

**GAO**

Report to the Chairman, Subcommittee  
on Telecommunications and the  
Internet, Committee on Energy and  
Commerce, House of Representatives

February 2008

## TELECOMMUNICATIONS

# FCC Has Made Some Progress in the Management of Its Enforcement Program but Faces Limitations, and Additional Actions Are Needed





Highlights of [GAO-08-125](#), a report to the Chairman, Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, House of Representatives

## Why GAO Did This Study

The Federal Communications Commission (FCC) annually receives about 100,000 complaints from individuals and companies. FCC has the authority to investigate these complaints and take enforcement action if it finds a violation of the telecommunications laws and rules, which are designed to ensure, for example, that individuals have access to 911 services and a wider affordable range of communication services.

As requested, this report reviews FCC's enforcement program and (1) summarizes the number and type of complaints received, investigations conducted, and enforcement actions taken by FCC from 2003 through 2006; (2) discusses how FCC assesses the impact of its enforcement program; and (3) discusses challenges FCC faces in providing complete and accurate information on its enforcement program. To address these objectives, GAO analyzed FCC's databases, interviewed FCC officials, telecommunications executives, and experts.

## What GAO Recommends

The Chairman, FCC, should improve FCC's data collection and analysis to help it better manage its enforcement efforts and develop and implement performance goals and outcome measures for its enforcement program. FCC said it has already implemented measures that address both recommendations; however, the actions it identified do not fully address our recommendations.

To view the full product, including the scope and methodology, click on [GAO-08-125](#). For more information, contact Mark Goldstein at (202) 512-2834 or [goldsteinm@gao.gov](mailto:goldsteinm@gao.gov).

## TELECOMMUNICATIONS

### FCC Has Made Some Progress in the Management of its Enforcement Program but Faces Limitations, and Additional Actions Are Needed

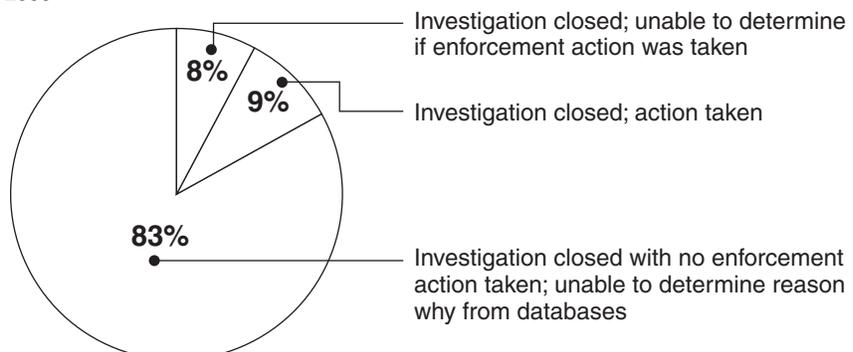
#### What GAO Found

According to GAO's analysis of FCC data, between 2003 and 2006, the number of complaints received by FCC totaled about 454,000 and grew, from almost 86,000 in 2003, to a high of about 132,000 in 2005. The largest number of complaints alleged violations of the do-not-call list request and telemarketing during prohibited hours. FCC processed about 95 percent of the complaints it received. FCC also opened about 46,000 investigations and closed about 39,000; almost 9 percent of these investigations were closed with an enforcement action, and about 83 percent were closed with no enforcement action. GAO was unable to determine why these investigations were closed with no enforcement action because FCC does not systematically collect these data. FCC told GAO that some investigations were closed with no enforcement action because no violation occurred or the data were insufficient.

FCC assesses the impact of its enforcement program by periodically reviewing certain program outputs, such as the amount of time it takes to close an investigation, but it lacks management tools to fully measure its outcomes. Specifically, FCC has not set measurable enforcement goals, developed a well-defined enforcement strategy, or established performance measures that are linked to the enforcement goals. Without key management tools, FCC may have difficulty assuring Congress and other stakeholders that it is meeting its enforcement mission.

Limitations in FCC's current approach for collecting and analyzing enforcement data constitute the principal challenge FCC faces in providing complete and accurate information on its enforcement program. These limitations make it difficult to analyze trends; determine program effectiveness; allocate Commission resources; or accurately track and monitor key aspects of all complaints received, investigations conducted, and enforcement actions taken.

Disposition of FCC's 39,000 Closed Investigations, Calendar Years 2003 through 2006



Source: GAO analysis of Enforcement Bureau's databases.

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## Abbreviations

CGB	Consumer and Governmental Affairs Bureau
FCC	Federal Communications Commission
FTC	Federal Trade Commission
GPRA	Government Performance and Results Act of 1993
OMD	Office of the Managing Director

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United States Government Accountability Office  
Washington, DC 20548

February 15, 2008

The Honorable Edward J. Markey  
Chairman  
Subcommittee on Telecommunications  
and the Internet  
Committee on Energy and Commerce  
House of Representatives

Dear Mr. Chairman:

The Federal Communications Commission (FCC) is responsible for enforcing the Communications Act of 1934, as amended (the Act), and Commission rules and orders. Each year, FCC receives approximately 100,000 complaints from consumers and companies. FCC has the authority to investigate complaints and to take enforcement action if it finds that there have been violations of the various telecommunications laws and Commission rules that are designed to protect the consumer, ensure public safety, and encourage competition. Thus, it is important that FCC have a strong and effective enforcement program that allows it to act on these complaints in an efficient and equitable manner.

Within FCC, two bureaus—the Consumer and Governmental Affairs Bureau (CGB) and the Enforcement Bureau—have responsibility for handling the hundreds of thousands of complaints that FCC receives from individuals and companies. CGB is primarily responsible for processing the majority of the complaints that FCC receives from individuals. The Enforcement Bureau is the primary bureau within FCC that is responsible for enforcing the Act's provisions and FCC's rules and orders.

You requested that we review FCC's enforcement program. This report (1) summarizes the number and types of complaints received, investigations conducted, and enforcement actions taken by FCC during calendar years 2003 through 2006; (2) discusses how FCC assesses the impact of its enforcement program; and (3) discusses challenges FCC faces in providing complete and accurate information on its enforcement program.

To provide information on the number and types of complaints received, investigations conducted, and enforcement actions taken by FCC from 2003 through 2006, we analyzed data entirely from FCC's six databases for

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calendar years 2003 to 2006.<sup>1</sup> We primarily focused our analysis on the approximately 46,000 investigations that FCC conducted during this time period. We did not review the paper case files that FCC maintains. Our focus was on the database systems for FCC's enforcement program. To assess the reliability of FCC's databases, we performed a separate assessment of each of the five databases and of CGB's database. We identified the degree of missing, duplicate, and invalid records and analyzed certain data fields to assess the quality of the data. We found some inconsistencies and limitations in the databases, which we reported to FCC. We also reviewed FCC's procedures for handling complaints, conducting investigations, and taking enforcement actions. While we discuss limitations of the data in this report, we determined that the data were sufficiently reliable for us to present some general information regarding the number and types of complaints, investigations and enforcement actions.

To identify the challenges FCC faces, we interviewed officials at FCC and 15 companies that are subject to FCC's enforcement, and five experts in telecommunications. We selected the companies based on the type of telecommunications services provided (radio and television broadcasting, cable and satellite, wireless and wireline telecommunications services) and FCC and industry data for 2006. To assess how FCC measures the impact of its enforcement program, we reviewed the agency's *Strategic Plan for 2006 through 2011, Fiscal Year 2006 Performance and Accountability Report, Fiscal Year 2006 Congressional Justification of Estimates*, and the FCC's enforcement manual to identify enforcement goals and performance measures. We also interviewed FCC officials about performance goals and measures and compared FCC's efforts with performance management practices identified in prior GAO reports. We conducted this performance audit from November 2006 through December 2007 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.

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<sup>1</sup>We initially requested data from CGB and the Enforcement Bureau's databases for calendar years 2000 through 2006 but were told that information from CGB was only available for calendar years 2003 through 2006. Thus, to be consistent in reporting the results of our review, we are reporting data from 2003 through 2006.

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## Results in Brief

Overall, FCC received and processed hundreds of thousands of complaints, conducted tens of thousands of investigations, and took a limited number of enforcement actions during calendar years 2003 through 2006. According to our analysis of FCC's CGB database for 2003 through 2006, during this period, the number of complaints received by FCC's CGB totaled 454,000 and grew, from almost 86,000 in 2003, to a high of about 132,000 in 2005. The CGB processed about 95 percent of these complaints by sending a letter of acknowledgment to the complainant and, where appropriate, referred them for resolution to the company that was the subject of the complaint. The largest number of complaints alleged violations of the Telephone Consumer Protection Act (TCPA),<sup>2</sup> including violations of the do-not-call list request and telemarketing during prohibited hours. As of December 2006, about 23,000 complaints remained open, with 16 percent of them open from 1 to 4 years. In addition, based on our analysis of FCC's Enforcement Bureau's databases, from 2003 through 2006, FCC's Enforcement Bureau conducted about 46,000 investigations. These investigations were in response to complaints that the Enforcement Bureau received directly, complaints received by CGB, audits and inspections, and self-initiated inquiries. As of December 2006, the Enforcement Bureau had closed about 39,000 of the 46,000 investigations. Based on our analysis of FCC's Enforcement Bureau's databases for 2003 through 2006, about 9 percent, or almost 3,400, of these investigations were closed with an enforcement action, and approximately 83 percent, or about 32,200, were closed with no enforcement. We were not able to determine whether enforcement actions had been taken in the remaining 3,200 closed investigations or to determine why investigations were closed with no discernible enforcement action because the Enforcement Bureau databases did not collect this information systematically. However, Enforcement Bureau officials told us that some investigations may be closed with no enforcement action for such reasons as insufficient information or a determination that no violation occurred. Our analysis of FCC's Enforcement Bureau databases for 2003 through 2006 shows that when FCC took an enforcement action, it generally issued an admonishment or notice of violation, sometimes assessed a fine, and rarely relied on more serious enforcement actions. For example, FCC did not issue any order to cease and desist during this period. As of December 2006, about 7,200 investigations remained open and almost 1,400 (about 19

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<sup>2</sup>In 1991, Congress enacted TCPA to address a growing number of telephone marketing calls and certain telemarketing practices thought to be an invasion of consumer privacy and, in some cases, costly to consumers. See 47 USC 227.

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percent) were open for 1 to 4 years. According to FCC officials, from 2003 through 2006 the Commission assessed \$73 million in fines and payments negotiated through consent decrees, of which about \$53 million, or 72 percent, has been collected.

While FCC assesses the impact of its enforcement program by periodically reviewing certain program outputs, it lacks the management tools needed to fully measure its outputs and manage its program. Specifically, FCC's Enforcement Bureau has not set specific enforcement goals, developed a well-defined enforcement strategy, or established performance measures that are linked to the enforcement goals. FCC measures outputs, such as the extent to which it takes enforcement action within its statute of limitations requirement for assessing fines or the time it takes to close investigations, but it does not measure outcomes such as the effects of its enforcement actions on levels of compliance in certain areas. Without key management tools, FCC may have difficulty fully assuring Congress and other stakeholders that it is meeting its enforcement mission of protecting the consumer, ensuring public safety, and encouraging competition.

Limitations in FCC's current approach for collecting and analyzing enforcement data constitute the principal challenge FCC faces in providing complete and accurate information on its enforcement program. These limitations make it difficult to conduct trend analysis, determine program effectiveness, allocate Commission resources, or accurately track and monitor key aspects of all complaints received, investigations conducted, and enforcement actions taken. Currently, the Enforcement Bureau uses five separate databases and manually searches tens of thousands of paper case files to track and monitor the extent to which each of its divisions takes enforcement action within its statute of limitations requirement for assessing fines or the time it takes to close an enforcement case. Consequently, we could not use the Enforcement Bureau's databases to obtain bureauwide information on the 1-year statute of limitations for imposing monetary forfeitures, the speed with which the Enforcement Bureau closed an investigation, the reasons for closing investigations with no enforcement action, or the amount of the fines FCC assessed. Our past work has shown that when data management systems are not integrated and compatible, excessive use of resources and inconsistent analysis of program results can occur.

To develop a more efficient and effective approach to enforcing communications laws and Commission rules and orders, we recommend that the Chairman of the Federal Communications Commission

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- improve how FCC collects and analyzes data on complaints received, investigations conducted, and enforcement actions taken to help it better manage and understand the outcomes and net results of enforcement efforts and provide Congress and stakeholders with timely and accurate information that can be used to hold FCC accountable for accomplishing its enforcement mission under the Act; and
  - develop and implement performance management practices for the Enforcement Bureau, such as a well-defined strategy that includes specific goals and performance measures, in order to assess the effectiveness of FCC's enforcement program.

We provided a draft of our report to FCC for review and comment. FCC commented that it has already implemented measures that address both of our recommendations. In addition, FCC disagreed with our methodology and several of our findings. FCC's comments appear in appendix II. FCC also provided over 100 pages of attachments in its comments. Because these attachments cover time periods that are after the scope of our audit and are voluminous, we have decided to characterize the attachments rather than include them in their entirety.<sup>3</sup> FCC also provided technical and legal clarifications, which we incorporated as appropriate. We also clarified our methodology for analyzing FCC's databases. These technical and legal changes did not affect our findings, conclusions, or recommendations.

