



The PSC and Legislature Could Consider Several Options to Enhance Services and Consumer Protection

at a glance

The Public Service Commission regulates the rates, service, and safety of all privately owned electric, gas, and telecommunications utilities in Florida and privately owned water and wastewater utilities in 34 counties. The commission also helps consumers resolve complaints against most utility companies.

Several options exist for the commission and the Legislature to enhance consumer services and protection.

- To reduce fragmentation in resolving telecommunications-related complaints, the Legislature could transfer responsibility for resolving wireless complaints from the Department of Agriculture and Consumer Services to the commission.
- To encourage more participation in Florida's Lifeline program, the commission should develop guidelines for telecommunications carriers that address outreach and other issues that affect participation.
- To ensure adequate investment in future infrastructure needs, the PSC should monitor the capital improvements and financial health of small water and wastewater utilities.

Scope

As requested by the Legislature, this report examines the Florida Public Service Commission's (PSC) organization, operation, and services. The report answers three questions.

1. How does the PSC regulate the utilities within its jurisdiction?
2. How does the PSC help consumers resolve complaints against utility companies?
3. What changes would enhance state services to utility customers?

Background

The Florida Public Service Commission's (PSC) mission is to facilitate the efficient provision of safe and reliable utility services at fair prices. The commission accomplishes this goal by regulating the rates, service, and safety of privately owned electric and gas utilities. The commission also has limited jurisdiction over some public utilities. In addition, the commission facilitates the development of competition in the local telecommunications market and regulates privately owned water and wastewater utilities in those counties that have opted to transfer regulatory jurisdiction to the PSC.

As of 2007, the commission had jurisdiction over more than 1,500 utility companies (see Exhibit 1). As shown in the exhibit, telecommunications companies make up the majority of regulated entities, at 83.3%.

Although the management structure and types of utilities regulated vary, most states have entities similar to the Florida Public Service Commission that oversee utility regulation. In these states, the Governor or Legislature typically appoints utility commissioners to their positions; however, at least 13 states elect their commissioners. While most states have

a single entity responsible for utility regulation, at least two states—Massachusetts and Texas—divide utility regulation between two or more entities. Five states do not impose economic regulation over water utilities.

**Exhibit 1
The PSC Has Jurisdiction Over More Than 1,500 Utilities**

Utility	Number of Companies	Percentage of Companies
Privately Owned Utilities		
Electric	5	0.3%
Natural gas	7	0.5%
Water and wastewater	160	10.7%
Telecommunications	1,251	83.3%
Publicly Owned Utilities		
Electric	52	3.4%
Natural gas	27	1.8%
Total	1,502	100.0%

Source: OPPAGA analysis of Public Service Commission data.

Organization

The Public Service Commission is composed of a five-member board. When vacancies occur, the PSC Nominating Council recommends six applicants to the Joint Legislative Committee on Public Service Commission Oversight, which nominates three applicants to the Governor. The Governor then selects from among the nominees and appoints commissioners to four-year terms, subject to Senate confirmation. The commissioners elect a chair, who serves a two-year term. The chairman, who acts as the commission’s chief administrative officer, sets commission hearings, establishes panels, assigns cases, presides at all hearings and conferences, and performs all other duties as prescribed by law.¹

¹ The chair is elected to a two-year term by majority vote of the commissioners.

The commission has staff to assist in performing its regulatory functions. The executive director advises the commission and has responsibility for directing, planning, and administering the overall activities of commission staff.² The PSC performs its functions through four divisions—administrative services; service, safety and consumer assistance; economic regulation; and regulatory compliance (see Appendix A for an organizational chart).

Resources

The Florida Public Service Regulatory Trust Fund fully supports the commission’s operations. The trust fund includes regulatory assessment fees charged to the utilities regulated by the commission, and these fees are a percentage of the utilities’ gross operations revenues. For example, privately owned electric companies are required to pay the commission 0.00072% of gross operating revenues, with a minimum annual assessment fee of \$25. The commission collected approximately \$33.1 million in regulatory assessment fees in Fiscal Year 2007-08 (see Exhibit 2).³ The amount of regulatory assessment fees collected by the commission has generally increased over the last four fiscal years. For Fiscal Year 2008-09, the Legislature appropriated \$27,984,878 and 331 full-time equivalent positions to the commission from the Florida Public Service Regulatory Trust Fund.

² The executive director does not have authority over the Office of the General Counsel, which reports directly to the commission.

³ The commission also collects penalties and fines from utilities; however, these funds are deposited into the General Revenue Fund, not the Regulatory Trust Fund.

**Exhibit 2
The PSC Collected More Than \$33 Million in Regulatory Assessment Fees in Fiscal Year 2007-08**

Utility	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08
Electric	\$10,860,013	\$11,921,027	\$14,534,705	\$14,422,241
Natural gas	2,829,345	3,284,484	3,370,998	3,162,178
Water and wastewater	3,990,188	4,013,203	4,480,892	4,488,441
Telecommunications	9,026,664	11,893,048	11,131,986	10,982,180
Total	\$26,706,210	\$31,111,762	\$33,518,581	\$33,055,040

Source: OPPAGA analysis of Public Service Commission data.

Questions and Answers

How does the PSC regulate the utilities within its jurisdiction?

To regulate the industries within its jurisdiction, the Public Service Commission monitors utility company earnings, conducts audits and inspections, facilitates utility company competition, and assists consumers through outreach services and opportunities for public input.

The commission monitors utility company rate structure and earnings to help ensure that consumers are charged appropriate rates. As regulated utilities are monopolies, the commission's regulation is intended to assure that they do not charge excessive rates to consumers. To ensure that utilities do not exceed their authorized rates of return, the commission establishes and monitors earnings levels for privately owned electric, natural gas, water and wastewater companies; one telephone company is also under rate-of-return regulation. In addition, the commission monitors the rate structure of approximately 1,500 privately owned electric, natural gas, telecommunications, and water and wastewater utilities and 52 public electric systems to ensure that companies appropriately apply rates to customers.⁴

Utilities may petition the commission for a rate change whenever companies believe that their earnings are below a reasonable level. When the PSC receives such a request, it conducts an extensive review of the company's financial records in order to determine a reasonable rate of return. During its review, the commission analyzes the rates charged by the utility, allocates revenue requirements between classes of customers, and develops appropriate rate structures within rate classes.

