



September 2017

TELECOMMUNICATIONS

FCC Updated Its Enforcement Program, but Improved Transparency Is Needed

GAO Highlights

Highlights of [GAO-17-727](#), a report to congressional requesters

Why GAO Did This Study

FCC's Enforcement Bureau is primarily responsible for ensuring the telecommunications industry's compliance with federal statutes and the Commission rules and orders designed to protect consumers, ensure public safety, and encourage competition. Some industry stakeholders have raised questions about the transparency and fairness of the Enforcement Bureau. GAO was asked to review FCC's management of its enforcement program.

In this report, GAO addresses: (1) actions FCC has taken in the last 5 years to update its enforcement program, (2) FCC's enforcement performance goals and measures, and (3) selected stakeholders' views on FCC's enforcement program and external communications. GAO reviewed FCC's enforcement policies and procedures; analyzed FCC's performance measures and spoke with officials of similarly sized independent agencies with enforcement missions; and interviewed FCC officials and 22 stakeholders from public and private organizations who were knowledgeable of the Enforcement Bureau and the communications industry.

What GAO Recommends

FCC should establish and publish: (1) quantifiable performance goals and related measures for its enforcement program; and (2) a communications strategy outlining its enforcement program for external stakeholders. FCC concurred with the recommendations.

View [GAO-17-727](#). For more information, contact Mark Goldstein at (202) 512-2834 or goldsteinm@gao.gov.

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FCC Updated Its Enforcement Program, but Improved Transparency Is Needed

What GAO Found

The Federal Communications Commission (FCC) has taken actions in the last 5 years to update its enforcement data collection and processes. In 2012, FCC implemented a new enforcement data system, which combined five previously separate databases and contains pertinent information related to each enforcement case. In 2014, FCC launched a new consumer complaints portal that FCC officials can use to identify trends and determine whether to investigate a particular company or practice. FCC also updated its internal enforcement program guidance, which includes case prioritization policies as well as timeliness goals for case resolution. Lastly, FCC completed its reorganization of the Enforcement Bureau's field office division in January 2017, closing 11 of 24 field offices and decreasing personnel from 108 to 54. FCC officials stated they do not anticipate a decline in enforcement activity because FCC is taking steps to use the anticipated annual cost savings of \$9 to \$10 million from the reorganization to invest in training, equipment, and technology that will improve efficiency. Given the recent changes, it is too early to determine the impact these actions will have on enforcement efforts.

FCC has not quantified most of its enforcement performance goals and measures. FCC officials told GAO that in 2009 the Chairman's Office decided that narrative examples, rather than quantifiable goals and related measures, were the most appropriate way to report on the enforcement program. For example, FCC's 2016 *Annual Performance Report* describes details of settlements or fines levied without reporting such goals or measures. Although such metrics can be difficult to develop, GAO found that other enforcement agencies report quantified performance goals and related measures and that FCC has the data it would need to develop such goals and measures. Without meaningful program performance goals and measures, FCC lacks important tools for assessing and reporting on the progress of its enforcement efforts and determining whether it should make changes to its program. FCC also may be missing an opportunity to help promote transparency and support congressional oversight by clearly communicating enforcement priorities.

Most of the selected stakeholders GAO interviewed affirmed the importance of enforcement, but cited concerns about FCC's current enforcement process and communication efforts with stakeholders. Fourteen of 22 selected stakeholders said enforcement is important for deterring violations of federal statutes and FCC rules. However, 17 of 22 also expressed concerns regarding the transparency or fairness of the enforcement process or regarding FCC's emphasis on generating publicity by proposing high dollar fines for potential violators. FCC does not have a formal communications strategy that outlines its enforcement purposes and processes. Instead, FCC tailors the extent of its communications to stakeholders on a case-by-case basis. FCC officials told GAO that information about the enforcement process is sensitive and could undermine their cases. However, leading practices on enforcement highlight the importance of disclosing agency enforcement processes, including how to challenge and appeal conclusions, as a way to foster fair and consistent enforcement. Increased communication from FCC could improve transparency and stakeholder perceptions of FCC enforcement actions.

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Abbreviations

APA	Administrative Procedure Act
CFTC	Commodities Futures Trade Commission
CGB	Consumer and Governmental Affairs Bureau
EBATS	Enforcement Bureau Activity Tracking System
FCC	Federal Communications Commission
FTC	Federal Trade Commission
GPRA	Government Performance and Results Act
LTE	Long-Term Evolution
NAL	Notice of Apparent Liability
OECD	Organisation for Economic Co-operation and Development
OMB	Office of Management and Budget
SEC	Securities Exchange Commission
USF	Universal Service Fund

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September 14, 2017

The Honorable Greg Walden
Chairman
Committee on Energy and Commerce
House of Representatives

The Honorable Fred Upton
House of Representatives

The Honorable Bob Latta
House of Representatives

The Federal Communications Commission (FCC), an independent federal agency, regulates the telecommunications industry, which includes radio, television, cable, satellite, wireless, and wireline industries. FCC's Enforcement Bureau is primarily responsible for ensuring industry compliance with the Communications Act of 1934, as amended and Commission regulations and orders designed to protect consumers, ensure public safety, and encourage competition. For example, FCC enforces regulations to resolve wireless communications interference issues involving commercial carriers and public safety officials.¹ FCC also takes action against companies or individuals violating regulations or statutes that directly affect consumers, such as calling people on the Do-Not-Call Registry or broadcasting indecent or profane programming during certain hours. The Enforcement Bureau undertakes investigations, and if the investigation reveals a violation occurred, FCC can issue non-monetary and monetary penalties. Monetary penalties can be significant. For example, in 2017, the Enforcement Bureau issued a \$120 million proposed fine to an individual for allegedly making almost 100 million spoofed robocalls—telephone calls that caused the display of misleading or inaccurate caller ID information with the intent to defraud, cause harm,

¹ Wireless devices typically connect via the radio frequency spectrum, which is the medium for wireless communications and supports a vast array of commercial and governmental services.

or wrongfully obtain anything of value—in violation of the Truth in Caller ID Act.²

In 2008, we found FCC's enforcement program lacked clear performance goals and data on the outcomes of FCC's enforcement efforts.³ FCC implemented our recommendations by taking steps to establish performance goals and update its enforcement data. Recently, however, some stakeholders have raised questions about the openness, transparency, and fairness of FCC's enforcement processes. For example, some have noted an apparent shift away from enforcing regulations such as those regarding the operation of unlicensed radio stations, or "pirate radio", and stated the Enforcement Bureau may not be setting the appropriate priorities and is less productive than it used to be. You asked us to review FCC's management of its enforcement program. This report examines (1) actions taken by FCC in the last 5 years to update its enforcement program; (2) performance goals and measures for FCC's enforcement program; and (3) selected stakeholders' views on FCC's enforcement program and FCC's communication with these stakeholders.

To describe what actions FCC has taken in the last 5 years (calendar years 2012 through 2016) to update its enforcement program we reviewed FCC documentation, such as policies and reports related to internal improvement efforts. In addition, we interviewed FCC headquarters officials about recent changes to the program including investments in new technology, management, and process changes. We also interviewed FCC officials located in two field offices (Columbia, MD, and Dallas, TX), chosen, in part, because, in the past, they have conducted greater numbers of investigations than some other field offices.

² The Communications Act of 1934, as amended by the Truth in Caller ID Act of 2009, prohibits any person from knowingly transmitting misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value, subject to certain exceptions. Communications Act of 1934, Pub. L. No. 73-416, 48 Stat. 1064 (1934), as amended by *Truth in Caller ID Act of 2009*, Pub. L. No. 111-331, 124 Stat. 3572 (2010) (codified as amended at 47 U.S.C. § 227(e)(1)). For more information, see *FCC Notice of Apparent Liability for Forfeiture and Order*: 17-80, June 22, 2017.

³ GAO, *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).

To determine what performance goals and measures are in place for the enforcement program we reviewed FCC's annual performance and budget reports and strategic plans from 2008 to present; 2008 was the last time we reviewed FCC's enforcement program performance goals and measures. We evaluated goals and measures—as listed in FCC's fiscal year 2015 annual performance and fiscal year 2017 budget reports⁴ against criteria for developing federal agency performance goals and measures as established in the Government Performance and Results Act, as enhanced by the GPRA Modernization Act of 2010,⁵ and Office of Management and Budget (OMB) guidance related to implementing performance measures.⁶ In addition, we reviewed the most recent annual performance reports of three other independent regulatory agencies with enforcement divisions: the Securities Exchange Commission (SEC), Commodity Futures Trading Commission (CFTC), and Federal Trade Commission (FTC). We selected these three agencies, in part, because they have enforcement missions and are similar in size and budget to FCC. In addition to interviewing FCC officials on their performance goals and measures, we also interviewed officials from each of these agencies to gain their perspective on managing performance and measuring enforcement efforts.

