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Report to the Chairman, Information,
Justice, Transportation, and Agriculture
Subcommittee, Committee on
Government Operations, House of
Representatives

March 1993

TELECOMMUNICATIONS

FCC's Handling of Formal Complaints Filed Against Common Carriers



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**Resources, Community, and
Economic Development Division**

B-250197

March 18, 1993

The Honorable Gary A. Condit
Chairman, Information, Justice,
Transportation, and Agriculture Subcommittee
Committee on Government Operations
House of Representatives

Dear Mr. Chairman:

The Federal Communications Commission (FCC) relies on a complaint process to resolve pricing and other disputes between customers and common carriers—entities such as local and long-distance telephone companies that provide interstate communication services for hire. Section 208 of the Communications Act of 1934, as amended, permits any party to file a complaint against a common carrier for actions or omissions that violate either the act itself or an FCC rule or order promulgated under the act.

Under section 208, complaints that challenge the lawfulness of a charge, classification, regulation, or practice (hereafter referred to as “tariff” complaints) must be resolved within 12 months of filing, or 15 months if the case involves facts of “extraordinary complexity.” Complaints that involve issues other than the lawfulness of a tariff (hereafter referred to as “nontariff” complaints) are not required to be completed within 12 or 15 months.

An example of a tariff complaint is when a long-distance telephone company alleges that a local exchange telephone company’s (LEC) interstate access charges are unlawful because the LEC earned more than the rate of return prescribed by the Commission. An example of a nontariff complaint is when a complainant alleges that a LEC is not complying with the terms of its tariff because it is double-billing access minutes for calls made over nationwide 800-number telephone services.

It is not FCC’s policy to routinely defer formal complaints. However, when the resolution of a complaint depends upon the outcome of other legal proceedings and involves substantially the same legal and factual issues, FCC defers the complaint proceedings until the interrelated proceedings are resolved. For deferred complaints, FCC calculates the resolution time frames from the date the complaints are removed from deferral status rather than from the date the complaints are filed.

As agreed with the office of the former Subcommittee Chairman, this report provides information on (1) the length of time it takes FCC to resolve formal complaints against common carriers; (2) FCC's level of compliance with the requirement that the Commission resolve tariff complaints within 12 or 15 months of their filing; and (3) the volume and age of formal complaints pending at FCC.

Results in Brief

Over the last 4 years, it took FCC an average of 18 months from the date of filing to close 465 formal tariff complaints and an average of 21 months to close 256 formal nontariff complaints. Tariff complaints—calculated from the date they were filed, the date that legislation established time limitations on them, or the date they were removed from deferral status, whichever was latest—took an average of 8 months to be resolved.

Over 40 percent (207 of 465) of the formal tariff complaints resolved by FCC during the past 4 years were not resolved within the time frames established by law. In addition, as of the end of fiscal year 1992, over 80 percent of the pending tariff complaints (at least 425 of 520) were already older than the legal limitations allowed. However, FCC used deferrals to extend the completion deadlines for many of the resolved formal tariff complaints and for almost all of the pending tariff complaints. Only 15 percent (68 of 465) of the resolved cases and none of the pending cases have exceeded the completion deadlines that FCC extended. FCC has notified both the House and Senate authorization subcommittees that it does not intend to mechanically apply time constraints in such instances, but the Commission lacks explicit statutory authority to extend the deadlines mandated by legislation on tariff complaint investigations.

At the end of fiscal year 1992, a total of 670 formal complaints (520 tariff and 150 nontariff) were pending at FCC. A significant increase of complaints in recent years has overburdened FCC in processing them. Over 60 percent (420 of 670) of the complaints have been pending for more than 24 months. FCC has taken various steps to resolve formal complaints more quickly, including doubling its staff of formal complaint attorneys between fiscal years 1989 and 1992, proposing streamlined resolution procedures, and piloting alternative techniques for dispute resolution.

Background

The Enforcement Division of FCC's Common Carrier Bureau handles formal and informal complaints, inquiries, and investigations involving common carriers. Complaints filed against carriers may be made either

informally or formally, with format rather than content being the distinction. The information presented in this report is for formal complaints only. In 1990, we conveyed to the former Chairman of this Subcommittee the results of our examination of FCC's processing of informal complaints.