We are pleased that FCC is moving in the direction suggested by our recommendations, but we disagree with FCC that it has already fully implemented them; we also disagree with FCC's criticisms of our methodology and findings. We believe that our report provides an accurate and sufficient overview of FCC's processes for handling complaints, conducting investigations, and taking enforcement actions and the results of FCC's efforts to enforce telecommunications laws and the Commission's rules from 2003 through 2006, the latest year complete data was available. We also exercised caution in writing our report to ensure that we explained that the results of our analysis are based entirely on FCC's databases. In our view, FCC's concerns about the accuracy of our findings stem from (1) the challenges FCC faces in not having a data

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<sup>3</sup>GAGAS does not require us to print in its entirety responses submitted by an agency in connection with our reports and allows us to characterize responses where suitable and to include or not to include them as appropriate.

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management system that will allow it to systematically collect and analyze information about complaints, investigations, and enforcement actions and (2) the Commission's use of an approach that differs significantly from ours. We discuss the challenges posed by FCC's data management system in our report and point out that without improvements, such as we recommend, FCC cannot readily analyze trends, determine program effectiveness, allocate Commission resources, or accurately track and monitor key aspects of all complaints received, investigations conducted, and enforcement actions taken. In addition, the Commission's use of data for 2007 and data from the thousands of paper case files, both of which were outside the scope of our analysis, necessarily led to findings that differed from ours, but these differences do not affect the appropriateness of our methodology or the accuracy of our findings.

FCC disagreed with our methodology and our findings, conducted its own analyses, and included the results of these analyses in attachments to its comments. We believe that our methodology meets generally accepted government auditing standards which require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings, conclusions, and recommendations. However, while FCC did not provide its methodology, its overall approach differs significantly from the approach we used. In its comment letter, FCC acknowledged that it had to review about 46,000 paper case files and use its databases to determine the reasons why investigations were closed with no enforcement action. FCC also acknowledged that it conducted a manual review of a variable in its database that we could not use because of reliability concerns. As noted in our report, the data that we used for our analyses are derived directly from FCC's databases. We did not review the 46,000 paper case files that FCC maintains. Our focus was on the database systems for FCC's enforcement program.

FCC also disagreed with our finding that 83 percent of its investigations were closed with no enforcement action and that there were no justifications for these closures in its databases. In its comments, FCC stated that based on its analysis of its databases and paper case files, 85 percent of its investigations were closed with no enforcement action and 96 percent of these closures were due to findings of compliance or insufficient information from the complainant. To determine the reasons why investigations were closed, we attempted to identify a reliable variable in FCC's enforcement database that clearly categorized the justifications for closing an investigation with no enforcement action. No such variable exists. As an alternative, FCC referred us to open-ended text variables. We reviewed these variables, and in June 2007, told FCC

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officials that we could not use these variables because they are frequently blank or, if completed, contain varying amounts of text to justify the actions or lack thereof. While such information may be useful to the FCC analysts working on the complaints, they are not usable for management information purposes. In addition, as FCC acknowledged in its comments, to determine the reasons why its investigations were closed with no enforcement action, it had to review approximately 46,000 paper case files. As noted in this report, the data that we used for our analysis are derived entirely from FCC's databases. We did not review the 46,000 paper case files that FCC maintains. Our focus was on the database systems for FCC's enforcement program. Our understanding is that FCC analysts reviewed the information from its databases and paper case files and categorized the reasons for approximately 46,000 investigations in response to our initial analysis. We believe that FCC should have data management systems that allow it to generate this type of information automatically, reliably, and regularly. Consequently, we stand by our recommendation that FCC needs to improve how it collects and analyzes data on complaints received, investigations conducted, and enforcement actions taken to better manage its enforcement program.

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## Background

Two bureaus within FCC—CGB and the Enforcement Bureau— have responsibilities for developing and implementing procedures for processing complaints, conducting investigations, and taking enforcement action if appropriate. CGB has primary responsibility for processing the majority of the complaints that FCC receives and for responding to other consumer complaints and inquiries.<sup>4</sup> For example, some of these complaints allege that (1) common carriers may have violated telecommunications laws and FCC rules; (2) television and radio broadcasters may have violated indecency rules; and (3) nonregulated entities, such as telemarketers, may have violated some aspects of the TCPA, such as the do-not-call list request. CGB may also receive complaints and inquiries about consumer issues from congressional offices and FCC Commissioners. Under CGB's process, complaints are logged upon receipt into CGB's database, and acknowledgment letters are sent to the complainants notifying them that FCC received the complaint. Complaints against common carriers are processed according to the

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<sup>4</sup>FCC refers to the complaints it receives as formal and informal; however, for purposes of this report we are not making that distinction.

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procedures outlined in FCC's regulations, which require FCC to forward the complaint to the carrier that allegedly committed the violation and ask the carrier to respond to the complainant and FCC.<sup>5</sup> If the common carrier responds to the complainant by, for example, issuing a refund or explaining the charges, then CGB takes no further action. However, if the company does not respond, then CGB initiates additional contact after 30 days and, again, after 60 days, to get the complaint resolved. A CGB official told us that CGB also receives a copy of the carrier's response to the complaint. According to FCC, voluntary action by the carrier to achieve consumer satisfaction is the expected outcome for most of the complaints CGB receives. However, if this outcome is not achieved, the complainant may pursue the matter by filing a formal complaint with FCC's Enforcement Bureau.<sup>6</sup> CGB responds to other complaints, such as those concerning junk faxes, by acknowledging receipt of the complaint and then closing the case.

Formed in November 1999, the Enforcement Bureau consolidates the enforcement functions of FCC's policy bureaus, which formerly carried out their own investigations and enforcement activities.<sup>7</sup> The areas of enforcement that are handled by the Enforcement Bureau are consumer protection, local competition, and public safety. The Enforcement Bureau has four divisions and 25 field offices in three geographic regions. These five divisions are responsible for conducting investigations and taking enforcement actions, if appropriate (see table 1).<sup>8</sup>

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<sup>5</sup>47 C.F.R. § 1.717.

<sup>6</sup>47 C.F.R. § 1.717-1.718. Special rules apply to the handling of informal slamming complaints. See 47 C.F.R. 1.719.

<sup>7</sup>Other FCC bureaus continue to handle some enforcement issues. For example, enforcement issues related to licenses are handled by the relevant licensing bureau.

<sup>8</sup>For purposes of this report, we are including the 25 field offices as one of the Enforcement Bureau's five divisions.

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**Table 1: Divisions and Responsibilities of FCC’s Enforcement Bureau**

<b>Division</b>	<b>Primary responsibilities</b>
Investigations and Hearings	Investigates and takes or recommends enforcement action against (1) broadcast licensees for violations of nontechnical Commission rules concerning issues, such as indecency, enhanced underwriting, unauthorized assignments and transfers of control of licenses; (2) wireless licensees for violations of nontechnical rules involving such issues as auction collusion and unauthorized assignments and transfer of control of licensees; (3) common carriers in cases involving alleged or suspected misconduct; and (4) in cases involving suspected violations of the laws and rules governing universal service. This division also serves as trial staff in formal hearings.
Spectrum Enforcement	Investigates and takes or recommends enforcement action for violation of public-safety related and other technical rules, such as those governing interference, tower marking and lighting, the Emergency Alert System, 911, Enhanced 911, and compliance with operational provisions of licenses. This division also handles enforcement action in the areas of unauthorized equipment, network reliability or network outages, and digital television, among others.
Telecommunications Consumers	Investigates and takes or recommends enforcement action for violations of consumer-related obligations of common carriers and other telecommunications entities, such as slamming, junk faxes, and prohibited calls to do-not-call list request subscribers, and adjudicating formal complaints filed against telecommunications entities that raise consumer issues and proceedings on the accessibility of telecommunications services and equipment to persons with disabilities.
Market Disputes Resolution	Resolving complaints by market participants, entities, or organizations against common carriers for alleged violations of the Act that are filed under section 208 of the Act; resolving complaints filed by cable operators, telecommunications carriers, utilities, and other parties relating to the reasonableness of rates, terms, and conditions for pole attachments as stated under section 224 of the Act; and facilitating settlements of disputes by engaging the parties in mediation.
Field Offices	Responding to spectrum and homeland-security-related safety of life and public safety matters, investigating interference complaints, inspecting FCC-regulated entities, and taking or recommending enforcement action for violations of public safety and technical rules.

Source: FCC

The Enforcement Bureau generally investigates alleged violations of telecommunications and Commission rules in response to complaints received directly from an individual or an entity or from complaints it selected from CGB’s database. After a complaint is received, Enforcement Bureau staff review it to determine whether it meets FCC’s sufficiency of evidence and jurisdictional requirements. If a complaint does not meet these requirements, an investigation is not conducted. While Enforcement Bureau officials told us that FCC’s enforcement work is primarily complaint-based, the bureau does initiate a few investigations in response to audits or observations made during the normal course of agency business, such as research during other investigations. If a violation is found during an investigation, then the Enforcement Bureau may take enforcement action.

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Once a violation is found, the Commission may impose a range of enforcement actions. According to FCC, potential enforcement actions include the following:<sup>9</sup>

- *Admonishment.* A notice that serves to inform the subject that its action violates the Act or Commission rules, orders, or terms and conditions of authorizations and allows the Enforcement Bureau to establish a record of enforcement action in cases where a forfeiture is not warranted.
- *Cease and desist order.* An order requiring a person to cease and desist from violation of the Act or Commission rules.<sup>10</sup>
- *Citation.* Provides notice to parties who do not ordinarily conduct business with FCC (i.e., persons not holding or applying for Commission authorizations) that their actions violate the Act or FCC rules and could subject them to a monetary forfeiture. A forfeiture may not be issued for the subject of a citation but may be imposed for subsequent violations.
- *Consent decree.* An agreement between FCC or the Enforcement Bureau and the party of an investigation that sets forth the terms and conditions of accepted behavior to which that subject must conform in exchange for closure of the investigation or forfeiture proceedings. A consent decree generally includes a compliance plan and a voluntary contribution to the U.S. Treasury.
- *Criminal and civil penalties.* The Act provides for a fine of not more than \$10,000 or a criminal penalty of imprisonment for up to 1 year for a first-time conviction of willfully and knowingly violating the Act (47 USC § 501). A second conviction for violating any provision of the Act is punishable by a fine of not more than \$10,000 or imprisonment for up to 2 years. FCC has no authority to initiate a criminal action against a subject for violation of the Act; instead, FCC must refer such a matter to the Department of Justice.

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<sup>9</sup>According to FCC, besides enforcement actions, investigations may also result in denials, dismissals, or a determination that a party complied with relevant rules.

<sup>10</sup>According to FCC, a cease and desist order can only be issued by the Commission or an administrative law judge following a hearing.

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- *Debarment.*<sup>11</sup> FCC's debarment rules establish procedures to prevent persons who have been convicted of or held civilly liable for attempting to commit or committing a variety of offenses from engaging in activities with or related to universal service mechanisms. The offenses covered by the rule include criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice or other fraud or criminal offense arising out of activities associated with or related to universal service mechanisms, such as the schools' and libraries' support mechanisms.
  - *Equipment seizure (In Rem seizure).* Primarily used in cases involving unlicensed or pirate radio stations where FCC field agents, in conjunction with the U.S. Marshal Service and the U.S. Attorney's Office, seize radio transmitting equipment.
  - *Monetary forfeiture.* A fine assessed for violation of the Act or FCC rules, orders, or terms and conditions of an authorization. The Act provides two methods by which FCC may assess monetary forfeitures. The most commonly used method is to issue a notice of apparent liability. This notice, which is a proposed action, informs the subject that FCC believes that a violation has occurred and that a forfeiture in a specified dollar amount is warranted. The other method is the issuance of a notice of opportunity for hearing. This hearing process is typically used in application hearing designation and revocation proceedings and entitles the subject to a full hearing before an administrative law judge.
  - *Notice of violation.* A notice generally issued by an FCC field office to an FCC-regulated entity concerning a violation of laws or rules that is identified during an inspection. The notice requires the subject to respond to the allegation and, based on the response, additional action may be taken.
  - *Revocation of license.* Reserved for the most egregious violations of the law that raise serious questions about a licensee's basic qualifications to be and remain a licensee. Such offenses include misrepresentation, lack of candor, and repeat violations of the Act or Commission rules and orders.<sup>12</sup>

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<sup>11</sup>47 CFR § 54.8.

<sup>12</sup>According to FCC, as with cease and desist orders, a revocation of license can only be issued by the Commission or an administrative law judge following a hearing.

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The Commission may assess a monetary forfeiture for violations of the Act, the Commission's rules, a Commission order, or terms and conditions of an authorization. The Commission's general legal authority can be found in Section 503 of the Act.<sup>13</sup> Section 503 of the Act sets forth maximum forfeiture amounts for violations by licensees or regulated entities. Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and any other such matters as justice may require. These requirements are implemented by FCC rules.<sup>14</sup> In 1997, to help implement these criteria, the Commission adopted *Guidelines for Assessing Forfeitures*.<sup>15</sup> These guidelines are used to help determine the amount of a forfeiture for a specific violation and to provide a base forfeiture amount for most of the common violations. The base amount can be adjusted up or down, depending on the existence of factors meeting the adjustment criteria, such as a history of prior violations. Although the guidelines represent the general method for assessing forfeitures, the Commission has discretion to depart from them when appropriate.

Section 503 (b) of the Act also limits the time within which FCC may assess a monetary forfeiture. For common carriers and all other entities except broadcast licensees, the notice of apparent liability or notice of opportunity for hearing is required to be issued within 1 year of the violation. For broadcast licensees, the notice of apparent liability or notice of opportunity for hearing may be issued if the violation occurred during the current license term or within the last year, whichever is earlier.

