STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2001- 852

June 20, 2002[1]

PUBLIC UTILITIES COMMISSION
Standards for Billing, Credit and Collection, Termination of Service, and Customer Information for Eligible, Non-Eligible, and Interexchange Telecommunications Carriers (Chapters 290, 291 and 292)

ORDER ADOPTING RULES

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order Adopting Rules (Order), we adopt three rules that establish standards for billing, credit and collection, and termination of service for telecommunications carriers. The three separate Chapters apply to: (1) eligible telecommunications carriers (ETCs – Chapter 290); (2) non-eligible telecommunications carriers (non-ETCs – Chapter 291); and (3) interexchange carriers (IXCs – Chapter 292), respectively. The requirements of these Chapters replace the existing requirements of Chapter 81, Residential Utility Service Standards for Credit and Collection Programs and Chapter 86, Disconnection and Deposit Regulations for Non-Residential Utility Services, which formerly applied to telecommunications services and the providers of those services.

II. BACKGROUND

A. Procedural History

By Notice of Rulemaking in Docket No. 2001-43, dated February 2, 2001 (February 2nd Notice), the Commission began a proceeding to consider what subsequently became the "initially proposed" Chapters 290, 291 and 292.[2] After considering the comments submitted by interested persons in Docket No. 2001-43, the Commission decided to terminate that docket, amend the initially proposed rules, and begin a new proceeding to consider the amended rules.

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[1] This Order was deliberated and approved by the Commission on June 10, 2002.

[2] For the purposes of this Order, we refer to the rules proposed in Docket No. 2001-43 as "initial rules," the rules proposed in our December 31, 2001 Notice of Rulemaking in the instant proceeding as "amended rules" and the rules we adopt with this Order as the "final rules."

On December 31, 2001, we issued a Notice of Rulemaking in Docket No. 2001-852 (December 31st Notice). The amended rules were attached to the December 31st Notice. The December 31st Notice set February 8, 2002 as the deadline for filing written comments on the amended rules. By Procedural Order dated February 8, 2002, the deadline for filing written comments was extended to February 15, 2002. Written comments on the amended rules were filed by the following entities:

? AT&T Communications (AT&T)
? CTC Communications (CTC)
? Department of Public Safety, Emergency Services Communications Bureau (Bureau)
? Sprint Communications Company (Sprint)
? Telephone Association of Maine (TAM)
? Verizon Maine (Verizon)
? WorldCom, Inc. (WorldCom)

Those comments, and our response to those comments, are summarized in Part III of this Order below.

In the December 31st Notice, we indicated that we did not intend to hold a hearing in this rulemaking, but stated that a hearing would be held if requested by five or more interested persons. No person requested a hearing on the amended rules and, accordingly, no hearing was held in this proceeding.

B. Goals Underlying the Final Rules

The goals for the final rules are unchanged from those expressed in the February 2nd Notice in Docket No. 2001-43 and the December 31st Notice in the instant docket.[3] These goals are:

? Ensure that basic telephone service is available at affordable rates to all citizens of Maine;
? Remove regulatory barriers to competition;
? Account for the asymmetry that exists in today's telecommunications market; and
? Substitute disclosure for regulation in the interexchange and local exchange markets where competition exists.

C. Number of Rules and Asymmetrical Treatment of ETCs and Non-ETCs

[3] The February 2, 2001 Notice, and the initial rules appended to that Notice, as well as the December 31st Notice and the amended rules in Docket No. 2001-852, may be viewed on the Commission's web site located at www.state.me.us\mpuc. Hard copies of these Notices and corresponding draft rules may also be obtained by contacting the Commission at (207) 287-3831.

In Docket No. 2001-43 and in the current proceeding, we proposed separate rules for ETCs, non-ETCs, and IXCs. Both the initial rules and the amended rules imposed different requirements on ETCs and non-ETCs. Several commenters in Docket No. 2001-43 asserted that the asymmetrical treatment of ETCs and non-ETCs in the initial rules creates a variety of specific competitive concerns (as opposed to general overall competitive impact). We discussed many of these specific concerns in the December 31st Notice and attempted to address these concerns in the amended rules. The accommodations have been preserved in the final rules.

We also received comments in both dockets generally opposing the proposed asymmetrical treatment of ETCs and non-ETCs. Verizon claims the Commission cannot use a carrier's ETC status as a basis for differential treatment. TAM and Verizon assert that the more prescriptive rules for ETCs would put ETCs at a competitive disadvantage. Though we addressed some of the comments in the February 2nd Notice, we believe these concerns merit additional attention.