The PSC also monitors each company's earnings levels to reduce the likelihood that they generate excessive earnings. The commission reviews utility company's annual reports to determine their amount of earnings for the prior year, and it reduces a company's rates when, based on prior year earnings, it appears the company will experience excessive earnings in the coming year. To monitor earnings on an ongoing basis, the commission also reviews

periodic earnings information filed by electric and natural gas companies.

The commission conducts financial audits and onsite inspections to increase utility company compliance and public safety. The commission conducts financial, compliance, billing, and verification audits in all industries within its jurisdiction. Auditors examine utility related financial and operating records and verify supporting documentation for all statements and reports submitted by regulated companies. In addition, the commission monitors service quality by inspecting local telephone companies' installation and repair records to determine whether service objectives have been met. For example, telephone companies have a certain amount of time to provide initial telephone service or complete out-of-service repairs and must provide credits to customers when these objectives are not met.

The commission's electric safety engineers inspect utility electric transmission and distribution construction sites for variances from applicable safety standards. Safety staff also conduct evaluations of all natural gas systems operating in the state, including 27 municipally owned natural gas utilities. These evaluations focus on corrosion control, leaks, emergency response, employee qualification and training and system operation and maintenance. To assist staff responsible for auditing and safety functions, the commission operates field offices in Tallahassee, Tampa, and Miami.

Commission oversight seeks to facilitate ongoing competition in the telecommunications industry. To encourage competition and ensure compliance with applicable rules, pricing guidelines, procedures, and laws, the commission oversees Florida's telephone market. The commission ensures that telecommunications companies doing business in the state are certified or registered and have filed required price lists and tariffs. The commission processes tariffs and negotiated agreements between telecommunications companies, arbitrates operational issues, and resolves complaints pertaining to existing contracts. The commission also processes requests to establish new area codes and oversees phone number usage. In addition, the commission sets certain wholesale prices and monitors industry practices to determine whether entities are engaging in anti-competitive practices.

⁴ This includes 34 municipally owned electric systems and 18 rural electric cooperatives.

The PSC also conducts field evaluations and periodic onsite inspections of telecommunications facilities to monitor the quality of service provided to consumers. The commission conducts call completion tests and reviews service outage reports to ensure network reliability and evaluates the billing accuracy of long distance companies. Moreover, the PSC supports telecommunications programs funded through the federal Universal Service Fund, including the Lifeline Assistance Program, which provides financial assistance for telephone services to low income Florida residents. The commission designates eligible telecommunications carrier status to telephone companies, develops procedures to promote participation in Lifeline, and monitors Federal Universal Service Fund disbursements to Florida's eligible telecommunications carriers.

Commission outreach and public input opportunities provide consumers information about regulated entities and commission services. In addition to its regulatory activities, the commission provides Florida residents information regarding utility services and related programs. The commission also provides opportunities for public involvement in decisions that affect utility companies and their consumers. For example, the PSC plans and participates in community events and provides brochures and other materials to educate consumers on utility regulation, energy conservation, and other commission programs. The commission also provides press releases on important commission decisions and activities and publishes weekly reports of commission actions.

In addition, the commission provides opportunities for public input on utility-related issues during its meetings and hearings. During hearings to discuss proposed rate changes, customers may comment, ask questions, or make other statements relating to the utility's operations.⁵ During the subsequent technical hearings on the proposed rates, interested persons may submit written or present oral comments at the testimony portion of the hearings.⁶ The public may also address the commission during agenda conferences regarding issues that have not yet been to hearing.⁷

⁵ As part of its investigation in rate cases, the commission often holds a customer hearing within the utility's service area to receive input from the public.

⁶ After customer hearings, the commission holds technical hearings similar to courtroom proceedings so evidence can be presented in support of each viewpoint represented.

⁷ Agenda conferences are public meetings held for the commission to

How does the PSC help consumers resolve complaints against utility companies?

With the exception of complaints about wireless telecommunications (i.e., cellular telephone companies), the Public Service Commission accepts complaints to help consumers resolve disputes with utility companies. These complaints involve issues such as billing, and the quality of services provided by utility companies. The commission receives complaints via its consumer call center, mail, fax, and e-mail.

In the commission's complaint resolution process, it first gives companies the opportunity to resolve customer complaints, and it monitors and intervenes if complaints are not resolved to the customers' satisfaction. To facilitate complaint resolution, the commission offers complainants the option to participate in the Transfer Connect program.⁸ This program allows complainants to work directly with a company representative to resolve their complaint. Complainants that choose this option can contact the commission for assistance if they are not satisfied with the company's resolution.

The commission forwards all other complaints, including those that were not handled through the Transfer Connect program, to the utility company for resolution on behalf of the customer (see Exhibit 3).⁹ As shown in the exhibit, if the complainant objects to the company's proposed resolution, the commission investigates the complaint, reviews all documentation, and works with company staff to propose a resolution.¹⁰ If the complaint remains unresolved, the commission works with its technical staff and company personnel to negotiate a resolution.

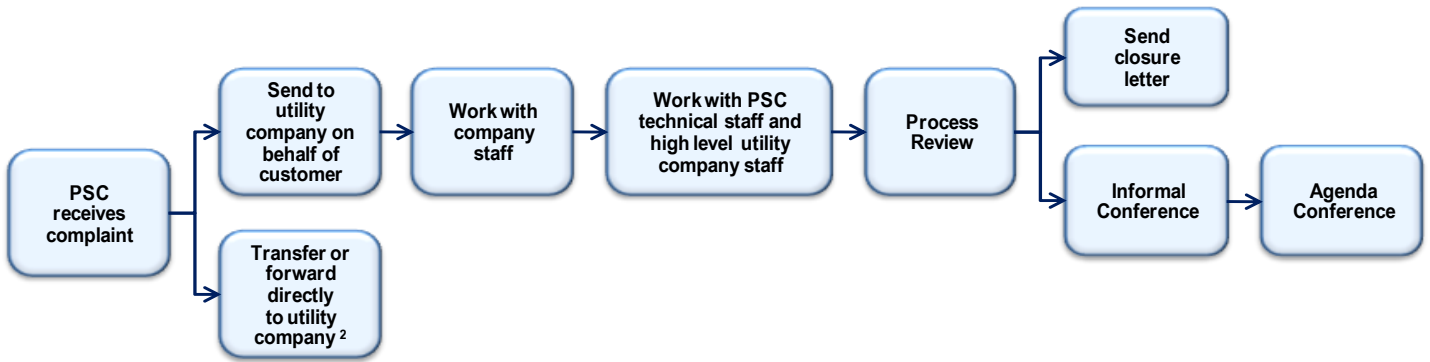
make decisions on docketed cases. Meetings are typically held on the first and third Tuesday of each month and are noticed in advance in the *Florida Administrative Weekly*. Commission staff attends public meetings and are available to answer questions or explain issues.