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<sup>13</sup>Other forfeiture amounts or other sanctions are established in other sections of the Communications Act of 1934, as amended, including sections 202(c); 203 (e); 205(b); 214(d); 219(b); 220(d); 364(a)-(b); 386(a)-(b); and 634.

<sup>14</sup>See 47 C.F.R. § 1.80 for current maximum forfeiture amounts. In accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, Pub. L. 104-134, Sec. 31001, 110 Stat. 1321, the Commission has twice implemented an increase of the maximum statutory forfeiture amounts.

<sup>15</sup>See Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Report and Order, 12 FCC Rcd 17087 (1997) ("Forfeiture Policy Statement"), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4).

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After a fine is assessed, information on the fine is sent to the Office of the Managing Director (OMD) for tracking and monitoring of payment. OMD has responsibility within FCC for keeping track of what fines have and have not been paid. The Enforcement Bureau receives reports from OMD and has access to OMD's database to monitor payment, as well. Although the Enforcement Bureau and the Commission have the legal authority to impose fines, the U.S. Department of Justice has the authority to collect unpaid fines. Thus, when a case is past due, the Enforcement Bureau refers the case to its Office of General Counsel, which then determines whether or not to refer the case to the U.S. Department of Justice for collection. Once the U.S. Department of Justice receives a referral from FCC's Office of General Counsel, it can decide whether or not to pursue a case or to collect a fine.

Companies have several opportunities to respond to FCC's assessment of a monetary forfeiture. For example, after a notice of apparent liability is issued, a company may submit information, including financial information, and request that the fine amount be reduced or cancelled. If FCC decides to move forward with the fine (whether the original amount or a reduced amount) and the company disagrees with the fine, then the company can ask for the fine to be reviewed. Companies may request that the Commissioners review the fine by filing a petition for reconsideration of an Enforcement Bureau forfeiture order or submitting an application for review of a fine issued by the Commission.

At any point during an investigation or after a fine has been assessed, a company may request to settle with FCC and enter into a consent decree. A consent decree terminates the investigation or forfeiture, and the subject of the investigation agrees to certain terms and conditions but typically does not admit or deny any wrongdoing. The terms and conditions usually include specific steps to correct the violation and ensure future compliance, as well as a voluntary monetary contribution to the U.S. Treasury.

In commenting on a draft of this report, FCC disagreed with our description of its process for responding to consumer complaints and said that during the course of our review it began responding to 100 percent of consumer complaints. Our description of FCC's process for responding to consumer complaints is based on information it provided to us during the course of our review. During the course of our review, FCC stated that it planned to change its process for responding to consumer complaints. However, in the 100 page attachment to its letter FCC did not provide any documentation explaining how or when the process changed. Thus, we

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were not able to evaluate any changes that FCC may have made to its process for responding to consumer complaints. As part of our routine recommendation follow-up work, we will inquire about FCC's progress in this area.

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### **Complaints Received by FCC Have Increased and the Majority of Investigations Have Not Resulted in Enforcement Actions**

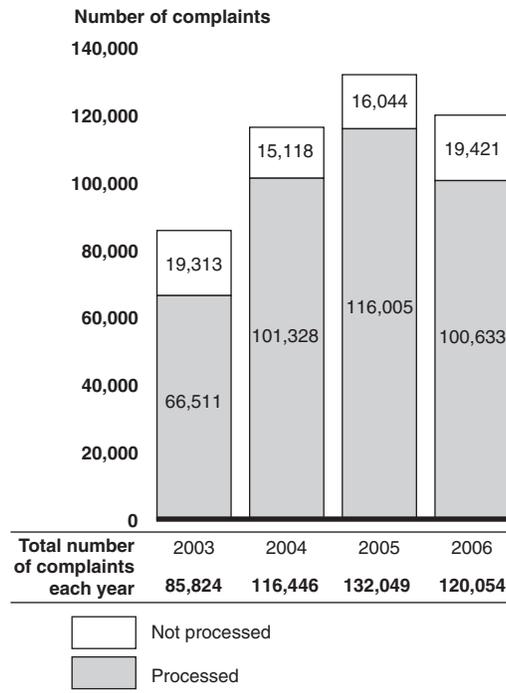
Overall, FCC received and processed hundreds of thousands of complaints and conducted thousands of investigations but took a limited number of enforcement actions from 2003 through 2006. The number of consumer complaints received by CGB totaled about 454,000 and increased by about 40 percent during this period. As of December 31, 2006, about 95 percent of these complaints were closed. In addition, the Enforcement Bureau conducted about 46,000 investigations and closed about 39,000, of which almost 3,400 resulted in an enforcement action and about 32,200 did not result in an enforcement action. About 7,200 investigations remained open. According to FCC, it has collected about 72 percent of the \$73 million in monetary forfeitures and payments associated with consent decrees issued from 2003 through 2006.

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### **Complaints Received and Processed by FCC's CGB Have Increased**

For calendar years 2003 through 2006, the number of complaints received by CGB totaled about 454,000 and grew, from almost 86,000 in 2003, to a high of about 132,000 in 2005, as shown in figure 1. Also, as shown in figure 1, the number of complaints processed during these years increased, reaching a high of 116,000 in 2005.

**Figure 1: Number of Complaints Received and Processed by the Consumer and Governmental Affairs Bureau, Calendar Years 2003 through 2006**



Source: GAO analysis of CGB's database.

In its written comments, FCC said that figure 1 only reflects the status of complaints received by CGB during the year in which the complaint was received and that the figure does not reflect complaints that were closed in subsequent years. This figure is designed to show a year-by-year analysis of the number of complaints received, processed, and not processed by CGB in the same year and is not designed to show the number of complaints that were received in one year and processed in a subsequent year.

Furthermore, from 2003 through 2006, about 65 percent of the 454,000 complaints received by CGB were about alleged violations of the FCC's TCPA rules, as well as billing and rates for wireline and wireless services, as shown in figure 2. TCPA complaints, which include allegations of failing to honor the do-not-call list request and soliciting during prohibited hours,

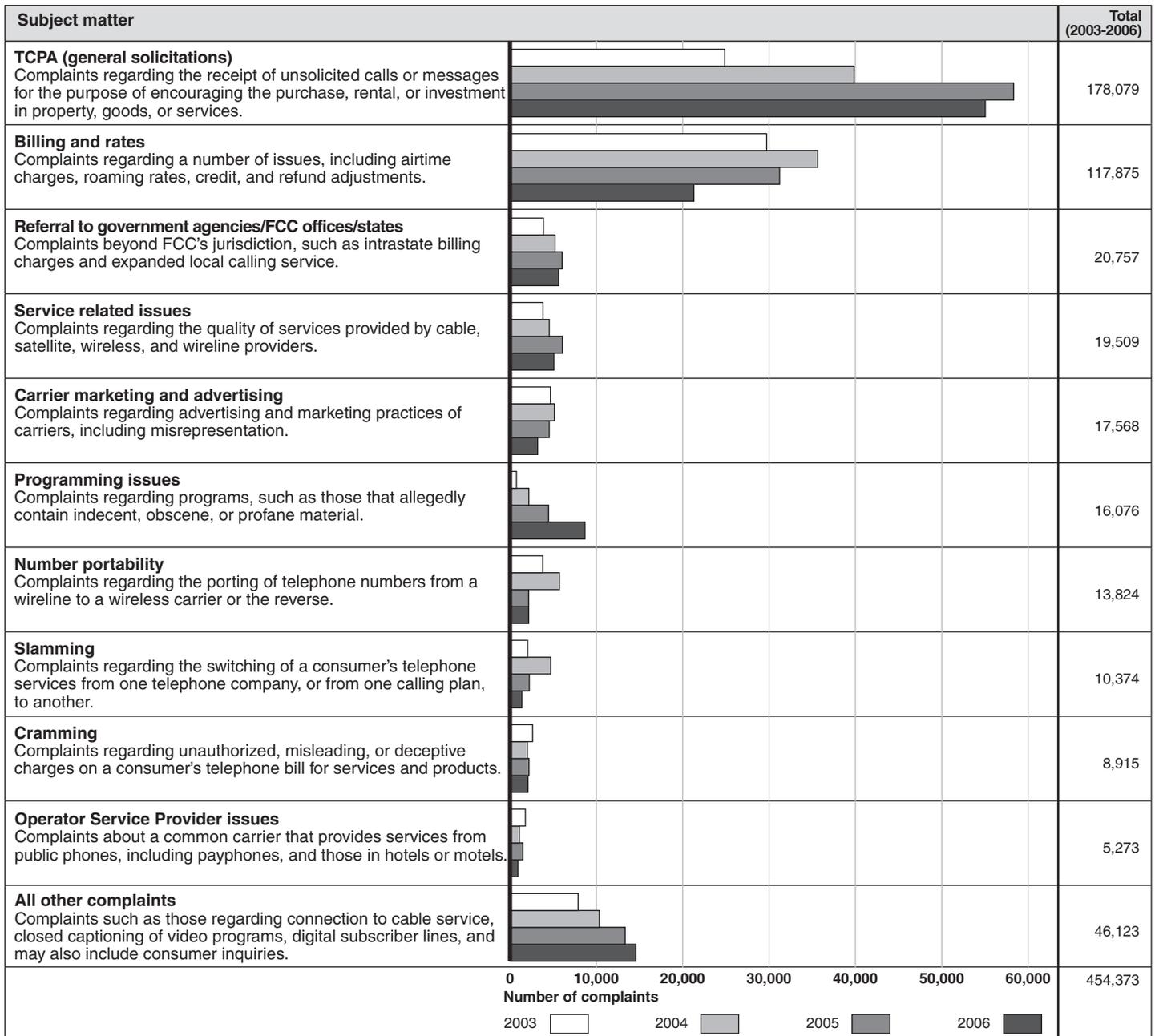
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increased, from almost 25,000 in 2003, to a high of about 58,000 in 2005.<sup>16</sup> In addition, complaints about billing and rates for wireline and wireless services increased, from almost 30,000 in 2003, to almost 36,000 in 2004; complaints then decreased to about 21,000 in 2006. These complaints included not receiving credits, refunds, or adjustments that were owed to the subscriber; questions about local, state, or federal taxes appearing on the complainant's bills; and premature termination of calls. The overall trend for programming issues, such as indecency, has been steadily upward. For example, this type of complaint increased, from about 700 in 2003, to almost 9,000 in 2006.

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<sup>16</sup>Under FCC's TCPA rules, no person or entity may initiate any telephone solicitation to a residential telephone subscriber before 8 a.m. or after 9 p.m., based on the called party's local time. 47 C.F.R. 64.1200(e)(1).

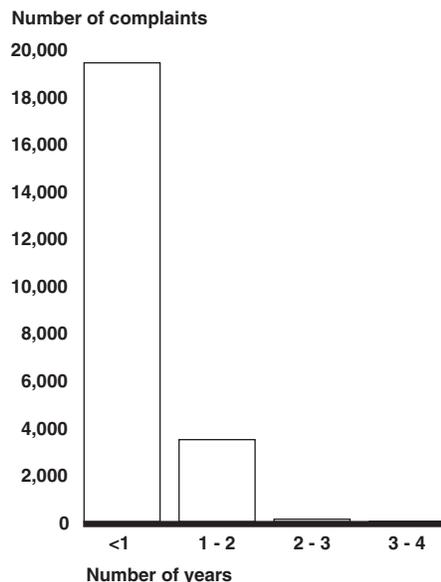
**Figure 2: Top 10 Complaints Received by the Consumer and Governmental Affairs Bureau, Calendar Years 2003 through 2006**



Source: GAO analysis of CGB's database.

Our analysis of CGB's database shows that, as of December 31, 2006, CGB had processed almost 95 percent of the 454,000 complaints it received from 2003 through 2006. Of the 23,000 complaints that were not processed, about 84 percent, or 19,400, were pending for less than 1 year, and about 16 percent, or almost 3,600, were pending for 1 to 4 years, as shown in figure 3. Most of the complaints that remained pending were potential TCPA and billing violations.

**Figure 3: Number of Years Consumer and Governmental Affairs Bureau Complaints Were Pending, as of December 31, 2006**



Source: GAO analysis of CGB's database.

