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THE CONSUMER RESPONSE TO PUBLIC UTILITY COMPETITION

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EXECUTIVE SUMMARY

This report discusses the response of the consumer to the changing regulatory environment, as well as the impact of the environment on the role and function of the state and federal public utility commissions, and the consumer affairs departments within these commissions. Whereas other publications address the consumer issues associated with competition from economic or political perspectives, this report focuses on the consumer response to choice programs. It details the skills that they have had to acquire in order to optimally function in the new regulatory environment, the new relationships that they have had to enter into, the transaction costs or "social costs" that they have had to bear within the new regulatory environment, and the frustrations that they have experienced.

The report also chronicles the impact of the consumer response on state public utility commissions. Indeed, the structural and institutional changes that earmark the new regulatory environment have forced state public utility commissions to reexamine their relationships with consumers, utilities, billing agents, federal utility commissions, other government agencies, and consumer protection agencies. In doing so, it has forced them to reexamine the ways in which they protect consumers, and in essence has forced them to reexamine both their roles and responsibilities within the context of their consumer protection mandate and the very essence of who they are. The report also discusses the new skills that consumer affairs departments have had to add in order to do their jobs effectively. As discussed in Chapter 1, in many cases, the consumer affairs function has evolved from primarily a complaint-handing or intake function to one which encompasses complaint-handling, consumer research, policy making/ policy enforcement, and consumer education.

Clearly, there is no doubt that telecommunications, gas, and electric industry restructuring have a profound impact on consumers. The report also details the evidence gathered thus far on the variables that impact consumer responses to utility industry restructuring in those markets. Results of the research indicate that the most significant variables can be categorized as income effects, age effects, consumer size effects, and outreach effects. According to the research, the following conclusions can be gleaned:

- Consumers at the bottom half of the income spectrum do not share the same benefits of competition—meaningful competitive choice and lower prices—as do consumers at the top half.[1]

- Older adults do not reap the same benefits of long distance competition that younger adults reap.[2]

- Small gas customers are reluctant to choose an alternative service even when it would result in savings.[3]

- Consumer outreach or empowerment activities do play a pivotal role in consumer responses to electric industry restructuring .[4]

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[1] Mark Cooper and Gene Kimmelman, *The Digital Divide Confronts the Telecommunication Act of 1996: Economic Reality Versus Public Policy* (Washington, D.C.: The Consumer Federation of America, 1999), viii.

[2] Christopher A. Baker and Ann McLarty Jackson, *Consumer Understanding of Pricing Practices and Savings Opportunities in the Long Distance Industry: Findings from an AARP Survey* (Washington, D.C.: AARP, 2000).

[3] Kenneth W. Costello, *Household Participation in Gas Customer Choice Programs: Some Facts, Explanations, and Lessons Learned* (Columbus, OH: The National Regulatory Research Institute, 1990).

[4] Nora Mead Brownelll, "Unplugged Pennsylvania's Experience," *The San Diego Union Tribune*, January 28, 2001.

The evidence presented thus far indicates that consumers have, in some cases, been negatively impacted by industry restructuring efforts. As commissions attempt to restructure these markets, attention will need to be paid to consumer impacts and reactions.

Conclusions indicate that as we move forward within the new competitive environment, it will be important for state public utility commissions to conduct market monitoring to ensure that safeguards are in place to adequately protect consumers from market abuses, as well as ensure that all classes of consumers reap the benefits not the growing pains of competition. As an example, it will be important for consumer affairs staffs to continue to conduct market research regarding the factors that motivate and impede consumers from participating in energy choice programs, as well as the impact of market action on consumers' attitudes, values, beliefs, and behavior toward choice programs.

Chapter 3 builds understanding of consumer complaints. The chapter discusses the rise in consumer complaints; frustrations and challenges that consumers have endured with regard to specific types of consumer complaints: cramming, slamming, and sliding; and the frustrations and challenges that consumers have endured with regard to the complaint-handling process.

A major contribution of this report is the identification of performance indicators that address the consumer side of the marketplace. This is the first time that an attempt has been made to develop such performance indicators, which will provide a rich complement to existing economic and political indicators.

Conclusions indicate the need for performance indicators for the following areas:

- complaint statistics
- company complaint-handling mechanisms
- codes of conduct

- deceptive marketing practices
- telemarketing sales pitches/marketing scripts
- sales incentives and disincentives
- billing aggregators
- truth-in billing issues
- benefits of consumer choice programs
- consumer research
- utility performance standards

Clearly, the addition of the consumer perspective to traditional market monitoring activities will add a rich new dimension to the data analysis and will add a valuable component to existing consumer protection endeavors.

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FOREWORD

As we move forward toward a more competitive environment, it is important to understand the impact of the environment on the consumer and the consumer affairs function. This report provides an in-depth overview of the consumer perspective, as well as analysis of the challenges facing consumer affairs departments. The report also provides valuable recommendations for policy makers who are conducting market monitoring as related to consumer issues.

Sincerely,

Raymond W. Lawton
Director, NRRI
June 2001

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CHAPTER 1

INTRODUCTION

The New Complex Consumer Environment

In the article, "State Commissions in Transition: The NARUC Consumer Challenge" former Commissioner William Gillis, former chair of the NARUC Consumer Affairs Committee, explains the impact of the regulatory environment on the role of the commission and the consumer:

> The reason for state commissions to expand their consumer education and protection role arises from the transformation of public service industries from monopolies, with appropriate regulation, to industries where the private market is expected to provide a greater regulatory role. The emerging public utility marketplace has provided many consumer benefits. However, consumers are also asked to accept new responsibilities and costs.[1]

Figure 1-1 depicts the new consumer roles within the evolving regulatory environment. As indicated by Figure 1-1, consumers are now expected to competently detect fraud, unauthorized charges, deceptive and misleading marketing practices, and make informed choices regarding the selection of a service provider and vertical services, as well as successfully navigate complex complaint-handling processes.

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[1] Former Commissioner William Gillis, "State Commissions in Transition: The NARUC Consumer Issues Challenge," *NRRI Quarterly Bulletin* 20, no. 2 (1999): 171-176.

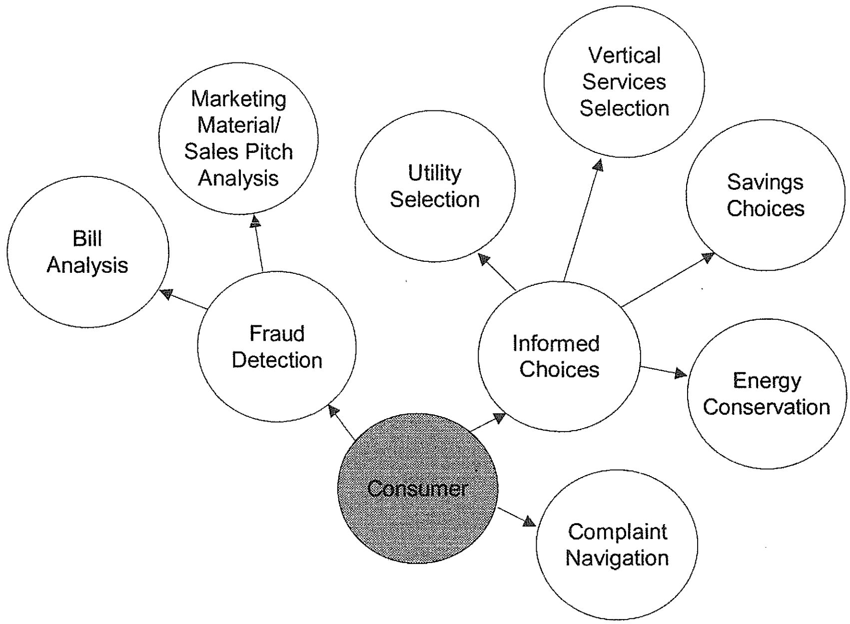

Figure 1-1. New consumer roles.
Source: Author's construct.

Consumer responsibilities regarding fraud detection include careful bill analysis and careful analysis of sales pitches and marketing materials. A consumer must carefully examine their bills to determine if all of the charges are authorized, to ensure that they are indeed receiving all of the services that they are billed for, and to ensure that the bill does not include fake charges, such as charges for an "800 call manager."

Consumers must listen carefully to sales pitches for local, long distance, and vertical services, such as Caller ID, to ensure that they understand the rates, charges, and services. As an example, sometimes consumers will agree to a long distance calling card, expecting the card to have the same rate as their long distance rate, and later find out that the charges are five or ten times higher.

Still other consumers are unpleasantly surprised to find out that the "fine print" contained an activation fee or that the promotional rate only applies to two- or three-year contracts.