To determine stakeholder views on FCC's enforcement program we interviewed a non-generalizable sample of 22 stakeholders—including private companies, public interest groups, industry associations, and telecommunications experts. We determined the stakeholders were knowledgeable about the communications industry by taking into account a stakeholder's prior work and their level of FCC comment activity. We selected stakeholders based on area of expertise (phone, radio, television, and wireless) to get a cross section of non-generalizable viewpoints. To determine how FCC communicates with stakeholders we reviewed FCC documentation and policies for formal and informal communication with stakeholders. We compared FCC communication policies and practices to the Organisation for Economic Co-operation and Development's (OECD) Best Practice Principles for Regulatory

⁴ FCC did not list enforcement program goals in the fiscal year 2016 annual performance and fiscal year 2018 budget reports.

⁵ Government Performance and Results Act, Pub. L. No. 103-62, 107 Stat. 285 (1993), as enhanced by GPRA Modernization Act of 2010, Pub. L. No. 111-352, 124 Stat. 3866 (2011).

⁶ OMB Circular A-11 Part 6, Section 200 (Washington, D.C.: July 2016).

Enforcement⁷ and federal internal control standards on managing external communications.⁸ We also analyzed publically accessible data on monetary enforcement actions that are on FCC's website from calendar years 2012 through 2016 to determine whether stakeholder views matched recent FCC enforcement outcomes. We determined that these data were sufficiently reliable for our purposes by reconciling the publically accessible data with FCC provided data and interviewing FCC officials on their data validation efforts.

We conducted this performance audit from June 2016 to September 2017 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. See appendix I for a more detailed explanation of our scope and methodology.

Background

In 1999, FCC established the Enforcement Bureau to investigate potential violations of applicable statutes and Commission regulations and orders that are within FCC's mission of protecting consumers, promoting competition, ensuring responsible use of the public airwaves, and addressing risks to public safety. Prior to the establishment of the Enforcement Bureau, the Compliance and Information Bureau handled enforcement of matters currently handled by the field offices, and individual policy bureaus, such as the Media Bureau handled enforcement within their bureau's responsibilities.⁹ When the Commission created the Enforcement Bureau, it consolidated most of these responsibilities to streamline enforcement.¹⁰

⁷ Organisation for Economic Co-operation and Development (OECD) *OECD Best Practice Principles for Regulatory Policy: Regulatory Enforcement and Inspections*. (Paris: OECD Publishing, 2014.)

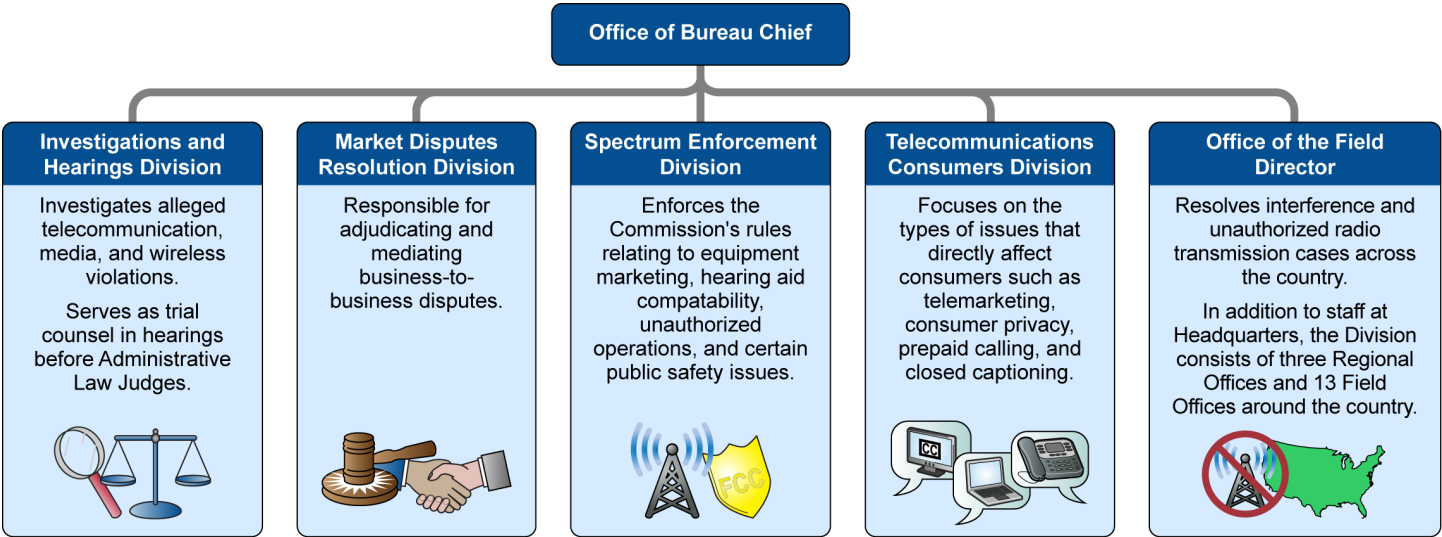
⁸ GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 2014).

⁹ At the time of the creation of the Enforcement Bureau, the Media Bureau tasks were divided between the existing Mass Media Bureau and Cable Service Bureau, which were consolidated into the Media Bureau in 2002.

¹⁰ Some policy bureaus still have limited enforcement responsibilities. For example, the Media Bureau continues to conduct some of its own enforcement actions related to media station license violations.

Currently, the Enforcement Bureau has five divisions that conduct investigations (see fig. 1 below).¹¹ As of August 2017, there are approximately 199 employees (full time equivalents) in the Enforcement Bureau.

Figure 1: Federal Communications Commission’s (FCC) Enforcement Bureau Division Offices



Source: GAO analysis of FCC information. | GAO-17-727

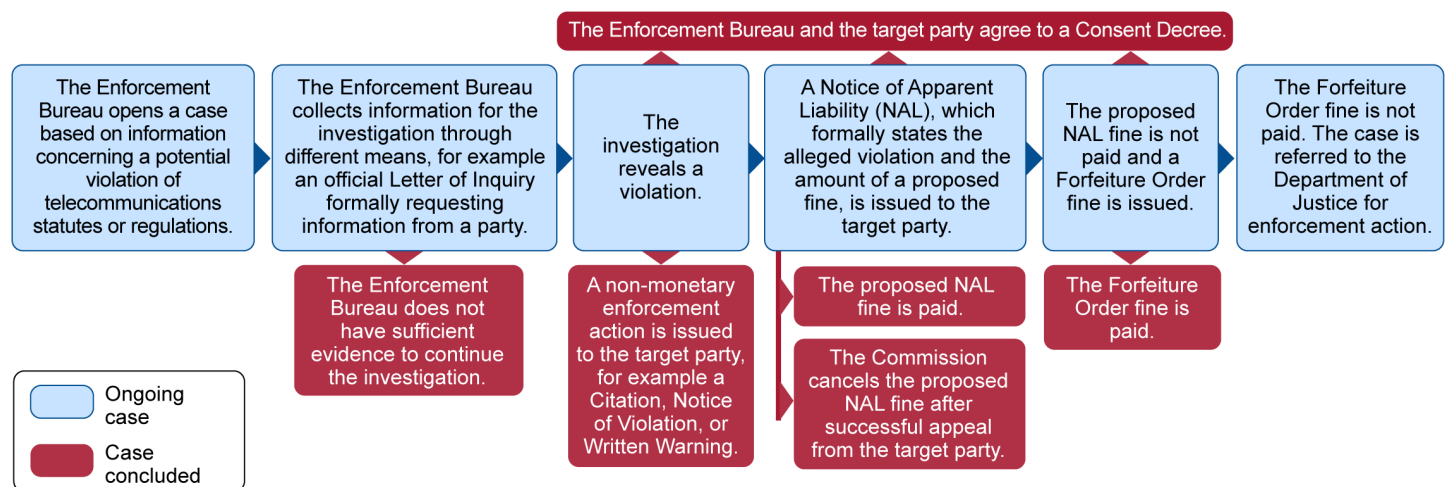
Enforcement Bureau officials conduct reviews of potential violations and open enforcement cases if they determine an investigation is warranted. According to FCC officials, information about potential violations comes from a variety of sources including: (1) consumer complaints;¹² (2) industry and/or public safety complaints on interference, such as weather

¹¹ In 2014, FCC created the Universal Service Fund (USF) Strike Force, which is housed within the Enforcement Bureau, but is separate from the other divisions, to safeguard the USF. The USF is a fund paid for by contributions from telecommunication service providers, usually passed on to consumers through their bills, to subsidize programs to make telecommunication services more accessible.