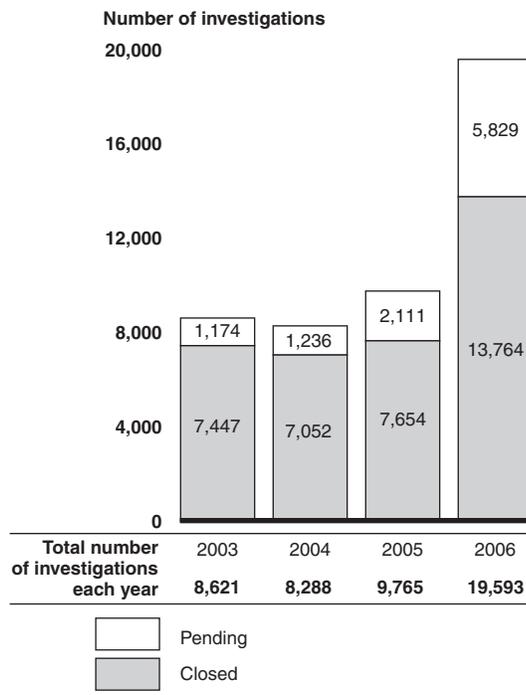
## Enforcement Bureau Opened and Closed a Large Number of Investigations, but Few Enforcement Actions Were Taken

Based on our analysis of FCC's Enforcement Bureau's databases for calendar years 2003 through 2006, the Enforcement Bureau opened a total of about 46,000 investigations that resulted from complaints it received directly, audits and inspections, self-initiated inquiries, and complaints it selected from CGB's database; the bureau closed about 39,000 of these investigations.<sup>17</sup> As shown in figure 4, the number of investigations the Enforcement Bureau opened between 2003 and 2006 increased, from

<sup>17</sup>The Enforcement Bureau does not investigate every complaint received by CGB. We were not able to identify the number of complaints from CGB's database that the Enforcement Bureau selected for investigation.

about 8,600 in 2003, to almost 19,600 in 2006, or about 127 percent. Similarly, the number of investigations closed by the Enforcement Bureau in the same year they were opened also increased, from about 7,400 in 2003, to almost 13,800 in 2006, or about 85 percent. However, the number of investigations pending in the same year they were opened almost quadrupled—increasing from almost 1,200 in 2003, to about 5,800 in 2006. In addition, while the number of investigations opened and closed increased in 2005 and 2006, the percentage of investigations closed in these years is starting to trend downward to about 78 and 70 percent, respectively, compared with about 85 percent in 2003 and 2004.

**Figure 4: Number of Investigations Opened, Closed, and Pending by the Enforcement Bureau, Calendar Years 2003 through 2006**

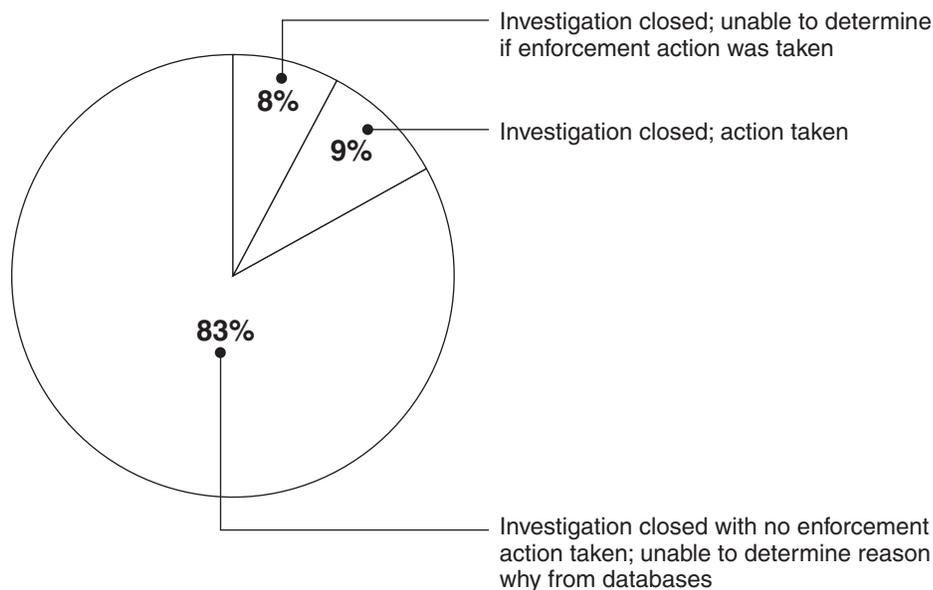


Source: GAO analysis of the Enforcement Bureau's databases.

Using the data that was available in the Enforcement Bureau's databases, we determined that about 9 percent, or almost 3,400 of the approximately 39,000 investigations, were closed with an enforcement action, and about 83 percent, or about 32,200 of the investigations, were listed as closed with no enforcement action, as shown in figure 5. We asked Enforcement Bureau officials to provide information on why investigations were closed with no enforcement action. They explained that investigations are generally closed for a number of reasons,

including insufficient information or because no violation was found. Enforcement Bureau officials also stated that a time-consuming, manual review of the paper case files was necessary to provide specific information on its enforcement activities. We also were not able to determine whether enforcement actions were taken or not taken for the remaining 8 percent, or about 3,200 closed investigations, because the Enforcement Bureau's databases did not contain sufficient information on the disposition of the investigations.

**Figure 5: Disposition of Enforcement Bureau's 39,000 Closed Investigations, Calendar Years 2003 through 2006**



Source: GAO analysis of Enforcement Bureau's databases.

Note: The information in this figure was derived entirely from our analysis of FCC's Enforcement Bureau's databases. This figure does not include 283 proceedings closed by the Market Disputes Resolution Division. Market Disputes Resolution Division cases result in FCC's issuance of an order to resolve a dispute between two companies, rather than a specific enforcement action taken by FCC against a subject.

Enforcement actions can help correct identified compliance problems and deter future noncompliance. As shown in table 2, the majority of the investigations conducted from 2003 through 2006, which totaled about 20,000, were potential violations regarding antenna lighting and structure requirements,<sup>18</sup> junk faxes, domestic interference, and indecency. FCC

<sup>18</sup>For public safety purposes, FCC requires owners to register antenna structures that are more than 200 feet in height or located near an airport.

took enforcement actions in about 1,300 of these investigations; admonishments, warnings, citations, and notices of violation were the primary actions taken. FCC rarely relied on more serious enforcement actions, such as issuing an order to cease and desist. According to FCC, it takes several factors into account, such as the nature and extent of the violation and whether the violator had any history of prior offenses, before determining the type of enforcement action.

**Table 2: Summary of Enforcement Bureau’s Approximately 39,000 Closed Investigations, Calendar Years 2003 through 2006**

Types of enforcement actions taken <sup>a</sup>								
Type and number of investigations	Admonishment and warning	Citation	Consent decree	Debarment	Monetary forfeiture <sup>b</sup>	Notice of violation	Closed; no action taken	Unable to determine if any action was taken
Antenna lighting and structure requirements (9,241)	320				49	244	8,628	
Junk fax (4,135)		192			1		3,942	
Domestic interference (3,539)	221	30			54	114	3,120	
Indecency (3,075)			85		11		2,880	99
Customer Proprietary Network Information (CPNI) certification (2,315)							2,315	
Audits of certification-based facilities (1,965)	189				72	92	1,612	
Emergency Alert System requirements (1,533)	230				53	69	1,181	
Due diligence (1,082) <sup>c</sup>							365	717
Other general enforcement (1,079) <sup>d</sup>	34	3			5	6	1,031	
Cable TV leakage (1,022)	98	7			6	142	769	
All other investigations <sup>e</sup> (9,800)	698	124	50	10	88	77	6,394	2,348
<b>Total (38,786)</b>	<b>1,790</b>	<b>356</b>	<b>135</b>	<b>10</b>	<b>339</b>	<b>744</b>	<b>32,237<sup>f</sup></b>	<b>3,164</b>

Source: GAO analysis of Enforcement Bureau’s databases.

Note: The information in this table was derived entirely from our analysis of FCC’s Enforcement Bureau’s databases.

<sup>a</sup>In addition to the enforcement actions listed in this table, the Enforcement Bureau took four civil/criminal actions and seven equipment seizures.

<sup>b</sup>Monetary forfeiture also includes notice of apparent liability actions.

<sup>c</sup>According to an Enforcement Bureau official, due diligence, though included in its databases, is not an investigation. Due diligence refers to a request made to the Enforcement Bureau for information concerning matters pending before the Bureau that might adversely impact a proposed transaction with a station or company.

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<sup>d</sup>FCC did not provide us with a definition for investigations it referred to as other general enforcement.

<sup>e</sup>All other investigations includes, for example, Freedom of Information requests, Universal Service Fund, unlicensed and unauthorized operations, sponsorship identification, and unauthorized equipment enforcement.

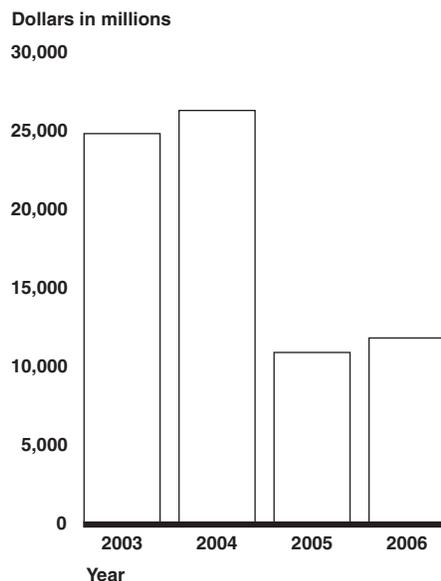
<sup>f</sup>This figure does not include 283 proceedings closed by the Market Disputes Resolution Division.

In its written comments FCC said that figure 5 and table 2 in our report understate or inaccurately state information about its enforcement record or systems. As such, FCC conducted its own analyses and provided us with the results of these analyses. However, while FCC did not provide its methodology, its overall approach differs significantly from the approach we used. Based on discussions with FCC officials, we analyzed the variables from its databases that contained information on enforcement actions and that could be searched for codes indicating particular types of actions, such as “citation” or “monetary forfeiture.” We worked extensively with these officials to ensure that we searched for all of the appropriate codes for enforcement actions. However, in its comment letter, FCC acknowledged that it had to review about 46,000 paper case files and use its databases to determine the reasons why investigations were closed with no enforcement action. FCC also acknowledged that it conducted a manual review of a variable in its database that we could not use because of reliability concerns. As noted in our report, the data that we used for our analyses are derived directly from FCC’s databases. We did not review the 46,000 paper case files that FCC maintains. Our focus was on the database systems for FCC’s enforcement program. We continue to believe that FCC should have data management systems that will allow it to generate this type of information automatically, reliably, and regularly.

According to FCC, it assessed fines and negotiated payments through consent decrees, which totaled about \$73 million from 2003 through 2006, and has collected about \$53 million, or 72 percent. However, as shown in figure 6, the amount of the fines and payments negotiated through consent decrees decreased, from about \$25 million in 2003 and \$26 million in 2004, to almost \$11 million in 2005 and \$12 million in 2006—a decrease of more than 50 percent. According to an Enforcement Bureau senior official, the phasing out of section 271 complaints may have contributed to this

decrease.<sup>19</sup> FCC staff also stated that the amount of fines and negotiated payments through consent decrees totaled about \$43 million in 2007.

**Figure 6: Amount of Monetary Forfeitures Assessed and Payments Negotiated through Consent Decrees, Calendar Years 2003 through 2006**



Source: FCC.

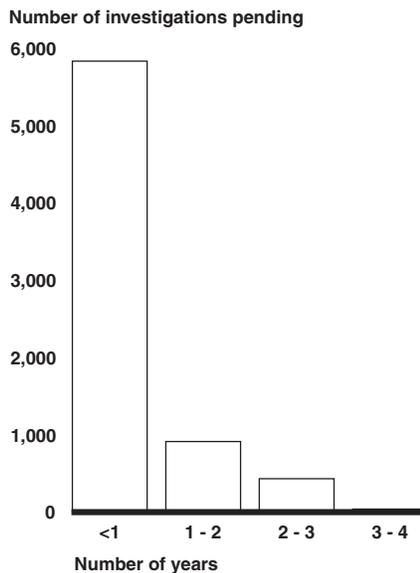
At the end of December 2006, the Enforcement Bureau had almost 7,200 investigations that were pending resolution, as shown in figure 7. About 81 percent, or about 5,800, were pending for less than 1 year, and 19 percent, or almost 1,400, were pending from about 1 to 4 years. About 46 percent of the pending investigations were related to potential indecency violations,

<sup>19</sup>Under section 271 of the Communications Act of 1934, as amended, the Bell Operating Companies (BOC) needed to file applications with FCC on a state-by-state basis in order to provide in-region, interLATA services. In 2002, the Enforcement Bureau set up a Section 271 Compliance Review Program for each newly filed section 271 application. As of December 3, 2003, the Commission had granted all of the BOCs section 271 authorization for the provision of in-region, interLATA services in all of the BOCs' territories nationwide.

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and about 800 of them remained open for more than 1 year. According to FCC, litigation has delayed resolution of many indecency investigations.<sup>20</sup>

**Figure 7: Number of Years Enforcement Bureau Investigations Were Pending, as of December 31, 2006**



Source: GAO analysis of FCC data.

It is difficult to fully determine the reasons why the trends we identified occurred. FCC officials were not able to explain or provide documentation on why the number of complaints, investigations, and enforcement actions fluctuated from 2003 through 2006. While we were able to use FCC enforcement data to identify some overall trends, FCC had not systematically identified trends related to enforcement issues associated with its overall mission, and we were not able to use the data to determine why the trends occurred. Apart from providing requested information for our analysis of FCC's enforcement data, the Enforcement Bureau has taken few steps to analyze the Commission's existing data to determine the reasons for the fluctuations in complaints received, investigations conducted, and enforcement actions taken. FCC has not systematically

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<sup>20</sup>*Fox Television Stations, Inc. v. FCC*, 489 F.3d 444 (D.C. Cir. 2007), petition for cert. filed, No. 07-582, 2007 Westlaw 3231567 (Nov. 1, 2007); *Complaints Against Various Television Licensees Concerning Their February 1, 2004 Broadcast of the Super Bowl XXXVII Halftime Show*, pet. for rev. pending sub nom. *CBS Corp. v. FCC*, No. 06-3575 (3d Cir. Filed July 28, 2006).

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analyzed its existing enforcement data to identify factors that might account for the year-to-year fluctuations we found in the data. While FCC has an array of enforcement actions that it may take, performing this type of analysis may help in assessing the effectiveness of the enforcement program and the utility of FCC's enforcement actions.