⁸ Eligible complaints include those received by telephone or e-mail against electric and telecommunications companies participating in the Transfer Connect program. The commission also offers customers of some utilities an option to file an electronic complaint directly with the utility. If the customer chooses this option on the commission's website, the customer is redirected to the company's website and can file the complaint directly with the utility. A copy of the complaint is automatically forwarded to the commission.

⁹ The utility company has 15 days to contact the complainant, either verbally or in writing, and propose a resolution.

¹⁰ If at any point during the resolution process the complainant accepts the proposed resolution, the commission considers the case resolved and closed.

Exhibit 3
The PSC Complaint Resolution Process Has Several Steps ¹



¹ If at any point during the resolution process the complainant accepts the proposed resolution, the commission considers the case resolved and closed.

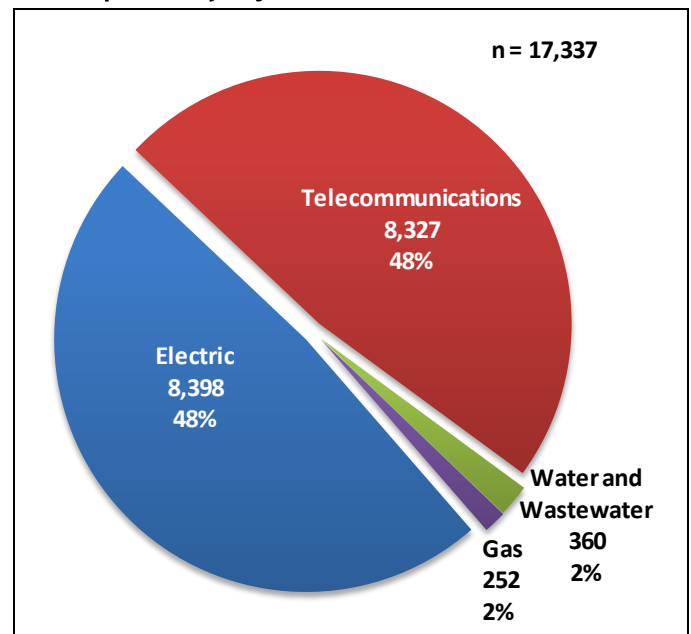
² Complainants can contact the commission for additional assistance if they are not satisfied with the company’s resolution.

Source: OPPAGA analysis of Public Service Commission data.

If the complainant is still dissatisfied, staff refers the complaint to the commission’s process review team.¹¹ The process review team examines the complaint to determine whether (1) it is under the commission’s jurisdiction; (2) the commission can grant the relief sought; (3) the complaint does not challenge the validity of current statutes, rules, or tariffs; and (4) the company violated a statute, rule, or company tariff. If none of these conditions applies, the commission closes the case. Otherwise, the commission offers the complainant an informal conference.¹² If a settlement is not reached during the informal conference, the commission prepares a recommendation for commissioners to consider at the next agenda conference.

The commission received 17,337 utility consumer complaints in 2007 (see Exhibit 4). Most of these complaints were against electric or telecommunications companies and were related to service and billing issues. Appendix B shows the number of complaints received for each industry over a three-year period (2005 to 2007).

Exhibit 4
Electric and Telecommunications Complaints Made up the Majority of Those Received in 2007



Source: OPPAGA analysis of Public Service Commission data.

As shown in Exhibit 5, the commission closes many of the complaints it receives without providing direct services. Specifically, in 2007, the commission closed 59% of its complaints by transferring the customers to the utility named in their complaint; most of the remaining complaints (36% of the total) were closed during the commission’s initial attempt to resolve the complaint. No complaints required an informal conference or a hearing.

¹¹ The commission continues to attempt to settle the complaint during the period prior to the process review meeting.

¹² During an informal conference, the commission serves as a mediator between the customer and the utility company to settle the complaint. Each participant is given an opportunity to present information in support of his/her position.

Exhibit 5
In 2007, the PSC Transferred Most Complaints to Companies for Resolution

Complaints Closed	Total	Percentage
Before PSC Attempted to Resolve		
Transferred to companies	10,216	59.15%
After PSC Attempted to Resolve		
Resolved during initial attempt	6,228	36.06%
Resolved during second attempt	710	4.11%
Resolution review	108	.63%
Process review	9	.05%
Total	7,055	40.85%
Total	17,271	100.00%

Source: OPPAGA analysis of Public Service Commission data.

What changes would enhance state services to utility customers?

The Legislature and the Public Service Commission could strengthen consumer protection for utility customers by

- reducing fragmentation in the state’s processes for resolving consumer complaints about telecommunications services;
- encouraging more participation in the Lifeline Assistance Program; and
- monitoring small, privately owned water and wastewater utilities’ investment in future infrastructure needs.

The current process for resolving utility-related consumer complaints is fragmented

Although the Public Service Commission handles most utility-related complaints, it does not have jurisdiction over complaints against wireless telecommunications companies. Instead, the Department of Agriculture and Consumer Services and the Office of the Attorney General assist consumers with complaints against cellular telephone companies. A more centralized state process for handling complaints about telecommunications companies would be more efficient and less confusing to consumers.

Three state entities receive telecommunications complaints. Although the Public Service Commission helps consumers resolve complaints against wireline telecommunications companies, current state law does not authorize the commission to assist Florida consumers with resolving most

complaints against wireless telecommunications companies.¹³ Instead, the Department of Agriculture and Consumer Services (DACs) and the Office of the Attorney General are each responsible for different aspects of wireless complaints.

