this process, and expand FCC's outreach to consumers about these efforts;

2. develop goals and related measures for FCC's informal complaint-handing efforts that clearly articulate intended outcomes and address important dimensions of performance; and

3. develop and implement policies and procedures for conducting documented monitoring and analysis of consumer complaints in order to help the agency identify trends and emerging issues and determine whether carriers are complying with existing rules or whether new rules may be needed to protect consumers.

To better ensure a systemwide focus in providing oversight of wireless phone service and improve FCC's partnership with state agencies that also oversee this service, direct the commission to

4. develop and issue guidance delineating federal and state authority to regulate wireless phone service, including pulling together prior rulings on this issue; addressing the related open proceedings on truth-in-billing and early termination fees; and, if needed, seeking appropriate statutory authority from Congress; and

5. develop and implement policies and procedures for communicating with states about wireless phone service oversight.

Agency Comments

We provided a draft of this report to FCC for its review and comment. FCC provided written comments, which appear in appendix V. FCC agreed with our recommendation on monitoring and had no position on the others, but

noted it has started to take steps to address the issues we raise in our report. In particular, FCC noted that its August 2009 notice of inquiry sought comment on a number of issues related to the findings and recommendations in this report.[81] The agency views this action as the first step in implementing several of the report's recommendations.

Regarding clearly informing consumers about its complaint process and expanding outreach to consumers, FCC noted that its notice of inquiry sought comment on whether the agency should take measures to ensure that consumers are aware of its complaint process. Additionally, FCC noted that it intends to do more to better inform consumers of its services to assist consumers, including making it clear that consumers can request that FCC mediate with their carrier on their behalf. Regarding developing goals and measures that clearly articulate the intended outcomes of its complaint-handling efforts, FCC noted that it already has some performance measures for these efforts and, that since the outcome of each complaint varies depending on its particular circumstances, the appropriate performance measures for this effort should measure its procedural aspects rather than its substantive outcomes. We note, however, that as we indicated in this report, it is not clear to consumers what they can expect from FCC's complaint process. Articulating the intended outcome of this process—whether it be to help consumers resolve their problems, facilitate communication between carriers and consumers, or both—would provide consumers with a better understanding of the purpose of this effort, as well as help the agency better demonstrate results. Regarding our recommendation to develop and implement documented monitoring of its consumer complaints, FCC noted that it has been working to make improvements to its complaint database, including its analytical tools, which will facilitate such monitoring.

Regarding the development of guidance delineating federal and state authority to regulate wireless phone service, FCC noted that, in response to its August 2009 notice of inquiry, the agency is currently updating the public record regarding its truth-in-billing rules and carriers' early termination fees, and expects to use this as the basis for potential federal regulatory action, which could include delineating areas within the states' authority that the record indicates should be addressed. Regarding

[81] *Consumer Information and Disclosure, Truth-in-Billing, and Billing Format IP-Enabled Services*, Notice of Inquiry, FCC 09-68 (2009).

policies and procedures for communicating with states about wireless phone service oversight, FCC noted that it is always looking for new and better ways to communicate with its state partners and that its recent notice of inquiry also asks whether FCC can take further action to reach out to state, as well as federal, local, and tribal government entities.

We also provided FCC a draft of this report's related e-supplement, GAO-10-35SP, containing additional results of our surveys of consumers and state utility commissions. FCC indicated it did not have any comments in response to the e-supplement.

As we agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution of it until 30 days from the date of this letter. In addition, the report will be available at no charge on the GAO Web site at http://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (202) 512-2834 or goldsteinm@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Contact information and major contributors to this report are listed in appendix VI.

Mark L. Goldstein
Director, Physical Infrastructure Issues

Appendix I: Objectives, Scope, and Methodology

This report examines (1) consumers' satisfaction with wireless phone service and problems they have experienced with this service, as well as the industry's response to these problems; (2) the Federal Communication Commission's (FCC) efforts to oversee services provided by wireless phone service carriers; and (3) state utility commissions' efforts to oversee services provided by wireless phone service carriers.

To respond to the overall objectives of this report, we interviewed FCC officials and reviewed documents obtained from the agency. We also reviewed relevant laws and FCC regulations. Additionally we interviewed individuals representing consumer organizations, state agencies, and the industry to obtain their views on wireless phone service consumer concerns and oversight efforts. Table 4 lists the organizations with whom we spoke.

To obtain information about consumers' satisfaction with wireless phone service and problems they have experienced with this service, we conducted a telephone survey of the U.S. adult population of wireless phone service users. Our aim was to produce nationally representative estimates of adult wireless phone service users' (1) satisfaction with wireless service overall and with specific aspects of service, including billing, terms of service, carriers' explanation of key aspects of service, call quality and coverage, and customer service; (2) frequency of problems with billing and call quality; (3) desire to switch carriers and barriers to switching; and (4) knowledge of where to complain about problems. Percentage estimates have a margin of error of less than 5 percentage points, unless otherwise noted. We conducted this survey of the American public from February 23, 2009, through April 5, 2009. A total of 1,143 completed interviews were collected, and calls were made to all 50 states. Our sampling approach included randomly contacting potential respondents using both landline and cell phone telephone numbers. Using these two sampling frames provided us with a more comprehensive coverage of adult cell phone users than if we had sampled from only one frame.

Because we followed a probability procedure based on random selections, our sample is only one of a large number of samples that we might have drawn. Since each sample could have provided different estimates, we express our confidence in the precision of our particular sample's results as a 95 percent confidence interval. This is the interval that would contain the actual population value for 95 percent of the samples we could have drawn. As a result, we are 95 percent confident that each of the confidence intervals in this report will include the true values in the study population.