Twenty years ago consumer choice revolved around issues such as the style or the color of the telephone and whether or not to turn down the thermostat another degree. Today, consumers are faced with a confusing array of utility-related choices. Examples include the following:

- Selection of a long distance telecommunications carrier
- Selection of a local telecommunications carrier
- Selection of an electric company
- Selection of a gas company
- Selection of vertical services, such as Caller ID and voice mail
- Selection of long distance rate plans
- Selection of energy conservation measures

Moreover, as will be discussed in Chapter 3, many consumers have learned that the ability to successfully navigate the utility complaint-handling process is a highly desirable skill. Unfortunately, many consumers have found the complaint-handling process to be a very frustrating experience.

The impact of the new regulatory environment is most profoundly felt on the very persons whose lives were supposed to be improved by the changes—the consumer. Chapter 3 provides a detailed analysis of the impact of company abuses on consumers and is supported by complaint statistics.

The transition toward a new competitive environment has encouraged commissions, as well as, consumers to redefine their relationship with utilities, state and federal public utility commissions, third-party billing agents, billing houses, the legislature, the Office of the Attorney General, and consumer protection agencies, such as the National Consumers League. Moreover, as they navigate their way through the treacherous waters of the uncharted sea that is commonly referred to as the new competitive environment, both commissions and consumers are motivated to acquire new skill sets with which to enter into these new relationships. As an example, consumers must have the skills to make "informed decisions" regarding choice of suppliers including: (1) the ability to compare rates; (2) the ability to compare service quality; (3) the ability to make decisions which are not unduly influenced by promotional incentives, such as cash or frequent flyer miles; (4) the ability to reinterpret deceptive or misleading advertising; (5) the ability to reinterpret deceptive or misleading sales pitches; (6) the ability to identify unauthorized charges on their bills, and; (7) the ability to identify market abuses.

The New Role of Commission Consumer Affairs Departments

Figure 1-2 depicts the range of organizations that commission consumer affairs departments interact with on behalf of the consumer.[2] As Figure 1-2 indicates, the range and scope of organizations that state public utility commission consumer affairs departments interact with on behalf of consumers has increased significantly over the past few years. Consumer affairs staffs are interacting with billing parties, such as XYZ Horoscope, with which they never expected to have a professional relationship. On the other side of the spectrum, because of their access to complaint data and their knowledge of market abuse

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[2] Figure 1-2 is presented for illustrative purposes and is not meant to represent an exhaustive listing.

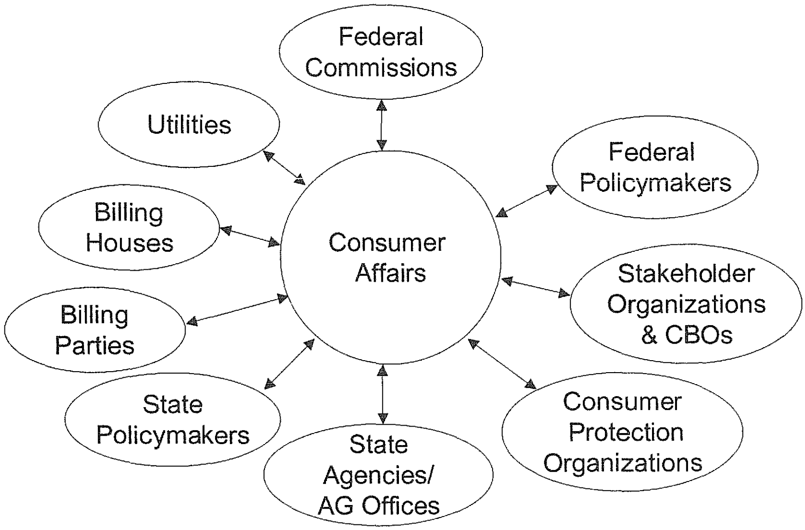

Figure 1-2. Typical organizations that consumer affairs departments interact with on behalf of consumers.
Source: Author's construct.

trends, consumer affairs staffs are providing policy recommendations that impact state and federal consumer protection legislation. Clearly, it is an understatement to say that the changes within the new regulatory environment have made the role of the consumer affairs department both more complex and more salient. Similarly, staff of commission consumer affairs departments have also learned that change requires new duties. Figure 1-3 depicts the typical functions that consumer affairs departments have entered into within the evolving regulatory

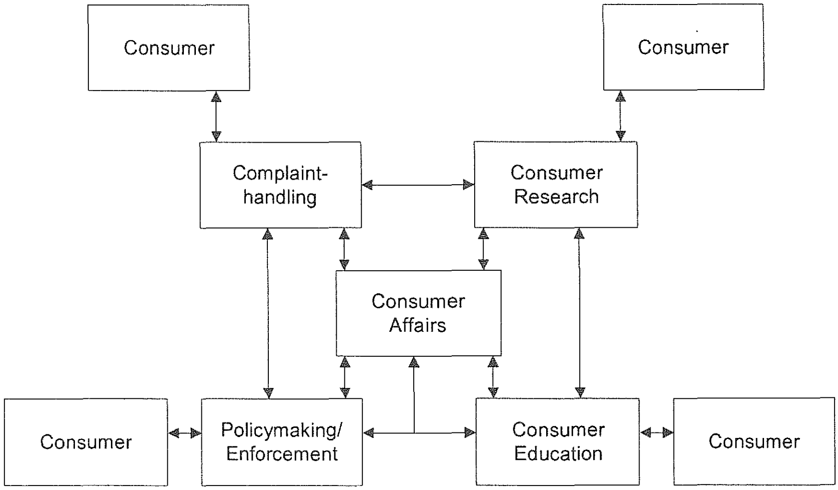

Figure 1-3. New consumer affairs roles.
Source: Author's construct.

environment.[3] As indicated by Figure 1-3, the basic functions of the consumer affairs are indeed interdependent. As shown in Figure 1-3, in many cases, the consumer affairs function encompasses complaint-handling, consumer research, policy making/enforcement, and consumer education. Clearly, the function of this department has significantly expanded within the last five years.

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[3] It is not the intent of the author to imply that all consumer affairs departments have assumed all of the functions described in Figure 1-3, nor is the intent of the author to imply that the functions are compartmentalized exactly as described within the figures. Rather the intent is to provide the reader with illustrative examples of the functions that consumer affairs departments are assuming. It is important to remember that each state's situation is unique and that consumer affairs departments are organized according to the unique set of circumstances which they face. "Consumer Protection: Roles and Responsibilities," *NRRI Quarterly Bulletin* 19, no. 4 (1999): 407-424, is an excellent resource for readers wishing an in-depth case study of how a specific consumer affairs department is configured.

Figures 1-4 through 1-8 provide a more detailed look at each of the four areas of the consumer affairs function that are described in Figure 1-3. Figure 1-4 depicts five of the popular ways that commissions educate the public. Figure 1-5 depicts the range of consumer research activities that a commission may conduct. Figure 1-6 depicts the range of activities that occur within the complaint-handling function.[4] Figure 1-7 depicts the range of policy activities that a commission may conduct and Figure 1-8 provides a more in-depth description of the policy activities related to information flow and management.

CONSUMER EDUCATION ACTIVITIES

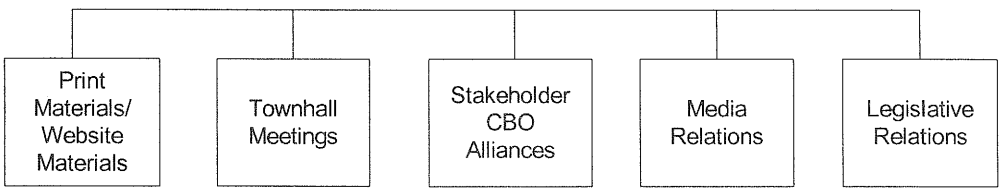

Figure 1-4. Consumer education activities.
Source: Author's construct.

[4] In Figure 1-6, complaint-handling policies refers to complaint-handling processes that commissions set for their call centers and the company call centers. As an example, some commissions have call completion standards for both themselves and the companies in their jurisdiction. In Figure 1-6, aggregate data analysis refers to the process of examining complaint data for service quality and "bad actor" trends.

CONSUMER RESEARCH ACTIVITIES

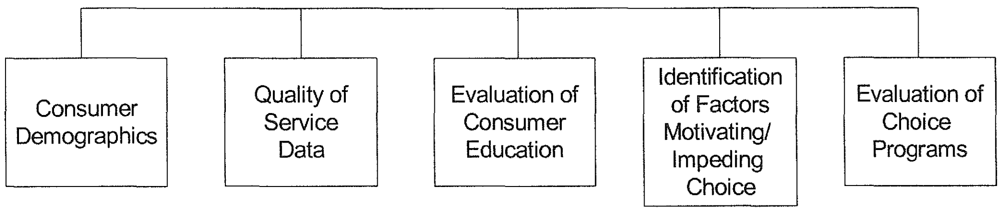

Figure 1-5. Consumer research activities.
Source: Author's construct.