The commission generally does not accept wireless telecommunications complaints, although wireless customers do contact the PSC requesting assistance.¹⁴ When the commission receives complaints about wireless companies, such as complaints about billing and quality of service, it refers these consumers to the Department of Agriculture and Consumer Services. The commission received 806 wireless complaints in Fiscal Year 2007-08; it advised these consumers to contact DACs for assistance.

Both the Department of Agriculture and Consumer Services and Office of the Attorney General accept wireless complaints. DACs processes these complaints through its Division of Consumer Services. The division is authorized to use informal conciliation methods to resolve consumer complaints, which typically involve writing letters notifying the business or professional of the complaint and how the consumer wants to resolve it. The division uses this conciliatory approach because it does not have the statutory authority to enforce settlement of complaints. In Fiscal Year 2007-08, the division processed 760 complaints about wireless telephone services. These complaints primarily related to billing, contracts, and service quality.

Although the Office of the Attorney General does not handle individual consumer complaints, it gathers wireless complaint information to use in enforcing Florida’s Deceptive and Unfair Trade Practices Act. The act is designed to protect individual consumers and legitimate businesses from various types of illegal conduct in trade and business. The office investigates and prosecutes entities that employ unfair methods of competition or unconscionable, deceptive, and unfair practices in any trade or commerce. The office looks for patterns of business activity that systematically violate Florida

¹³ Section 364.011(4), F.S.

¹⁴ Because the commission has jurisdiction over telephone number portability and numbering issues in telecommunications, staff is authorized to handle complaints against wireless telecommunications companies involving these issues. For example, the commission can address complaints from consumers alleging they were not allowed to retain their telephone number after switching wireless companies.

law and affects the broad public interest. When examining patterns of activity, the Attorney General uses consumer complaint information collected through its Citizens Services Office, as well as complaint information gathered from the Department of Agriculture and Consumer Services.¹⁵ In Calendar Year 2007, the Citizens Services Office received 664 complaints related to wireless telephone services.¹⁶ The Office of the Attorney General refers consumers to the Department of Agriculture and Consumer Services, Division of Consumer Services for assistance with resolving individual wireless complaints. As a result of consumer complaints, the Office of the Attorney General filed one lawsuit against a wireless company in 2008. The office attempts to work with companies to reach a resolution; therefore, all cases do not get to court.

The fragmentation of state responsibilities for resolving complaints about telecommunications can make it difficult for consumers to determine where to seek assistance. Because the commission accepts some telecommunications complaints, it also receives complaints from consumers who believe the PSC provides assistance with resolving wireless complaints. In addition, the division of responsibility between three state agencies delays resolution for some consumers, particularly those who must be referred to another agency. For example, when a consumer sends a wireless complaint to the commission by mail, the commission sends the consumer a letter advising him or her to contact the Department of Agriculture and Consumer Services for assistance. Since the consumer must then contact DACS to file the complaint, it could add an additional week or more to the time necessary to resolve the wireless complaint.

The Legislature could consider transferring responsibility for resolving wireless complaints to the commission. To centralize telecommunications complaint processing, the Legislature may wish to consider transferring responsibility for resolving wireless complaints from DACS to the Public Service Commission. This would give consumers one point of contact for resolving all types of telecommunications-related complaints. The

commission has the technical knowledge to handle wireless complaints and already has a system in place to handle complaints currently under its jurisdiction. Many consumers already contact the commission to help resolve wireless complaints, and the commission would no longer need to refer such consumers to the Department of Agriculture and Consumer Services.

Other states have consolidated telecommunications complaint assistance. For example, in Oregon, wireless customers may obtain assistance from the Oregon Public Utility Commission in resolving problems with both landline and cellular providers. Similarly, utility commissions in Iowa and South Dakota require both landline and cellular providers with eligible telecommunications carrier designation to submit to the commission's complaint authority.

However, authorizing the commission to handle wireless complaints also would have some disadvantages. Adding wireless complaints to the commission's jurisdiction would increase its workload, which could lead to longer response times for all complaints given the need to provide services with current resources. This additional workload also may result in longer hold times before an analyst can respond to callers, and lengthier timeframes for the follow-up necessary to resolve complaints not resolved by utility companies.

Florida's Lifeline program is underutilized

As of September 2007, only 14% of eligible Florida households were enrolled in the Lifeline Assistance Program, which provides low-income households financial assistance for basic local telephone service. Research indicates that lack of awareness, shifting consumer preferences, and current telecommunications company practices contribute to this low participation rate. The Legislature recently made several changes that should simplify enrollment and increase participation. To further address low enrollment, the commission could provide telecommunications companies additional guidance on outreach strategies.

Lack of awareness and shifting telecommunications preferences contribute to low Lifeline participation. Lifeline is a federal Universal Service Program designed to help low-income households pay for

¹⁵ Once the Attorney General files a lawsuit against a wireless telecommunications company, the office contacts the Department of Agriculture and Consumer Services and the Better Business Bureau to compile complaint information that may support its case.

¹⁶ The Office of the Attorney General compiles this information on a calendar year basis; therefore, this is the most recent data available.

basic local telephone service.^{17, 18} Telephone companies, the Office of Public Counsel, and the Department of Children and Families accepts applications to determine eligibility for the program; the Office of Public Counsel determines eligibility based on applicant income level. Eligible subscribers receive a monthly credit (up to \$13.50) on their telephone bill. In order to provide Lifeline discounts, the Public Service Commission or the Federal Communications Commission must designate companies as eligible telecommunications carriers. Both landline and wireless telecommunications companies may apply for this designation.¹⁹ As of December 2007, Florida had 18 designated eligible telecommunications carriers, including two wireless companies.

Eligible telecommunications companies may reject applications for Lifeline assistance for several reasons, such as incorrect Social Security number or telephone number. When customers apply for Lifeline Assistance through the automatic enrollment process and are denied assistance, the PSC attempts to contact the applicant to collect the correct information and enroll the customer. However, when customers apply for Lifeline assistance through an eligible telecommunications carriers' website and are denied assistance, the commission does not conduct follow up because the carriers are not required to report information to the PSC on these individual applications. Moreover, eligible telecommunications carriers are not required to conduct follow up with denied applicants to assist them in meeting program eligibility requirements.

Historically, Lifeline program participation rates have been low in Florida. As of September 2007, only 14% (164,626) of eligible households were enrolled in the program (see Exhibit 6).