Each sampled adult was subsequently weighted in the analysis to account statistically for all of the adult cell phone users of the population. The final weight applied to each responding adult cell phone user included an adjustment for the overlap in the two sampling frames, a raking adjustment to align the weighted sample to the known population distributions from the 2009 supplement of the U.S. Census Bureau's Current Population Survey and the Centers for Disease Control and Prevention's 2008 National Health Interview Survey, and an expansion weight to ensure the total number of weighted adults represent an estimated adult population eligible for this study.[1]

We conducted an analysis of the final weighted estimates from our survey designed to identify whether our results contain a significant level of bias because our results inherently do not reflect the experiences of those who did not respond to our survey—i.e., a nonresponse bias analysis. We compared unadjusted weighted estimates and final, nonresponse-adjusted weighted estimates of the proportion of U.S. adults' cell phone usage to similar population estimates from the 2008 National Health Interview Survey, which also includes questions about household telephones and whether anyone in the household has a wireless phone. While we identified evidence of potential bias in the unadjusted weighted estimate, the final weighting adjustments appear to address this potential bias, and we did not observe the same level of bias when examining the final weighted estimates. Based on these findings, we chose to include final weighted estimates at the national level from our survey in the report. In addition, we identified all estimates in the report with margins of error that exceeded plus or minus 5 percentage points and we did not publish estimates with a margin of error greater than plus or minus 9 percentage points.

Telephone surveys require assumptions about the disposition of noncontacted sample households that meet certain standards. These assumptions affect the response rate calculation. For this survey the response rate was calculated using the American Association of Public Opinion Research (AAPOR) Response Rate 3, which includes a set of

[1]S.J. Blumberg and J.V. Luke, *Wireless substitution: Early release of estimates from the National Health Interview Survey, January-June 2008*, a report for the Centers for Disease Control and Prevention, National Center for Health Statistics, Washington, D.C., Dec. 17, 2008.

assumptions.[2] Based on these assumptions, the response rate for the survey was 32 percent; however, the response rate could have been lower if different assumptions had been made and might also be different if calculated using a different method. We used random digit dial (RDD) sampling frames that include both listed and unlisted landline numbers from working blocks of numbers in the United States. The RDD sampling frame approach cannot provide any coverage of the increasing number of cell-phone-only households and limited coverage of cell-phone-mostly households (i.e., households that receive most of their calls on cell phones in spite of having a landline). Because of the importance of reaching such households for this survey about wireless phone service, we also used an RDD cell phone sampling frame. The RDD cell phone sampling frame was randomly generated from blocks of phone numbers that are dedicated to cellular service. About 43 percent of the completed interviews were from the RDD cell phone sample.

Because many households contain more than one potential respondent, obtaining an unbiased sample from an RDD frame of landline numbers requires interviewing a randomly selected respondent from among all potential respondents within the sampled household (as opposed to always interviewing the individual who initially answers the phone). We obtained an unbiased sample by using the most recent birthday method, in which the interviewer asks to speak to the household member aged 18 or older with a wireless phone who had the most recent birthday. If the respondent who was identified as the member of the household with the most recent birthday was unavailable to talk and asked to schedule a callback, the call representative recorded the person's name and preferred telephone number for the callback. There were also cases when a respondent from the cell phone sample asked to be called back on his or her landline. These respondents, if they completed the survey, were considered a completed interview from the cell phone sample. There were no respondent selection criteria for the cell phone sample; each number dialed from the cell phone sample was assumed to be a cell phone number, and each cell phone was assumed to have only one possible respondent to contact.

[2]The method we used to calculate the response rate, AAPOR Response Rate 3, uses a calculation that includes an estimate of the proportion of the sample that is eligible to complete the survey among those whose eligibility for the survey is unknown. The estimate is derived using a formula that includes the number of respondents interviewed, the number of respondents known to be eligible that were not interviewed, and the number of respondents contacted that were determined to be ineligible.

The results of this survey reflect wireless phone users' experience with their current or most recent wireless phone service from the beginning of 2008 through the time they were surveyed. Not all questions were asked of all respondents. For example, questions about the prevalence of billing problems were asked only of respondents who indicated they were solely or jointly responsible for paying for their service. Additionally, satisfaction with wireless coverage for particular locations (i.e. at home, at work, and in a vehicle) was calculated only among respondents who indicated they used their wireless phone service in those locations. The survey and a more complete tabulation of the results can be viewed by accessing GAO-10-35SP.

To identify the type and nature of problems consumers have experienced in recent years with their wireless phone service, we interviewed officials from FCC, consumer organizations, national organizations that represent state agency officials, and state agency officials from three selected states—California, Nebraska, and West Virginia—representing utility commissions, offices of consumer advocates, and offices of attorneys general (see table 4). We selected these states based on their varying geography, populations, region, and approaches to overseeing wireless phone service, as indicated in part by information obtained from national organizations representing state agency officials. We also interviewed officials from the four major wireless carriers, two selected smaller carriers that serve mostly rural areas, and wireless industry associations. In addition, we reviewed documents obtained from some of these sources. We also analyzed FCC's wireless complaint data on complaints received from 2004 through 2008. We reviewed FCC's processes for generating these data and checked the data for errors and inconsistencies. We determined that the data were sufficiently reliable for the purposes of this review. We also obtained the total number of wireless complaints received in 2008 by the 21 state utility commissions that record and track wireless phone service consumer complaints. While we did not assess the reliability of the state complaint data, we are providing the numbers of complaints states reported receiving for illustrative purposes.

To identify major actions the industry has taken in recent years to address consumers' concerns, we interviewed the industry organizations named above and reviewed related documentation (see table 4). We also requested service quality information from the four major carriers, including measures of network performance and the number and types of customer complaints. Carriers told us that this information is proprietary and sensitive, and as we did not obtain comparable information from all four carriers, we were not able to present any aggregate information based

on these data. Additionally, we interviewed consumer, state, and federal stakeholders about the effectiveness of industry efforts to address consumers' concerns (see table 4).