COMPLAINT-HANDLING ACTIVITIES

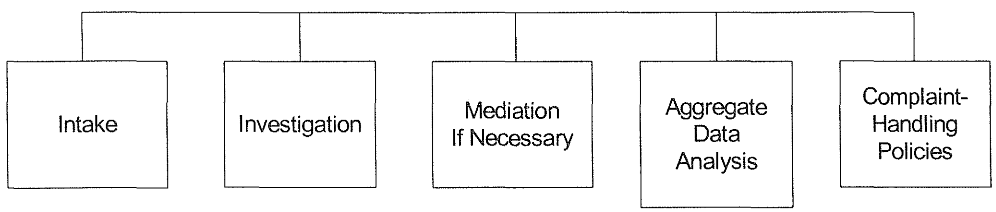

Figure 1-6. Complaint-handling activities.
Source: Author's construct.

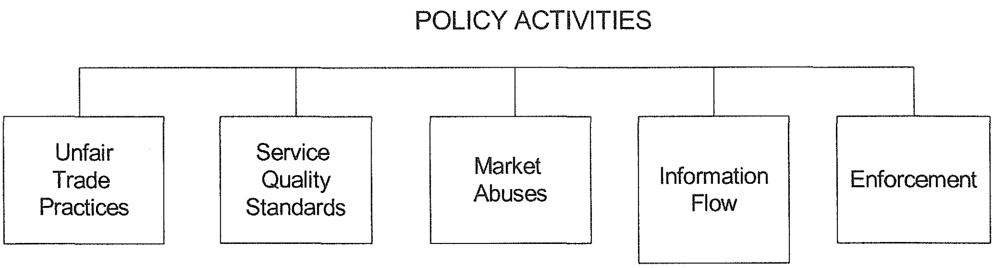

Figure 1-7. Policy activities.
Source: Author's construct.

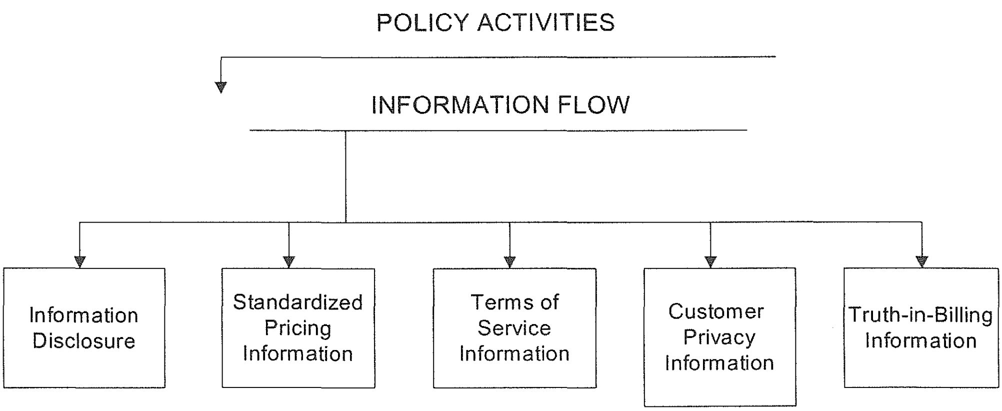

Figure 1-8. Information flow and management activities.
Source: Author's construct.

Conclusion

Harry M. Trebing discusses some of the implications of the new regulatory environment on both the consumer's skills set and the role and relevancy of the consumer protection movement.

> As markets replace regulated sources of supply, consumers will be compelled to negotiate directly with vendors in these markets to acquire utility services. If these markets are assumed to be both efficient and competitive then the consumers' first line of protection would involve informed decision making and free choice. This, in turn, would place primary emphasis on providing consumers with the type of information needed to make rational decisions.
>
> But if there is a strong potential for the exercise of market power and the selective exploitation of customer classes, then an entirely different form of consumer activism is called for. Information regarding prices and reliability loses much of its significance when placed in the context of market failure.[5]

Indeed, as Trebing points out, the challenges of the new regulatory environment have significant, and perhaps unprecedented, impact on the roles and responsibilities of both the consumer and the consumer intervention function. For better or for worse, the ability of both the public utility commission, and perhaps the consumer protection movement in mass, to respond rapidly and effectively to these marketplace challenges will indeed redefine its position and subsequent value in the new consumer protection paradigm.[6]

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[5] Harry M. Trebing, "New Challenges for the Consumer Movement in an Era of Utility Deregulation," *NRRI Quarterly Bulletin* 19, no. 4 (1999): 426.

[6] At present, the issue of whether consumer education should stay within the PUC or move to the Consumer Counsel is on the table in one state. In another state the issue did arise as to whether the Commission was the best organization to do consumer protection.

CHAPTER 2

CONSUMER RESPONSES TO UTILITY CHOICE

There is also no doubt that telecommunications, gas, and electric industry restructuring have a profound impact on consumers. This chapter details the evidence gathered thus far on the variables that affect consumer responses to utility industry restructuring in those markets. The most significant variables can be categorized as income effects, age effects, consumer size effects, and outreach effects.

Income Effects

According to Mark Cooper and Gene Kimmelman, neither current market forces or public policy create either incentives or assurances that cable, local telephone, long distance, or any combination of these companies will bring more meaningful competitive choice or lower prices for the bottom half of the consumer markets of these services.[1]

Based on their research, Cooper and Kimmelman divided telecommunications consumers into the following four market segments:[2]

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[1] Mark Cooper and Gene Kimmelman, *The Digital Divide Confronts the Telecommunications Act of 1996: Economic Reality Versus Public Policy* (Washington, D.C: The Consumer Federation of America, 1999), viii.

[2] The market segments are constructed by the households' use of telecommunications services. For the purpose of the report, the authors define telecommunications services to include Internet and cable services.

1. Modest households
2. Mobile households
3. Transitional households and
4. Premier households.

According to the researchers, Modest households comprise 45 percent of all households; Premier households comprise 24 percent, Mobile households comprise 16 percent; and Transitional households comprise 15 percent. Table 2-1 presents a summary of some of the key differences in purchasing patterns of Modest and Premier households.

As indicated by Table 2-1, there are significant differences in the purchasing power and patterns of Mobile and Premier households. Clearly, the ability of Premier households to take advantage of the deployment of new technologies is far greater than that of the Mobile households.

As indicated by Table 2-1, Premier households expenditures for telecommunications services are significantly higher, over three times higher, than the expenditures of Modest households. In between those two groups are the Mobile and Transitional households.[3]

As the research indicates, the Modest households, comprising 45 percent of the total households, either do not want or cannot afford advanced services. By contrast, approximately 45 percent of all telecommunications expenditures in the residential sector are purchased by the Premier households. According to the researchers, income is a salient factor that drives the digital divide. The Modest households are comprised of low-income households; 66 percent of

[3] The Mobile and Transitional households have the following characteristics: (1) both spend just over $100 per month; (2) Mobile households have expanded their telecommunications consumption only with the addition of cellular; (3) Transitional households have expanded their consumption with second lines and Internet access.

Table 2-1: Characteristics of Market Segments				
Demographics	Modest	Mobile	Transitional	Premier
% of Population	45%	16%	15%	24%
% of Revenue	24%	16%	16%	44%
Median Income ($M)	$22,5	$41,2	$35,8	$53,8
Segment Defining				
2nd Line	No	No	50%	70%
Internet	No	No	62%	87%
Cellular	No	100%	10%	91%
3+ Enhanced Service	28%	44%	53%	70%
Usage Patterns				
Long Distance	30%	20%	5%	60%
(V. National Avg.)	Below	Below	Above	Above
% w/TV Services	63%	76%	74%	86%
% w/Fax	5%	10%	28%	50%
Segment Bills				
Local	$20	$25	$40	$50
Long Distance	$20	$25	$30	$50
Internet	- 0 -	- 0 -	$20	$25
Cellular	- 0 -	$30	$5	$35
Cable	$20	$30	$30	$40
Telecom Act Total	$60	$110	$125	$200

Source: Cooper and Kimmelman, *The Digital Divide Confronts the Telecommunications Act of 1996*, Table ES-1, v.

these households report annual income below $30,000 and 80 percent report income below $40,000. The median income for this group is $22,500.

Conclusions of the authors indicate a need for policy makers to adjust their policies "to reflect the reality that the core telecommunications and TV services that are consumed in modest quantities by average consumers are and will be provided under monopolistic conditions for the foreseeable future."[4]

Age Effects

Another perspective on the impact of the Telecommunications Act of 1996 on long distance usage patterns is found in the study, *Consumer Understanding of Pricing Practices and Savings Opportunities in the Long Distance Telephone Industry: Findings from an AARP Survey*, which reports on the responses of long distance callers age 18 and over to a recent AARP survey designed to determine consumer awareness and use of long distance cost-savings options and to determine whether these differ by age.

Key findings include the following:

1. Older adults make fewer long distance calls per week than younger respondents.
2. The long distance expenditures for older adults are almost 50 percent less than those of adults 18-49.[5]

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[4] Cooper and Kimmelman, *The Digital Divide Confronts the Telecommunications Act of 1996,* Table ES-1, viii.