**Exhibit 6
Florida Lifeline Program Participation Rates Are Low ¹**

Year	Lifeline Enrollment	Eligible Households	Participation Rate
2003	148,905	819,112	18.0%
2004	154,017	1,100,000	14.0%
2005	139,261	1,122,593	12.4%
2006	145,734	1,150,483	12.7%
2007	164,626	1,173,173	14.0%

¹ For 2003, data was reported as of December, while data for the remaining years was reported as of September.

Source: Public Service Commission.

In 2006, the Public Utility Research Center (PURC) examined Lifeline and concluded that lack of awareness is one of the most significant barriers to Lifeline Assistance Program participation in Florida.²⁰ A 2007 PURC survey supported this conclusion, finding that less than 20% of low-income households in the state were aware of the program.²¹

Changes in consumer telecommunications preferences contribute to low Lifeline program participation rates, with low-income households migrating from landline phones, which have been the focus of program outreach efforts, to cellular phones, which have only recently become eligible for program discounts. The Public Utility Research Center found that 46.5% of low-income households had local access landline service, while 70% had cellular phones.²²

In addition, the PSC reports that some telephone companies' refusal to provide program discounts to customers who use "bundled services" may decrease participation rates. A bundled service package combines basic local exchange service with nonbasic services to create an enhanced service offering.²³ According to the commission, disallowing consumers subscribing to bundled services from enrolling in the Lifeline program is a

¹⁷ Lifeline is a component of the Low-Income Federal Universal Service Fund program. Linkup, which is also a component of the Low-Income Program, provides a 50% discount (up to \$30) on the cost of telephone service installation.

¹⁸ The Low Income program is one of four programs funded by the Universal Service Fund. The High Cost program helps to provide telecommunications services at a lower rate to high cost, rural or remote areas. The Schools and Libraries program provides affordable telecommunications and internet services to schools and libraries. The Rural Health program provides discounts to healthcare providers and facilities for telecommunications services.

¹⁹ In June 2008, the commission approved TracFone, a prepaid wireless company, as an eligible telecommunications carrier.

²⁰ Holt, Lynn and Mark Jamison. *Making Telephone Service Affordable for Low-Income Households: An Analysis of Lifeline and Link-Up Telephone Program in Florida*. Public Utility Research Center, University of Florida, 2006.

²¹ Brown, Justin. *Where is the Link in the Lifeline? Understanding Lifeline Awareness, Support & Retention Among Low-Income Households in Florida*. Public Utility Research Center, University of Florida, 2007.

²² This is based on surveys conducted between 2007 and 2008 and reported in PURC's 2008 report.

²³ Non-basic services include call waiting, call forwarding, voicemail, internet access, and all other services that may be offered in a bundled package, which includes basic service.

barrier to enrollment. For example, a PSC survey found that 49% of the lowest income group preferred bundled packages to purchasing services separately.

Telecommunications carriers currently have the option of rejecting Lifeline program applications from consumers subscribing to bundled services. Between August 2007 and September 2008, over 8,500 applications were rejected for this reason. In June 2008, the PSC recommended that all eligible telecommunications carriers apply the Lifeline discount to bundled service packages. Because some telecommunications companies have protested this recommendation, the commission will hear the case and issue a final order in February 2009.

Recent legislative changes are expected to increase Lifeline participation rates. Statutory changes made in 2007, as well as subsequent policy changes made by the Public Service Commission, are intended to increase participation in the Lifeline program. For example, the Legislature now requires that any state agency that determines a person eligible for Lifeline service must forward the information to the PSC to ensure that the person is automatically enrolled in the program.²⁴ The Legislature also amended state law to require the PSC to adopt rules to automatically enroll eligible customers in the program and directed the commission, the Department of Children and Families, and the Office of Public Counsel to enter into a memorandum of understanding with respect to Lifeline automatic enrollment procedures.²⁵

As directed by the Legislature, the commission simplified the enrollment process by implementing an online application and automatic enrollment process in cooperation with the Department of Children and Families. In addition, the PSC implemented several measures expected to increase participation rates. In 2007, the commission engaged in extensive outreach efforts in cooperation with the Department of Children and Families, other state agencies, telecommunications companies and community organizations. In response to the growing wireless trend, the commission approved Florida's first fully prepaid wireless

provider (TracFone/SafeLink) as an eligible telecommunications carrier in May 2008.

To further increase Lifeline participation rates, the PSC could provide additional guidance to telecommunications companies. To encourage more consumers to participate in the program, the Public Service Commission should develop guidelines for eligible telecommunications carriers responsible for providing Lifeline discounts. These guidelines should address outreach and other issues that limit participation, such as how denied applications are handled. At a minimum, these guidelines should direct all eligible telecommunications carriers to

- develop procedures to ensure that all denied applicants are notified of the rejection, given the reason for the denial, and provided contact information for the person that can address questions regarding the application;
- develop outreach materials for specific consumer groups, such as young and rural populations, and wireless users; and
- develop outreach strategies to reach households that do not currently have telephone service.

Some small water and wastewater utilities may need help generating funds to meet future infrastructure needs

The Public Service Commission regulates small water and wastewater utilities, which frequently face unique financial challenges. Although Florida law provides regulatory options to assist these companies, some companies may need additional assistance in funding the infrastructure needed to meet future demands for services.

Most of the privately owned water and wastewater utilities regulated by the PSC have annual operating revenues under \$200,000. In Florida, the Public Service Commission and counties regulate the operations of privately owned water and wastewater utilities.²⁶ Either the commission or the county where the utility is located regulates privately owned water utilities operating within a single county.²⁷

²⁴ Section 364.10(3)(h)2., *F.S.*

²⁵ In September 2007, the Public Service Commission approved proposed amendments to Rule 25-4.0665 to include the Lifeline automatic enrollment process.

²⁶ Government-owned water and wastewater utilities are self-regulated.

²⁷ As specified in s. 367.171(7), *F.S.*, the commission has regulatory authority over all privately owned water utilities whose service crosses county boundaries.

The commission regulates water and wastewater utility operations by establishing exclusive service territories, regulating the rates and profits of a utility, and requiring the utility to provide service to all who request it. Counties have the option of either regulating private water and wastewater utilities themselves or transferring jurisdiction to the commission. As shown in Appendix C, the commission regulates privately owned water and wastewater utilities in 34 counties.