¹² FCC distinguishes complaints it receives as formal and informal. FCC officials stated that formal complaints are managed by the Enforcement Bureau, must be filed in accordance with FCC rules, and must allege facts, which if true, constitute a violation of FCC rules or the Communications Act, whereas informal complaints are those received through the FCC’s electronic portal, by phone or postal mail. For purposes of this report we are not making this distinction. Most consumer complaints are made directly to the Consumer and Governmental Affairs Bureau, which develops and implements the Commission’s consumer policies and also directly responds to consumer inquiries and complaints.

or cell tower interference; (3) referrals from other FCC bureaus such as the Media Bureau that administers broadcast licenses; (4) congressional interest/direction; and (5) trade/news reports on potential company violations. Figure 2 below shows the general process the Enforcement Bureau uses once it decides to open a case and pursue an investigation. In most instances, cases conclude with one of the three following outcomes: the Enforcement Bureau determines there is no violation, and the case is closed without action; the Enforcement Bureau and the company reach a settlement; or FCC issues an enforcement action, which can include a monetary penalty.

Figure 2: Federal Communications Commission’s (FCC) General Process for Enforcement Cases



Source: GAO analysis of Federal Communications Commission (FCC) information. | GAO-17-727

If an investigation for an enforcement case reveals a potential violation, the Enforcement Bureau may issue a non-monetary or monetary enforcement action. Non-monetary actions include written warnings such as a notice of unlicensed operation or a notice of violation. For example, FCC can notify a party that it is operating a radio station without a license and warn that continued operation could result in more severe penalties such as a fine, seizure of equipment, and imprisonment. Below are the three main enforcement actions that could involve a monetary penalty:

- *Notice of Apparent Liability (NAL)*: A notice to inform the party of an investigation of a violation that FCC believes has occurred and forfeiture in a specified dollar amount is warranted. The subject of an NAL may elect to pay the proposed forfeiture, ending the proceeding,

or file a response making legal or factual arguments that the proposed forfeiture should be modified, reduced, or cancelled.

- *Consent Decree*: An agreement between FCC and the party of an investigation that sets forth the terms and conditions in exchange for closing the investigation. This can include a plan for reaching compliance and an agreed upon civil penalty payable to the U.S. Treasury.
- *Forfeiture Order*: An order that requires the monetary forfeiture proposed in an NAL be paid. If a party does not pay the forfeiture, the case is referred to the U.S. Department of Justice, which may bring an enforcement action in district court to recover the forfeiture.

From calendar years 2014 through 2016, the Enforcement Bureau opened 3,075 cases. Of these, 2,591—approximately 84 percent—were field office cases, which are under the Office of the Field Director.¹³ Many of the cases handled by the field offices relate to wireless spectrum interference, such as, a radio station operating outside of its licensed spectrum and interfering with other radio communications. For the number of cases opened and closed by each division from calendar years 2014 through 2016, see table 1 below.

Table 1: Enforcement Cases Opened and Closed by the Federal Communications Commission’s (FCC) Enforcement Bureau by Enforcement Division, Calendar Years 2014–2016

Enforcement Division	Calendar Year 2014		Calendar Year 2015		Calendar Year 2016	
	Opened	Closed	Opened	Closed	Opened	Closed
Universal Service Fund Strike Force	14	0	4	9	1	3
Investigations and Hearing Division	147	94	44	79	19	57
Market Disputes Resolution Division	34	51	17	36	6	9
Spectrum Enforcement Division	24	58	13	28	35	81
Telecommunications Consumers Division	46	46	41	57	39	85
Field Offices	872	1,100	458	645	1,261	1,294
Totals	1,137	1,349	577	854	1,361	1,529

Source: FCC Enforcement Data | GAO-17-727

Note: Cases are not always opened and closed in the same calendar year. A case can be closed several years after it was opened.

¹³ There are currently 13 field offices after a recent FCC effort to restructure the field offices. This restructuring effort is discussed in more detail later in this report.

FCC closes most cases the Enforcement Bureau investigates without monetary penalty. In calendar years 2014 through 2016, FCC closed 3,732 cases (see table 2). Of these cases, 359 (approximately 10 percent) had a monetary penalty in the form of a NAL, Consent Decree, or Forfeiture Order. In this same period, FCC closed 1,509 cases (approximately 40 percent) through non-monetary enforcement actions such as written or verbal warnings or notice of unlicensed operation.¹⁴ FCC closed the remaining 1,864 cases (approximately 50 percent) without an enforcement action.

Table 2: Number of Federal Communications Commission (FCC) Enforcement Cases Closed by Type of Action – Calendar Years 2014-2016

	Calendar Year 2014	Calendar Year 2015	Calendar Year 2016
Total Cases Closed	1,349	854	1,529
Cases Closed with Monetary Action	171	108	80
Consent Decrees	45	38	39
Forfeiture Orders	58	47	17
Notices of Apparent Liability	68	23	24
Cases Closed with Non-monetary Action	785	366	358
Total Cases Closed without Enforcement Action	393	380	1,091

Source: FCC Enforcement Data | GAO-17-727

¹⁴ A Notice of Unlicensed Operation is a formal notice telling a party to cease in its operation because the party does not have a license.

FCC Has Taken Actions to Update Its Data Collection and Enforcement Processes

FCC Implemented a New Enforcement Data System and Consumer Informal Complaint Portal

FCC recently improved the collection of data for its enforcement program by implementing a new enforcement data system and consumer informal complaint portal.

Enforcement Bureau Activity Tracking System (EBATS): EBATS is a new data system that serves as the system of record for the Enforcement Bureau. EBATS captures data inputs for investigations (such as key dates and close out status), and contains pertinent notes and documents investigators obtain or create related to a case.¹⁵ Prior to the implementation of EBATS, there were five distinct data systems, one for each division within the Enforcement Bureau. In 2008, we reported that FCC's separate data systems and the limitations with each hampered FCC's ability to use data to inform management of the enforcement program, and we recommended the data systems be improved.¹⁶ EBATS addresses these previously reported issues by unifying the databases and capturing key Enforcement Bureau data and information in a manner that we found, during our current review, to be generally reliable beginning with calendar year 2014.¹⁷

¹⁵ FCC officials estimated EBATS cost at approximately \$2.2 million, which includes determining requirements for the database, building the database, as well as continued development work. The officials stated that this is their best approximation since FCC did not complete EBATS through a stand-alone contract.

¹⁶ [GAO-08-125](#).

¹⁷ FCC officials told us they began implementation of EBATS in 2012, but the system was not fully implemented until the beginning of calendar year 2014. According to these officials, EBATS was rolled out to each of the divisions one at a time, and FCC made substantive revisions to the database to improve its quality between initial implementation and the beginning of calendar year 2014. For example, officials stated that improvements such as, the linking of complaints directly to cases housed in EBATS and migrating some information from the legacy systems was not automatic and thus was open to more errors that had to be noticed and corrected over time.

Managers across FCC's divisions use data from EBATS to monitor ongoing work. FCC officials told us that managers of each division review reports based on available data on a weekly basis, which includes the number of cases closed and opened during that week. FCC officials said Enforcement Bureau managers such as the deputy chief of the Enforcement Bureau and assistant bureau chiefs, review EBATS data on a monthly basis. FCC officials noted that the monthly review focuses mainly on cases with pending Commission reviews and external deadlines such as referring debt collection of an issued fine to the U.S. Department of Justice, which is the final step by FCC if a party does not pay an ordered fine.

FCC officials said EBATS allows for closer management of dates that resulted in improved case efficiency and provided two examples. First, officials said FCC has decreased the use of tolling agreements, in which FCC requests that parties waive the statute of limitations. Data on the number of tolling agreements from 2014 through 2016 showed FCC used tolling agreements in approximately 1–2 percent of the cases investigated each year. Although FCC officials told us this is an improvement over previous years, they could not provide reliable data on tolling agreements used before 2014. The second example provided by FCC officials is a decrease in the number of backlogged cases, which are those cases considered overdue for resolution. However, when we requested information on the total number of backlogged cases over the last 5 years FCC officials informed us that they do not currently track this information over time. While the database improvements should increase the availability and reliability of data FCC officials can use to assess the program, the agency's current enforcement performance goals are not quantified, as is discussed later in this report.

Consumer Informal Complaints Portal: FCC implemented a new consumer complaints portal in December 2014 at a development cost of \$297,514. This portal allows consumers to receive e-mail updates on the status of their complaints as well as ask questions and receive answers related to the complaint. The Consumer and Governmental Affairs Bureau (CGB) manages and houses the consumer informal complaints portal. FCC officials stated that most complaints are directly addressed by CGB officials through actions such as providing information to consumers and/or forwarding the complaint to the service provider. FCC officials told us that most complaints do not become enforcement cases because most do not represent a violation of a federal statute or commission regulation. For example, in calendar year 2016 consumers filed 344,045 complaints through the portal; these complaints resulted in 402 enforcement cases,

according to FCC officials. Regardless of whether a complaint initiates an enforcement case, FCC officials have access to the information in the consumer complaint portal and officials stated that they can use this data to help identify trends and determine whether to review a particular company or practice.

FCC Updated Internal Enforcement Guidelines and Reorganized Field Offices

FCC recently updated its enforcement processes by developing an enforcement handbook and reorganizing the field office division of the Enforcement Bureau to enhance efficiencies.