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### **FCC's Enforcement Bureau Assesses Some Program Outputs, but Lacks Key Management Tools to Measure Outcomes and Manage Its Program**

FCC's Enforcement Bureau periodically reviews some of its enforcement program outputs to determine how well it is doing in certain areas but does not use its data to evaluate the outcomes of its enforcement efforts. The Enforcement Bureau's ability to assess the impact of its enforcement program is limited because it does not have a well-defined enforcement strategy, specific enforcement goals, or performance measures. We have previously reported that a key element in an organization's efforts to manage for results is its ability to select meaningful performance goals and measures. Without these key management tools, FCC faces challenges in managing its enforcement program and in fully assuring Congress and other stakeholders that it is meeting its enforcement mission and related objectives of the Act, which include protecting the consumer, ensuring public safety, and encouraging competition.

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### **FCC's Enforcement Bureau Measures Outputs Rather Than Outcomes**

FCC has focused on measuring the outputs of its enforcement program and not on measuring outcomes or the net effect of its program. For example, Enforcement Bureau officials told us that two measures they use to determine how well they are doing are whether they have met the statute of limitations for monetary forfeitures and how long it takes to close a case. However, Enforcement Bureau officials told us that to prepare written reports on these two output measures, data must be compiled from several different databases, as well as from a manual search of thousands of paper case files. In addition, each of the Enforcement Bureau's five divisions described a different method for measuring its performance. For example, three divisions (Spectrum Enforcement, Investigations and Hearings, and the Field Offices) told us they know their actions are effective because they handle 100 percent of the complaints they receive. The Telecommunications Consumer Division generally assesses its effectiveness on a case-by-case basis through staff dialogue, and the Market Disputes Resolution Division measures its effectiveness by the percentage of proceedings, that meet statutory deadlines, and the amount of time taken to close cases.

While measures of outputs are useful, measures of outcomes are also important because they can provide FCC with broader information on

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program results, such as the extent to which its current enforcement efforts are contributing to higher compliance rates or fewer repeat violations or whether other types of enforcement action may be needed to deter noncompliance. Currently, FCC's Enforcement Bureau conducts limited analyses of its enforcement data. For example, the Enforcement Bureau monitors the amount of time it takes to close an investigation, but it does not measure the effect of one of its key enforcement tools—monetary forfeitures—on companies' compliance with telecommunications laws and Commission rules. Without this information, it is difficult for FCC to make sound decisions about how this program might be made more effective. In addition, FCC created the Enforcement Bureau in 1999 because it wanted to enhance the Commission's ability to serve the public by improving the effectiveness of the enforcement program. However, FCC has not analyzed the impact of this new organizational structure to determine if it is more effective and efficient than the previous decentralized structure, under which several bureaus were responsible for enforcing telecommunications laws and Commission rules. According to Enforcement Bureau officials, they believe that centralizing enforcement efforts has been effective because it has enabled the bureau to establish standard procedures across all issue areas, resulting in more consistent and effective enforcement, and has also brought greater visibility and importance to the enforcement function. As a measure of the program's effectiveness, Enforcement Bureau officials pointed out that the efforts of the bureau have garnered headlines in the mainstream press and have been cited by a wide range of citizens and industry participants.

We asked several stakeholders, including telecommunications company executives and telecommunications experts, for their views on the impact of FCC's enforcement efforts.<sup>21</sup> Eleven of the fifteen executives we interviewed stated that they believe FCC's enforcement program is having an impact on the telecommunications industry, and four of the five experts we interviewed said they thought FCC was having a positive effect on the telecommunications industry. For example, one expert stated that FCC is doing a good job, particularly in protecting consumers; another said that the Enforcement Bureau has had an impact on reducing intentional interference and ensuring public safety; and a third said that FCC's

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<sup>21</sup>As our sample size was small and nongeneralizable, the views we obtained may not be representative of all stakeholders. However, we asked experts and company representatives about similar issues.

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Enforcement Bureau has been effective in working with the states to address slamming and cramming issues. However, all five experts and 9 of the 15 executives we interviewed were also critical of FCC's enforcement efforts. The 9 executives said that FCC's enforcement decisions are not always equitable, and 6 of the 9 stated that FCC's enforcement actions were not always transparent. For example, 1 executive said that the use of consent decrees lacked both transparency and equity because there was no indication as to how the final result was determined and parties to the consent decree did not know how prior consent decrees involving the same alleged violation were handled. Another executive told us that the focus of FCC's investigations appeared to be arbitrary and based on the issues of the moment, resulting in inequitable enforcement actions. One expert stated that whenever FCC makes an enforcement decision, there is always the possibility that negotiations behind the scenes are not subject to public review.

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## FCC's Enforcement Bureau Has Not Fully Defined Its Strategy and Has No Specific Goals or Performance Measures

FCC's Enforcement Bureau has not fully defined its strategy for carrying out its enforcement of consumer protection, public safety, and competition laws and rules. FCC's Web site states that "the Enforcement Bureau is the primary organizational unit within the Federal Communications Commission that is responsible for enforcement of provisions of the Communications Act, the Commission's rules, Commission orders and terms and conditions of station authorizations." However, FCC's *Strategic Plan for 2006 through 2011, Fiscal Year 2006 Performance and Accountability Report*, and *Fiscal Year 2006 Congressional Justification of Estimates* do not identify specific enforcement goals or performance measures linked to those goals that would allow a complete assessment of the results of FCC's enforcement program.<sup>22</sup> In addition, while the Enforcement Bureau has an enforcement manual that provides general guidance on conducting investigations, the various types of enforcement actions it can take, and how each should be used, the manual does not specify enforcement goals or priorities relating to consumer protection, public safety, and competition.

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<sup>22</sup>According to an FCC official, while the Enforcement Bureau does not have outcome goals, it does have some output goals. As an example of FCC's output goals, the official provided us with a copy of a March 31, 2006, letter sent to the Chairman, Subcommittee on Commerce, Justice, Science, and Related Agencies, House Committee on Appropriations. In response to questions from the Chairman, FCC wrote that the Commission attempts to resolve public safety interference complaints within 1 day, nonemergency interference complaints within 1 month, indecency complaints within 9 months, formal complaints within 1 year, and all other investigations and complaints within 15 months.

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Federal agencies are required to develop strategic plans with long-term, outcome-oriented goals and objectives, annual goals linked to achieving the long-term goals, and annual reports on the results achieved.<sup>23</sup> An analysis of FCC's *Strategic Plan for 2006 through 2011*, *Fiscal Year 2006 Performance and Accountability Report*, and *Fiscal Year 2006 Congressional Justification of Estimates* shows that, although there are strategic goals for FCC, there are no strategic or performance goals pertaining to the Enforcement Bureau. For example, in its *Strategic Plan for 2006 through 2011*, FCC lists goals in six categories: broadband, competition, spectrum, media, public safety and homeland security, and FCC modernization. Each of these strategic goals is supported by a number of objectives showing how FCC will meet these goals. Several of the objectives include the term "enforcement," such as the objective that states, "the Commission shall vigorously enforce its spectrum regulations and policies," but there are no specific or measurable enforcement actions indicated. The *Fiscal Year 2006 Performance and Accountability Report* also illustrates the lack of specific performance measures relating to enforcement. In the section on program performance, there are performance goals for each of the six strategic goals. While some of these performance goals do include the term "enforcement," such as in the statement "enforce the Commission's rules for the benefit of consumers," no specific, measurable actions are listed. Additionally, in the *Fiscal Year 2006 Congressional Justification of Estimates*, FCC uses a performance measure scorecard to identify its activities of the past year in support of each of its six strategic goals. One of the activities in support of homeland security is to "enforce technical regulations and investigate harmful interference complaints affecting public safety communications systems and infrastructure." FCC rated itself as having met this goal, although there are no specific actions listed and no indication of how much activity is required for FCC to meet the goal.

Enforcement Bureau officials told us that the bureau has not set specific goals and performance measures because its priorities are constantly changing. Officials explained that the Enforcement Bureau is responsive to a number of stakeholders—Congress, Commissioners, the public—and the priorities of those stakeholders change. In addition, the Enforcement Bureau is responsible for enforcing a wide range of rules and issues, and current enforcement priorities may not be future enforcement priorities. For example, according to an FCC official, issues regarding the transition

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<sup>23</sup>Pub. L. No. 103-62, 107 Stat. 285.

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to digital television have become a high priority, but after February 2009, when the transition takes place, these issues will no longer be as significant. However, we found that the Enforcement Bureau had specific enforcement goals and performance measures in the past. For example, in its fiscal year 2004 annual performance plan, FCC specified the following performance goals relating to enforcement and stated that it met these goals:

- achieve a 10 percent reduction in the number of long-distance slamming complaints in 2000, a 20 percent reduction in 2001, and a 40 percent reduction in 2002;
- achieve 65 percent compliance with new disability rules in 2000, 80 percent compliance in 2001, and 85 percent compliance in 2002; and
- achieve 85 percent compliance with antenna lighting rules in 2000, 90 percent compliance in 2001, and 92 percent compliance in 2002.

The Federal Trade Commission (FTC), which shares responsibility with FCC for consumer protection against violations of the do-not-call list request and telemarketing fraud, has developed goals and performance measures to assess the results of its enforcement program. For example, one of FTC's strategic goals is to maintain competition by identifying and taking enforcement action against anticompetitive mergers and practices that cause the greatest injury to consumers. In support of this goal, they have established performance measures, one of which is to achieve a positive result in at least 80 percent of the cases in which the FTC takes enforcement action each year. According to FTC officials, setting specific goals and performance measures allows them to target their enforcement activities and more efficiently use their limited resources.

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## Goals and Performance Measures Are Key Elements of Effective Management

We have previously reported that a key element in an organization's efforts to manage for results is its ability to set meaningful performance goals and measures and agencies should create a set of performance goals that address key aspects of program performance. We and other federal agencies have also maintained that adequate and reliable performance

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measures are a necessary component of effective management.<sup>24</sup> We have also found that performance measures should provide agency managers with timely, action-oriented information in a format conducive to helping them make decisions that improve program performance, including decisions to adjust policies and priorities.<sup>25</sup> However, FCC does not appear to be using these key management practices to manage the work of its Enforcement Bureau.

In 2006, we recommended that FCC develop goals and performance measures for its program pertaining to the enforcement of junk fax rules. FCC has told us it is in the process of implementing some of those recommendations. For example, in 2006, we found that FCC's Enforcement Bureau did not have goals or performance measures for junk fax monitoring and was not performing any analysis of complaint and enforcement data, making it impossible to explore the effectiveness of their current enforcement measures.<sup>26</sup> FCC acknowledged the need for such measures and, in July 2007, told us it had begun drafting such goals and performance measures. The Commission has also recognized the need for more data to measure performance, as indicated by a directive from FCC's OMD issued in May 2007. This directive outlines FCC's plans to begin collecting and analyzing data to measure the performance of Commission programs that involve the processing of applications or other filings from the public or other private entities. An Enforcement Bureau official told us that the bureau will respond to this directive by gathering data that could be used to help FCC better manage its enforcement program. Although these efforts, when completed, will begin to address the Enforcement Bureau's lack of specific program goals and performance measures, the Enforcement Bureau will not have goals or performance measures for several of its divisions, such as the Investigations and Hearings Division or the Market Disputes Resolution Division. Without goals, a well-defined enforcement strategy, and performance measures

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<sup>24</sup>GAO, *Results-Oriented Government: GPRA Has Established a Solid Foundation for Achieving Greater Results*, [GAO-04-38](#) (Washington, D.C.: Mar. 10, 2004); GAO, *Managing for Results: Strengthening Regulatory Agencies' Performance Management Practices*, [GAO/GGD-00-10](#) (Washington, D.C.: Oct. 28, 1999); and GAO, *Agency Performance Plans: Examples of Practices That Can Improve Usefulness to Decisionmakers*, [GAO/GGD/AIMD-99-69](#) (Washington, D.C.: Feb. 26, 1999).

<sup>25</sup>GAO, *Pipeline Safety: Management of the Office of Pipeline Safety's Enforcement Program Needs Further Strengthening*, [GAO-04-801](#) (Washington, D.C.: July 23, 2004).

<sup>26</sup>GAO, *Telecommunications: Weaknesses in Procedures and Performance Management Hinder Junk Fax Enforcement*, [GAO-06-425](#) (Washington, D.C.: Apr. 5, 2006).

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linked to those goals, the Commission lacks important tools for assessing and reporting on the progress of its enforcement program and determining whether changes should be made.

FCC disagreed with our finding that it has no specific enforcement goals or performance measures. In its comments, FCC stated that its performance goals for disposing of complaints are 1 day for public safety interference complaints, 1 month for nonemergency interference complaints, and 9 months for indecency complaints. We view FCC's efforts to collect, track, and report data for such goals as first steps toward performance management, and we encourage FCC to ensure that it consistently includes this information in its future Performance and Accountability Reports. However, as we state in our report, such goals are measures of outputs and are useful as indicators of program activities, but measures of outcomes, such as the extent to which FCC's current enforcement efforts are contributing to higher compliance rates or fewer repeat violations may be more important because they can provide FCC with broader information on program results.