Most of the water and wastewater utilities under the commission’s jurisdiction are small. As shown in Exhibit 7, 107 (67%) of the water and wastewater utilities regulated by the commission during 2007 had annual operating revenue of less than \$200,000.

**Exhibit 7
The PSC Regulated 160 Water and Wastewater Utilities in 2007, and Most Had Annual Revenues Under \$200,000**

Utility Class	2003	2004	2005	2006	2007
A. Operating Revenues of \$1 Million or More	15	15	15	15	15
B. Operating Revenues of \$200,000 or More, but Less than \$1 Million	50	47	47	42	38
C. Operating Revenues of Less than \$200,000	117	119	118	113	107
Total Utilities	182	181	180	170	160

Source: Public Service Commission.

The PSC uses several regulatory tools to help small water and wastewater utilities meet their challenges. According to Public Service Commission officials and industry representatives, small water and wastewater utilities lack economies of scale and thus frequently face financial challenges in maintaining system reliability, operating in a cost-effective manner, retaining an adequate labor pool, sustaining a stable financial position, and complying with regulatory requirements. Because small systems have fewer customers over which to spread their costs, financial challenges more directly affect their operations.

Conventional regulatory tools are sometimes insufficient to meet these challenges. For example, because rate-of-return regulation is time-consuming, expensive, and complex, some small systems may be reluctant to file for rate increases. In addition, small utilities typically have a close relationship with their customers and seek to keep rates as low as possible.

The PSC currently has several regulatory options to help small water and wastewater utilities. These options, which include staff-assisted rate filings, price indexing, and pass-through rate adjustments, are designed to speed up the rate approval process and generally reduce the cost and complexity of regulation.

Under staff-assisted rate case filings, commission staff provides small utilities with analytical expertise they may not have available in-house.²⁸ To request a rate increase, a regulated utility typically must file a petition with the commission and submit all of the information necessary to complete the minimum filing requirements. Because small water and wastewater utilities may lack the resources to file these applications on their own, s. 367.0814, *Florida Statutes*, authorizes the commission to provide staff assistance to certain utilities.²⁹ The commission reported that its staff assisted in six rate cases closed during Fiscal Year 2007-08.

The commission also uses price indexing and pass-through rate adjustments to allow utilities to increase rates without formal action by the commission.³⁰ Utilities may apply a price index to any of their major categories of operating costs incurred during the immediate preceding calendar year without a hearing.³¹ Under pass-through rate adjustments, utilities may assess specific charges that it incurs to customers as a “pass through” without a hearing.^{32, 33} Utilities seeking pass-through rate adjustments must provide verified notice to the commission 45 days prior to its implementation of the change.

²⁸ The commission audits the utility company’s records, compiles the necessary information and presents it to customers, and recommends to the commissioners whether the rate increase is justified.

²⁹ Staff assistance can be provided to utilities whose annual revenues do not exceed \$250,000. The Legislature increased the eligibility cap to \$250,000 from \$150,000 on July 1, 2008.

³⁰ Section 367.081(4)(a), *F.S.*

³¹ By March 31 of each year, the commission is required to establish a price index by which a utility may implement an increase or decrease in its rates. In order to apply the index to change its rates, utilities must file a notice of intention and other materials with the commission 60 days prior to the effective date of the new rate, which take effect unless the commission finds that not all requirements were met.

³² Section 367.081(4)(b), *F.S.*

³³ Pass-through rate adjustments can be applied to changes in the rates or fees that utilities are charged for electric power, the amount of ad valorem taxes assessed against its used and useful property, the fees charged by the department of environmental protection in connection with the National Pollutant Discharge Elimination System Program, or the regulatory assessment fees imposed upon it by the commission.

The PSC should monitor small water and wastewater utilities to ensure adequate investment in infrastructure. To ensure the long-term financial viability of small water and wastewater utilities, the commission should closely monitor the infrastructure needs of such utilities. In addition, if the commission's monitoring demonstrates that water and wastewater utilities are not adequately investing in infrastructure, it should examine the feasibility of additional regulatory tools, such as capital improvement surcharges. Maintaining system infrastructure is vital to providing reliable service to consumers and reducing main breaks, which present water quality and service interruption problems.

When companies petition the PSC for a rate change, the commission conducts an extensive review of the company's operations. These reviews include an audit of the utility's accounting and billing records, a review of the company's financial operations, and a detailed study of the utility's physical facilities, which includes an onsite investigation of the plant. Through these reviews, the commission could monitor the extent to which water and wastewater utilities invest in infrastructure needed for their long-term viability.

If it becomes apparent that a significant number of Florida's small water and wastewater utilities are not adequately investing in infrastructure, additional regulatory tools may be needed. For example, capital improvement surcharges encourage needed investment and allow utilities to collect revenue without filing a full rate case. These surcharges are temporarily added to rates to enable

expeditious recovery of an amount of revenue needed to fund qualifying categories of investments and expenditures. The charges are usually capped at a set percentage of current rates. However, regulators must periodically reconcile revenues to ensure that the funds collected are utilized as intended.

Such surcharges are currently permitted in several other states. For example, Ohio allows water and wastewater utilities to collect a "system infrastructure charge" for qualifying expenditures related to water and wastewater. These include water replacement mains, valves, service lines, wastewater replacement mains and lift stations. Similarly, since 1997, Pennsylvania has authorized a distribution system improvement charge for water systems. The surcharge is applicable to expenditures such as replacement services, mains and valves, main cleaning and relining and unreimbursed highway relocations. Illinois approved a qualifying infrastructure plant surcharge in 2000 for water and wastewater systems. The surcharge can be applied to expenditures such as water mains and services, sewer force and gravity collection mains.

Agency Response

In accordance with the provisions of s. 11.51(5), *Florida Statutes*, a draft of our report was submitted to the Executive Director of the Public Service Commission for her review and response. The Executive Director's written response has been reproduced in Appendix D.

OPPAGA supports the Florida Legislature by providing evaluative research and objective analyses to promote government accountability and the efficient and effective use of public resources. This project was conducted in accordance with applicable evaluation standards. Copies of this report in print or alternate accessible format may be obtained by telephone (850/488-0021), by FAX (850/487-3804), in person, or by mail (OPPAGA Report Production, Claude Pepper Building, Room 312, 111 W. Madison St., Tallahassee, FL 32399-1475). Cover photo by Mark Foley.