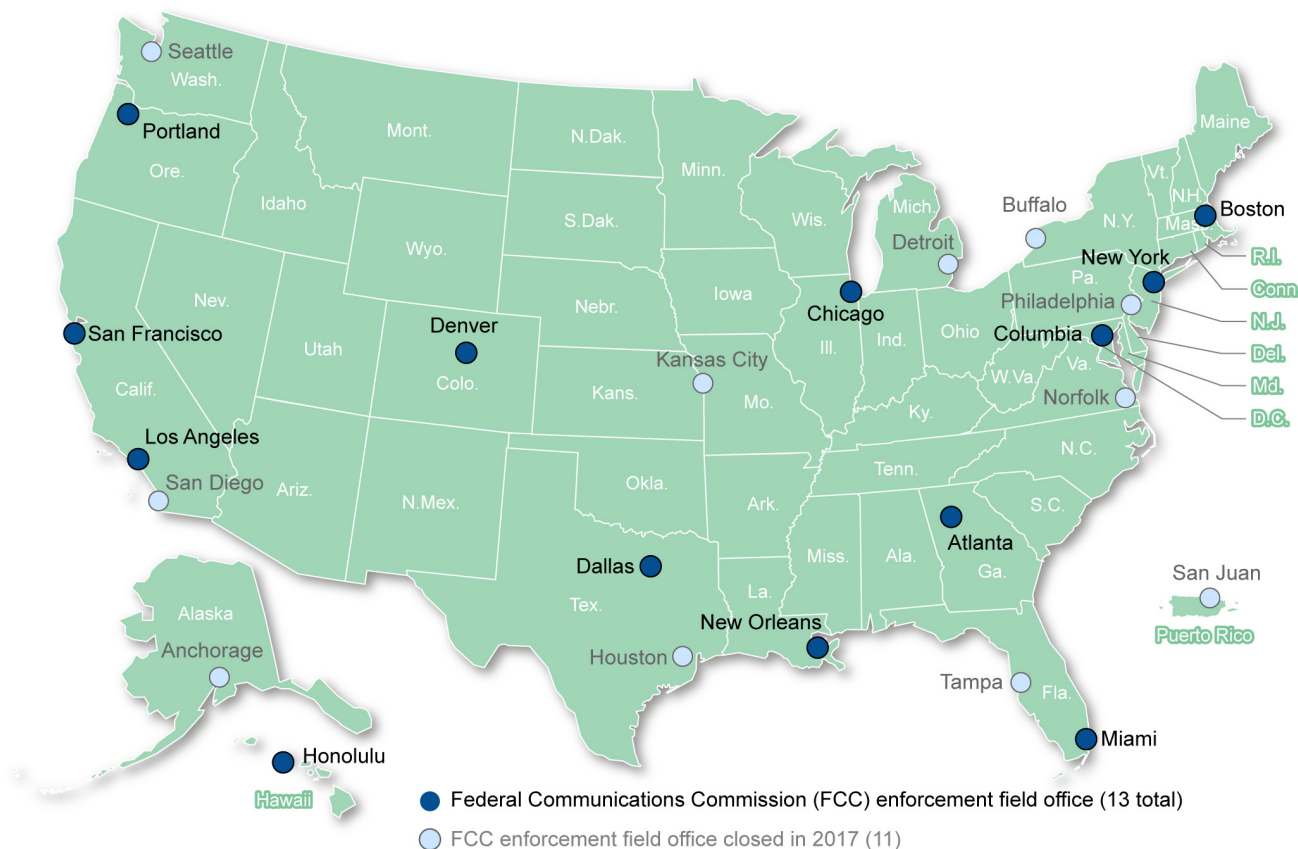
Enforcement Handbook: The enforcement handbook is an internal guidance document for the Enforcement Bureau. The handbook contains and organizes previously disparate policy guidelines and added additional guidelines. According to FCC officials, in 2014, there was an agency wide process reform effort and an Enforcement Bureau specific reform effort that resulted in the creation of the enforcement handbook. Officials stated that this document helped in meeting several goals of the reform effort including increasing efficiencies and consistency across divisions and improving effectiveness of allocated resources. The handbook sets explicit timelines for major case milestones. The handbook also provides a case priority rating system to improve efficient use of resources. The case priority rating system is used by most divisions to determine how to prioritize investigations to improve efficient use of resources with the exception of the field office division, which conducts the majority of investigations. The Office of the Field Director has a separate priority rating system to prioritize public safety interference, such as interference to emergency communication networks, above all other cases. FCC officials said they found the case priority rating system helpful for day-to-day management of the enforcement program. To improve consistency across the divisions, the handbook also has standardized templates for various forms and official documents. Previously, each division had its own guidance for preparing these documents.

Field Office Reorganization: FCC contracted for a study to review its field offices and received the results in March 2015. In July 2015, FCC issued an order stating it could achieve efficiencies through reorganizing and closing some field offices.¹⁸ As of January 2017, FCC had closed 11

¹⁸ *Reorganization of the Enforcement Bureau's Field Operations*, Order, 30 FCC Rcd 7649 (2015).

of 24 field offices (see fig. 3), and FCC officials stated that this reduction included eliminating 16 of 21 management positions, and reducing the total number of staff from 108 to 54 employees. FCC officials estimated the reorganization would cost \$2 to \$4 million and would save \$9 to \$10 million per year.

Figure 3: Federal Communications Commission’s (FCC) Enforcement Field Offices before and after Field Office Closures



Source: Map Resources. | GAO-17-727

FCC had originally proposed further cuts to the field office division, but while FCC was considering the field office reorganization in 2015, some stakeholders—ranging from members of Congress, to industry groups, and private companies—raised concerns that the decrease in field staff would hinder FCC’s effectiveness and timeliness of response to interference. Two stakeholders (one expert and one industry association) we spoke with for our review remain concerned about this issue. For example, one expert whom we interviewed stated that with the current

transition in technology there is likely to be an increase in spectrum interference. According to this expert, wireless broadband is important to the economy because it is used in so many different ways¹⁹ and without effective interference enforcement, wireless' potential could be undermined. The expert added that if there is an increase in interference FCC will need more, not fewer, field resources to resolve interference between spectrum users. Similarly, the industry association representatives we spoke to, expressed concerns that FCC's ability to effectively respond to interference issues has diminished since the field office reorganization. According to FCC officials, to help mitigate concerns about responsiveness to interference issues FCC has employed mobile "tiger teams." These tiger teams are currently located in the Columbia and Denver field offices where FCC officials stated they can be quickly deployed to support high-priority initiatives of the Enforcement Bureau or other entities from headquarters.

FCC officials also told us that they are taking steps to use the anticipated cost savings from the field office reorganization to invest in training, equipment, and technology updates that will improve efficiency. For example, some efforts already under-taken or planned, according to officials include the following:

- **Training:** FCC officials said field office staff completed a 3-day training on Long-Term Evolution (LTE) wireless networks in July 2016 to increase staff knowledge of this technology. FCC officials said that LTE is increasingly being used for wireless communication and that it is important for FCC officials in the field to understand what it is and how interference with it can cause harm. Officials stated that they plan to conduct more training in the future.
- **Equipment:** FCC is in the process of purchasing a remote radio location detector system, which officials stated will act as a "force multiplier" because the detectors can be easily deployed and left in place to measure interference over time. Previously field personnel had to collect this type of data in-person. FCC officials stated they have conducted hands on evaluations of the top four vendors and are developing purchase recommendations. Also, according to FCC officials, FCC recently purchased mobile direction finding equipment

¹⁹ For example, we have reported on the increased use of wireless broadband for the internet of things. See GAO, *Technology Assessment: Internet of Things: Status and implications of an increasingly connected world* [GAO-17-75](#), Washington, D.C.: May 15, 2017).

for use on rental vehicles and is in the process of purchasing equipment such as amplifiers, filters, and spectrum analyzers to improve the technological capability of field office personnel.

- **Technology:** FCC officials are working on a new complaint portal for businesses and public safety officials to use when they experience interference. FCC planned to implement this portal in spring 2016 but has faced delays.²⁰

Given the recent changes, it is too early to determine the impact these actions will have on enforcement efforts.

Most of FCC's Enforcement Performance Goals and Measures Have Not Been Quantified

We found that most of FCC's enforcement program goals as published in its *Annual Performance Reports* and *Budget Estimates* to Congress are missing key elements that could improve oversight and performance evaluation. The Government Performance and Results Act (GPRA), as enhanced by the GPRA Modernization Act of 2010 requires agencies to develop objective, measurable, and quantifiable performance goals and related measures and to report progress in performance reports in order to promote public and congressional oversight as well as improve agency program performance.²¹ OMB guidance on implementation of the GPRA Modernization Act of 2010 states that performance goals should include a specific measure with a targeted level of performance to occur over a defined timeframe.²² In comparing FCC's recently published goals to OMB guidance, FCC has only one enforcement performance goal that partly meets OMB's guidance and FCC's remaining seven performance goals do not have associated measures with target levels and timeframes, see table 3 below.