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## **An Inadequate Data Management System Challenges the Enforcement Bureau's Ability to Carry Out Its Responsibilities**

Limitations with FCC's current approach for collecting and analyzing enforcement data challenge the ability of the Enforcement Bureau to carry out its enforcement responsibilities, making it difficult for the bureau and others to determine the enforcement program's effectiveness or for the bureau to accurately track and monitor data on complaints received, investigations conducted, and enforcement actions taken. Currently, the Enforcement Bureau uses several separate databases and manually searches paper case files to track and monitor its enforcement activities. Consequently, we could not use the Enforcement Bureau's databases to obtain bureau-level information on the percentage of monetary forfeitures assessed within FCC's statute of limitations, the speed with which FCC disposed of complaints, the reasons for closing investigations with no enforcement action, or the amounts of the fines FCC assessed. Our past work has shown that when data management systems are not integrated and compatible, excessive use of resources and inconsistent analyses of program results can occur.

The Enforcement Bureau has five databases, one for each of its five divisions. However, these databases are not standardized and do not track the same information in the same manner. FCC officials explained that when the Enforcement Bureau was created in 1999, it inherited these databases from the various bureaus and, partly because of budget constraints, cobbled them together rather than create a single,

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standardized, automated data management system. These officials acknowledged that the databases have limitations and were created only to manage staff workload, not to track the history of cases or measure performance.<sup>27</sup>

While the Enforcement Bureau's databases do contain some information, our analysis of their files indicates that this information is not sufficient to measure certain important aspects of FCC's enforcement program. For example, when we tried to determine whether FCC met the statute of limitations for assessing monetary forfeitures, we could not determine how many cases the Enforcement Bureau resolved within the statutory deadline because the databases did not contain sufficient information. Specifically, the Investigations and Hearings Division's database was missing 84 percent, the Telecommunications Consumers Division's database was missing 99 percent, and the Spectrum Enforcement Division's database was missing 99 percent of the information needed to determine whether FCC met the statute of limitations for assessing monetary forfeitures. Of the remaining two databases, one (for Field Offices) would allow the statutory deadline to be determined for investigations that were closed with an enforcement action, but not for investigations that were closed with no enforcement action because the database does not include a field for the date of the alleged violation. The other database is managed by the Market Disputes Resolution Division; according to Enforcement Bureau officials, the majority of the division's investigations do not have a statute of limitations involving forfeitures, and the database does not have a field for this information.<sup>28</sup>

We were also unable to determine how long it took the Enforcement Bureau to open and close investigations for three of its five divisions because of how the required information is entered into the databases. Enforcement Bureau personnel did not always enter the dates into the database and, when a date was entered, it was not always clear what the date represented. For example, it was unclear whether the date entered was the date of the initial or the final enforcement action. More

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<sup>27</sup> According to an FCC official, the Commission is planning to spend \$2 million to improve its existing systems for receiving, processing, and enforcing consumer telemarketing complaints alleging violations of junk fax and do-not-call list request but has not finalized its plans to improve the Enforcement Bureau's databases.

<sup>28</sup> FCC may choose to initiate a forfeiture proceeding separate and apart from a formal 208 complaint proceeding. The complainant would not be a party to such a forfeiture proceeding.

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specifically, according to one Investigations and Hearings Division official, it would be difficult to calculate the speed of disposal times for investigations in its database because entering the date when an investigation was closed was not always a priority for the division and its database does not track all milestones in an investigation. While the Spectrum Enforcement Division's database has fields for opening and closing dates, we were not able to calculate the speed of disposal because we could not always determine what the closing date represented. According to Enforcement Bureau officials, the Telecommunications Consumers Division's database cannot determine the speed of disposal for investigations because some investigations tracked in the database have been closed at one point with an enforcement action but have subsequently been reopened to consider the next stage of enforcement. This reopening affects both the number of enforcement actions tracked in the database and the speed of disposition. In addition, cases that were initially closed but then reopened, and left pending for some time after being reopened, would be tracked back to the initial date and would appear to have taken a long time to close. As a result, data for such cases would skew calculations of the average speed of disposition for all of the Telecommunications Consumers Division's enforcement actions.

We were also unable to use the Enforcement Bureau divisions' databases to determine the amounts of the fines the bureau had assessed, the amount collected, or the status of the uncollected amount. We could not determine this information because several of the database fields relating to fines either were missing information or did not contain sufficient information to allow for data analysis.<sup>29</sup> For example, while the Investigations and Hearings Division's database tracks the amounts of the fines assessed, the information is not consistently entered into the database and there are no distinct fields for the amounts initially assessed, reduced, collected, or outstanding. In addition, we found that the database used by the Telecommunications Consumers Division had a table for tracking fines, but data were not entered into the table consistently. FCC officials told us that they could generate information on fines and other aspects of the agency's enforcement program by manually searching thousands of paper files.

Finally, during the course of our review, we could not use FCC's databases to determine how many of the 32,200 investigations that were closed with

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<sup>29</sup>The Market Disputes Resolution Division does not impose fines.

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no enforcement action from 2003 through 2006 were closed because no violation was found, because of insufficient information, because the statute of limitations had expired, or because of other reasons. We were not able to make this determination because FCC did not collect the information systematically, which hampered our ability to analyze its enforcement efforts. Specifically, we found that the Investigations and Hearings and the Telecommunications Consumers Divisions' databases did not clearly indicate whether a case was closed because no violation was found or because of other reasons. The Spectrum Enforcement Division entered some information specific to why investigations were closed with no enforcement action in text fields, but the information was not entered in a way that would allow for quantitative analysis. While the Field Office database allows for some determination of when investigations were closed with no enforcement action, we had to follow up with Field Office officials to obtain the specific reasons. In addition, we could not use the database to determine why the majority of their investigations were closed with no enforcement action. According to Field Office officials, the majority of their investigations do not result in an enforcement action because, generally, no Commission rules were violated. For FCC to analyze the 83 percent of investigations that did not result in an enforcement action, it would have to (1) access files for all of those cases, (2) ensure that the files contained sufficient information for a reviewer to reconstruct the reasons for no action, and (3) establish and implement procedures that would ensure consistency and accuracy in the review. FCC could also review a statistical sample of the cases in which no action was taken, rather than the entire universe of such cases. The review procedures should include clear guidance for reviewers to categorize the reasons for no action and provide a means for checking the accuracy and consistency of the reviewers.

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## Conclusions

The extent to which FCC is effectively enforcing the Communications Act of 1934, as amended, and Commission rules and orders is difficult to assess because it lacks a robust data management system, as well as performance goals and measures. For example, a more robust data management system for monitoring complaints, investigations, and enforcement actions is critical for the agency to better understand the outcome and net results of its enforcement efforts. In past reports, we have discussed the importance of maintaining timely and accurate data to help monitor and improve the effectiveness of government programs. We have found that, in order to make informed decisions and ensure accountability, agencies need data management systems that can generate timely, accurate, and useful information. Lacking such critical information,

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government leaders are not able to invest resources where they are needed, reduce costs, or fully oversee programs; they are also unable to hold agency managers accountable for the outcomes of government programs. We also found that agencies that do not have integrated data management systems are more likely to devote more time and resources to collecting information than those with integrated systems and that opportunities for errors increase when agency systems are not compatible.

Moreover, beyond our analysis of FCC's enforcement data, there have been limited efforts to analyze the Commission's existing data to identify trends and determine the reasons for the year-to-year fluctuations in the number of complaints received, investigations conducted, and enforcement actions taken. FCC has not systematically analyzed its existing data to identify factors that might account for these fluctuations and to assess their implications for the enforcement program. As demonstrated by our analysis of FCC's enforcement data, the Commission does have some information available, despite data limitations, to analyze enforcement outputs and outcomes in a manner that could provide more reliable, useful, and timely information for managing its day-to-day operations and to make more informed decisions about its enforcement efforts. In addition, improvements in existing data management could make this type of analysis more useful and could enhance FCC's ability to provide Congress and other stakeholders with accurate and timely information on its enforcement program. This information could also help the Enforcement Bureau determine whether different policy options might be more effective in implementing the enforcement program.

The extent to which the Enforcement Bureau is achieving its mission is difficult to determine because the bureau does not use several important performance management tools. FCC's Enforcement Bureau has not set specific enforcement goals, developed a well-defined strategy for achieving those goals, or established performance measures linked to goals. Performance measures of program results are important for several reasons. First, they can help hold agencies accountable for the performance of their programs. Among other things, measures of enforcement results may help FCC allocate limited resources where they are most needed and determine if rules and procedures should be changed to deter potential violators. Second, Congress needs information on program results to support its oversight of agencies and their budgets. Third, stakeholders can use this information to accurately judge program effectiveness.

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## Recommendations for Executive Action

To develop a more effective approach to enforcing telecommunications laws and Commission rules, we recommend that the Chairman of the Federal Communications Commission

- improve how FCC collects and analyzes data on complaints received, investigations conducted, and enforcement actions taken to help it better manage and understand the outcomes and net results of enforcement efforts and to provide Congress and stakeholders with timely and accurate information that can be used to hold FCC's enforcement program accountable for accomplishing its mission under the Act; and
- develop and implement additional performance management practices, such as outcome measures, to assess the performance and improve the accountability of FCC's enforcement program.

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## Agency Comments and Our Evaluation

We provided a draft of our report to FCC for review and comment. FCC commented that it has already implemented measures that address both of our recommendations, but it provided no supporting documentation. In addition, FCC disagreed with our methodology and several of our findings. FCC's detailed comments appear in appendix II. FCC also provided over 100 pages of attachments in its comments. Because these attachments cover time periods that are after the scope of our audit and are voluminous, we have decided to characterize the attachments rather than include them in their entirety.<sup>30</sup> FCC also provided technical and legal clarifications, which we incorporated as appropriate. In appendix I, we also clarified our methodology for analyzing FCC's databases. These technical and legal changes did not affect our findings, conclusions, or recommendations.

In FCC's view, it has already implemented measures that address both of our recommendations. Concerning our first recommendation, FCC said that during the period of our audit (2003 through 2006), the Commission was already aware of the challenges posed by its limited information systems and database management resources and already had plans in place to improve its enforcement data collection methods and process. By

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<sup>30</sup> Generally accepted government auditing standards do not require us to print responses submitted by an agency in connection with our reports in their entirety and allows us to characterize responses where suitable, and to include or not to include responses as appropriate.

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July 2007, FCC said, the Commission had secured congressional approval to make significant modifications to the databases and systems used to support its enforcement activities. Concerning our second recommendation, FCC noted that it has implemented standardized enforcement performance goals to better manage the enforcement process and to automate portions of this process. Moreover, according to FCC, goals and measures for managing the enforcement process have been incorporated for the first time into the performance plans of the senior executives responsible for oversight of the enforcement program and that information about these efforts is included in the Commission's *Fiscal Year 2007 Performance and Accountability Report*. Finally, FCC said that we based our conclusions and recommendations on significantly outdated information and that our report contains several errors. As a result of these errors, FCC said, our report provides a misleading description of FCC's current enforcement processes, understates or inaccurately states information about FCC's enforcement record or systems, and provides an incomplete and misleading picture of FCC's legal enforcement environment.

We are pleased that FCC may be taking some steps toward implementing our recommendations, but we disagree with FCC that it has already fully implemented them; we also disagree with FCC's criticisms of our methodology and findings. We believe that our report provides an accurate and sufficient overview of FCC's processes for handling complaints, conducting investigations, and taking enforcement actions and the results of FCC's efforts to enforce telecommunications laws and the Commission's rules from 2003 through 2006. We also exercised the due diligence in writing our report to ensure we explained that the results of our analysis are based entirely on FCC's databases. In our view, FCC's concerns about the accuracy of our findings stem from (1) the challenges FCC faces in not having a data management system that will allow it to systematically collect and analyze information about complaints, investigations, and enforcement actions and (2) the Commission's use of an approach that differs significantly from ours. We discuss the challenges posed by FCC's data management system in our report and point out that without improvements such as we recommend, FCC cannot readily analyze trends, determine program effectiveness, allocate Commission resources, or accurately track and monitor key aspects of all complaints received, investigations conducted, and enforcement actions taken. In addition, the Commission's use of data for 2007 and data from paper case files, both of which were outside the scope of our analysis, necessarily led to findings that differed from ours. These differences, however, do not

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affect the appropriateness of our methodology or the accuracy of our findings.

In commenting that it has already implemented our first recommendation—to improve how it collects and analyzes data on complaints received, investigations conducted, and enforcement actions taken—FCC stated that its Managing Director wrote Congress on June 27, 2007, asking for approval to upgrade its databases and that FCC expected the final delivery of system enhancements this year. While we are pleased that FCC has taken this step, on July 26, 2007, the Chief of FCC's Enforcement Bureau stated that the funds would be used to enhance CGB's database for processing junk fax and do-not-call list request complaints and that FCC has no specific plans or time frames for upgrading the Enforcement Bureau's databases. In its comments, FCC did not provide any additional information that changes our understanding of the Enforcement Bureau's plans to upgrade its databases systems. Thus, it is not apparent to us how enhancements to CGB's database will address the weaknesses with the Enforcement Bureau's databases. Therefore, we do not believe that FCC has yet fully implemented our first recommendation.