If a complainant alleges that more than one common carrier is performing the same unlawful activity, FCC assigns separate complaint file numbers for each carrier identified by the complainant. Formal complaint proceedings are generally resolved with a written record that consists of a complaint, answer, and reply, and usually also includes other written submissions, such as briefs and written interrogatories. All written submissions must conform to FCC standards and requirements in regard to form and content. According to FCC officials, individual consumers tend to make informal complaints, which are less structured; telephone companies and other telecommunications organizations generally make formal complaints.

Time limitations on resolving tariff complaints were established on November 3, 1988, when the Federal Communications Commission Authorization Act of 1988 (FCCAA) amended section 208 of the Communications Act. This legislation was enacted in part because of congressional concerns that FCC often failed to reach a decision that would complete a tariff investigation in a reasonable amount of time. As a result, potentially unlawful tariffs could have been in effect for several years pending the outcome of FCC's investigation.

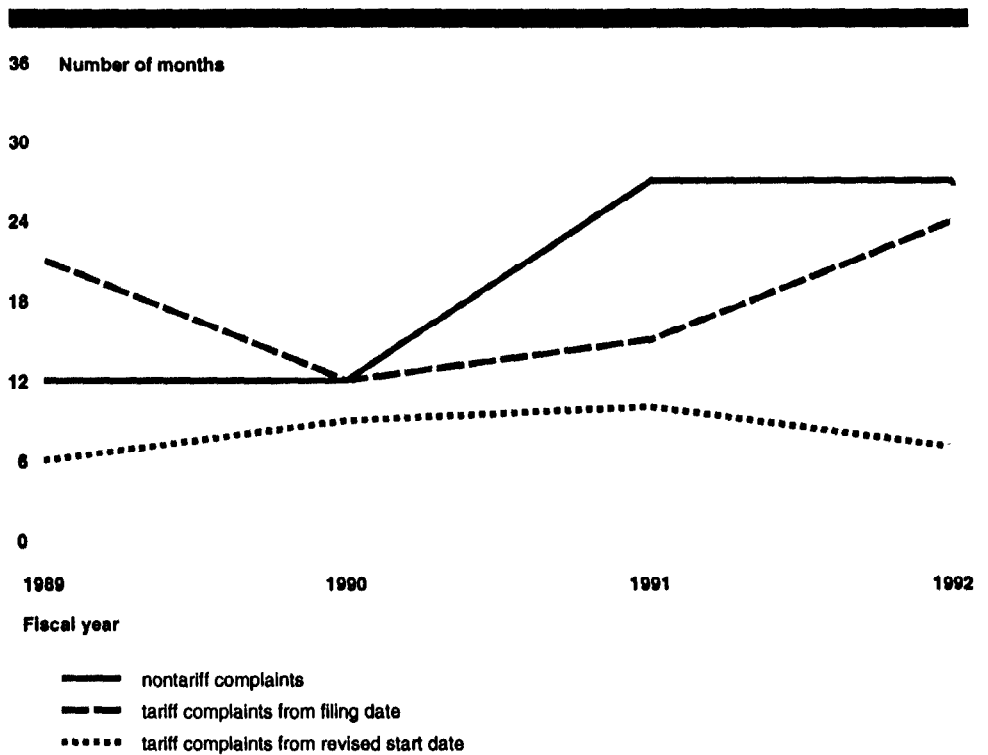
Length of Time Required to Resolve Formal Complaints

Between October 1, 1988, and September 30, 1992, FCC closed 721 formal complaints (465 tariff and 256 nontariff) against common carriers. The average tariff complaint was closed in 18 months from the date of filing (with processing times ranging from 12 months in fiscal year 1990 to 24 months in fiscal year 1992) and the average nontariff complaint was closed in 21 months (with processing times ranging from 12 months in fiscal years 1989 and 1990 to 27 months in fiscal years 1991 and 1992).

However, FCC established new start dates to recognize the impact of the revised time limitations mandated by the 1988 FCCAA for complaints filed prior to November 3, 1988. Tariff complaints pending on the date that the FCCAA was enacted were required to be resolved within 12 months of that enactment rather than within 12 or 15 months of filing. Also, FCC calculates complaint resolution time frames from the date that deferred complaints are removed from deferral status rather than from the date that such

complaints are filed. Using FCC's method of tracking case closing times, the average tariff complaint was closed in 8 months (with processing times ranging from 6 months in fiscal year 1989 to 10 months in fiscal year 1991). Figure 1 shows the annual average number of months needed to resolve both nontariff complaints calculated from filing dates and tariff complaints calculated from filing dates and from revised FCC start dates.