²⁰ A *Federal Register* notice on February 9, 2017 provided stakeholders and the public a 60-day period (ending on April 10, 2017) to submit comments on the proposed information collection. FCC officials said, as of July 11, 2017, they are seeking internal budgetary approval to expend funds to develop the website and systems needed to implement the portal once OMB has approved the information collection.

²¹ Government Performance and Results Act, Pub. L. No. 103-62, 107 Stat. 285 (1993), as enhanced by the GPRA Modernization Act of 2010, Pub. L. No. 111-352, 124 Stat. 3866 (2011).

²² OMB. *Circular A-11* Part 6, Section 200 (Washington, D.C.: July, 2016).

Table 3: Federal Communications Commission's (FCC) Enforcement Program Performance Goals

Performance Goal	Performance Indicator	Target	Timeframe
Act swiftly and consistently in the use of enforcement authority to protect consumers.	None	None	None
Take enforcement action in appropriate cases against violations of spectrum-related rules, such as interference and unauthorized use of frequencies.	None	None	None
Promote compliance with rules designed to maximize competitive choices by taking enforcement action in appropriate cases.	None	None	None
Ensure that consumers have access to advanced public safety services in an emergency by reviewing service provider compliance and outage reports and taking enforcement action where appropriate.	None	None	None
Preserve the integrity of public safety communications infrastructure by taking action on 99 percent of complaints of interference to public safety communications within one day.	Action taken in response to public safety complaints	99 percent responded to in one day	None ^a
Promote compliance with the Commission's rules by taking action, where appropriate, on all new complaints and referrals concerning the Commission's 911, E911, and NG911 rules. ^b	None	None	None
Ensure that communications networks are available during emergencies and crises by developing reliability standards and enforcing network outage reporting requirements.	None	None	None
Continue developing custom-adapted investigative tools that enable FCC to timely resolve interference and take appropriate enforcement action across a wide range of services.	None	None	None

Source: GAO analysis of FCC's Fiscal Year 2015 Annual Performance Report and Fiscal Year 2017 Budget Estimates to Congress with Office of Management and Budget Guidance. | GAO-17-727

^aFCC publishes information on this goal quarterly on its website.

^bBasic 911, transmits only the voice call to a Public Safety Answering Point and E911, Enhanced 911, transmits the voice call as well as the caller's telephone number and information about the caller's location. NG 911, Next Generation 911, refers to a service that is working to enable, among other things, the public to send texts, photos, videos, and other data to 911 call centers.

Our review of FCC's annual performance report found that it includes descriptions of enforcement actions taken against companies, but does not include quantified performance measures. FCC officials stated that narrative examples, rather than quantified goals and related measures, were the most appropriate way to report on FCC's efforts to help consumers and protect the public through its enforcement program. In 2008, FCC reported two additional performance measures related to the number of cases they investigated and the length of time that it took to

close cases. FCC officials told us the Chairman's Office made the decision in 2009 to stop reporting data driven measures and to replace them with narratives of the types of investigations performed, penalties issued, and examples of what it considers bad behavior. According to FCC officials, it is difficult to develop effective performance goals and measures for its enforcement program because enforcement is usually in reaction to the activities of companies. As a result, in lieu of performance goals and measures, FCC's *Fiscal Year 2016 Annual Performance Report* contains descriptions of specific settlements or proposed fines issued; including one fine in excess of \$34 million assessed to a company that illegally imported jamming devices that overpower, jam, or interfere with authorized communications. However, the Enforcement Bureau's new database—EBATS—described earlier in this report, has the data that FCC could use to help establish and report on objective, measurable, and quantifiable performance goals and related measures.

Three other regulatory agencies with inherently reactive enforcement programs similar to FCC's have developed objective, measurable, and quantifiable performance goals. During our review we spoke with officials from the Securities Exchange Commission (SEC), Commodities Futures Trading Commission (CFTC), and Federal Trade Commission (FTC), which all have enforcement programs and have developed objective, quantifiable, and measureable goals for their programs.²³ Officials from these agencies agreed that it is difficult to measure enforcement performance in part due to the reactive nature of enforcement as well as the difficulty of quantifying deterrence. However, they believe there are performance measures—timeliness, monetary outcomes, and enforcement actions taken in relation to consumer complaints, among others—that can capture essential program information. Examples of three agencies' performance goals for their enforcement programs are shown in table 4 below.

²³ For more information on how we selected these agencies, see appendix I.

Table 4: Examples of Other Enforcement Agency Performance Goals for Fiscal Year 2015

Securities and Exchange Commission (SEC) Performance Goal: Percentage of first enforcement actions filed within 2 years of opening of an investigation.
Performance Indicator: Percentage of first filing actions
Target: 65 percent of total investigations
Timeframe: 2 years after opening an investigation
Commodity Futures Trading Commission (CFTC) Performance Goal: Percentage of enforcement investigations completed within 18 months of opening.
Performance Indicator: Percentage of completed investigation
Target: 70 percent of total investigations
Timeframe: 18 month after opening an investigation
Federal Trade Commission (FTC) Performance Goal: Percentage of the FTC's consumer protection law enforcement actions that targeted the subject of consumer complaints to the FTC.
Performance Indicator: Percentage of law enforcement actions based on consumer complaints
Target: 80 percent of total law enforcement actions taken
Timeframe: Assessed annually

Source: Examples from SEC, CFTC, and FTC Annual Performance Reports with Office of Management and Budget Guidance. | GAO-17-727

Note: We did not conduct an assessment of these goals during the course of this review.

We have previously reported that a key element in an agency's efforts to manage for results is its ability to set meaningful performance goals and to measure progress towards those goals.²⁴ We have also found that communicating what an agency intends to achieve and its approach for doing so are fundamental aims of performance management.²⁵ Without developing meaningful, quantifiable goals and related measures for the enforcement program, FCC (1) lacks important tools for assessing and reporting on the progress of its enforcement program and determining whether changes should be made to improve performance, and (2) may be missing an opportunity to help promote transparency about its program and support congressional oversight.

²⁴ GAO, *Managing For Results: Executive Branch Should More Fully Implement the GPRA Modernization Act to Address Pressing Governance Challenges*, [GAO-13-518](#) (Washington, D.C.: June 26, 2013).

²⁵ GAO, *Telecommunications: Additional Coordination and Performance Measurement Needed for High-Speed Internet Access Programs on Tribal Lands*, [GAO-16-222](#) (Washington, D.C.: Jan. 29, 2016).

Selected Stakeholders Affirmed the Importance of FCC's Enforcement but Cited Concerns about the Agency's Enforcement Process and Communication Efforts

Most Stakeholders Stated FCC's Enforcement Is Important for Deterring Violations

We interviewed stakeholders with a wide range of perspectives however most agreed that FCC's enforcement is important for deterring violations of federal statutes and FCC regulations.²⁶ Fourteen of the 22 stakeholders explicitly stated that FCC enforcement is important to deter violations and/or provided examples of appropriate FCC enforcement against violators.²⁷

- Ten of the stakeholders highlighted the importance of Enforcement Bureau actions in helping to protect consumers.²⁸ For example, two telecommunications experts said FCC enforcement actions against prepaid calling card companies for deceptive marketing practices have protected consumers. In calendar years 2010 through 2015, FCC investigated and issued separate \$5 million dollar fines to six companies for deceptive marketing of pre-paid calling cards. FCC's announcement of the fines said that in each case, companies sold cards that advertised hundreds or thousands of minutes for international calls at a low cost but consumers were only given a small fraction of the advertised time unless they used all of the minutes in a single call. FCC officials we spoke with also cited these cases as

²⁶ For more information on how we selected stakeholders to interview, see appendix I.

²⁷ This group of stakeholders consisted of three public interest groups, two industry associations, seven telecommunications companies, and two telecommunications experts.

²⁸ This group of stakeholders consisted of three public interest groups, three industry associations, two telecommunications companies, and two telecommunications experts.

instances in which they believed there may be a deterrent effect to other companies that might consider conducting similar practices.

- Four stakeholders said Enforcement Bureau actions help address interference with emergency communications systems or violations of public safety regulations.²⁹ For example, representatives of one public interest group and one industry association said FCC is quick to respond and resolve interference issues with communications systems used by first responders, which ensures that risks to public safety are minimized. One telecommunications company official said FCC's fines to companies for insufficiently lighted radio towers appear to be effective because according to this official, the number of aircraft accidents involving towers appears to have decreased.

Most Stakeholders Expressed Some Concerns about FCC's Enforcement Processes

Most stakeholders expressed concerns regarding the transparency, fairness, or emphasis on publicity in the enforcement process. Of the 22 stakeholders we interviewed, 17 mentioned at least one of these concerns.³⁰

Lack of Transparency: When asked about their perception regarding the transparency of the enforcement process 16 of the 22 stakeholders we interviewed expressed concern that the enforcement process was not transparent.³¹ As an example, stakeholders noted their unsuccessful attempts to obtain information during an investigation.