To evaluate how FCC oversees wireless phone service, including the agency's efforts to process complaints, monitor sources of information to inform policy decisions, and create and enforce rules, we interviewed FCC officials about these activities and reviewed related documentation obtained from these officials. We also reviewed relevant laws, regulations, and procedures, as well as FCC's quarterly complaint reports, strategic plan, and budget with performance goals and measures. In addition, we reviewed requirements of the Government Performance and Results Act of 1993 and our prior recommendations on performance goals and measures and determined whether FCC's efforts to measure the performance of its efforts to process consumer complaints are consistent with these requirements and recommendations. We also interviewed consumer, state, and industry stakeholders about their views on FCC's efforts to provide oversight (see table 4). We focused our review on FCC's oversight of wireless phone service issues that have been major areas of concern for consumers in recent years, specifically targeting consumer protection efforts and those actions related to how wireless carriers interact with and serve their customers. We did not assess how FCC oversees a number of other facets of the wireless industry, including competition, spectrum allocation, licensing, construction, technical issues such as interference, public safety, or the agency's obligations under the Telephone Consumer Protection Act and the Controlling the Assault of Non-Solicited Pornography and Marketing Act.

To describe state utility commissions' efforts to oversee wireless phone service, we surveyed commissions in all 50 states and the District of Columbia. We conducted this survey from March 3, 2009, through April 1, 2009. We received responses from all 51 commissions, which we obtained through a Web-based survey we administered and subsequent follow-up with some states. The survey and a more complete tabulation of the results can be viewed by accessing GAO-10-35SP. To obtain illustrative information about these issues, we interviewed state officials in public utility commissions, consumer advocate offices, and offices of attorneys general in three selected states (California, Nebraska, and West Virginia). Although we met with the offices of the state attorneys general in the three selected states and a national organization representing state attorneys general, we did not attempt to assess the full breadth of involvement of state attorneys general in addressing wireless phone service consumer concerns.

Table 4: Organizations Interviewed

National consumer organizations
AARP
Consumers Union
Council of Better Business Bureaus
State consumer organizations
Consumer Action (California)
The Utility Reform Network (California)
Wireless phone service carriers
AT&T
nTelos[a]
Sprint
T-Mobile
Verizon
Viaero[a]
Wireless industry associations
CTIA–The Wireless Industry
PCIA–The Wireless Infrastructure Association
Rural Cellular Association
State agency associations
National Association of Attorneys General
National Association of Regulatory Utility Commissioners
National Association of State Utility Consumer Advocates
State agencies
California Office of the Attorney General
California Public Utility Commission[b]
Nebraska Office of the Attorney General
Nebraska Public Service Commission[b]
West Virginia Office of the Attorney General
West Virginia Public Service Commission[b]

Source: GAO interviews.

[a]We selected the two rural carriers, nTelos and Viaero, because they operated in two of our selected states and were referred to us by state officials we interviewed in these two states.

[b]At the three state utility commissions, we met with officials responsible for regulatory issues, consumer assistance, and consumer advocacy.

Appendix II: Analysis of FCC Wireless Consumer Complaint Data

Overall, the number of informal consumer complaints FCC has received about the service provided by wireless phone carriers has decreased since 2004 (see table 5).[1] FCC received 20,753 complaints about the service provided by wireless phone carriers in 2008, the second-lowest total since 2004.

Table 5: Consumer Complaints FCC Received about Services Provided by Wireless Phone Service Carriers from 2004 through 2008[a]

Complaint category	2004	2005	2006	2007	2008	Total (percent of total)
Billing and rates[b]	15,415	13,309	7,517	9,156	9,588	**54,985 (43%)**
Call quality[c]	3,131	3,932	2,116	2,612	2,476	**14,267 (11)**
Contract early termination[d]	4,119	3,821	1,623	1,643	2,105	**13,311 (10)**
Customer service[e]	2,038	3,472	2,176	3,602	472	**11,760 (9)**
Carrier marketing and advertising[f]	3,167	3,008	1,575	1,478	1,139	**10,367 (8)**
Number portability[g]	4,962	838	379	483	605	**7,267 (6)**
Equipment	1,366	1,610	978	1,111	1,300	**6,365 (5)**
Other[h]	1,190	1,399	1,040	2,053	3,068	**8,750 (7)**
Total	**35,388**	**31,389**	**17,404**	**22,138**	**20,753**	**127,072 (100%)**

Source: GAO analysis of FCC data.

Note: Percentages may not sum to 100 because of rounding.

[a]We analyzed FCC informal complaint data and excluded complaints unrelated to wireless phone service carriers, including nonwireless complaints that FCC categorized as wireless complaints and complaints about unsolicited telemarketing. FCC reported receiving more than 42,000 wireless complaints about unsolicited telemarketing in 2008.

[b]FCC's billing and rates category includes complaints about credits, adjustments, and refunds; line-item charges such as taxes and surcharges; charges for time spent talking on the phone; and service plan rates, among other issues. FCC also receives complaints about unauthorized or misleading charges, which we included with complaints about billing and rates in our analysis.

[1]FCC defines informal complaints as any correspondence or communication received via mail, fax, e-mail, or telephone from or on behalf of an individual that (1) identifies a particular entity under FCC's jurisdiction, (2) alleges harm or injury, and (3) requests relief. FCC publishes a quarterly report on the number of top categories of complaints it receives about wireless phone service and other telecommunications services. Because of differences in how our analysis and FCC identify some complaints, the numbers of complaints in this table will not exactly match the number of complaints FCC publishes in its quarterly reports. FCC reviewed our method of categorizing complaints and indicated it was acceptable for our purposes. FCC also reports on the number and types of consumer inquiries it receives; however, we did not include these data in our analysis because of their informational nature.

[c]FCC defines wireless "service related" complaints as including complaints about lack of coverage, telephone reception, and specific problems such as dead spots, dropped calls, and busy signals due to network congestion. We refer to these issues as "call quality."