Figure 1: Average Months Taken to Resolve Formal Complaints, Fiscal Years 1989-1992



Source: Compiled by GAO from data contained in FCC's Common Carrier Bureau formal complaints processing system.

According to the Chief of FCC's Common Carrier Bureau, deferrals are used when the disposition of a formal complaint is determined to be dependent upon the outcome of another proceeding that involves substantially the same legal and factual issues. FCC believes deferrals are necessary to ensure the fair and orderly conduct of complex interrelated proceedings and the due process rights of the parties.

Under its deferral policy, FCC issues orders holding the complaint proceedings in abeyance until the Commission resolves the related issues of the interrelated proceedings. After the Commission adopts a decision on the interrelated proceedings, FCC adopts and releases orders to remove the affected complaints from deferral status. Pleading and discovery schedules are then recommenced.

Most Tariff Complaints Will Not Be Resolved Within the Time Limitations Established by Law

According to our analysis, more than 60 percent (635 of 985) of the formal tariff complaints that either were resolved by FCC during fiscal years 1989 through 1992 or were still pending as of the end of fiscal year 1992 were not or will not be resolved within 12 or 15 months of filing, as required by section 208 of the Communications Act of 1934, as amended.

Over 25 percent (23 of 87) of the tariff complaints that were pending when revisions to section 208 were enacted were not resolved within 12 months of the enactment of those revisions. In addition, almost 50 percent (184 of 378) of the formal tariff complaints received after November 3, 1988, and resolved by September 30, 1992, were not resolved within the 12- or 15-month deadlines specified in the statute. Over 15 percent (70 of 378) of the complaints were classified by FCC as "extraordinarily complex" and thus were to be resolved in 15 months.

Furthermore, our analysis of the filing dates of the tariff complaints pending as of September 30, 1992, showed that over 80 percent (428 of 520) of the complaints are more than 12 months old. FCC does not code tariff complaints in its processing system as "extraordinarily complex" until they are closed. Thus, some of these complaints may be subject to the 15-month deadline rather than the 12-month one. But only 3 of the 520 tariff complaints have been pending between 13 and 15 months.

If the impact of deferrals is taken into account, however, only 15 percent (68 of 465) of the resolved formal tariff complaints—and none of the 520 pending complaints—have exceeded FCC's 12- or 15-month deadlines that were calculated from the date the complaints were removed from deferral status rather than from the dates the complaints were filed.

Deferrals began to increase substantially in the first quarter of fiscal year 1990, when over 20 percent (74 of 353) of the pending tariff complaints were deferred ones. By the second quarter of fiscal year 1991, the deferral rate had increased to over 95 percent (551 of 565). The rise in the use of

deferrals was caused, for the most part, by two related proceedings.¹ FCC resolved the issues related to one of these two underlying proceedings in October 1991 and issued orders in December 1991 and January 1992 to reactivate over 300 complaints that had previously been deferred. The issues related to the other major underlying proceeding remained unresolved as of January 31, 1993. At the end of fiscal year 1992, over 90 percent (480 of 520) of the pending formal tariff complaints were or had previously been deferred.

None of the 40 complaints that were not deferred had filing dates over 12 months old, whereas all of the 480 deferred and formerly deferred complaints had filing dates that were 12 months or older, ranging up to 44 months old. However, none of the deferred or formerly deferred complaints had been pending more than 12 months since the date they were removed from deferral status. In fact, 239 formal tariff complaints are still deferred—primarily because the court-remanded investigations have not been completed for 192 of these complaints, and the parties to 36 of the complaints have requested more time to negotiate settlements.

FCC had initially determined that time constraints imposed by section 208 of the Communications Act precluded any deferral of tariff complaints. However, early in fiscal year 1990, after discussing the matter with staff members from the Communications Subcommittee of the Senate Committee on Commerce, Science, and Transportation, FCC reinterpreted how section 208 applied to tariff complaints involving related issues it was investigating because of court remands. FCC concluded that in these cases the time constraints imposed by section 208 did not apply.