- Eight stakeholders said companies are unable to obtain information from the Enforcement Bureau about the potential violations under investigation until the final stages of an investigation.³² Of these 8 stakeholders, 4 said that this situation is different from their

²⁹ This group of stakeholders consisted of one public interest group, one industry association, and two telecommunications companies.

³⁰ This group of stakeholders consisted of five industry associations, eight telecommunications companies, and four telecommunications experts.

³¹ This group of stakeholders consisted of five industry associations, eight telecommunications companies, and three telecommunications experts. Representatives from one public interest group we spoke with said they also perceived the enforcement process to be non-transparent; however, this was not a concern for them. They believed that it is important for the enforcement process to be non-transparent and that it would be inappropriate if details became public during an investigation.

³² This group of stakeholders consisted of one industry association, six telecommunications companies, and one telecommunications expert.

interactions with other regulatory enforcement agencies that inform companies of the specific violation the agency is investigating earlier in the process.³³ FCC officials we spoke with said their lack of transparency during the course of an investigation is, in part, to protect the reputation and business interests of the target in the event that no violation is found and ensure that sensitive information that could undermine a case is not revealed to the party being investigated.

Perceived Unfair Process: Fourteen stakeholders said the enforcement process was not always fair.³⁴ Stakeholders provided the following examples.

- Ten stakeholders said that requests for information from the Enforcement Bureau can be broad and burdensome and require a lot of time and resources from the company to comply.³⁵ FCC officials told us they often work with parties they are investigating to narrow the scope of a request like a letter of inquiry, which can reduce the resource burden on the party and the Enforcement Bureau. FCC officials added, however, that they are careful to avoid overly narrowing the scope of a letter of inquiry because doing so could preclude the Enforcement Bureau from gathering information about all potential violations by the party.
- Nine stakeholders said the Enforcement Bureau issued fines when there was no clear violation of the regulations.³⁶ In addition, seven stakeholders commented that FCC is using enforcement actions to set precedent and effectively create new policy.³⁷ Two industry associations stated that they believe this type of action bypasses the notice and comment requirements in the Administrative Procedure Act

³³ This group of stakeholders consisted of one industry association, two telecommunications companies, and one telecommunications expert.

³⁴ This group of stakeholders consisted of four industry associations, eight telecommunications companies, and two telecommunications experts.

³⁵ This group of stakeholders consisted of three industry associations, five telecommunications companies, and two telecommunications experts.

³⁶ This group of stakeholders consisted of two industry associations, six telecommunications companies, and one telecommunications expert.

³⁷ This group of stakeholders consisted of two industry associations, four telecommunications companies, and one telecommunications expert.

(APA).³⁸ For example, one industry association cited a 2015 FCC enforcement policy statement that adopted a treble damages approach to calculating fines for companies not making their full contributions to FCC administered funds such as the Universal Service Fund.³⁹ Four industry associations filed a joint petition with FCC that asked FCC to reconsider the policy statement because they considered it a substantial change, issued without public notice and therefore in violation of the APA. FCC officials stated that this petition for reconsideration is pending at the FCC. When we asked FCC officials about claims that FCC issued fines where there was no clear violation of the regulations, officials directed us to a written response to a question for the record for a 2015 congressional oversight hearing, where former FCC Chairman Wheeler stated that penalties may be issued in the absence of an agency regulation governing such conduct. He stated that this is because the Communications Act of 1934, as amended, demonstrates Congress's intent that certain conduct be prohibited and the act as established by Congress does not require the additional creation of an agency regulation. He further stated that because the Commission has the choice to decide whether to carry out their activities through rulemaking or adjudication under the APA, FCC may use adjudication to interpret and apply statutes Congress has directed FCC to enforce.

- Nine stakeholders said industry participants have lost the incentive to self-report potential violations because it does not appear that the

³⁸ Among other things, the APA gives agencies the ability to carry out their authorized activities through rulemaking or adjudication. In rulemaking, the APA generally requires that agencies publish a notice of proposed rulemaking in the *Federal Register*. After giving interested persons an opportunity to comment on the proposed rule and after considering the public comments, the agency may then publish the final rule. In adjudication, an agency generally undergoes a judicial process through an individualized fact-specific examination of past conduct. Pub. L. No. 404, 60 Stat. 237 (1946) (codified in 1966 in scattered sections of title 5, United States Code).

³⁹ According to FCC, under a treble damages approach, FCC would fine a company three times the amount of money that it appeared the company had failed to contribute to an FCC fund or cost recovery mechanisms. For more information on this enforcement policy statement see FCC *Policy Statement*: 15-15, February 3, 2015. The Universal Service Fund is a fund paid for by contributions from telecommunication service providers, usually passed on to consumers through their bills, to subsidize programs to make telecommunication services more accessible.

Enforcement Bureau will treat them fairly.⁴⁰ Of these 9 stakeholders, 4 said they know of companies that acted quickly to correct and report violations, but the Enforcement Bureau still issued significant penalties.⁴¹ FCC officials stated that industry's self-policing is important to an effective enforcement regime and that pursuant to FCC regulations, good faith or voluntary disclosure can factor in decisions of leniency on parties.⁴²

Emphasis on Generating Publicity through Large Proposed Fines: Fifteen of the stakeholders expressed concerns that there has been an emphasis on generating publicity by proposing high dollar fines through NALs.⁴³ In addition, 10 of the 15 stakeholders said fine amounts appeared to be calculated arbitrarily and without rational basis.⁴⁴ To determine whether there has been an increase in the amount of FCC issued NALs, we reviewed FCC data on NALs from calendar years 2012 through 2016. As shown in table 5 below, the average dollar amount of NALs issued by FCC increased from approximately \$180,000 in 2012 to approximately \$6,300,000 in 2016. The median NAL fine amount has also generally increased over this same period though not to the same extent. From 2012 through 2016 median fines increased from \$15,000 to \$25,000. Also, the total number of NALs decreased from 111 in 2012 to 24 in 2016.

⁴⁰ Self-reporting a violation means that a company or individual would inform FCC of a potential violation without FCC's asking about it first. This group of stakeholders consisted of two industry associations, five telecommunications companies, and two telecommunications experts.

⁴¹ This group of stakeholders consisted of two industry associations, one telecommunications company and one telecommunications expert.

⁴² 47 C.F.R. § 1.80.

⁴³ This group of stakeholders consisted of four industry associations, eight telecommunications companies, and three telecommunications experts.

⁴⁴ This group of stakeholders consisted of one industry association, seven telecommunications companies, and two telecommunications experts.

Table 5: Notices of Apparent Liability (NALs) Issued by the Federal Communications Commission (FCC), Calendar Years 2012-2016

	2012	2013	2014	2015	2016
Total NALs	111	73	70	23	24
Average Proposed Fine Amount	\$183,223	\$1,417,439	\$1,300,292	\$5,261,565	\$6,370,818
Median Proposed Fine Amount	\$15,000	\$18,000	\$15,000	\$25,000	\$25,000

Source: GAO analysis of FCC's information of NAL Public Orders issued Calendar Years 2012 through 2016. | GAO-17-727

Note: NALs are proposed fines, and parties are not legally required to pay an NAL unless they agree to do so, or FCC issues a subsequent forfeiture order.

Compared to previous years FCC has recently issued a small number of fines with very high dollar amounts.⁴⁵ In 2016, FCC issued two of these high fines compared to none in 2012 (see table 6). When asked about the apparent increase in proposed fines, FCC officials acknowledged fines have increased. However, these officials stated that they have recently focused resources to investigate difficult cases they believe have the biggest impact on consumers and that the fine amounts they issue are appropriate for the violation. FCC officials also stated that publicity and large fines can be effective deterrents and can alert consumers that certain activities are unlawful. Seven stakeholders agreed that publicity and headlines can be effective tools for enforcement.⁴⁶

Table 6: Top-Five Proposed Fines Issued by the Federal Communications Commission (FCC), Calendar Years 2011–2016

	2012	2013	2014	2015	2016
1)	\$5,000,000	\$22,399,761	\$34,912,500	\$100,000,000	\$51,070,322
2)	\$1,758,465	\$18,397,814	\$11,937,549	\$9,065,000	\$49,598,448
3)	\$1,680,000	\$11,702,695	\$10,000,000	\$5,900,000	\$21,691,499
4)	\$1,680,000	\$9,461,978	\$7,620,000	\$2,400,000	\$9,620,000
5)	\$1,584,000	\$8,753,074	\$5,230,000	\$1,588,988	\$8,020,000

Source: GAO analysis of FCC's information of NAL Public Orders issued Calendar Years 2012 through 2016. | GAO-17-727

Note: The bolded fines are more than three standard deviations above the 2012 through 2016 mean proposed fine of \$1,623,743.