[d]Includes complaints about termination of wireless phone service by the consumer or by the carrier.

[e]Although FCC has not specifically identified customer service complaints in its quarterly reports of informal complaints from 2004 through 2008, FCC does have categories for such complaints in its data.

[f]According to FCC, carrier marketing and advertising complaints have to do with marketing and advertising practices of wireless phone service providers that include alleged misrepresentations.

[g]FCC promulgated rules in 2002 allowing customers to keep their phone numbers when switching between wireless carriers or between landline and wireless services. Carriers serving larger cities were required to implement the rules in 2003, and other carriers were required to do so in 2004.

[h]Our categorization of "other" complaints includes complaints FCC identified simply as "other," complaints of identity fraud, and complaints in several other categories such as referrals to government agencies and disability issues.

From our analysis of FCC data on complaints about the service provided by wireless phone carriers from 2004 through 2008, we identified specific problem areas that complaints cited within the major complaint categories:

- *Billing and rates*: Within this category, specific issues consumers complained about included problems obtaining credits, refunds, or adjustments to their bills; charges for minutes talking on a wireless phone; recurring charges on their bills; rates; and unauthorized or misleading charges. Of the nearly 55,000 billing complaints FCC received during this period, there were 28,000 focused on obtaining credits, refunds, or billing adjustments. FCC also received almost 9,000 billing complaints about charges for minutes talking on a wireless phone. Additionally, there were more than 5,500 complaints about recurring charges on consumers' bills and more than 5,500 complaints about the rates they received from their wireless service providers. Finally, our analysis of FCC's data identified more than 2,100 wireless complaints concerning unauthorized, misleading, or deceptive charges (known as "cramming").

- *Call quality:* Within this category, the majority of consumers complained about three issue areas: the quality of wireless phone service in their local service area, the premature termination of calls (i.e., "dropped calls"), and the inability to use their wireless phone because of service interruption by wireless phone service providers. Specifically, of the more than 14,000 call quality complaints FCC received during this period, more than 7,300 were about the quality of wireless phone service in the local service area. FCC

also received more than 3,200 complaints about dropped calls and more than 2,000 complaints about interruption of service by wireless service providers.

- *Contract early termination:* This category includes termination of wireless phone service by the consumer or by the carrier. Nearly 12,000, or just under 90 percent, of all terms-of-service contract complaints FCC received were about termination by consumers prior to the end of a specified contract term, which would result in an early termination fee.

- *Customer service:* Customer service complaints were the fourth largest category of complaints; however, FCC did not report customer service complaints as a top category of complaints in its quarterly reports from 2004 through 2008. In comparison, FCC identified carrier marketing and advertising as a top category of complaint in each year from 2004 through 2008, even though there were more customer service complaints in 2005, 2006, and 2007. An FCC official told us they did not include customer service complaints in the quarterly reports because they fell within the "other" category, which FCC does not report. FCC also indicated that the large decrease in the number of customer service complaints from more than 3,500 in 2007 to fewer than 500 in 2008 was due in part to the agency's redesign of its complaint forms, which allows for more accurate coding of complaints under specific topics rather than placing them in the "service treatment" category FCC uses to track customer service issues.

Appendix III: Industry Actions to Address Wireless Consumer Concerns

The wireless phone service industry has taken some actions to address the types of consumer concerns we identified. Specifically, in 2003, the industry adopted a voluntary code, and since then, carriers have taken other measures. Table 6 outlines how elements of the industry code and examples of subsequent major actions we identified among the four largest carriers correspond to the key areas of consumer concern we identified.

Table 6: Industry Actions in Response to Key Areas of Consumer Concern

Key area	Nature of concerns	2003 industry code requirements[a]	Examples of recent actions reported by some or all major carriers[b]
Billing	• Complexity of billing statements leads to lack of consumer understanding. • Bills contain unexpected charges and errors.	• Separate charges for service retained by the carrier from taxes and fees remitted to government entities.	• Provided customers with a draft bill or an estimate of their first bill when they sign up for service. Redesigned their bills to make them easier to understand.
Terms of service contract or agreement	• Consumers are subject to early termination fees, regardless of their reason for wanting to terminate service, effectively locking consumers into their contracts. • Consumers are not given enough time to try out their service before having to commit to the contract. • Carriers extend contracts when consumers request service changes.	• Provide a 14-day period for consumers to try out service. • Confirm terms and conditions with a customer who agrees to a change in service that is bound by a contract extension. • Do not modify the material terms of contracts in a materially adverse manner without providing advance notice and allowing subscribers 14 days to cancel with no early termination fee.	• Implemented policies to prorate early termination fees. • Offered noncontract options without early termination fees, such as prepaid or month-to-month plans. • Allowed 30 days to try out service, during which time customers may cancel without paying an early termination fee (one carrier provided 30 days only in California and 20 days elsewhere). • Stopped extending contracts for some service changes.
Explanation of service	• Key aspects of service, such as rates and coverage, are not clearly explained to consumers at the point of sale (when they sign up for the service).	• Disclose at the point of sale and on the carrier's Web site information about rates and fees (including for initiation and early termination) and provide maps depicting where service is generally available, and provide contract terms. • Agree to provide specific disclosures in advertising.	• Provided written explanations of service terms at the point of sale. • Redesigned statement outlining service terms and conditions to make it easier to understand. • Developed Web-based map tools that allow customers to research where coverage is available.