In a letter dated December 6, 1990, FCC further advised the staff counsel of the Senate Communications Subcommittee of its plans and rationale for such deferrals. In addition, in a letter dated July 24, 1991, that answered questions about formal complaints raised during FCC oversight hearings by a member of the Telecommunications and Finance Subcommittee of the House Committee on Energy and Commerce, the Chairman of FCC informed the Chairman of the House Telecommunications and Finance Subcommittee of FCC's use of deferrals.

An FCC official told us that the Commission had not received any congressional objections to the deferrals and their impact on the 12- or 15-month deadlines for resolving formal tariff complaints. Nor has any

¹MCI Telecommunications Corp. v. FCC, 842 F.2d 1296 (D.C. Cir. March 29, 1988) (Shared Network Facilities Agreements Remand Order); and Illinois Bell Tel. Co. v. FCC, 911 F.2d 776 (D.C. Cir. August 17, 1990) (Rate Base Remand Order).

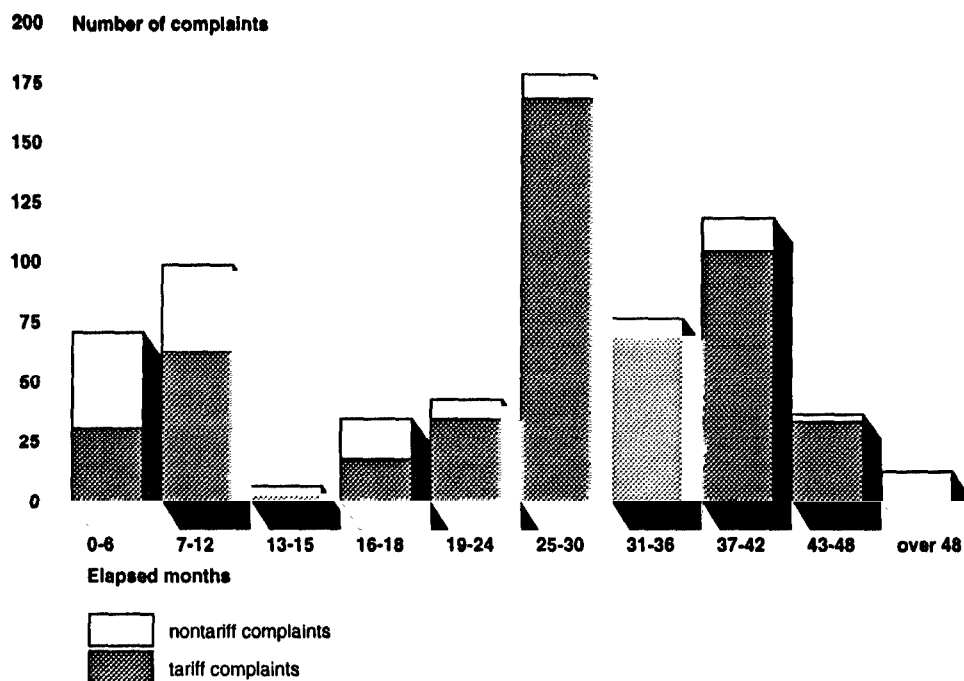
complainant directly challenged FCC's deferral policy in court; in at least one case, however, a complainant petitioned the court for a writ of mandamus based on a complaint that had not been resolved within the time frame required by section 208. Also, complainants did file applications with FCC for the review of FCC orders that held over 300 complaints in abeyance because of one of the court remands. FCC subsequently resolved this court remand and thus removed the complaints from deferral status without addressing the merits of the complainants' challenges of the need to hold the complaints in abeyance.

Extent of Pending Formal Complaints

The number of pending complaints increased four-fold (from 167 to 670) from the end of fiscal year 1988 to the end of fiscal year 1992 (see app. I). The number of pending formal complaints began to increase significantly in fiscal year 1989, when more complaints were filed (439) than in the previous 3 years combined (386). In fiscal year 1990, a total of 469 complaints were filed. In fiscal years 1991 and 1992, the number of complaints filed (185 and 131, respectively) dropped back to the pre-1989 level. As a result, the number of complaints decreased at the end of fiscal year 1992 compared with the previous year (from 755 to 670).