⁴⁵ Very high dollar amount is defined as a proposed fine more than three standard deviations above the 2012 through 2016 mean proposed fine of \$1,623,743. One standard deviation equals \$7,743,730.

⁴⁶ This group of stakeholders consisted of two public interest groups, two industry associations, two telecommunications companies, and one telecommunications expert.

FCC Lacks a Clear Communications Strategy for Industry Stakeholders

FCC currently has a variety of ways it communicates with stakeholders varying in terms of formality and public versus private communications but does not have a clear communication strategy for its enforcement activities (see list of all communications in table 7 below). Instead, FCC tailors the extent of its communications to stakeholders on a case-by-case basis. FCC officials told us they use this approach because they have concerns that in some cases sharing too much information about their enforcement processes or case sensitive information could help parties of investigations undermine FCC's case. For example, FCC does not publish an enforcement manual or similar overall policy document on its website outlining their enforcement policies and processes. In contrast, other agencies such as FTC and SEC publish enforcement manuals on their websites to provide information about the enforcement process as well as brief summaries to explain agency regulations to help ensure the clarity of both. FCC officials also told us they work under very strict time deadlines because of the one-year statute of limitations that applies to many cases that the Enforcement Bureau investigates. FCC officials also stated that at least some courts have found that this one-year deadline begins at the time of the violation—not at the time the Enforcement Bureau learns of the violation—further reducing the time the Bureau has to negotiate the scope of the investigation. During this one-year period FCC officials say they must make sure that communications with the parties do not jeopardize the agency's ability to act within the one year statutory deadline.⁴⁷ However, as described earlier, FCC can use tolling agreements, which allows FCC—with agreement from investigated parties—to waive the statute of limitations in cases where it needs additional time to conduct or complete the investigation.

⁴⁷ The FCC officials added that how an investigation proceeds including interaction with the target and the statute of limitations is dependent on the specific facts of the case.

Table 7: Formal and Informal Federal Communications Commission’s (FCC) Enforcement Communication with Stakeholders

Formal	Public/Private	Description
Letter of Inquiry	Private	FCC sends this letter to a party if there is a potential violation or to collect information from the party to determine whether there is a violation. This letter communicates to a party that FCC has opened an investigation, although FCC may not disclose the reason for the investigation.
Enforcement Orders	Public	FCC issues these orders to communicate to a party about an apparent violation, which may include a proposed fine. Examples of enforcement orders are Notices of Apparent Liability, Notices of Violation, and Forfeiture Orders.
Enforcement Advisories	Public	FCC periodically publishes these documents to educate parties and alert consumers about FCC requirements, purpose of regulations, and consequences for failure to comply.
Close Out Letters	Private	FCC sends, as a general practice, letters to parties who are aware they are the subject of an investigation saying that FCC will not pursue enforcement action and the investigation is closed, if FCC has determined not to pursue an enforcement action at the time of the letter.
Informal	Public/Private	Description
Meetings	Private	FCC conducts meetings and other interactions with parties during and outside of an investigation.
Public Events	Public	FCC officials attend public events to give speeches and participate in panel discussions to talk about the work of the Bureau.

Source: GAO analysis of FCC information. | GAO-17-727

Despite the communication efforts outlined in table 7, 16 of 22 stakeholders we spoke with expressed concern that the enforcement process was not transparent or fair.⁴⁸ Additionally, 10 of these 16 stakeholders said there is a perceived lack of communication between stakeholders and the Enforcement Bureau.⁴⁹

Clear communication strategies are important to promoting transparency particularly in the case of enforcement activities. In a publication on the *Best Practice Principles for Regulatory Enforcement*, the Organisation for Economic Co-operation and Development (OECD) states that government should ensure a clear and fair process for enforcement.⁵⁰

⁴⁸ This group of stakeholders consisted of five industry associations, eight telecommunications companies, and three telecommunications experts.

⁴⁹ This group of stakeholders consisted of three industry associations, and seven telecommunications companies.

⁵⁰ Organisation for Economic Co-operation and Development (OECD). *OECD Best Practice Principles for Regulatory Policy: Regulatory Enforcement and Inspections*. (Paris: OECD Publishing, 2014.)

The *Best Practice Principles* include clearly informing parties of what rights and obligations they have in the process, how to challenge and appeal the conclusions, where and how to obtain compliance assistance and/or report any abuses. Federal internal control standards state that management should design appropriate control activities for programs including externally communicating the necessary quality information to achieve the entity's objectives.⁵¹ In the case of enforcement, agencies can help promote compliance by establishing strategies that foster open two-way communications with external parties to help ensure the clarity of regulations and processes for enforcement.

A communication strategy would serve to relay the purposes, objectives, and processes the Enforcement Bureau employs to achieve its mission as well as the rights and expectations of those under investigation. Furthermore, the creation of a communication strategy to provide necessary and quality information to external stakeholders could (1) clarify aspects of the enforcement process that are not transparent or are confusing to stakeholders, and (2) promote clear, fair, and consistent enforcement. For example, such a strategy could include clearly identifying the rights and obligations parties have in the enforcement process, and where and how to obtain additional information regarding questions about the enforcement process, or to report any abuses, without revealing information considered sensitive during the course of an investigation.

Recently, FCC has taken steps toward improving the transparency of Commission processes to external stakeholders. Since January 2017, the new FCC Chairman has implemented six changes including two intended to improve external transparency. One of the newly implemented changes is for FCC to publicly release, in advance of monthly Commission meetings, the text of all agenda items that the Commission will vote on during the monthly meeting.⁵² Previously, FCC's practice was to release the full text of agenda items only after the Commission voted. However, an exception will be made for enforcement actions that are to be voted on before the Commission; FCC officials explained that the information contained in enforcement actions is considered law enforcement sensitive until it has been voted upon by the Commissioners. The other change

⁵¹ GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

⁵² In February 2017, the FCC Chairman announced this was a pilot program to publically release the text of meeting items.

intended to improve transparency is releasing a one-page fact sheet that summarizes the text of the meeting's agenda items.⁵³ FCC's statement released about this change said that the one-page summaries will improve the public's accessibility to Commission information. Although these policies have a limited direct impact on enforcement, increased focus on external transparency for the enforcement program could improve stakeholder perceptions of FCC actions and help promote the perception of a fair process as well as greater industry cooperation and compliance with FCC regulations.

Conclusions

In recent years, FCC has taken certain actions to improve the efficiency of its enforcement program. However, the extent to which FCC's Enforcement Bureau is achieving its mission of protecting consumers, promoting competition, ensuring responsible use of the public airwaves, and addressing risks to public safety is difficult to determine because FCC has not developed performance indicators, targets, and timeframes that would enable a meaningful assessment of its enforcement program. Furthermore, without quantifiable performance goals and related measures, Congress does not have information needed to fulfill its oversight role, and industry and consumers lack information that would provide transparency regarding FCC's enforcement priorities. Similarly, without a communications strategy that publicly outlines the purposes, objectives, and processes used by the Enforcement Bureau in carrying out its mission, FCC may be missing an opportunity to improve transparency for industry and consumers and to further engage with both to improve their understanding of FCC's enforcement process.

Recommendations for Executive Action

- The Chairman of the FCC should establish quantifiable goals and related measures—performance indicators, targets, and timeframes—for its enforcement program and annually publish the results to demonstrate the performance of this program and improve transparency regarding FCC's enforcement priorities. (Recommendation 1)
- The Chairman of the FCC should establish, and make publically available, a communications strategy outlining the agency's enforcement program for external stakeholders, to improve

⁵³ In February 2017, the FCC Chairman announced a one-page fact sheet that summarizes the text of meeting items to be released to the public for meetings.

engagement with the telecommunications community on the purposes, objectives, and processes the Enforcement Bureau employs to achieve its mission. (Recommendation 2)

Agency Comments

We provided a draft of this report to the Federal Communications Commission for review and comment. FCC provided written comments that are reprinted in appendix II. In written comments, FCC stated that it agreed with both of our recommendations and noted steps it plans to take when making changes to implement quantifiable performance goals and increase transparency regarding the enforcement process. FCC also provided technical comments that we incorporated as appropriate.

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. GAO staff who made key contributions to this report are listed in appendix III.



Mark Goldstein,
Director, Physical Infrastructure Issues

Appendix I: Objectives, Scope, and Methodology

This report addresses (1) actions taken by FCC in the last 5 years to update its enforcement program; (2) performance goals and measures for FCC's enforcement program; and (3) selected stakeholders' views on FCC's enforcement program and FCC's communication with these stakeholders.

To identify trends in enforcement actions and outcomes, we analyzed calendar years 2014 through 2016 summary data from FCC's Enforcement Bureau Activity Tracking System (EBATS). Although EBATS was implemented in 2012, a rolling implementation and major system upgrades limited the available reliable data to 2014 through 2016. We determined that these data were sufficiently reliable for our purposes by reviewing documentation related to how the data were collected and processed, by reconciling the publicly accessible data, and by interviewing FCC officials on their data validation efforts.