In commenting that it has already implemented our second recommendation—that it develop and implement performance management practices for the Enforcement Bureau, such as a well-defined enforcement strategy that includes specific goals and performance measures—FCC cited its implementation of standardized enforcement performance goals, its incorporation of enforcement goals and measures in the performance plans of its senior executives responsible for enforcement oversight, and its inclusion of this information in its *Fiscal Year 2007 Performance and Accountability Report*. The performance goals that FCC cited for disposing of complaints are 1 day for public safety interference complaints, 1 month for nonemergency interference complaints, and 9 months for indecency complaints. We view FCC's efforts to collect, track, and report data for such goals as first steps towards performance management, and we encourage FCC to ensure that it consistently includes this information in its future Performance and Accountability Reports. However, as we state in our report, such goals are measures of outputs and are useful as indicators of program activities, but are not measures of outcomes, such as the extent to which FCC's current enforcement efforts are contributing to higher compliance rates or fewer repeat violations. These outcome measures are necessary to determine a broader perspective on program results. Thus, while FCC has begun to develop and implement performance management practices, we believe

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that further efforts are needed for FCC to fully implement our recommendation.

FCC disagreed with our methodology and our findings, conducted its own analyses, and included the results of these analyses in attachments to its comments. According to FCC, its results are more accurate than ours. We disagree and believe that our results represent an accurate analysis of the relevant information in FCC's databases. Whereas we used data only from FCC's databases, FCC used information from both its databases and its approximately 46,000 paper case files. In addition, because FCC's databases are frequently updated and it analyzed data a year after we received our data, we believe this could have contributed to the differences in our results. As part of our routine recommendation follow-up work, we will assess FCC's progress in 2007.

According to FCC, the data for 2003 through 2006 that we used are out of date. However, these are the most recent data for complete years that were available to us at the time of our review. In conducting our audit work, we often select data for the last 3 or 4 years to analyze because it allows us to ensure the consistency and integrity of the data, identify trends, and understand information over time. We initially designed our analysis to cover a longer time period and requested data from FCC for 2000 through 2006, but FCC was not able to provide us with CGB's data from 2000 through 2003 because data prior to 2003 had been purged from its files. To be consistent in our reporting, we analyzed data from CGB and the Enforcement Bureau for the same time period, 2003 through 2006.

FCC also stated that our report does not acknowledge or assess its new process for handling consumer complaints. We disagree. Our description of FCC's process for responding to consumer complaints is based on information it provided to us during the course of our review. During the course of our review, FCC stated that it planned to change its process for responding to consumer complaints. However, FCC did not provide any documentation explaining how or when. Thus, we were not able to evaluate any changes that FCC may have made to its process for responding to consumer complaints.

FCC also disagreed with our finding that 83 percent of its investigations were closed with no enforcement actions and that there were no justifications for these closures in its databases. In its comments, FCC stated that its analysis of its databases and paper case files showed that 85 percent of its investigations were closed with no enforcement actions and 96 percent of these closures were due to findings of compliance or

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insufficient information from the complainant. To determine the reasons why investigations were closed, we attempted to identify a reliable variable in FCC's enforcement database that clearly categorized the justifications for closing an investigation with no enforcement action. No such variable exists. As an alternative, FCC referred us to open-ended text variables in the course of our audit work. We reviewed these variables, and in June 2007, told FCC officials that we could not use these variables because many of the database fields were frequently blank or, if completed, contained varying amounts of text to justify the actions or lack thereof. While such information may be useful to the FCC analysts working on the investigations, they are not useful or usable for management information purposes. In addition, as FCC acknowledged in its comments, to determine the reasons why its investigations were closed with no enforcement action, it had to use approximately 46,000 paper case files. As noted in our report, the data that we used for our analysis are derived entirely from FCC's databases. We did not review the 46,000 paper case files that FCC maintains. Our focus was on the database systems for FCC's enforcement program. FCC also acknowledged that it conducted a manual review of a variable that indicated enforcement action codes we could not search with any reliability. While our analyses are accurate based on the database variables we analyzed, we acknowledge that they do not account for information that FCC retained in paper case files and did not enter into its databases or for information that was entered in data fields that we could not search with our computer routines. Our understanding is that FCC analysts reviewed the information from its databases and paper case files and categorized the reasons for approximately 46,000 investigations after we conducted our initial analysis. We believe that FCC should have data management systems that allow it to generate this type of information automatically, reliably, and regularly. Therefore, we stand by our recommendation that FCC needs to improve how it collects and analyzes data on complaints received, investigations conducted, and enforcement actions taken because we do not believe that managing a program by reviewing 46,000 paper case files constitutes a good management practice.

Finally, we continue to believe that the findings, conclusions, and recommendations in our report are accurate and can improve how FCC manages its enforcement program. We also believe that FCC will continue to have difficulty providing Congress and other stakeholders with accurate and timely information on its enforcement efforts if it does not take additional steps to fully address our recommendations.

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As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution of it until 30 days from the date of this letter. At that time, we will send copies of this report to the appropriate congressional committees and the Chairman of the Federal Communications Commission. We will also make copies available to others on request. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff have any questions, please contact me at (202) 512-2834 or [goldsteinm@gao.gov](mailto: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 major contributions to this report are listed in appendix III.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'M. Goldstein', with a long horizontal flourish extending to the right.

Mark L. Goldstein  
Director, Physical Infrastructure Issues

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# Appendix I: Scope and Methodology

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To summarize the number and types of complaints received, investigations conducted, and enforcement actions taken by the Federal Communications Commission (FCC) during calendar years 2003 through 2006, we obtained six different databases from FCC in various formats. FCC's Enforcement Bureau provided four Microsoft Access databases and one fixed-width delimited text file, which had several text files linked by a single unique identifier. FCC's Consumer and Governmental Affairs Bureau (CGB) also provided a fixed-width delimited text file, which was a single 'flat file' that contained information on all complaints received from 2003 through 2006. The 'flat file' contained all the information and there were no other data files associated with it. When available, FCC also provided data dictionaries, user guides, screen shots, and illustrations of how key tables were linked for each database. Each of FCC's databases is independent (meaning that they are not connected or related to one another) and, therefore, the specific data elements contained in each one differed. Additionally, when multiple databases contained the same data element, it was often referred to or tracked differently.

We subsequently reviewed each database and file for consistency; duplication; and missing identifiers, such as case number. We limited our analysis to records that had an open date between calendar years January 1, 2003 and December 31, 2006. We excluded all cases in each database that were received before 2003 and after 2006. We then sorted the data into closed and pending cases. Closed cases had a closing date in the record and were closed as of December 31, 2006. If a situation existed in which a case had multiple records with varying dates, we always used the last date. We also excluded any cases where the closing date was before the opening date. Pending cases are cases that either did not have a closing date or the closing date was after December 31, 2006. We also reviewed the data dictionaries FCC provided to determine which fields contained the data elements we planned to report on. We ran frequency distributions using SAS software on all selected fields. These distributions provide guidance as to whether the contents are complete enough for use. This means that if a database has two similar fields such as Date Received and Data Entry Date, we needed to know which of these fields is used most frequently so that we could base our analysis on fields that are actually used by FCC. For example, if the Date Received field was populated only 40 percent of the time and the Data Entry Date field was populated 99 percent of the time, we used the Data Entry Date field. Based on this analysis, we developed a list of fields we could use from each database. We compared this list to the data elements we wanted to report on to determine the extent to which we would be able to report data according to our initial plan. We found that for three of the five Enforcement Bureau's databases

that are maintained by its Investigations and Hearings Division, Telecommunications Consumers Division, and Field Offices, we could report on the subject matter, the number of open and closed cases, and the disposition of closed cases from 2003 through 2006. For one of the remaining two databases, we were only able to report on the number of open and closed cases from 2003 through 2006. The remaining database is maintained by the Enforcement Bureau's Market Disputes Resolution Division. This division does not conduct investigations; instead it conducts proceedings which may result in FCC's issuance of an order to resolve a dispute between two companies, rather than an enforcement action. Thus, we are not including this database in our analysis.

We met with Enforcement Bureau officials to discuss the specific fields that we were planning to use and the manner in which we were going to use them. These officials agreed with the fields we had selected and acknowledged the limitations we faced with its databases. We reached agreement with Enforcement Bureau officials that for the Investigations and Hearings Division, Telecommunications Consumers Division, and Field Office databases we would report on the subject matter, the number of opened and closed investigations, and the most recent action taken for the closed investigations. Since the databases contained a large number of subject matters and many options for disposition of closed cases, we worked with Enforcement Bureau officials to combine the subject matters and dispositions of cases for reporting purposes. For example, CGB's database contained numerous subject matters for various types of billing issues. Based on discussions with CGB officials, we combined all subject matters related to billing into one subject matter called "Billing."

Based on our interviews with FCC and examination of its data, we determined that certain variables in the databases were sufficiently reliable for the purposes of this engagement. These variables allowed us to identify closed cases and determine whether enforcement actions had been taken, but did not allow us to determine the reasons for which actions were taken. To determine whether enforcement actions were taken, we analyzed the variables from FCC's databases. FCC officials told us that these databases contained information on enforcement actions and could be searched for codes indicating particular types of actions, such as "citation" or "monetary forfeiture." We worked extensively with these officials to ensure that we searched for all of the appropriate codes for enforcement actions. We did not analyze the approximately 46,000 paper case files that FCC maintains. Our focus was on the database systems for FCC's enforcement program. We also did not analyze a lengthy text variable that FCC indicated might contain some information on

enforcement actions because the information was entered in data fields that we could not search with our computer routines. To determine why investigations were closed with no enforcement actions, we attempted to identify a reliable variable in FCC's enforcement database that clearly categorized the justifications for closing an investigation with no enforcement action. No such variable exists. As an alternative, FCC referred us to open-ended text variables in the course of our audit work. We reviewed these variables, and in June 2007, told FCC officials that we could not use these variables because they were not analyzable. We also discovered that some database fields were frequently blank or, if completed, contained varying amounts of text to justify the actions or lack thereof. Thus, we were not able to use the databases to determine why investigations were closed with no enforcement action.

In addition, we interviewed officials from FCC's CGB about the Commission's overall approach for enforcing telecommunications laws and rules, as well as its specific processes for handling complaints, conducting investigations, and taking enforcement actions. We also reviewed the FCC Enforcement Bureau's *Enforcement Manual* and the *Code of Federal Regulations* to understand how FCC conducts investigations, determines whether a violation has occurred, and whether an enforcement action is appropriate. Finally, to ensure that we fully understood FCC's process for handling complaints, conducting investigations, and taking enforcement actions, in April, 2007, we provided FCC's Enforcement Bureau and CGB officials with a written summary of its processes for review. We revised our summary based on FCC's technical comments.

To review how FCC assesses the impact of its enforcement program, we interviewed both the Chief of the Enforcement Bureau and representatives from each of the divisions about their methods for assessing the effectiveness of their enforcement activities. We reviewed FCC's *Strategic Plan for 2006 through 2011*, *Fiscal Year 2006 Performance and Accountability Report*, *Fiscal Year 2006 Congressional Justification of Estimates*, and FCC's *Enforcement Manual* in order to identify enforcement goals and performance measures. We also reviewed provisions of the Government Performance and Results Act of 1993 (GPRA) and prior GAO reports on the effectiveness of GPRA and the methods other federal agencies use to measure their performance in order to identify leading performance measurement practices. We also analyzed FCC's quarterly complaint reports to assess the volume and subject matter of complaints over the past 4 years. As part of our analysis of the performance measures used by FCC's Enforcement Bureau, we also

interviewed officials from the Federal Trade Commission (FTC) to identify their methods for assessing the effectiveness of their enforcement program and obtained and reviewed information from FTC on its enforcement activities, as well as its *Strategic Plan for 2006 through 2011*, and *Fiscal Year 2006 Performance and Accountability Report*. To understand how FCC selects subjects and companies for investigation, we reviewed documentation for FCC's *Data Analysis Report on Telecommunications* and FCC reports based on that analysis for 2000 through 2006. In performing our work, we also reviewed and considered best practices identified in previous GAO reports and guides issued over the years on strategic plans and planning processes and the implementation of GPRA requirements. These documents helped us to compare the FCC Enforcement Bureau's management practices with those of leading organizations.

To obtain views on the effectiveness of FCC's enforcement efforts, we contacted 25 telecommunications companies and obtained interviews with executives from 15 of them. Of the 15 companies, 4 were in the radio and television broadcasting industry; 4 were in the cable and satellite industry; and 7 were in the wireless and wireline industry. In making this selection, we chose companies based on the following criteria: type of communication services provided (radio and television broadcasting, cable and satellite, wireless and wireline telecommunications services) and company size (small, medium, and large) according to FCC and industry data. We also contacted seven experts with knowledge of the telecommunications sector and FCC's enforcement program and obtained interviews with five of them. Among the five experts, two are academicians who have taught and written extensively about telecommunications, and the other three once held positions at FCC but are no longer employed at the Commission. The views we obtained from stakeholders and experts may not be representative of all stakeholders, but we asked both experts and stakeholders about similar issues.

Finally, to identify challenges FCC faces in providing complete and accurate information on its enforcement program, we interviewed FCC officials to understand how complaints are processed, investigated, and resolved. We obtained from FCC six different databases in various formats, five from the Enforcement Bureau and one from CGB; sent and received answers to data reliability questions; and discussed the limitations of each of the Enforcement Bureau's databases with staff from each of the divisions in the Enforcement Bureau. We examined each database for consistency in order to determine if the fields were sufficient for use. Based on this analysis, we developed a list of fields we could use

from each database and compared the fields across databases to determine what data elements could be reported across all databases. We found that we were limited in what we could report.

We conducted this performance audit from November 2006 through December 2007 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

Mr. Mark Goldstein  
Director, Physical Infrastructure  
U.S. Government Accountability Office  
Washington, DC 20548

Dear Mr. Goldstein:

Thank you for the opportunity to respond to the draft Government Accountability Office (GAO) report concerning the enforcement processes of the Federal Communications Commission (FCC or Commission) for the period January 1, 2003 through December 31, 2006.