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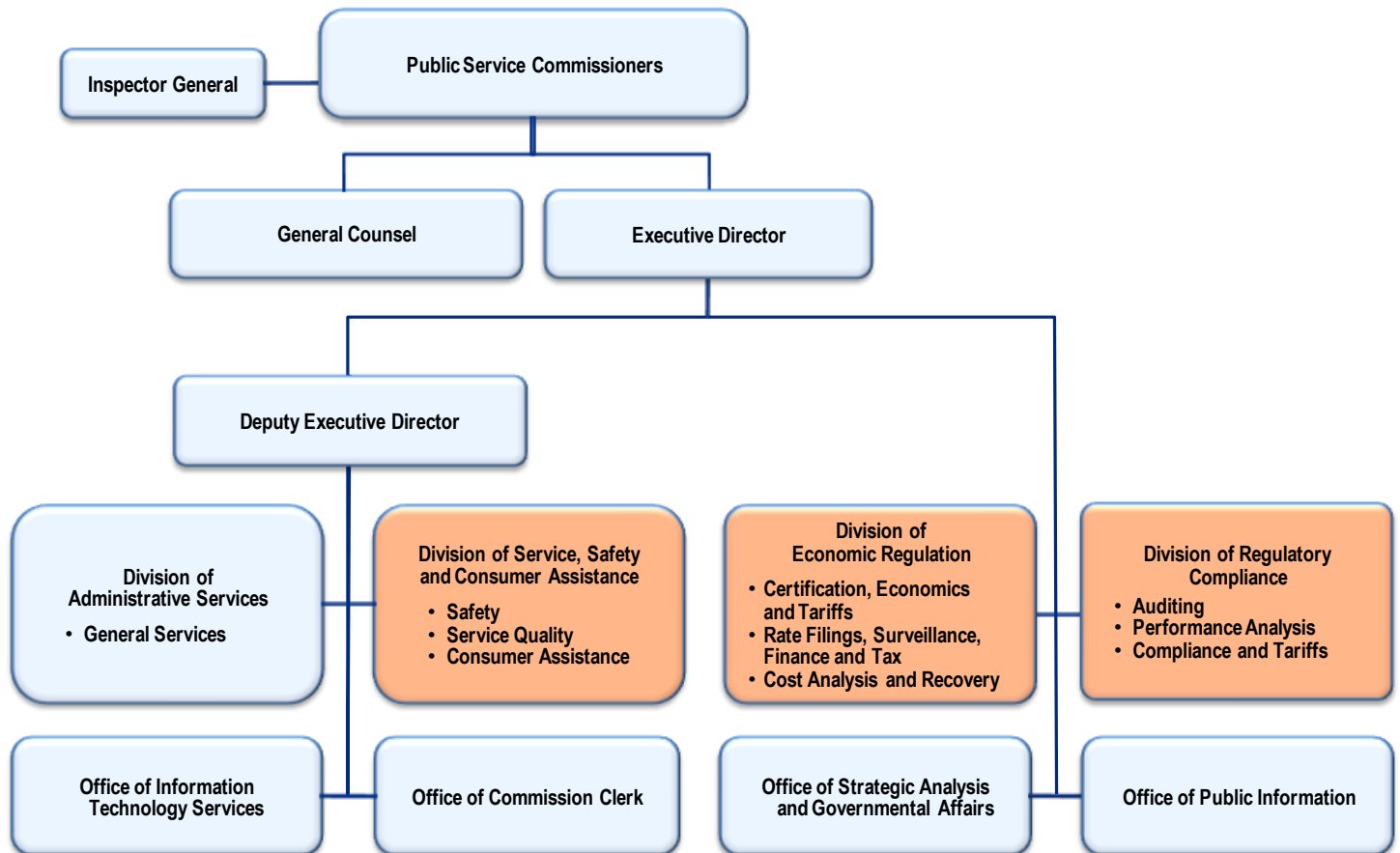
Project supervised by Kara Collins-Gomez (850/487-4257)

Project conducted by Jeanine Brown (850/487-4256) and Brook Pace (850/487-9266)

Gary R. VanLandingham, Ph.D., OPPAGA Director

Appendix A

Public Service Commission Organizational Chart



Source: Public Service Commission.

Appendix B

Most Consumer Complaints Received by the Public Service Commission Are Against Electric and Telecommunications Companies

The Public Service Commission's Bureau of Complaint Resolution accepts complaints to resolve informal disputes between consumers and utilities regulated by the commission. These complaints address issues regarding billing, facility operations, or the quality of services rendered. The commission receives complaints via telephone, mail, fax, or e-mail.

The commission accepts consumer complaints regarding electric, telecommunications, gas and water and wastewater utilities. Over 96% of the complaints received in 2007 were against electric and telecommunications companies.

The number of complaints received by the Public Service Commission has decreased over the past few years. While the commission received over 20,000 complaints in 2005, it received slightly over 17,000 complaints in 2007.