At the end of fiscal year 1988, FCC had 167 pending formal complaints (84 tariff and 83 nontariff). During fiscal years 1989-1992, FCC received 1,224 formal complaints (903 tariff and 321 nontariff). Over the same 4 years, FCC resolved 721 formal complaints (465 tariff and 256 nontariff). At the end of fiscal year 1992, a total of 670 formal complaints (520 tariff and 150 nontariff) were pending at FCC. Over 60 percent (420 of 670) of the complaints have been pending for more than 24 months (see fig. 2).

Figure 2: Number of Months Formal Complaints Have Been Pending, as of September 30, 1992



Source: Compiled by GAO from data contained in FCC's Common Carrier Bureau formal complaints processing system.

Despite the large number of complaints pending for an extended period of time, the FCC Deputy Chief (Operations) of the Enforcement Division of the Common Carrier Bureau believes that no backlog exists because (1) most tariff complaints are either deferred or have been removed from deferral status for less than 1 year and (2) all undeferred formal tariff and nontariff complaints are being actively worked on.

FCC has taken various steps to improve the processing of the case load of formal complaints that are pending. In order to focus resources primarily on formal complaint cases, the Chief of the Common Carrier Bureau decided in 1991 that formal complaint attorneys in the Enforcement Division would not be assigned any new rulemaking proceedings until the pending case load of formal complaints was significantly reduced. In addition, the number of full-time staff attorneys assigned formal complaints was increased from 7 to 15 between 1989 to 1992.

In 1991, FCC began examining the formal complaint process in order to recommend changes aimed at resolving complaints more quickly. As a result, FCC released a notice of proposed rulemaking on March 12, 1992, to solicit comments on proposed changes to FCC's rules that would streamline the procedures used to resolve formal complaints. The proposed rules would, among other things, shorten filing deadlines, eliminate certain pleading opportunities, and expedite and consolidate the discovery process. Comments regarding the notice of proposed rulemaking were received by FCC in April and May 1992. FCC is currently evaluating all the comments; during the spring of 1993, it plans to consider proposals to streamline the procedures used to resolve formal complaints.

In addition to these proposed changes, FCC launched a voluntary alternative dispute resolution (ADR) pilot project in the area of common carrier formal complaints on June 30, 1992. The ADR pilot program encourages the parties involved in complaints to consider using a mediator to help settle the dispute.

Under the ADR program, the parties involved receive in their initial mailings a copy of FCC's brochure explaining the Commission's administrative resolution program. In enacting the Administrative Dispute Resolution Act, which authorized federal agencies to use ADR techniques to resolve disputes promptly and informally, the Congress emphasized that ADR procedures can resolve disputes in a more effective, less costly, and fair and timely manner. FCC has assigned an attorney to work full-time on the ADR program. According to FCC officials, as of the end of fiscal year 1992, the parties to one formal complaint case had chosen to participate in the new pilot ADR program.

Conclusions

A significant increase in complaints during fiscal years 1989 and 1990 and FCC's extensive use of deferrals have resulted in (1) an increasing number of unresolved formal complaints against common carriers; (2) long periods of time taken to resolve the complaints; and (3) a very low level of compliance with section 208 of the Communications Act, which requires that the Commission resolve tariff complaints within 12 to 15 months of their filing. If the steps taken by FCC to expedite formal complaint resolution are effective and if complaint receipts continue to decrease as they did during fiscal years 1991 and 1992, FCC's work load of formal complaints should improve in the near future. However, the need to use deferrals could continue to affect FCC's ability to comply with the legal

requirement to resolve tariff complaints within 12 or 15 months of their filing date.

Most of the formal tariff complaints received by FCC were held in abeyance because they were found to be dependent upon the outcome of other proceedings involving substantially the same legal and factual issues. Although FCC notified the appropriate congressional subcommittees of its intentions to defer complaints in order to ensure the fair and orderly conduct of interrelated proceedings and to ensure the due process rights of the parties, FCC has no explicit statutory authority to defer the resolution of tariff complaints beyond 12 or 15 months of their filing.

Recommendation to the Congress

In view of the section 208 requirement that FCC complete its tariff investigations within 12 to 15 months of the filing date of a complaint, we recommend that the Congress consider amending the section to explicitly authorize FCC's deferral policy. This would allow FCC to calculate the complaint resolution time frame from the date that the underlying proceeding is completed, rather than the date on which the complaint is filed.