[5] Christopher A. Baker and Ann McLarty Jackson, *Consumer Understanding of Pricing Practices and Savings Opportunities in the Long Distance Industry: Findings from an AARP Survey* (Washington, D.C.: AARP, 2000).

As indicated by Figure 2-1, one in four consumers age 65 and older report making fewer than one long distance call per week. By contrast, only 10 percent of consumers age 18-49 reported making fewer than one long distance call per week.

Results of the AARP research indicates that older adults tend to make fewer carrier switches due to cheaper rates than do younger respondents. Their research indicated that more long distance customers age 18-49 (66 percent), as compared to customers age 65 and older (42 percent) report switching their long distance provider to receive a cheaper rate. In addition:

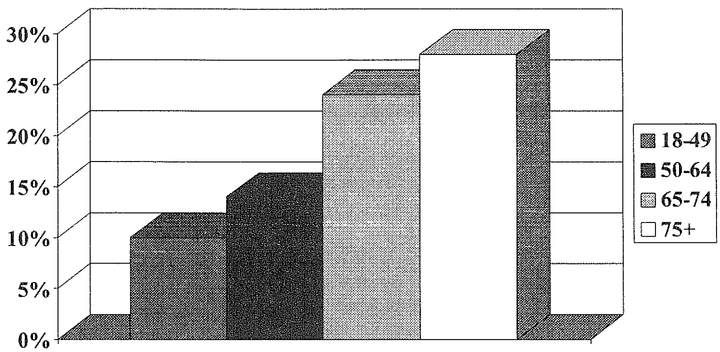

Figure 2-1. Percentage of respondents who make less than one long distance call per week.
Source: Baker and McLarty Jackson, *Consumer Understanding of Pricing Practices and Savings Opportunities in the Long Distance Industry,* 2.

1. One-half of long distance callers age 18-49 reported searching among long distance service providers for the least expensive rate, compared to only one-third of those age 65 and older.
2. Relatively few long distance callers age 18-49 (36 percent) and even fewer age 65 and older (23 percent) report subscribing to a calling plan.
3. While insufficient savings or price is the most commonly cited reason for not using a cost-savings method, more than seven in ten respondents do not identify this as a primary reason—this finding is consistent over all age groups.[6]

Customer Size Effects

Results of the research findings in the first phase of consumer choice for small retail gas customers have indicated results not dissimilar to those of the electric restructuring studies. Results of a 1999 study by Kenneth Costello, *Household Participation in Gas Customer Choice Programs: Some Facts, Explanations, and Lessons Learned,* indicated that most small gas customers are reluctant to choose an alternative service even when it would result in savings.[7]

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[6] For the purposes of the AARP study cost-savings methods were defined as: (1) subscribing to a discounted calling plan, (2) calling during off-peak times when rates are lower priced, or (3) dialing a special seven-digit number before making a long distance call.

[7] Kenneth W. Costello, *Household Participation in Gas Customer Choice Programs: Some Facts, Explanations, and Lessons Learned* (Columbus, OH: The National Regulatory Research Institute, 1999).

Costello offers three possible explanations for this behavior:

- Some customers made well-informed decisions, correctly anticipating no net benefits from choosing an unencumbered marketer.
- Some customers may be so confused and uninformed that they decide to incur no search costs and to "stay put" even though there may be imputed positive net benefits.
- Discriminary actions by the local gas utility may prevent or discourage customers from switching—as an example, onerous certification requirements may decrease the number of new marketers.[8]

These findings match the results of a more recent study by Kenneth W. Costello and Mohammad Harunuzzaman, *Consumer Benefits From Gas Choice: Empirical Findings From the First Programs*, which indicates that residential consumers have received marginal benefits from gas choice programs:

> This study largely confirms the perception by industry observers of outcomes of gas choice programs to date: customers have generally received limited benefits from current programs–the *average* price savings for all the selected programs in the study are 3.02 cents per therm or 7.8 percent; and marketers and other energy service providers have not yet successfully learned how to repackage different value-added services that customers demand and at a profit to suppliers. Consequently, the benefits of past and current gas choice programs come almost exclusively in the form of lower gas bills. It is inconceivable that gas choice will accelerate much beyond its current state without the availability of value-added services. These services will provide greater benefits to consumers and opportunities for suppliers to earn much higher profit margins than what they have to date.[9]

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[8] Ibid., iii, iv.

[9] Kenneth W. Costello and Mohammad Harunuzzaman, *Consumer Benefits from Gas Choice: Empirical Findings from the First Programs* (Columbus, OH: The National Regulatory Research Institute, 2000), iv.

Unfortunately, winter 2000 gas prices increased by 35-50 percent on national average. As an example, statistics from the U.S. Department of Energy (DOE) note that the average Midwest household heating with natural gas would see their total cost per household for the heating season of October 2000-March 2001 increase by 58 percent or $387 over the average cost for the 1999-2000.[10] Clearly, gas choice savings of 7.8 percent will look pale in light of this increase.

Consumer Outreach Effects

According to Commissioner Nora Mead Brownell, consumer empowerment activities were critical to Pennsylvania success in electric industry restructuring:[11]

> One of the keys to Pennsylvania's success was a strong consumer education program. Not only did we run an effective mass media campaign at the statewide level, but we also used surrogates to help us in our local education efforts. The results were and remain impressive, a 95 percent awareness and understanding about how to shop for electricity. Of more than a half-million customers who shopped for a new supplier, Pennsylvania's program was able to meet unique customer demands for those with environmental concerns. More than 80,000 customers have selected "green" power, bringing new investment to the state in the form of wind farms.

Clearly, the Pennsylvania experience provides rich insights from which other states can benefit. As an example, a number of consumer awareness

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[10] U.S. Department of Energy, "Residential Natural Gas Prices: What Consumers Should Know," updated January 2001, as available at: http://www.eia.doe.gov/oil_gas/natural_gas/analysis_publications/residential_natural_gas_prices/Chapter1.html.

[11] Nora Mead Brownell, "Unplugged: Pennsylvania's Experience," *The San Diego Union Tribune*, January 28, 2001.

studies have been conducted in the Pennsylvania market. From these studies we are able to glean valuable insights into factors that motivate and impede consumers to change suppliers, as well as the level of consumer awareness of their ability to choose suppliers.

Results of the Pennsylvania surveys indicate that consumers are aware of their ability to choose an electric supplier and are generally pleased with the information that they have been exposed to. Moreover, a large majority of consumers understand that participation in the electric choice program entails selection of an electric generation supplier and notification of the supplier of their choice. Consumers expressed a desire to learn more about who the competing suppliers are and their rates, as well as how to compare prices and calculate savings. However, recent attempts to educate consumers about how to determine their "price to compare" were not noticed by consumers. Key findings include the following:[12]

- The primary reasons for changing suppliers were:
  - lowest rate
  - overall reputation or name of the supplier
  - environmental "friendliness" of the supplier
  - additional services offered by the supplier
  - special programs/offers of the supplier
- The biggest impediments in considering or sticking to a new supplier were:
  - too confusing, too difficult, too much trouble (52 percent)
  - not enough savings for effort expended (35 percent)
  - no intriguing offers (10 percent)

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[12] See Wattage Monitor's "Switching Electricity Suppliers: A Research Study of Pennsylvania's Residential Consumers," Spring 1999, Wattage Monitor Inc., as downloaded from www.wattagemonitor.com. It is important to note that Wattage Monitor is a commercial service providing rate comparison information to consumers.

At the time of this writing, the sixth study of public opinion of consumer choice has been conducted among a cross-section of Pennsylvania citizens. The purpose of the research is to measure awareness of, and attitudes toward the Pennsylvania Electric Choice Program (PECP). Key findings of the sixth study, which was conducted March 5-12, 2000, include the following:[13]

- Ninety-one percent of all Pennsylvanians have recently seen, read, or heard something about being able to choose their electricity supplier.
- Forty-two percent of respondents are more likely to participate in the Electric Choice Program as a result of what they have seen, read or heard, whereas 34 percent are less likely to participate.
- Of the respondents who are more likely to participate based on what they have seen, read or heard, 17 percent attribute being more willing to participate based on recall of lower rates or savings.
- Forty-one percent of all Pennsylvanians currently claim to know what to do to participate in the program.[14]

Conclusion

Clearly, restructuring of the telecommunications, gas, and electric industries has had a profound impact on consumers. Results of the research indicate that the variables that have had the most significant impact on

[13] Previous studies were conducted on the following dates: June 20-24, 1998; August 23-25, 1998; December 9-14, 1998; March 28-April 1, 1999; and September 10-14, 1999.

[14] Although 8 percent of the respondents claim to have switched suppliers, 12 percent of respondents claim to have selected an alternative electric supplier at some time since the choice program began in 1999.

consumers can be categorize as income effects, age effects, consumer size effects, and outreach effects.