To describe what actions FCC has taken in the last five years (calendar years 2012 through 2016) to update its enforcement program we reviewed FCC documentation, such as policies and reports related to internal improvement efforts. In addition, we interviewed FCC officials from the Enforcement Bureau, Consumer and Government Affairs Bureau, as well as the Office of Managing Director. We also interviewed FCC officials located in two of FCC's field offices, Columbia, MD, and Dallas, TX, because these field offices represent 2 of the 3 regions and in the past have conducted greater numbers of investigations than some other field offices. In Dallas, we accompanied FCC officials on a field investigation to observe officials use equipment to locate sources of interference.

To determine what performance goals and measures are in place for the enforcement program we reviewed FCC's annual performance reports, budget estimates to congress, and strategic plans from 2008 to present and interviewed FCC officials. We evaluated FCC's performance goals and measures as listed in FCC's *Fiscal Year 2015 Annual Performance Report* and the *Fiscal Year 2017 Budget Estimates to Congress*, against criteria for developing federal agency performance goals and measures as established in the GPRA Modernization Act of 2010¹ and OMB guidance related to implementing performance measures.² We also

¹ The GPRA Modernization Act of 2010, Pub. L. No. 111-352, 124 Stat. 3866 (2011).

² OMB Circular A-11 Part 6, Section 200 (Washington, D.C.: July, 2016).

reviewed documents including OMB's *Circular A-11*, Part 6, Section 200, and GAO's *Federal Internal Control Standards* related to performance measures.³ We also reviewed FCC's fiscal year 2016 *Annual Performance Report* and *Fiscal Year 2018 Budget Estimates to Congress*; however, FCC did not include enforcement program goals in these reports.

To obtain information on the performance goals and measures used by other agencies with enforcement programs, we selected three additional agencies to review: the Securities Exchange Commission (SEC), Commodities Futures Trading Commission (CFTC), and the Federal Trade Commission (FTC). We selected these agencies from a group of comparison agencies that also had (1) federal independent regulatory authority and (2) a dedicated enforcement bureau/division. After applying the first set of criteria, we selected the three agencies based on similarity to FCC in terms of budget and number of employees allocated in the congressionally approved budget for fiscal year 2016. For each of the agencies selected we reviewed its most recent performance plans and other relevant enforcement related documentation. We also interviewed officials from each of these agencies to gain their perspectives on managing performance and measuring enforcement efforts.

To determine stakeholder views on FCC's enforcement program we interviewed a non-generalizable sample of 22 stakeholders who were knowledgeable of the Enforcement Bureau and the communications industry. We selected these stakeholders in order to get a range of perspectives using the following criteria: (1) type of industry perspective, (2) size of a company (where applicable), (3) level of activity in filing comments with FCC, and (4) area of expertise. After applying these criteria we assembled a list of stakeholders who viewed the industry from different perspectives (telecommunications companies, public interest groups, industry association, telecommunications experts) and different areas of expertise (phone, radio, television, and internet). By taking into account stakeholders' prior work and their level of FCC comment activity, we also ensured these selected stakeholders were knowledgeable of the industry. For a full list of the stakeholders whom we interviewed see table 8 below. To determine how FCC communicates with stakeholders, we reviewed FCC documentation and policies for formal and informal communication with stakeholders. We compared these policies to the

³ GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

Organisation for Economic Co-operation and Development's (OECD) *Best Practice Principles for Regulatory Policy: Enforcement and Inspections*⁴ and *Federal Internal Control Standards* on managing external communications.⁵

We also analyzed publicly accessible data on monetary enforcement actions that are on FCC's website from calendar years 2012 through 2016 to determine whether stakeholder views matched recent FCC enforcement outcomes. We determined that these data were sufficiently reliable for our purposes by reconciling the data with FCC provided data and interviewing FCC officials on their data validation efforts.

Table 8: Organizations and Individuals GAO Selected for Interviews

Stakeholder Type	Name
Telecommunications Companies	AT&T
	Blue Jay Wireless
	Comcast
	Schurz Communications
	Smart City Holdings
	T-Mobile
	Urban One
	Verizon
Public Interest Groups	Consumers Union
	Electronic Frontier Foundation
	National Consumer Law Center
	Public Knowledge
Industry Associations	Association of Federal Communications Consulting Engineers ^a
	Association of Public-Safety Communications Officials
	CTIA
	INCOMPAS
	National Association of Broadcasters
	United States Telecom Association

⁴ Organisation for Economic Co-operation and Development (OECD) *OECD Best Practice Principles for Regulatory Policy: Regulatory Enforcement and Inspections* (Paris: OECD Publishing, 2014)

⁵ GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

Stakeholder Type	Name
Telecommunications Experts	James L. Casserly, Willkie Farr & Gallagher LLP
	Frank G. Lamancusa, Morgan Lewis & Bockius LLP
	David H. Solomon, Wilkinson Barker Knauer, LLP
	Philip J. Weiser, University of Colorado

Source: GAO | GAO-17-727

^aThis association was not interviewed, but chose to provide written response to our questions.

We conducted this performance audit from June 2016 to September 2017 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.

Appendix II: Comments from the Federal Communications Commission



Federal Communications Commission
Washington, D.C. 20554

August 25, 2017

Mark Goldstein, Director
Physical Infrastructure Team
Government Accountability Office
441 G Street NW
Washington, DC 20548

Dear Mr. Goldstein:

Thank you for the opportunity to review and comment on the Government Accountability Office's (GAO) draft report titled *Telecommunications: FCC Updated Its Enforcement Program, but Improved Transparency Is Needed* ("Draft Report"). We accept GAO's recommendations and will (1) develop and publish performance goals and measures for FCC enforcement practices in accordance with the Government Performance and Results Act (GPRA) Modernization Act of 2010; and (2) develop and make publicly available a communications strategy for external stakeholders outlining the FCC's enforcement program.

We appreciate GAO's acknowledgement of the many improvements that the Commission has made in its enforcement processes. These improvements include implementing a data system, EBATS, to assist in the collection of enforcement data; implementing a new consumer complaint portal that allows consumers to receive email updates on the status of their complaints and to ask questions and receive answers related to the complaint; and developing internal policies and timelines. We will continue to look for ways to modernize and improve our processes.

The Draft Report also includes feedback on the FCC's enforcement program from 22 stakeholders identified by type of organization. It is difficult to address these comments without having more information. For example, the Draft Report states that "[n]ine stakeholders said the Enforcement Bureau issued fines when there was no clear violation of the regulations."¹ Without knowing the specifics of these claims, we are unable to dispute (or concur with) the assertion that the violations were unclear. We note that whenever the Bureau issues a fine, the affected party has a right to challenge the fine before the Commission and, ultimately, appeal it to a court.

The other stakeholder criticisms are equally non-specific, and we therefore cannot evaluate their credibility. For example, the Draft Report states that nine stakeholders said that "industry participants have lost the incentive to self-report potential violations because it does not appear that the Enforcement Bureau will treat them fairly."² Again, we lack sufficient information to assess these claims. Moreover,

¹ Draft Report at 18.

² Draft Report at 19.

the fact that some companies allegedly “acted quickly to correct and report violations” but still received “significant penalties” does not answer pertinent questions such as: how quickly did the companies act, did they fully remedy the violations, and were those corrective actions taken into account in deciding the amount of fine? Self-reporting is one factor that goes into calculating an appropriate fine, but it does not absolve wrongdoing.

We also appreciate that GAO appears to recognize that there are legitimate reasons to protect confidentiality. The Draft Report notes that the FCC’s communications strategy is guided, in part, by “concerns that in some cases sharing too much information about [our] enforcement processes or case sensitive information could help parties of investigations undermine FCC’s case.”³ Consistent with applicable law,⁴ we must exercise caution about disclosing information that might jeopardize an ongoing investigation, or unfairly raise concerns about a target’s activities.⁵

Finally, we agree with GAO’s recommendation that we can and should implement quantifiable performance goals, and increase transparency regarding the enforcement process. We will look in particular at the practices of the other agencies that GAO referenced in its report, and keep those practices in mind as we implement the recommended changes.

Thank you for the opportunity to respond to the recommendations in the Draft Report. We look forward to working with GAO in the future.

Sincerely,



Rosemary C. Harold
Chief, Enforcement Bureau

³ *Draft Report* at 21.

⁴ *See, e.g.*, 5 U.S.C. § 552(b)(7) (providing exemption from public disclosure for certain records or information compiled for law enforcement purposes).

⁵ *Draft Report* at 17.

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

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

Staff Acknowledgments

In addition to the contact named above, Derrick Collins, Assistant Director; Jade Winfree, Analyst-in-Charge; Dennis Antonio, Anne Doré, Camilo Flores, Josh Ormond, Michelle Weathers, and Elizabeth Wood made key contributions to this report.

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