Agency Comments

We discussed the findings in this report with officials in FCC's Office of Managing Director and Common Carrier Bureau, who generally agreed with the facts presented. However, they suggested that our report include more analysis of the impact of deferrals on compliance with time limitations. Nonetheless, they agreed that explicit statutory authority to extend the dates used to compute time limitations for deferred formal tariff complaints would be helpful. The report was modified to accommodate FCC officials' concerns where appropriate. However, we did not obtain written agency comments on a draft of this report.

Scope and Methodology

We reviewed the legislative history of the 1988 amendments to section 208 of the Communications Act of 1934. The statistics in this report were obtained from the Enforcement Division of FCC's Common Carrier Bureau. We analyzed data contained in FCC's Common Carrier Bureau formal complaints processing system, including information on filing dates and Commission order issue dates (if the case was closed) for all pending formal complaints filed against common carriers as of October 1, 1988, and all subsequent complaints filed through September 30, 1992. We excluded applications for review and petitions for reconsideration of

formal complaint decisions from the scope of our examination. We computed elapsed months to the nearest whole month. For example, we considered 12 months and 15 days to be 12 months, whereas we considered 12 months and 16 days to be 13 months.

We made appropriate inquiries and analyses to assess the reliability of the data. Our assessment included interviewing users of the data and obtaining copies of publicly available FCC orders that provided key information about formal complaints. The users we interviewed were very confident about the accuracy of the data generated by FCC's Common Carrier Bureau formal complaints processing system.

We compared the case file numbers of complaints reported pending as of September 30, 1992, with the listings of closed cases to ensure that all complaints were accounted for. We also compared the complaint filing dates reported by FCC with the assigned case file numbers to determine if the dates appeared to be accurate. The case file numbers are assigned by FCC according to the fiscal year the complaint was filed and the numerical order in which it was received by FCC.

We obtained copies of FCC orders for all tariff complaints reported closed during the 4-year period. We compared the complaint filing and resolution dates shown on the orders with the dates shown on FCC reports generated from the formal complaints processing system. We also obtained copies of FCC orders to hold complaint proceedings in abeyance and, if applicable, the orders removing the affected complaints from deferral status. We compared the complaint file numbers and deferral dates in the orders with the information included in FCC deferral reports.

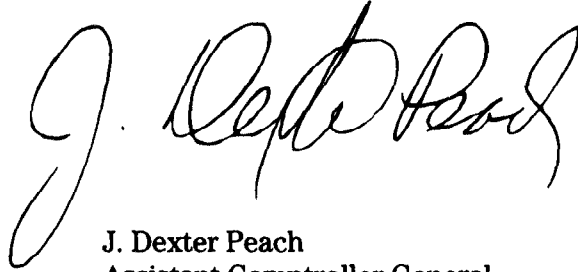
We conducted our work between August and December 1992 in accordance with generally accepted government auditing standards.

As agreed with the office of the former Subcommittee Chairman, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will provide copies to other appropriate congressional committees and to the Chairman of the Federal Communications Commission. We will also make copies available to others on request.

This work was performed under the direction of Kenneth M. Mead, Director, Transportation Issues, who can be reached on (202) 512-6001 if

you or your staff have any questions. Major contributors to this report are listed in appendix II.

Sincerely yours,

A handwritten signature in black ink, appearing to read "J. Dexter Peach". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

J. Dexter Peach
Assistant Comptroller General

GAO Analysis of Data Contained in FCC's Common Carrier Bureau Formal Complaints Processing System