According to the research, the following conclusions can be gleaned regarding the impact of these variables on consumers:

- Consumers at the bottom half of the income spectrum do not share the same benefits of competition—meaningful competitive choice and lower prices—as do consumers at the top half.[15]
- Older adults do not reap the same benefits of long distance competition that younger adults reap.[16]
- Small gas customers are reluctant to choose an alternative service even when it would result in savings.[17]
- Consumer outreach or empowerment activities do play a pivotal role in consumer responses to electric industry restructuring .[18]

The evidence presented thus far indicates that consumers have, in some cases, been negatively impacted by industry restructuring efforts. As commissions attempt to restructure these markets, attention will need to be paid to assessing consumer impacts and reactions. Conclusions indicate the need for the development of performance measures that commissions might adopt to ensure that all consumers reap the benefits of restructuring.

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[15] Cooper and Kimmelman, *The Digital Divide Confronts the Telecommunication Act of 1996*, viii.

[16] Baker and McLarty Jackson, *Consumer Understanding of Pricing Practices and Savings Opportunities in the Long Distance Industry.*

[17] Costello, *Household Participation in Gas Customer Choice Programs: Some Facts, Explanations, and Lessons Learned.*

[18] Brownelll, "Unplugged Pennsylvania's Experience."

In the past, commission market monitoring endeavors focused primarily on economic and political indicators. It will be important that commissions identify performance indicators that address the consumer side of the marketplace. These performance indicators will provide a rich complement to existing economic and political indicators.

CHAPTER 3

CONSUMER COMPLAINTS[1]

Increase in Complaint Volume

In the article, "State Commissions in Transition: The NARUC Consumer Challenge," former Commissioner William Gillis discusses the rise in consumer complaints in response to developing markets:

> As markets have begun to develop, consumer complaints have grown. A survey of twenty-eight states conducted by the NARUC Staff Subcommittee on Consumer Affairs found that between 1993 and 1997, telephone service complaints rose by 91 percent, electric complaints by 58 percent and gas complaints by 40 percent. The California Public Utility Commission reports that consumer contacts increased by 65 percent between 1995-96 and 1997-98. It is not just regulatory commissions that are seeing the complaints. In Washington State, our Attorney General's Consumer Protection Division reports that telephone related complaints (slamming , cramming, billing practices) are their largest category.[2, 3]

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[1] It is not the author's intent to infer that the marketplace is guilty of abuses—rather it is individual firms. It is also not the intent to infer that all players are indeed "bad actors."

[2] Former Commissioner William Gillis, "State Commissions in Transition: The NARUC Consumer Issues Challenge," *NRRI Quarterly Bulletin* 20, no. 2 (1999): 171-176.

[3] Cramming schemes run the gamut from a one-time charge for entertainment services crammed into an unsuspecting consumer's phone bill to unauthorized recurring monthly charges for services as diverse as voice mail and psychic clubs.

Although in most industries the process of changing service providers, or maintaining service with a chosen provider, is a fairly transparent process that usually is congruent with preconceived notions regarding service expectations, thousands of utility consumers have not enjoyed such a luxury. Figure 3-1 illustrates the types of problems endured by consumers during the complaint-handling process.

Table 3-1, illustrates the range of consumer complaints received by the FCC, as well as comparison data for the first six months of 1998 through the first six months of 1999. Comparison of the first half of 1998 with the first half of 1999 complaints statistics indicated an approximate 15 percent increase in written complaints.

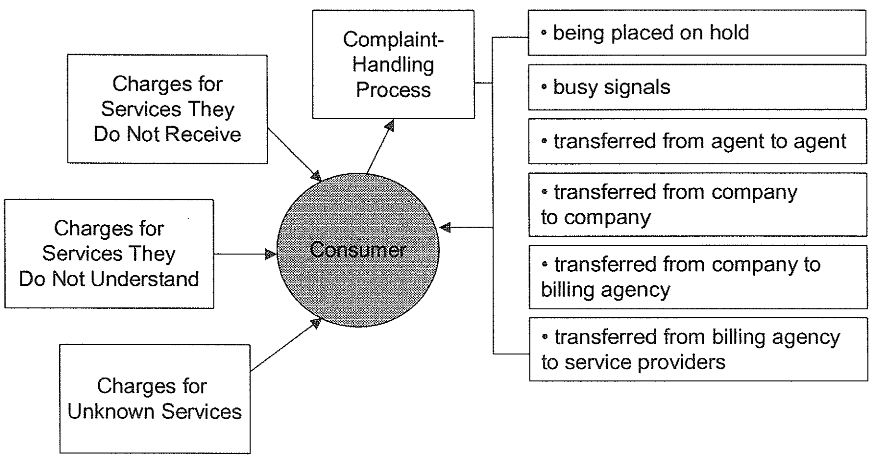

Figure 3-1. Company abuses endured by consumers during the complaint-handling process.
Source: Author's construct.

Table 3-1: Written Complaints Processed by the FCC First Half of 1998 Through First Half of 1999			
Complaint Types	1st Half 1998	2nd Half 1998	1st Half 1999
Slamming	9,597	10,557	12,478
Rates & Services	2,461	2,778	4,473
Cramming	2,302	2,256	1,214
End User Common Line[1]	0	1,854	1,072
Carrier Marketing	1,102	1,001	1,007
International (rates and other)	753	667	766
Access Charges	358	2,470	614
Operator Services	659	480	534
Telephone Consumer Protection Act	475	1,467	402
Referrals[2]	646	2,120	380
Information Services (pay per call)	810	953	325
Miscellaneous	1,266	1,465	720
Total Written Complaints Processed	20,429	28,068	23,985

[1] These complaints involve a one-time dispute between payphone providers and local exchange carriers over end-user common line charges.

[2] The FCC did not have jurisdiction over these complaints. These complaints were forwarded to the entity with jurisdiction.

Source: FCC, *Common Carrier Scorecard: Reporting Period January 1, 1999 to June 30, 1999.*

Clearly, not all consumer complaints are substantiated; however, most consumer affairs staff would argue that reported complaints represent only a small portion of actual complaints. Moreover, with regard to telecommunications complaints, prevalence data is often skewed by the fact that many consumers are unaware of the fact that the problem is occurring; others may be aware of the problem's potential but are unable to decipher the cryptic language of the telephone bill; and still others are aware of their victim status but are unable or unwilling, due to time constraints and/or other factors, to navigate the sea of utility complaint processes, such as 1-800 numbers, automated answering systems, call transferring, busy signals and being placed on hold. Moreover, if an unauthorized charge is inconsequential, for many consumers recovery of the small amount may not be worth the transaction costs. Inconvenient daytime complaint-handling hours may further deter other consumers from logging their complaint or attempting to recover unauthorized charges.

Types of Consumer Complaints

Cramming[4]

At the close of the century, the problem of cramming—the practice of placing unauthorized charges on a consumer's local telephone bill—for services

[4] Persons interested in obtaining information regarding how the complaints lodged against a specific telephone service provider compare to the number of complaints received by the competition have access to a valuable resource: the FCC's Scorecard can provide that information. The Scorecard, available on the Common Carrier Bureau's home page, highlights the three highest categories of telephone-related consumer complaints and inquiries processed by the Common Carrier Bureau's Enforcement Division during the most recent reporting period, reports telephone-related complaint trends, and includes an overview of how companies performed individually and as a group. Additionally, the Scorecard provides valuable consumer tips on how to avoid scams and what to do if problems occur.

that they did not order, authorize, receive, or use—was an issue that became a significant regulatory, legislative, and industry concern.[5] In fact, as indicated by Table 3-2, the Federal Communications Commission (FCC) reported that telephone billing and service complaint procedure was their number one Consumer Center issue for the period of January 1, 1999, through December 31, 1999.[6]

As indicated by Table 3-2, during 1999, telephone-related company abuses represented six of the top seven consumer issues reported to the FCC Consumer Center.

Of course, the FCC was not the only agency to receive cramming complaints. At the close of the century, most state public utility commissions and many Attorneys General were also beset with cramming complaints.[7] As an example, in 1998, cramming was the fifth largest complaint category in the State of Illinois.[8] As a result of the rise in cramming complaints, at least thirteen Attorneys General (CA, ID, IL, MS, NJ, NY, NC, OH, OR, PA, TN, VA, and WI)

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[5] For an in-depth analysis of the cramming problem, including state and federal action, see: Francine Sevel, *An Analysis of Cramming: Stakeholder Actions, Policy Recommendations, and Related Resources* (Columbus, Ohio: The National Regulatory Research Institute, 1999); and GAO, *Telecommunications: State and Federal Actions to Curb Slamming and Cramming,* RCED-99-193, July 27, 1999, available at: www.gao.gov/new.items/rc99193.pdf.

[6] "FCC Consumer Center Top 20 Consumer Issues," from: www.fcc.gov/cib/ncc/topsplit.html#tp2.