Key area	Nature of concerns	2003 industry code requirements[a]	Examples of recent actions reported by some or all major carriers[b]
Call quality	• Consumers experience dropped or blocked calls, as well as noise on calls that makes hearing calls difficult. • Consumers experience poor coverage, which in rural areas may be the result of lack of infrastructure and in urban areas stems from lack of capacity for peak call volumes.	• No specific requirement other than to provide maps depicting service coverage.	• Spent billions of dollars on network infrastructure in recent years.[c] • Used information from network testing and feedback from consumers to inform decisions about upgrading wireless networks to improve coverage.
Customer service	• Consumers experience problems such as long waits, ineffective assistance, and insufficient resolution to problems.	• Provide customers with contact information for ready access to customer service. • Respond to complaints forwarded by state or federal agencies within 30 days.	• Implemented specific initiatives to improve the performance of their customer service representatives.

Source: GAO analysis.

[a]Carriers that sign this voluntary code agree to abide by these requirements. Carriers submit information annually to CTIA–The Wireless Association to demonstrate compliance with the code. Association representatives told us that they review these materials internally to check compliance.

[b]Although we interviewed the four major carriers (AT&T, Sprint, T-Mobile, and Verizon), we could not determine the full extent to which they have taken these actions because we could not obtain complete documentation from all of the carriers to confirm actions discussed.

[c]According to CTIA–The Wireless Association, the wireless industry spent an average of $24 billion annually between 2001 and 2007 on infrastructure and equipment to improve call quality and coverage.

Appendix IV: Examples of Actions Taken by FCC and Courts Regarding States' Authority to Regulate Wireless Phone Service

Federal law provides that while a state may not regulate a wireless carrier's rates or entry, it may regulate the other terms and conditions of wireless phone service. Section 332(c)(3)(A) of title 47 of the U.S. Code does not define what constitutes rate and entry regulation or what comprises other terms and conditions of wireless phone service.[1] This has left it up to FCC and courts to further define which specific aspects of service fall within the scope of these respective terms. Recently, two areas have garnered much attention at FCC and in the courts—the ability of states to regulate billing line items and the imposition of early termination fees. However, clarity has not yet been achieved.

Billing Line Items

One area of disagreement is whether billing line items, such as surcharges and taxes that appear on consumers' wireless bills, should be considered a rate or a term and condition of service. In 2005, under its truth-in-billing proceeding, FCC held that state regulations requiring or prohibiting the use of line items for wireless carriers constituted rate regulation and

[1]There is some legislative history on the meaning of "terms and conditions." The House Report on the Omnibus Budget Reconciliation Act of 1993 (1993 Act), in which the amended language in Section 332 was enacted, states that "Section 332(c)(3) provides that state or local governments cannot impose rate or entry regulation on private land mobile service or commercial mobile services; this paragraph further stipulates that nothing here shall preclude a state from regulating the other terms and conditions of commercial mobile services. By 'terms and conditions,' the committee intends to include such matters as customer billing information and practices and billing disputes and other consumer protection matters . . . or such other matters as fall within a state's lawful authority. This list is intended to be illustrative only and not meant to preclude other matters generally understood to fall under 'terms and conditions.'" H.R. Rep. No. 103-111 at 211, 261 (1993). In 1999, the D.C. Circuit Court of Appeals noted that section 332(c)(3)(A) leaves its key terms undefined and does not state what constitutes rate regulation or what comprises other terms and conditions of wireless service. *Cellular Telecomms. Indus. Ass'n v. FCC*, 168 F.3d 1332 (D.C. Cir. 1999).

therefore were preempted.[2] In the same proceeding, FCC solicited comments on the proper boundaries of "other terms and conditions" within the statute and asked commenters to delineate what they believe should be the relative roles of FCC and the states in defining carriers' proper billing practices. The National Association of State Utility Consumer Advocates challenged FCC's preemption finding in court, and the United States Court of Appeals for the Eleventh Circuit (Eleventh Circuit) found that FCC had exceeded its authority.[3] Specifically, the court found that the presentation of a line item on a bill is not a "charge or payment" for service, but rather falls within the definition of "other terms and conditions" that states may regulate.

Subsequent to the Eleventh Circuit's ruling, the Western District Court of Washington rejected the Eleventh Circuit's analysis and concluded that FCC did not exceed its statutory authority when it preempted line-item regulation and that line items are charges.[4] However, the United States Court of Appeals for the Ninth Circuit (Ninth Circuit) reversed the district court, finding that the Eleventh Circuit decision is binding outside of the Eleventh Circuit.[5] Furthermore, the Ninth Circuit stated that it agreed with the Eleventh Circuit's determination that how line items are displayed or

[2]FCC created its truth-in-billing rules in 1999 in response to concerns about growing consumer confusion relating to billing for telecommunications service. Although the agency stated that these rules should apply to all carriers, it did not apply all of the rules to wireless carriers at that time. See *Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd. 7492 (1999). In 2005, FCC expanded the applicability of the truth-in-billing rules to wireless phone service carriers. In addition, as part of this proceeding, FCC addressed a Petition for Declaratory Ruling filed by the National Association of State Utility Consumer Advocates seeking to prohibit telecommunications carriers from imposing any separate line items or surcharges on a customer's bill that were not mandated or authorized by federal, state, or local law. See *Truth-in-Billing Format; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in- Billing*, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, 20 FCC Rcd. 6448 (2005) (Declaratory Ruling and/or *Second Truth-in-Billing Order and/or Second Further Notice*). Preemption is when federal law supersedes state law.

[3]*National Association of State Utility Consumer Advocates v. FCC*, 457 F.3d 1238, *modified on reh'g* 468 F.3d 1272 (11th Cir. 2006), *cert. denied sub nom. Sprint Nextel v. National Association of State Utility Consumer Advocates*. 128 S. Ct. 1119(2008).

[4]*Peck v. Cingular Wireless*, No. CV-06-00343-TSZ (W.D. Wash. Oct. 24, 2006); see, also, *Hesse v. Sprint Spectrum L.P.*, No. C06-0592-JCC, 2007 U.S. Dist. LEXIS 3885 (W.D. Wash., Jan. 18, 2007).