The Commission is a proponent of strong enforcement action to protect consumers and to ensure the Communications Act of 1934, as amended (the Act), is carried out in the manner intended by Congress. During Chairman Martin's tenure, the Commission has undertaken more than 3,400 enforcement actions. These enforcement actions have resulted in assessing more than \$65.7 million in fines, forfeitures, and consent decree payments – including more than \$43 million in 2007 alone, which the GAO acknowledges is the highest annual amount since the Enforcement Bureau was created in 1999.<sup>1</sup> In addition, the Commission has devoted significant resources to reviewing and taking action on a backlog of more than 113,000 consumer complaints; as a result, the Commission no longer has a backlog of these complaints and now takes action faster on a consumer's complaint.

Because the Commission's enforcement program is an important tool for ensuring the statutory goals of the Act are met, we welcome recommendations on making improvements. In its draft report, the GAO recommends that the Commission improve how it collects and analyzes enforcement-related data (e.g., complaints received, investigations conducted, enforcement actions taken). Indeed, the report concludes that "[l]imitations in FCC's current approach for collecting and analyzing enforcement data constitute the challenge FCC faces in providing complete and accurate information on its enforcement program."<sup>2</sup> In addition, the GAO recommends that the Commission develop and implement performance management practices, including the establishment of goals and performance measures. See *GAO Draft Report* at pages 35-36.

I am pleased to report that the Commission has already implemented measures that address both GAO recommendations. The GAO report focuses on the period from 2003 through 2006. As staff indicated to the GAO during its examination, by the time of this audit, we were already aware of these issues and already had plans in place to improve both the Commission's enforcement data collection and processes.

<sup>1</sup> See Attachment 4.

<sup>2</sup> GAO Report at 4.

**Appendix II: Comments from the Federal Communications Commission**

Mr. Mark Goldstein  
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First, the Commission had recognized that one of its principle challenges was its limited information systems and database management resources. By July 2007, the Commission had already secured Congressional approval to make significant modifications to the databases and systems used to support the Commission's enforcement activities.<sup>3</sup> The budget and planning processes for these systems enhancements had been underway for some time, and we expect final delivery this year. We anticipate that this system will enhance the Commission's ability to collect more detailed complaint information from consumers as well as improve the Commission's case management system to better track the status of all enforcement complaints throughout the process.

Second, during Chairman Martin's tenure, the Commission has implemented standardized enforcement performance goals to better manage the enforcement process and to automate portions of this process.<sup>4</sup> The Commission implemented an internal performance measurements program (including the establishment of written internal controls) to collect data used to assess the performance and accountability of the enforcement program. For the first time, under Chairman Martin, goals and measures for managing the enforcement processes have been incorporated into the performance plans of the senior executives responsible for oversight of the enforcement program. Information about these efforts is also included in the Commission's annual Performance and Accountability Report and will be included going-forward in the Commission's annual performance budget submissions to Congress.

Unfortunately, the GAO Report contains several errors that detract from its utility. We raised these problems with GAO during the course of its examination, but the flaws remain in the draft report. We have included additional information in the attachment to this letter to respond to the GAO's report.

<sup>3</sup> Letter from Anthony J. Dale, Managing Director, FCC, to individual Members of the House Appropriations Subcommittee on Financial Services and General Government and the Senate Appropriations Subcommittee on Financial Services and General Government (June 27, 2007).

<sup>4</sup> In March 2006, the Commission resolved to work on public safety interference complaints within one day; non-emergency interference complaints within one month; indecency complaints within nine months; and formal complaints within one year. The Commission works to resolve all other investigations and complaints within 15 months. The Commission publicly reports on its progress at meeting these performance goals in our annual Performance and Accountability Report. Below are the results from the Commission's 2007 Performance and Accountability Report. The indecency complaints are currently involved in litigation.

Category	Enforcement Investigations Performance Results – 2007		% Meeting Goal
	No. of Investigations Meeting Goal	No. of Investigations Not Meeting Goal	
Public Safety Interference	388	0	100.00%
Non-Emergency Interference	895	15	98.35%
Formal Complaints	6	2	75.00%
Indecency Complaints	601	2625	18.63%
Other Investigations/Complaints	29608	75	99.75%
Other Investigations/Complaints	29608	75	99.75%

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First, the GAO relied on information that is significantly out-of-date in making its conclusions and recommendations. In some cases, the GAO relied on information more than four years old rather than examine more current information. By relying on information that is out-of-date, the GAO's draft report provides a misleading description of the Commission's current enforcement processes. For example, the GAO describes the Commission's former consumer complaint processes on page 6 of its draft report. However, because we had already concluded that the former process needed to be changed to enforce the Commission's consumer protection rules, we had already changed the process by which the Commission handles consumer complaints. Today, unlike the past practices that had been used since the Enforcement Bureau was started in 1999, the Commission responds to 100% of consumer complaints. The GAO's report, however, fails to acknowledge or assess the new process and incorrectly describes the Commission's current consumer complaint process. This is particularly unfortunate because our new process for handling consumer complaints has realized meaningful benefits. For example, the Commission issued 412 citations for violations of the junk fax rules in 2007, which was approximately a 350% increase over the 91 citations issued in 2006 and a 984% increase over the 38 citations issued in 2004.<sup>5</sup>

Similarly, during the 2003-2006 period the GAO examined, the Commission did not regularly collect and review data to measure the performance of the enforcement program. This issue has been addressed. As noted above, the Commission reports on these performance measures in its annual Performance and Accountability Report and, going-forward, will provide performance information in its annual budget submission to Congress. We are concerned that GAO's failure to examine current practices and processes significantly diminishes the value of the report.

Second, in addition to using outdated information, the GAO made errors in presenting certain data. During the preparation of this report, the Commission informed the GAO of our concerns that the draft report contained factual flaws. For example:

- the GAO draft report at pages 19-20 (Table 2) contains inaccurate information regarding the number and types of investigations and enforcement actions taken by the Commission. Table 2 overstates the number of enforcement investigations that were closed without action because it fails to acknowledge certain actions taken by the Commission such as findings of compliance, denials, and dismissals for insufficient information provided by the complainant. Attachment 3 provides Commission data side-by-side to GAO's data as set forth in the chart. The Commission's chart in Attachment 3 provides data on enforcement actions which are contained in the Commission's databases and paper files.
- the data presented on pages 19-20, which the GAO derived from the Commission's databases, does not correspond to the information contained in our databases. The GAO's draft report at pages 19-20 significantly understates the number of admonishments/warnings, citations, consent decrees, monetary forfeitures, and notices of

<sup>5</sup> See *Performance and Accountability Report for Fiscal Year 2007* at 56 (Nov. 15, 2007).

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violation issued<sup>6</sup> and the report overstates the number of investigations conducted during the 2003-2006 period.<sup>7</sup>

- the GAO's draft report at pages 19-20 also significantly overstates the number of investigations closed with no action.<sup>8</sup> In its draft report, the GAO states that the Commission closed with no action 8,628 investigations concerning antenna lighting and structure requirements. Had GAO scrolled to the problem resolution section of the Commission's database it would have found readily available information indicating that action had indeed been taken on a large portion of these investigations.<sup>9</sup> The problem resolution section of the database contains a written description of the finding made by an Enforcement Bureau employee for a particular investigation (*e.g.*, no violation found). Attachment 6 shows the problem resolution field in the database for an antenna lighting and structure requirement investigation. In addition, the Commission maintains files on each investigation conducted by a field agent or other Commission personnel. Because the GAO limited its inquiry to Commission databases, it failed to accord for the outcomes of field investigations recorded in paper files. In fact, the Commission's databases and paper files verify that a significantly smaller number of investigations were closed with no action than reported by the GAO. Only 32 investigations were closed with no action instead of the 8628 contained in the GAO Report, a difference of 26,863%.<sup>10</sup>
- the GAO's draft report at pages 16-17 significantly overstates the total number of investigations that were listed as closed with no enforcement action. In its draft report, the GAO states that "about 83 percent or about 32,200 of the investigations were listed as closed with no enforcement action."<sup>11</sup> Attachment 2, however, indicates that only 3 percent of investigations were closed with no enforcement action taken. In fact, 71 percent of investigations were closed with compliance found, 15 percent closed after taking action, and 11 percent were closed as a result of insufficient information being provided by the complainant. *See* Attachment 2. Had GAO scrolled through the problem resolution or similar notation sections of the Commission's databases it would have found readily available data indicating that action had indeed been taken on all the

<sup>6</sup> The GAO's draft report on pages 19-20 indicates that the Commission issued 2279 enforcement actions admonishments/warnings, citations, consent decrees, debarments, monetary forfeitures, and notices of violation for investigations involving antenna lighting and structure requirements, junk fax, domestic interference, indecency, CPNI certification, audits of certification-based facilities, emergency alert system requirements, and cable TV leakage during 2003 to 2006; Commission data, however, indicates that 3679 enforcement actions were initiated during that same time period. *See* Attachment 3. In particular, while pages 19-20 of the GAO's draft report indicate the Commission issued 1058 admonishments and warnings during the time period for these investigations, Commission records indicate that 2570 admonishments and warnings were issued during that time period. *Id.*

<sup>7</sup> The GAO's draft report on pages 19-20 indicates that the Commission's Enforcement Bureau handled 38,786 investigations from 2003 through 2006; instead the Commission's Enforcement Bureau handled 25,351 investigations during this period. *See* Attachment 3.

<sup>8</sup> *See* Attachment 3.

<sup>9</sup> *See* Attachment 3.

<sup>10</sup> *See* Attachment 3.

<sup>11</sup> GAO Report at 16.

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domestic interference, indecency, CPNI certification, audits of certification-based facilities, Emergency Alert System requirements, and Cable TV leakage investigations listed in the Report.<sup>12</sup> As demonstrated in Attachment 7 showing examples of actual investigations of various types in the databases, the problem resolution section of the database memorializes findings made by the Enforcement Bureau staff during a particular investigation. The notation would indicate whether a finding of compliance was made, whether the investigation was dismissed for insufficient information provided by the complainant, or whether the issue was resolved at the time of inspection (e.g., interference resolved prior to inspection). In addition, the Commission maintains paper files on each investigation conducted by a field agent or other Commission personnel. The Commission's databases and paper files verify that a significantly smaller number of investigations were closed with no action than reported by the GAO.<sup>13</sup> Only 576 investigations were closed with no action instead of the 32,237 contained in the GAO Report.<sup>14</sup>

- the GAO's draft report at pages 12-13 (Figure 1) only reflects the status of complaints received by the Consumer and Governmental Affairs Bureau (CGB) during the year in which the complaint was received. The chart does not capture information about the disposition of complaints received in one year and resolved in a subsequent year. The draft report thus leaves the impression that complaints were unresolved when in fact they were resolved, albeit in a subsequent year. Attachment 1 provides the number of complaints received from 2003-2006 and indicates that no complaints are pending for 2003, 2004, and 2005. Only 62 complaints are pending for 2006.

Because the GAO failed to identify which complaints or cases were in the "all other investigations" or "general enforcement" categories, we were unable to resolve the data inconsistencies and inaccuracies in the draft report.

Third, the GAO makes a number of incorrect statements in its report. For example, the GAO states on page 3 that the Commission's existing enforcement databases do not contain information about the disposition of a complaint (e.g., whether the Commission took enforcement action or concluded that no violation occurred). This is incorrect – the Commission's systems do contain this information. This information resides in the problem resolution or similar notation sections of the Commission's database systems. This section of the database was readily accessible to GAO during the course of their investigation. We informed the GAO about the disposition information on several occasions and offered to make technical assistance available.

Finally, the GAO's draft report fails to include important information to assist the reader of the report. For example, the GAO's description of the Commission's enforcement processes and statutory authority fails to include any discussion about the legal standards applicable to the

<sup>12</sup> See Attachment 3.

<sup>13</sup> Data from the Enforcement Bureau's database and paper files reveals that only 3% of investigations were opened with no enforcement action, a number significantly lower than GAO's 83%. See Attachment 5.

<sup>14</sup> See Attachment 2.

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Commission's enforcement process, including the appropriate burden of proof the Commission must meet in order to issue a notice of apparent liability, citation, notice of violation, admonishment, or warning. Similarly, on page 10 the GAO failed to discuss other sections of the Act that provide authority for fines or sanctions or the procedural and other legal requirements that govern license revocation proceedings. By leaving this important information out of the draft report, the GAO provides an incomplete and misleading picture about the legal environment in which the Commission's enforcement activities operate.

Although we are concerned about the flaws in the GAO's examination noted above, we do appreciate the GAO's examination into the Commission's enforcement processes. Moreover, we agree that the Commission needed to improve our data management systems from the limited time frame examined, for which we have already contracted, and provide specific enforcement goals, which we have already implemented. We look forward to working with the GAO on this and other matters in the future.

Sincerely,

  
Kris Anne Monteith  
Chief, Enforcement Bureau

Attachments

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# Appendix III: GAO Contact and Staff Acknowledgments

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## GAO Contact

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

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## Staff Acknowledgments

In addition to the contact named above, individuals making key contributions to this report include Tammy Conquest, Assistant Director; Eli Albagli; Martin De Alteriis; Konstantin Dubrovsky; Sharon Dyer; Bess Eisenstadt; Heather Frevert; Mitch Karpman; Josh Ormond; Mindi Weisenbloom; and Nancy Zearfoss.

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