[7] For information regarding the number of cramming complaints received by state public utility commissions, see Sevel, *An Analysis of Cramming: Stakeholder Actions, Policy Recommendations, and Related Resources*; and GAO, *Telecommunications: State and Federal Actions to Curb Slamming and Cramming.*

[8] Comments of the National Association of Attorneys General Telecommunications Subcommittee of the Consumer Protection Committee, In the Matter of the Pay-Per-Call Rule Review, Before the Federal Trade Commission, 2.

**Table 3-2: FCC Consumer Center
Top 20 Consumer Issues**

1. Telephone Billing & Service Complaint Procedure
2. Telephone Slamming
3. Telephone Access Charges
4. Telephone Consumer Protection Act (TCPA)
5. Intrastate Telephone Issues
6. Land Mobile Licensing
7. Telephone Cramming
8. License Status Checks-Land Mobile
9. Commercial Radio Operators Licensing
10. Telephone Universal Service
11. Amateur Radio Licensing
12. Television Interference
13. Marine Ship Licensing
14. License Status Checks-Amateur
15. Cellular Telephone Billing and Service
16. Telephone Number Portability
17. Over-the-Air Reception Devices (OTARD)
18. How to Obtain FCC Forms
19. Broadcasting General Information Requests
20. Satellite

Source: "FCC Consumer Center Top 20 Consumer Issues," available at www.fcc.gov/cib/ncc/topsplit.html#tp2.

have filed twenty-seven lawsuits and eight assurances of voluntary compliance against providers and sometimes their bill aggregators.[9]

Companies have also been beset with cramming-related complaints. As an example, in fall of 1999, US West was receiving approximately 3,000 cramming-related complaints a month from customers who asked US West to block all

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[9] Ibid, 2.

charges from other companies. In December of 1999, recognition of the severity of the problem, coupled with the advice of state public utility commissions and Attorneys General, led the company to announce that it would quit billing for most enhanced telecommunications services provided by other companies including services such as Internet service, Caller ID boxes, and paging services.[10, 11]

Examples of telephone-billed fraud reported to the National Fraud Information Center include the following:

- A Michigan man received bills totaling $386 for 800 number calls never made. When he called the company listed on the bill, he got a recorded message saying there would be a $5 per minute charge to dispute charges.
- A North Carolina woman's thirteen-year-old daughter called an 800 number listed in a magazine ad for a music hotline. The call was switched to an international number and resulted in a $1,200 phone bill.[12]

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[10] US WEST news release, "US WEST Responds to Requests from Customers, Regulators, and State Attorneys General to Quit Billing for Most Enhanced Services Provided by Other Companies," December 1, 1999.

[11] Other examples of company action to curb cramming are found in: Francine Sevel, *An Analysis of Cramming: Stakeholder Actions, Policy Recommendations, and Related Resources*.

[12] The National Consumers League, Comments to the Federal Trade Commission Concerning the Pay-Per-Call Rule Review, 13-14.

- The Ohio Consumers' Counsel intervened on behalf of a consumer who faced a bill for $1,500 in 900-number calls to Hong Kong that the consumer had never made.[13]

Still, other examples of cramming occur through the use of deceptive and/or vague descriptions of fraudulent charges. The National Consumers League received complaints regarding fraudulent billing practices associated with the following terms:

- "monthly fee"
- "call manager"
- "basic access"
- "monthly service fee"
- "min use fee"
- "special plan"
- "800 service"[14]

Slamming

The process of correctly identifying one's long distance carrier should be simple. However, on the surface what appears to be a simple issue is a

[13] Comments of the Ohio Consumers' Counsel in the Matter of Pay-Per Call Rule Review, before the Federal Trade Commission, 1, as downloaded from: http://www.ftc.gov/bcp/adcon/900rule/comments2.ohio.htm.

[14] The National Consumers League, Comments to the Federal Trade Commission Concerning the Pay-Per-Call Rule Review.

confusing, frustrating, and time consuming experience for many consumers.[15] According to research by U.S. General Accounting Office (GAO), slamming—the practice of changing a subscriber's long distance telephone company without their permission—also reached epic proportions in the late 1990's.[16]

The GAO report indicates that state regulators reported a 91 percent increase in slamming complaints between 1996 and 1998; regulators received 39,688 complaints in 1998.[17] Morever, during the two study years, regulators in 35 states reported completing 219 formal enforcement actions against companies accused of slamming or cramming. Violators were ordered to pay at least $27 million in restitution and penalties.[18]

During the period of January through June of 1999, the FCC received 12,478 slamming complaints, a 30 percent increase from the 9,567 slamming complaints that they received from January through June of 1998.[19] As of January 2000, slamming continues to be among the FCC's top telephone-related complaints. During the past year, the FCC has proposed nearly $13 million in forfeitures in connection with this fraudulent practice.[20]

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[15] An excellent consumer education brochure on slamming is provided by the Florida Public Service Commission, see: www2.screened/PSC/general/publications/ slambro.pdf.

[16] U.S. General Accounting Office, *Telecommunications: State and Federal Actions to Curb Slamming and Cramming.*

[17] "Telephone Fraud," *AP* Financial Sunday, August 29, 1999.

[18] Ibid.

[19] See: www.fcc.gov/cib/ncc/topsplit.html.

[20] "FCC Proposes $2 Million Fine for Long Distance Phone Provider Qwest Communications for Slamming," FCC news release, October 19, 1999.

As indicated by Figure 3-2, statistics provided by the NARUC Staff Subcommittee on Consumer Affairs indicate that total slamming statistics for twenty-four states have not decreased dramatically since 1997. In 1997, there was a total of 16,832 slamming complaints and projected statistics for 2000 are 14,895—which does not represent a significant decrease in 1997 statistics.

Often slamming will occur as the result of a contest or sweepstakes entry that authorizes a service change in very small print, and it also often occurs when telemarketers use deceptive or confusing language to get consumers to change

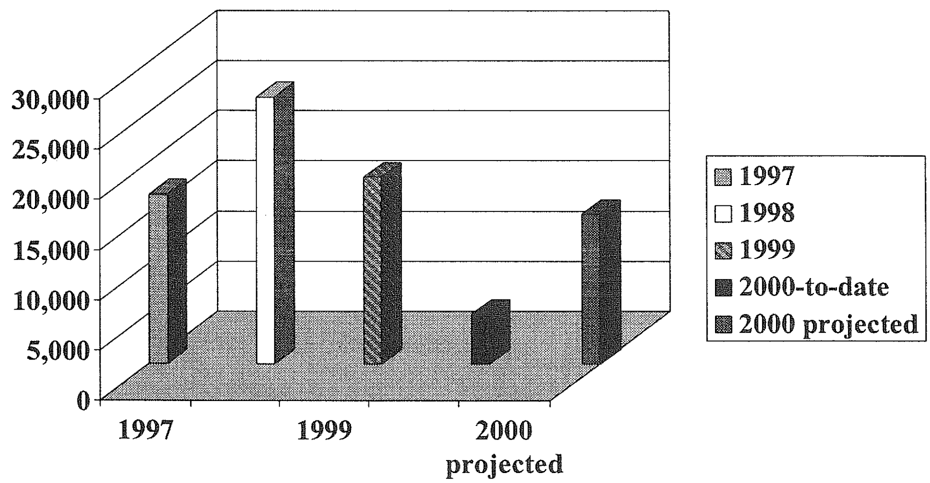

Figure 3-2. Slamming complaint statistics for 1997-2000.
Source: NARUC Staff Subcommittee on Consumer Affairs, July 2000.

their service.[21] However, it also occurs in cases where the consumer has had no contact with the new service provider.

The following are examples of typical slamming complaints investigated by the FCC and state public utility commissions:

> One of the complainants asserts that [the company] switched his preferred long distance service on the basis of an authorization "signed" in the name of his deceased dog, Boris. For privacy reasons, this subscriber had chosen to put his number in his dog's name in the local telephone directory.
>
> In another instance, the complainant alleges that the authorization letter provided by [the company] was purportedly signed by her husband, who had been deceased for eight years.[22]

Sliding

Sliding is the term that regulators are using to describe a phenomenon in which consumers have their local toll provider switched without their consent. Although slamming is clearly illegal under the regulations set forth by the Telecommunications Act of 1996, the issue of sliding is a little more complex. Sliding usually occurs when a customer signed a special offer to switch their long distance carrier, months or even years ago, and unknowingly agreed to the terms

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[21] Many states have disallowed the use of contests or sweepstakes entries in conjunction with the agreement to change long distance carriers. Persons interested in obtaining more information regarding the status of slamming laws and rules in individual states should see: www.tr.com/trinsight. The staff of *TRInsight* has prepared a chart on the status of laws and rules in each state governing "slamming." They also have provided citations to specific state laws, regulations or orders to assist those who wish to conduct further research. All of the information in the chart following is current as of Dec. 21, 1999.

[22] Ibid.

of the fine print which authorized the carrier to switch their local toll provider when the market opened to competition.