[5]*Peck v. Cingular Wireless Services, Inc.*, 535 F.3d 1053 (9th Cir. 2008).

presented on wireless consumers' bills does not fall within the definition of "rates."

FCC has not responded to these court decisions, nor has FCC concluded its truth-in-billing proceeding. While FCC has received comments on its 2005 truth-in-billing proposal, it has taken no further action in this proceeding. Accordingly, the issue of how states may regulate billing line items remains unclear. In August 2009, as part of its effort to seek comment on a number of telecommunications consumer issues, FCC sought comment on the effectiveness of its truth-in-billing rules and whether changes in these rules are needed.[6]

Early Termination Fees

Early termination fees are another area where the distinction between "rates" and "terms and conditions" is not clear. Wireless carriers routinely offer customers discounts on cell phones in exchange for the customer's commitment to a 1- or 2-year contract. If the contract is canceled before the end of the contract term, the customer is generally charged a fee, commonly referred to as an early termination fee.

The Western District Court of Washington, in recently considering an early termination fees case, noted that it is not clear whether a wireless service carrier's early termination fees are within the preemptive scope of "rates charged" under the statute. The court noted that federal courts that have considered the matter appear to be split on the issue, citing the examples of a district court that found early termination fees to fall under "terms and conditions" and another district court that found them to be "rates charged."[7] Because of the ongoing FCC efforts in this area, the Western

[6] *Consumer Information and Disclosure, Truth-in-Billing, and Billing Format IP-Enabled Services*, Notice of Inquiry, FCC 09-68 (2009).

[7] *Green v. T-Mobile USA, Inc.*, Case No. C07-1563RSM, United States District Court for the Western District of Washington, 2008 U.S. Dist. LEXIS 12605 (Feb. 7, 2008). The cases the court cited were *Phillips v. AT&T Wireless*, 2004 U.S. Dist. LEXIS 14544 (S.D. Iowa 2004), in which the court found that early termination fees are other terms and conditions and *Chandler v. AT&T Wireless Services, Inc.*, 2004 U.S. Dist. LEXIS 14884 (S.D. Ill. 2004), in which the court found that early termination fees were rates charged.

District Court of Washington halted its proceeding pending a determination from FCC about this issue.[8]

In 2005, FCC was drawn into this debate at the request of a South Carolina court. In February 2005, SunCom, a wireless carrier, at the request of the court, filed a petition with FCC on whether early termination fees are rates charged.[9] In May 2005, FCC released a public notice seeking comments on this matter.[10] Subsequently, the parties to the litigation entered into a settlement agreement and jointly requested that FCC dismiss the matter without further review.[11] FCC issued an order terminating the proceeding; however, the agency noted that it had a similar petition under review that it intended to address "in the near future."[12] The similar petition was filed by CTIA–The Wireless Association in March 2005, asking for an "expedited" ruling on whether early termination fees are rates.[13] FCC sought comments on the matter from interested parties, who have submitted over 37,000 filings in this proceeding.

In view of the growing concern over early termination fees and the number of complaints that FCC receives from consumers on this issue, FCC held a hearing in June 2008. At this hearing, expert panelists testified on the use of early termination fees by communications service providers. A year after the hearing, CTIA–The Wireless Association notified FCC that it was withdrawing its petition, citing the evolution of the competitive

[8]The court halted the proceeding under the doctrine of primary jurisdiction, which allows a federal court to refer a matter falling "beyond the conventional experiences of judges" back to administrative agencies. See *Green v. T-Mobile USA, Inc.*, Case No. C07-1563RSM, United States District Court for the Western District of Washington, 2008 U.S. Dist. LEXIS 12605 (Feb. 7, 2008). Primary jurisdiction is properly invoked when a claim can be litigated in federal court but requires resolution of an issue of first impression or of a particularly complicated issue that Congress has committed to a regulatory agency.

[9]*Debra Edwards v. SunCom*, No. 02-CP-26-3539 (S.C.Ct. of Common Pleas, 15th Jud. Cir.), filed May 25, 2004.

[10]There were 105 records filed in this proceeding.

[11]See Letter from Michael D. Hayes and Michele Farquhar, Counsel for SunCom and Nate Fata and Kent Sinclair, Counsel for Debra Edwards, to Marlene H. Dortch, FCC, filed January 28, 2008.

[12]*SunCom Wireless Operating Company, L.L.C., Petition for Declaratory Ruling; Debra Edwards Cross-Petition for Declaratory Ruling*, Order, 23 FCC Rcd. 4870 (2008).

[13]See also *Petition of the Cellular Telecommunications & Internet Association for an Expedited Declaratory Ruling*, WT Docket No. 05-194, filed March 15, 2005.

wireless marketplace as a reason for its withdrawal.[14] However, the National Association of State Utility Consumer Advocates, the National Consumer Law Center, U.S. Public Interest Research Group, and Consumers Union filed a joint response in opposition to the petition's withdrawal, arguing that a ruling from FCC would help clarify this issue and help resolve some pending lawsuits about it.[15] FCC has not responded to CTIA–The Wireless Association's notice or the consumer advocates' joint response. Thus, this is another area that remains unresolved.

[14]Letter from Christopher Guttman-McCabe to Marlene H. Dortch, dated June 12, 2009.

[15]Joint Response in Opposition to CTIA Withdrawal Notice, WT Docket No. 05-194, dated June 26, 2009.

Appendix V: Comments from the Federal Communications Commission

Federal Communications Commission
Washington, D.C. 20554

Mark L. Goldstein
Director, Physical Infrastructure Issues
United States Government Accountability Office
Washington, D.C. 20548

Re: GAO 10-34

Dear Mr. Goldstein:

Thank you for the opportunity to review and comment on the Government Accountability Office (GAO) Report, *FCC Needs to Improve Oversight of Wireless Phone Service* (the Report). This letter responds to the recommendations in the Report and describes the recent steps the Commission has taken to improve wireless consumers' experience.