**Table I.1: Formal Complaint Case
Workload for Fiscal Years 1989-92**

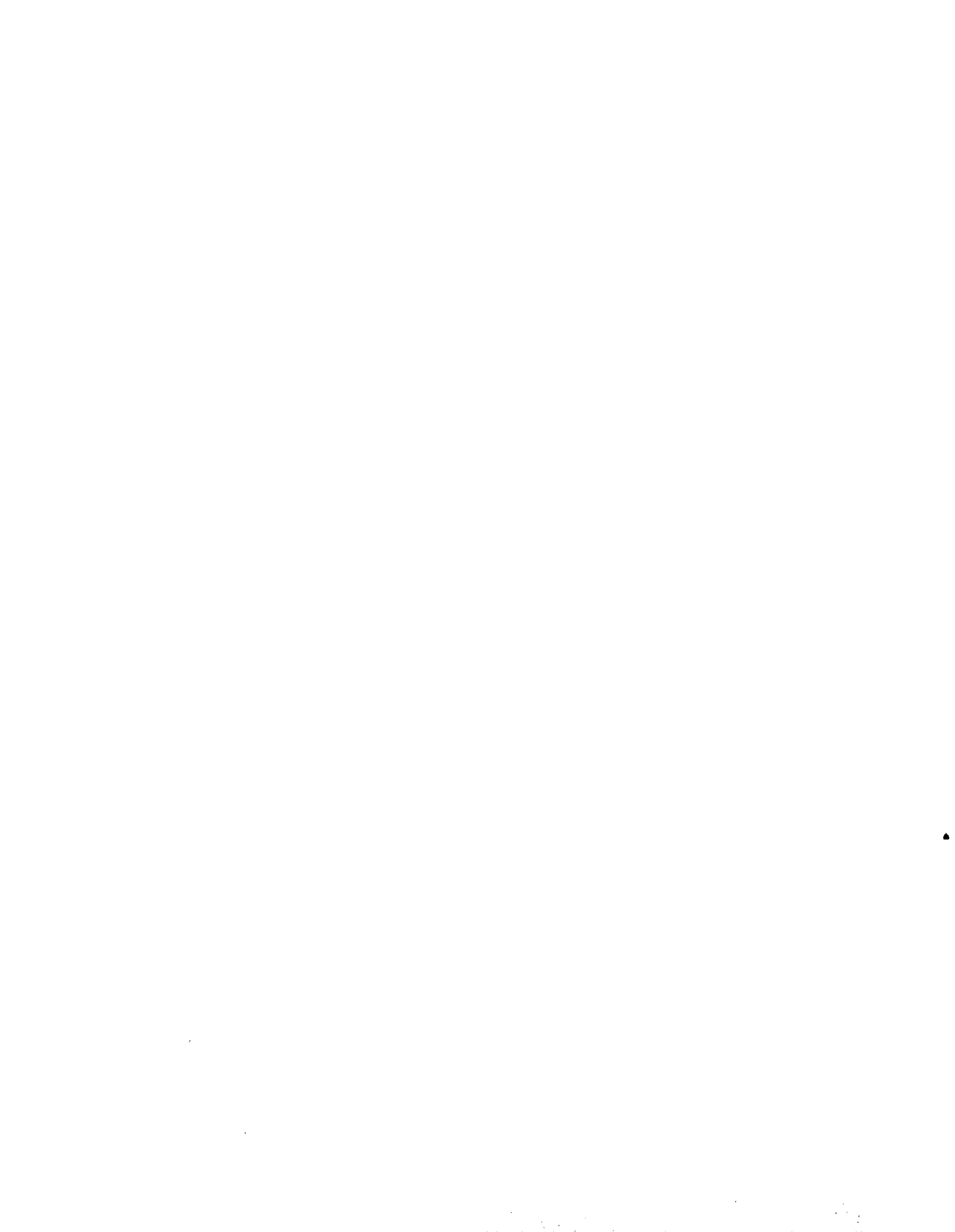
| Fiscal year | Pending start of year | Receipts | Disposals | Pending end of year |
|--------------------|----------------------------------|-----------------|------------------|--------------------------------|
| 1989 | | | | |
| Nontariff | 83 | 121 | 35 | 169 |
| Tariff | 84 | 318 | 85 | 317 |
| Total | 167 | 439 | 120 | 486 |
| 1990 | | | | |
| Nontariff | 169 | 69 | 73 | 165 |
| Tariff | 317 | 400 | 128 | 589 |
| Total | 486 | 469 | 201 | 754 |
| 1991 | | | | |
| Nontariff | 165 | 48 | 62 | 151 |
| Tariff | 589 | 137 | 122 | 604 |
| Total | 754 | 185 | 184 | 755 |
| 1992 | | | | |
| Nontariff | 151 | 85 | 86 | 150 |
| Tariff | 604 | 46 | 130 | 520 |
| Total | 755 | 131 | 216 | 670 |
| 1989-92 | | | | |
| Nontariff | 83 | 323 | 256 | 150 |
| Tariff | 84 | 901 | 465 | 520 |
| Total | 167 | 1,224 | 721 | 670 |

Source: Compiled by GAO from data contained in FCC's Common Carrier Bureau formal complaints processing system.

Major Contributors to This Report

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