The California Public Utilities Commission (CPUC) investigated 79,890 complaints alleging that consumers' toll provider was switched without their consent.[23] In May 1999, Pacific Bell (Pac Bell), the state's dominant local phone company, reported to the CPUC that 79,890 customers complained that their local toll provider was switched following the inception of local toll competition, which began in the company's services area on May 7, 1999.[24] This figure represents 8 percent of the more than 1 million Pac Bell customers whose local toll service was switched during that period.

Unfortunately, the sliding trend is disturbing to state utility regulators because they worry that if consumers feel "bamboozled" in areas such as local toll service, which should be relatively straight-forward, they will be even less eager to see areas such as basic local calling opened to competition.[25] As former CPUC Commissioner Josiah L. Neeper observed, abuses such as sliding have a negative impact on the consumer's perceptions of the effectiveness of competition.

> There just isn't any faster way to get people turned off to ideas of competition than by abuses such as switching carriers without their consent. People just get frosted when that happens.[26]

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[23] "PUC Investigating Allegations of Illegal 'Sliding' of Local Toll Call Services," *The Associated Press*, July 30, 1999, file story.

[24] Chris O'Brien, "Toll Service Switching Probed," *San Jose Mercury News*, July 29, 1999, as downloaded from *Knight Ridder/Tribune News Service* on January 25, 2000.

[25] Ibid.

[26] "PUC Investigating Allegations of Illegal 'Sliding' of Local Toll Call Services," *The Associated Press,* July 30, 1999, file story.

The Complaint-Handling Process

Unfortunately, consumers who are "lucky" enough to identify that they have been the victims of an *ing* abuse—slamming, cramming, sliding—may wish that they had never discovered the problem. In their comments to the FTC regarding the Pay-Per-Call Review, the Florida Public Service Commission (FPSC) notes the difficulties associated with resolving billing disputes:

> For example, the consumer who places a call to the displayed local or toll-free telephone number would not expect to receive a busy signal for days on end or to get no answer even if the call rings through. Based on the FPSC's experience, as well as numerous experiences reported by consumers, attempting to reach entities, who are currently listed on telephone billing statements as a point of contact for billing inquiries, has been very difficult, or sometimes totally impossible.[27]

Similarly, The National Consumers League, in their testimony to the Senate Permanent Subcommittee on Investigations, described some of the problems associated with disputing unauthorized phone charges:

> Once consumers discover they've been crammed, their problems are only beginning. Following the directions on the bill, they call the number provided on that page for questions. This connects them either to the crammer or a billing aggregator acting on its behalf. However, many consumers report being left on hold for inordinate amounts of time, getting incessant busy signals, or reaching only a recorded answering service.

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[27] Comments of the Florida Public Service Commission, in the Matter of Pay-Per-Call Rule Review. Before the Federal Trade Commission, 4, as downloaded from: http://www.ftc.gov/bcp/acon/900rule/comments2/florida.htm.

> If they do manage to connect to a live customer service representative, they are often lied to, abused or referred to someone else. They are told that they authorized the service when they did not, and presented with documentation that is fabricated, such as forged signatures or doctored tape recordings. Sometimes their requests for documentation are simply refused. ...Customers report that they are threatened that their phone service will be cut off and their credit will be ruined if they refuse to pay the disputed charges. Sometimes they are sent from one company to another. All are affiliated in some way with the crammer and each denying responsibility.
>
> If the company agrees to credit the consumers' account, it may be for only some and not all of the charges that have accrued. Or the company may promise a credit, and never make it. And if the charge is removed one month, it may pop up again on the next month's bill, requiring the consumer to go through the dispute process all over again.[28]

Clearly, the process of lodging a complaint against a service provider can be a very frustrating and futile experience. It is understandable that the difficulties and abuses associated with the complaint-handling process could easily deter consumers from seeking relief for unauthorized charges, particularly relatively small charges. Unfortunately, the reluctance of consumers to put themselves through the myriad of problems associated with the complaint-handling process may be a factor that motivates "bad actors" to continue the behavior. Moreover, as indicated by Table 3-3, billing agents are also a source of consumer complaints.

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[28] The Case of the Phantom Phone Charges," Testimony of the National Consumers League to the Senate Permanent Subcommittee on Investigations, Presented by Susan Grant, National Fraud Information Center, July 23, 1998, 4-5, as downloaded from: http:www.nationalconsumersleague.org/cram.htm.

Conclusion

For many consumers the frustrations associated with the complaint-resolution process compound the frustrations that they have with the company abuses and cause them to re-examine the ability of institutional solutions and public policy makers to protect them from abusers, as well as the ability of institutional solutions and public policy makers to help them to achieve efficient and satisfactory resolution to company abuses. The extent to which their frustrations in one competitive market impede their desire to enter into other utility-based competitive markets have yet to be determined.

Table 3-3: FCC Billing Agent Complaints
(January 1, 1999 through June 30, 1999)

Billing Agent	Complaints	Billing Agent	Complaints
Agent A	3,536	Agent E	346
Agent B	1,945	Agent F	119
Agent C	1,027	Agent G	59
Agent D	912	Agent H	48

Source: FCC, *Common Carrier Scorecard: Reporting Period January 1, 1999 to June 30, 1999.*

In the article, "Executive Summary: Blueprint for Consumer Protection," author Barbara Alexander discusses the impact of electric industry competition on consumer vulnerability, and in turn the vulnerability of the new regulatory paradigm:

> Most participants in the restructuring debate agree that the general public will not consider the prospect of theoretically lower prices in the future as a sufficient tradeoff if the new market also means an increase in fraud, customer confusion, complaints and inability to understand and participate in the new market structure. In short, consumer protection issues are crucial to the public's acceptance of the new market structure.[29]

As we move forward in the new regulatory environment, it will be important that commissions begin to assess the impact of company abuses, such as the ones delineated in this chapter, on the consumer's confidence in the ability of regulatory solutions to protect them from company abuses, as well as the impact of company abuses on the consumer's willingness to enter into arrangements with new market entrants. As an example, research by the CPUC has indicated that consumers who have been victims of market abuses in one market are reluctant to enter into electric choice programs for fear of market abuses.[30]

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[29] Barbara Alexander, "Executive Summary: Blueprint For Consumer Protection," *NRRI Quarterly Bulletin*, 19, no. 4 (1999): 435-440.

[30] Conversation with Bill Schulte, former director of Consumer Services, California Public Utilities Commission, Staff Subcommittee on Consumer Affairs Meeting, Summer 2000 NARUC Meetings, Los Angeles, California, July 2000.

CHAPTER 4

INDICATORS OF EFFECTIVE CONSUMER PROTECTION

The evidence presented thus far indicates that consumers have, in some cases, been negatively impacted by industry restructuring efforts. As commissions attempt to restructure these markets, therefore, attention will need to be paid to consumer impacts and reactions. This chapter identifies some performance measures that commissions might adopt to ensure that all consumers reap the benefits of restructuring. These performance indicators are designed as a model for consumer affairs departments who are developing or reviewing their market monitoring activities, as opposed to a "one-size-fits-all" approach to market monitoring.

Complaint Statistics

- What are the trends that can be discerned through the monitoring of complaint data?
- Are certain types of complaints more prevalent?
- Do certain demographic, geographic, or socio-economic status groups have higher complaint thresholds?
- Are there specific utility sectors where trends are more apparent?
- Are there specific companies where trends are more apparent?

Company Complaint-Handling Mechanisms

- What is the percentage of calls answered according to an established benchmark?

- How does the company's busy-out-rate compare to an established benchmark?

- How does the company's on-hold time compare to an established benchmark?

- What is the percentage of customers who are dissatisfied with the company's resolution of the problem?

- What is the percentage of customers who are dissatisfied with the courtesy of the company representative?

- What is the percentage of consumers who are satisfied with the knowledge of the company representative?

- How does the time frame in which the problem was resolved compare to an established benchmark?

- How does customer satisfaction with the company's overall handling of the interaction compare to an established benchmark?

- Are all customers treated equally during the complaint-handling process?

- Are there certain demographic, geographic, or socio-economic groups of customers who experience more problems with the complaint-handling process?

Codes of Conduct[1]

- Is the process of transferring customers from one company to another being accomplished according to customer request?

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[1] For more information on codes of conduct see: Kenneth W. Costello, "Do Codes of Conduct Achieve Their Objective," *The Electricity Journal* (March 2000): 55-66.

- What is the percentage of transfers that are not accomplished to customer satisfaction?

- Is the process of transferring customers from one company to another occurring within an established benchmark?

- Is there a need for policies regarding the transfer of customers from one company to another?

- Is the process of removing PIC-freezes going smoothly?

- Is there a need for policies regarding the removal of PIC-freezes?

- Is there a need for codes of conduct regarding the privacy of customer information?

Deceptive Marketing Practices

- Do marketing materials contain deceptive or misleading information?

- Do marketing materials contain complete information, such as full disclosure of rates and terms?

- Do marketing materials either overtly or covertly attempt to deter certain ethnic or socio-economic status groups as customers?