Over the past several months, the Commission has begun work to address many of the very concerns raised in the GAO Report. In launching three broad, interrelated proceedings in late August, the Commission has initiated action critical to a well-considered and data-driven process for improving its regulation of wireless telephone services in a manner that will most effectively serve the public interest. To this end, the Commission has begun a sweeping review of the wireless market from three distinct vantage points – the flow of information to consumers, the state of competition within and affecting the wireless industry, and the dynamics of innovation and investment. Thus, the Commission is taking appropriate steps to fashion any needed regulatory action for protecting consumer interests in a competitive, innovative, and, therefore, more complex world of consumer choice.

Of the three proceedings, the *Consumer Information and Disclosure Notice of Inquiry (NOI)*[1] focuses most directly on the need for consumer protection regulation. It seeks comment on whether there are opportunities to protect and empower American consumers by ensuring sufficient access to relevant information about communications services. The inquiry asks for comment on whether the Commission's 2005 Truth-in-Billing rules are still effective and about the consumer's experience with their communications services (including wireless service). Specifically, the Commission seeks comment on "how to provide consumers with better access to clear, easily understandable information they need to choose a provider, to choose a service plan, manage use of the service plan, and decide whether and when to switch to a different provider or plan."[2] Although the Commission initiated the *Consumer Information and Disclosure NOI* before receiving the Report's recommendations, we nonetheless believe

[1] *In the Matter of Consumer Information and Disclosure, Truth-in-Billing and Billing Format, IP Enabled Services*, CG Docket No. 09-158, CC Docket No. 98-170, WC Docket No. 04-36, Notice of Inquiry, FCC 09-68 (rel. Aug. 28, 2009) (*Consumer Information and Disclosure NOI*).
[2] *Consumer Information and Disclosure NOI* at para. 16.

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that the inquiry is the first step to effectively implementing several of the Report's recommendations.

The second of the three proceedings is an *NOI* that seeks to enhance the Commission's analysis of competitive conditions in the mobile wireless market and to better understand the net effects on the American consumer.[3] The inquiry is broader than previous congressional-mandated annual inquiries into the state of competition in the wireless market because it seeks input on an appropriate analytic framework and data sources, includes new markets not previously covered, and asks about the relationships among the market for wireless service and upstream and downstream markets. Finally, the Commission launched the third proceeding with the *Wireless Innovation and Investment NOI*,[4] which seeks to identify concrete steps the Commission can take to support and encourage further innovation and investment in the wireless marketplace, which ultimately will benefit wireless service consumers.

GAO Recommendations

The Report recommends that the Commission "clearly inform consumers that they may complain to FCC about problems with wireless phone service and what they can expect as potential outcomes from this process, and expand the FCC's outreach to consumers about these efforts."

The *Consumer Information and Disclosure NOI* begins to address this issue by seeking comment on whether the Commission should take measures to ensure that consumers are aware of the complaint process at the FCC.[5] In addition to seeking information about the Commission's complaint procedure, the Commission also seeks comment on whether it should consider modifying the truth-in-billing rules to make it easier for consumers to contact their service provider directly to file a complaint. For example, section 64.2401(d) of the Commission's rules currently requires telephone bills to display a toll-free number or numbers by which subscribers may inquire or dispute any charges on the bill.[6] The Commission requests comment on whether it should also

[3] *See In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless including Commercial Mobile Services*, WT Docket No. 09-66, Notice of Inquiry, FCC 09-67 (rel. Aug. 27, 2009).
[4] *In the Matter of Fostering Innovation and Investment in the Wireless Communications Market, A National Broadband Plan For Our Future*, GN Docket No. 09-157, GN Docket No. 09-51, Notice of Inquiry, FCC 09-66 (rel. Aug. 27, 2008).
[5] *Consumer Information and Disclosure NOI* at para. 51.
[6] 47 C.F.R. § 64.2401(d). A carrier may list a toll-free number for a billing agent, clearinghouse, or other third party, provided such party possesses sufficient information to answer questions concerning the subscriber's account and is fully authorized to resolve the consumer's complaints on the carrier's behalf.

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require service providers to include on their bills information about how to contact the provider via the Internet, or how to contact the Commission to file a complaint.

The *Consumer Information and Disclosure NOI* also seeks input on consumer education initiatives that could assist consumers in gaining access to the information necessary at all stages of the purchasing process. In particular, the Commission seeks comment on whether existing FCC consumer publications are helpful to consumers by providing relevant factors to consider and questions to ask when choosing providers and service plans.

The Commission shares the views expressed in the Report that consumers should be able to understand the services available to them and know where to turn if they have questions or complaints. As the Report notes, wireless consumer complaints to the Commission have risen, which may be attributable, at least in part, to the success the Commission has had informing consumers about the informal complaint process.[7] In particular, the Commission recently redesigned its complaint form to make filing complaints easier for consumers. In addition, the Commission continues to offer consumers information on how to complain to the FCC on its website and on all fact sheets that are circulated widely at outreach events and conferences. However, the Commission can and will do more to better inform consumers of the services available to them at the Commission, including making it clear that FCC-sponsored mediation with the relevant carrier on the consumers' behalf is an option. And the *Consumer Information and Disclosure NOI* encourages commenters to provide suggestions on what, if any, outreach and educational activities the Commission might undertake to help consumers in the area of resolving disputes.