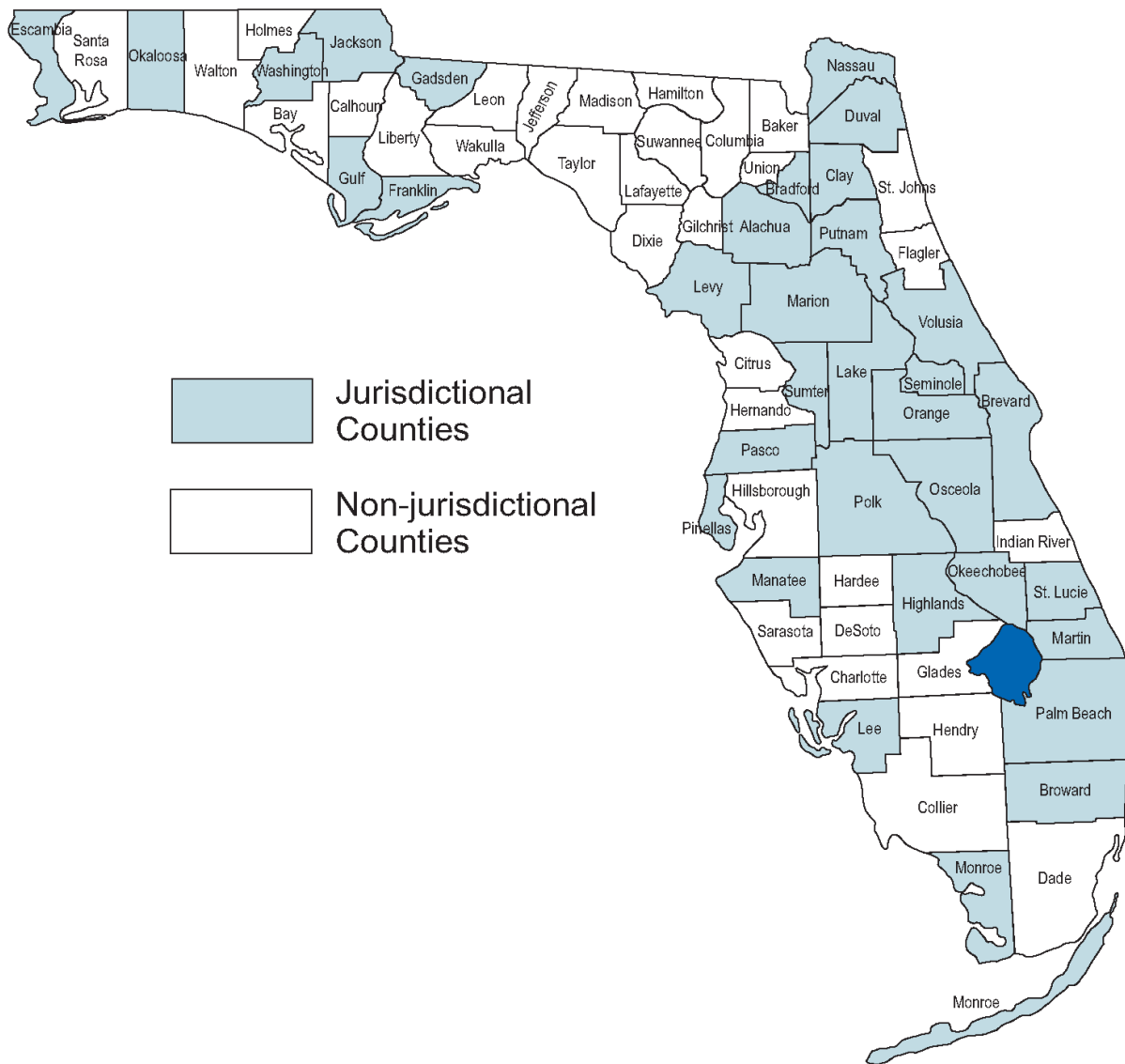
Although the total number of complaints received has declined since 2005, complaints about electric and water and wastewater utilities increased. Electric complaints increased by 17% between 2005 and 2007, while water and wastewater complaints increased by almost 57% during this period. According to commission officials, the increase in complaints for both utilities is likely due to recent rate increases implemented by electric and water and wastewater companies. Officials reported that complaints typically increase after utilities increase rates charged to customers.

Industry	2005		2006		2007	
Electric	7,165	(34.96%)	8,162	(44.66%)	8,398	(48.44%)
Telecommunications	12,818	(62.55%)	9,560	(52.31%)	8,327	(48.03%)
Gas	279	(1.36%)	323	(1.77%)	252	(1.45%)
Water and Wastewater	230	(1.12%)	232	(1.27%)	360	(2.08%)
Total Complaints	20,492	(100.00%)	18,277	(100.00%)	17,337	(100.00%)

Source: OPPAGA analysis of Public Service Commission data.

Appendix C

The Public Service Commission Regulates Private Water and Wastewater Utilities in 34 Counties



October 2007

Source: Public Service Commission.

Appendix D

COMMISSIONERS:
MATTHEW M. CARTER II, CHAIRMAN
LISA POLAK EDGAR
KATRINA J. MCMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

STATE OF FLORIDA



EXECUTIVE DIRECTOR
MARY ANDREWS BANE
(850) 413-6068

Public Service Commission

November 14, 2008

Mr. Gary R. VanLandingham, Director
Office of Program Policy Analysis and
Government Accountability
Claude Pepper Building, Room 312
111 West Madison Street
Tallahassee, FL 32399-1475

Dear Director VanLandingham:

Thank you for the opportunity to respond to the findings in your draft report entitled *The PSC and Legislature Could Consider Several Options to Enhance Services and Consumer Protection*. We appreciate the thorough and constructive efforts of your staff in providing options for improvement in Commission programs. Our responses, by finding area, are as follows:

OPPAGA Finding: The Legislature could consider transferring responsibility for resolving wireless complaints to the Commission.

The Commission agrees that centralizing responsibility for receiving and resolving telecommunications complaints could improve timeliness, ensure technical expertise is available, and provide greater clarity for consumers. If the Legislature chooses to consider this change, the Commission is prepared to assist in addressing implementation and resource issues.

OPPAGA Finding: To further increase Lifeline participation rates, the PSC could provide additional guidance to telecommunication companies.

As noted in the finding, some guidelines such as eligibility criteria have been established. However, we agree that additional guidelines regarding outreach and other related issues could increase Lifeline participation, and the Commission will consider mechanisms to improve guidance to companies.

OPPAGA Finding: The PSC should monitor small water and wastewater utilities to ensure adequate investment in infrastructure.


As discussed in the finding, the Commission currently has processes in place to monitor the earnings and financial health of small water and wastewater utilities. However, we agree that increasing these

Mr. Gary R. VanLandingham
November 14, 2008
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efforts and focusing on infrastructure needs of small companies could provide data necessary to determine if additional mechanisms such as surcharges may be warranted to fund capital improvements. The Commission agrees to consider these issues and propose additional monitoring efforts where indicated.

The Commission welcomes the opportunity to continue working with OPPAGA and the Legislature to address these important issues.

Sincerely,



Mary Andrews Bane
Executive Director

MAB/ba

cc: Chairman Matthew M. Carter II
Commissioner Lisa Polak Edgar
Commissioner Katrina J. McMurrian
Commissioner Nancy Argenziano
Commissioner Nathan Skop