- Do marketing materials contain sweepstakes, contests, and other such offers?

- Do marketing materials contain negative cancellation clauses?

- Do marketing materials explain all necessary information in clear terms that all consumers can understand?

- Is there a need for marketing materials to be printed in languages other than English?

- Is relevant information, terms of service, contract clauses, etc. displayed in a type size that is easy to read?

Telemarketing Sales Pitches/Marketing Scripts

- Do sales pitches assert undue pressure on consumers?
- Do the sales associates fully disclose all rates, terms of service, and contract clauses?
- Do sales associates engage in any deceptive or fraudulent marketing practices?
- Are certain ethnic or socio-economic status groups targeted with different sales pitches then other demographic and socio-economic groups?

<u>*Sales Incentives and Disincentives*</u>

- Do company incentives reward telemarketer service quality or do they primarily reward sales volumes?
- Does the company's incentive/disincentive program encourage or discourage unsatisfactory customer transactions?[2] [3]
- Is the sales force compensated through a mix of salary and commission?
- Is the sales force primarily composed of full-time employees?
- Does the company use third-party monitoring of telemarketing calls for service quality purposes?
- Does the company have codes of conduct that telemarketers must commit to?
- Does the company have a formalized plan for ensuring that telemarketers codes of conduct are adhered to?

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[2] For the purposes of this report, unsatisfactory customer transactions are transactions in which the customer is dissatisfied with the transaction outcome.

[3] As an example, at least one long distance company reports the practice of taking compensation away from the telemarketer for every complaint escalation in which the telemarketer is at fault.

- Are there incentives and disincentives in place to reward and penalize telemarketers who do not adhere to the codes of conduct?

- Do telemarketing supervisors share in the responsibility of ensuring that codes of conduct are adhered to?

- Are telemarketers provided with customer service training on a regular basis?

- Are customer service representatives provided with customer service training on a regular basis?

- Does the company have a policy manual for customer service representatives to refer to regarding the complaint-resolution process?

Billing Aggregators

- What are the trends that can be discerned through the monitoring of the billing aggregators' complaint data?

- Are certain types of complaints more prevalent?

- Do certain demographic, geographic, or socio-economic (status) groups have higher complaint thresholds?

- Do service representatives have codes of conduct for resolving consumer complaints?

- Does the billing aggregator have a formalized plan for monitoring that service representatives codes of conduct are adhered to?

- Are there incentives and disincentives in place to reward and penalize service representatives who do not adhere to the codes of conduct?

- Are service representatives provided with customer service training on a regular basis?

- Does the billing aggregator's incentive/disincentive program encourage or discourage unsatisfactory customer transactions?

- Does the billing aggregator use third-party monitoring of customer service calls?

Truth-in-Billing[4, 5]

- Are balances currently owed easily distinguished from previous balances?

- Are due dates and late charges clearly distinguishable?

- Does the bill contain conspicuous written notification of any changes in rates, calling plans, and vertical services?

- Does the bill contain clear definitions of terms?

- Are all federal charges labeled as such and clearly distinguished from other charges?

- Does the company allow the consumer to restrict charges to telecommunications-related charges?

- Does the bill clearly delineate nondeniable and deniable charges?

- Does the bill contain a rescission period during which the consumer can change their mind regarding the purchase of services or products that will be billed to their telecommunications bill?

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[4] The FCC and many states have adopted truth-in-billing policies. Many of the market monitoring points raised in this section are mandated by federal or state legislation.

[5] For more information see: Francine Sevel, *An Analysis of Cramming: Stakeholder Actions, Policy Recommendations, and Related Resources* (Columbus, OH: The National Regulatory Research Institute, 1999); and Demetria C. Watts and the Truth-in Billing Work Group of the NARUC Committee on Consumer Affairs, *The Critical Elements of a Model Telecommunications Billing Rule,* June 2000.

- Does the bill contain information regarding how to dispute charges?
- Does the bill contain information and 1-800 numbers regarding the complaint-handling process?

Benefits of Choice Programs

- Are different rates/services offered to different demographic, geographic, or socio-economic (status) groups?
- Are all demographic, geographic, or socio-economic groups benefitting equally from the advantages of choice programs? Either through the advantages afforded by lower rates or a wider array of services or a combination of both?
- What are the factors that motivate and impede consumers to engage in choice programs?
- To what degree do these factors very across demographic or socio-economic groups?

Consumer Research

- What is the level of consumer awareness of specific market abuses?
- What is the level of consumer satisfaction with utility service quality?
- What is the level of consumer satisfaction with utility complaint-handling processes?
- What is the level of consumer satisfaction with billing aggregator complaint-handling processes?
- What are the factors that motivate and impede consumers to choose alternative suppliers?
- To what degree do market abuses in one utility sector impede consumers from choosing alternative suppliers?

- Do high energy prices in states, such as California, deter consumers in other states from entering into choice programs?

- Do consumers perceive themselves to be receiving the benefits of choice programs or reaping the growing pains of deregulation?

Utility Performance Standards[6]

- How do individual utilities benchmark against other state utilities within their sector with regard to customer service?

- How do individual utilities benchmark against other state utilities within their sector with regard to quality of service?

- How do individual utilities benchmark against other state utilities within their sector with regard to complaint-handling?

- How do individual utilities benchmark against national comparable utilities with regard to customer service?

- How do individual utilities benchmark against national comparable utilities with regard to quality of service?

- How do individual utilities benchmark against national comparable utilities with regard to complaint-handling?

- How do individual utilities benchmark against other comparable businesses with regard to customer service?

- How do individual utilities benchmark against other comparable businesses with regard to quality of service?

- How do individual utilities benchmark against other comparable businesses with regard to complaint-handling?

- What is the historical service-quality performance of this utility?

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[6] See Mitchell Miller, "Utility Performance Standards: What States Are Doing?" The NARUC Staff Subcommittee on Consumer Affairs Annual Fall Conference, Charleston, South Carolina, September 19, 2000.

Indeed, consumer affairs departments can play a vital role in combating company abuses and ensuring that all consumers are able to reap the advantages as opposed to the disadvantages of competition and the new regulatory environment.

The addition of these market indicators to traditional commission market indicators will help commissions to develop new models of market monitoring. Moreover, the addition of the consumer perspective to traditional commission market monitoring will add a rich new dimension to the data analysis.

CHAPTER 5

CONCLUSIONS

The structural and institutional changes that hallmark the new regulatory environment have motivated state public utility commissions to reexamine their relationships with consumers, utilities, billing agents, federal utility commissions, other government agencies, consumer protection agencies, stakeholder organizations, and community-based organizations (CBOs). In doing so, it has motivated them to reexamine the ways in which they protect consumers, and in essence has motivated them to reexamine both their roles and responsibilities and the very essence of who they are.

Intrinsic to the question of who they are, lies the challenge of state public utility commissions to maximize consumer welfare and protect consumers from market abuses. Conclusions indicate that as we move forward within the new competitive environment, it will be important for state public utility commissions to conduct market monitoring to ensure that safeguards are in place to adequately protect consumers from market abuses, as well as ensure that all classes of consumers reap the benefits, not the growing pains, of competition.

As an example, it will be important for consumer affairs staffs to continue to conduct market research regarding the factors that motivate and impede consumers to choose energy suppliers, as well as the impact of market action on consumers' attitudes, values, beliefs, and behavior toward choice programs. Results of marketing monitoring endeavors will provide rich data that will help to guide commissions as they develop rules and policies to determine that the necessary safeguards and codes of conduct are in place to ensure that all the welfare of all classes of consumers is indeed both protected and maximized. Moreover, it will be important to conduct market monitoring to assess the impact of deregulation and competition on consumers. Results of this phase of market monitoring will provide rich insights for both states which are engaged in these processes, and states which have not begun these processes.

Conclusions also indicate that lessons learned from these early stages of the competitive marketplace will serve as guidance to commissions and legislative officials as they develop rules, policies, and legislation which will serve to prevent market abuses and ensure that all classes of consumers reap the benefits of competition. The lessons learned from these early stages will also provide rich insights to consumer affairs professionals regarding the attributes of consumer education that are necessary to provide consumers with the tools that are necessary to empower them to make informed choices. Moreover, the lessons learned from this transitional experience will be transferable to consumer protection professionals in other industries. The report, *Innovative Excellence: Best Practices in the Consumer Affairs Function*, is one example of a transferable product.[1]

The addition of the performance indicators presented in Chapter 4 to commission market monitoring activities will help commissions to develop new models of market monitoring. Moreover, the addition of the consumer perspective to traditional market monitoring activities will add a rich new dimension to the data analysis and will add a valuable component to existing consumer protection endeavors.

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[1] Francine Sevel, "Innovative Excellence: Best Practices in the Consumer Affairs Function," The National Regulatory Research Institute, 2000. This report contains a compilation of state public utility commission best practices within the following areas: Organization and Staffing of the Consumer Affairs Function, Call Center and Case Management, and Databases and Information Management.