The Report also recommends that the Commission "develop goals and related measures for the FCC's informal complaint-handling efforts that clearly articulate intended outcomes and address important dimensions of performance." The Commission has current performance measures requiring responses to 100 percent of non-Telephone Consumer Protection Act (TCPA) complaints within 30 days, and responding to consumers within 20 days of receiving junk fax and do-not-call complaints. While the Commission has thus established goals to ensure that the agency responds quickly to all informal complaints (and to track its success in these regards), the outcome of each complaint will turn on the specific facts involved and cannot be predetermined. Accordingly, the appropriate metrics of success in what is essentially a case by case

[7] "Consumer complaints at the FCC relating to billing and rates for wireline services increased from 8,965 in 2006 to 13,486 in 2008, an increase of 50 percent, while the number of wireline telephone subscribers decreased 10 percent between June 2006 and June 2008. Consumer complaints at the FCC relating to billing and rates for wireless services increased from 8,822 in 2006 to 10,930 in 2008, an increase of approximately 24 percent, while the number of wireless subscribers during the same period increased by 16 percent." *See Consumer Information and Disclosure NOI* at para. 15.

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complaint resolution process will measure the procedural aspects of the system (*e.g.*, response times, percentages of complaints processed) rather than substantive outcomes like the number of adverse decisions rendered against carriers. As discussed below, however, the Commission's recent and ongoing efforts to improve its ability to compile, manage and analyze data about these cases will enable the agency to take a focused and methodical approach, based on hard facts, in directing its enforcement resources and establishing policy and goals.

The Report recommends that the FCC "develop and implement policies and procedures for conducting documented monitoring and analysis of consumer complaints in order to help the agency identify trends and emerging issues and determine whether carriers are complying with existing rules or whether new rules may be needed to protect consumers." We agree with this recommendation and can report that the Commission has already taken concrete steps in this regard.

First, the Commission launched an ambitious overhaul of its data management systems to centralize the storage and management of consumer complaints and aggregate data for analysis. Specifically, the Commission implemented in February of last year the Consumer Complaint Management System (CCMS). Using CCMS, the Commission can directly access complaint data through both an application interface and an enterprise reporting tool (Business Objects) and can then use the data for complaint trend analyses as well as for broad, complaint-based investigations. In contrast to the more limited capabilities of the previous complaint management system, these automated delivery methods provide significant efficiencies by eliminating the Commission's need to manually re-key or export complaints for broad data analyses. More importantly, CCMS also facilitates the reporting of various metrics associated with some complaint subject areas. Using the CCMS and Business Objects reporting tools, the Commission has already begun performing complex analyses to identify complaint trends showing the most problematic substantive subject areas and the most significant alleged violators within those subject areas. Such analyses then form the basis for recommended enforcement actions and can also inform discussions regarding the need for new or revised rules. The new system is expected to reduce the potential for errors and delays in action that may have occurred due to the prior manual processes.

Second, the Commission is developing a second-generation complaint and tracking system that will provide added functionality. The next iteration of the complaint system will be launched as a module of the consolidated database, the Enforcement Bureau Activity Tracking System (EBATS). This improvement means that consumer complaints will be electronically delivered into EBATS. Consequently, the upgrade will provide the Commission with the ability to run targeted reports from a consolidated database about incoming complaint data, evaluate the time required to review complaints

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by substantive area, assist in the development and implementation of metrics, and automatically measure performance within those metrics. Based on the current schedule, the Commission anticipates deploying the first iteration of this module in the second quarter of fiscal year 2010.

The Report further recommends that the Commission "develop and issue guidance delineating federal and state authority to regulate wireless phone service, including pulling together prior rulings on this issue; addressing the related open proceedings on truth-in-billing and early termination fees, and, if needed, seeking appropriate statutory authority from Congress." As noted above, the *Consumer Information and Disclosure NOI* asks whether the Truth-in-Billing rules are working and having the desired effect in making bills easier to understand. It further asks if any quantifiable data describes whether and to what extent consumers still find their bills confusing and whether carriers are complying with the requirements. In addition, the Commission asks questions about early termination fees—whether the carriers disclose them clearly, including whether and how they are prorated. We anticipate a comprehensive updated record on these issues and look forwarding to reviewing the filed comments to ensure that wireless subscribers are receiving adequate disclosure of rates and terms of service before they subscribe to communications services. At that point, the Commission will be positioned to propose the federal regulatory action within its authority that it concludes is necessary to best serve the public interest, to delineate areas within the states' authority that the record indicates should be addressed, and to make any legislative recommendations that appear to be warranted.

The Report recommends that the Commission "develop and implement policies and procedures for communicating with states about wireless phone service oversight." The Commission currently has several avenues in which it interacts and communicates with state commissions for the purposes of strengthening consumer protections in the communications marketplace, including the State National Action Plan (SNAP), the Intergovernmental Advisory Committee (IAC), and the National Association of Regulatory Utility Commissioners (NARUC). The Commission always looks for new and better ways to communicate with our state partners, and will continue to do so on wireless issues. For instance, the *Consumer Information and Disclosure NOI* asks whether the Commission can take further actions to reach out to other federal agencies, as well as state, local, and tribal governmental entities to help identify ways to educate consumers and better address consumer confusion about the issues discussed in the Inquiry.[8]

We appreciate GAO's thoughts and recommendations on our oversight of the wireless industry. We will be mindful of them as we move forward with policy

[8] *Consumer Information and Disclosure NOI* at para. 58.

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initiatives and programs currently underway and as we craft new approaches to further protect American consumers of wireless phone service.

Thank you for the opportunity to comment on the Report.

Sincerely,

Steven VanRoekel
Managing Director

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Appendix VI: GAO Contact and Staff Acknowledgments

GAO Contact

Mark L. Goldstein, (202) 512-2834 or goldsteinm@gao.gov

Staff Acknowledgments

In addition to the individual named above, Judy Guilliams-Tapia, Assistant Director; Eli Albagli; James Ashley; Scott Behen; Nancy Boardman; Bess Eisenstadt; Andrew Huddleston; Eric Hudson; Mitchell Karpman; Josh Ormond; George Quinn; Ophelia Robinson; Kelly Rubin; Andrew Stavisky; and Mindi Weisenbloom made key contributions to this report.

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