First, Verizon asserts that:

> [t]he flawed distinction that the proposed rules continue to rely upon to justify disparate regulatory treatment (i.e. that ETCs receive federal USF support while non-ETCs do not) is legally insufficient. The federal Universal Service Fund program distributes funding to ETCs to defray high <u>network costs</u> in states like Maine. None of the monies distributed by the federal high cost USF program bears any relationship to the higher cost of credit and collections activity related to high credit risk subscribers. As Verizon has repeatedly demonstrated, to saddle incumbent LECs (ETCs) uniquely with the higher costs of high risk credit and collection customers openly violates state and federal law requiring that all efforts to foster universal service be targeted, explicit, and generally supported by all service providers. (emphasis in original)

We continue to believe that asymmetrical rules for ETCs and non-ETCs are justified because ETCs receive federal USF support and generally must accept all customers.[4] We have therefore preserved that feature in the final rules. As we stated in our February 2nd Notice:

> ETCs are in the unique position of providing service to customers who may otherwise be unable to obtain service.

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[4] Provided that customers meet the ETCs' conditions for service, i.e., payment of a deposit or past due balance, and provision of proper identification.

> In contrast, a non-ETC has no obligation to accept any given customer. Customers of a non-ETC who lose their service can always obtain service through an ETC serving his or her area, as Federal law requires that the ETC accept all customers who meet the minimum requirements. (February 2nd Notice at 3)

On this issue, we wish to re-emphasize a point that we made in the December 31st Notice:

> [M]any of the asymmetrical characteristics of the amended rules are motivated by the fundamental difference between basic service and all other types of service. This fundamental difference is grounded in the fact that the basic service provided by an ETC is a necessity. Because of its "provider of last resort" status, service from an ETC is the only option for many residential and small commercial customers. Because of this fact, consumer protection concerns apply to ETC service that do not apply to non-ETCs or IXCs (where customers have other choices for service). Consequently, more prescriptive regulation is necessary for ETCs to ensure that all customers in the State of Maine have access to basic service at just and reasonable rates. (December 31st Notice at 4).

Verizon also previously argued that state commissioners were precluded from adding to the ETC eligibility criteria found in section 214 of the TelAct.[5] However, the Court of Appeals for the Fifth Circuit has overturned the FCC's decision and found that states could impose additional requirements on carriers otherwise eligible to receive federal universal service support, including service quality measures.[6] Accordingly, we find no legal basis for Verizon's objections.

We recognize that the distinction between ETCs and non-ETCs is not a perfect match for carriers who ought to be subject to the more stringent rules, and carriers who ought not to be. A better distinction might be between carriers upon whom we impose a provider of last resort obligation, and carriers who have no such obligation. As a practical matter, however, it is likely that, for the near term, only ETCs will have the obligation. We can foresee the market developing to the point where, in fairness to

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[5] Comments, Docket No. 2001-43 at p. 6 *citing* In the Matter of Federal-State Joint Board on Universal Service, CC Docket 96-45, Report and Order, rel. May 8, 1997).

[6] Texas Office of Public Utility Counsel et al. v. FCC, 183 F.3d 393, 418 (5th Cir. 1999).

incumbents, we might impose some or all of these more stringent obligations on carriers who choose not to be ETCs; and we can also envision markets where the provider of last resort obligation becomes unnecessary or much less meaningful, and in those circumstances we might relax the requirements even for the ETCs. We believe, however, that for the current state of the market we have achieved the proper balance. Thus, we find that the best way to provide the necessary level of consumer protection for the level of competition in the various market segments that exist in Maine today is to promulgate separate rules for ETCs, non-ETCs and IXCs.

D. General Observations Regarding the Final Rules

There are three general observations about the amended and final rules that we discussed in the December 31st Notice that warrant reiteration at the outset of this Order. First, we wish to correct an apparent misimpression that is reflected in several comments filed in Docket No. 2001-43. The final rules do not prohibit the disconnection of toll service, optional services, or basic service. The final rules prevent the disconnection of local service for the non-payment of toll or optional services. This prevents Incumbent Local Exchange Carriers (ETCs)[7] from leveraging their monopoly power for basic service to collect amounts due for toll or optional service.

We find that the separation of local service from toll service and the treatment of each unbundled service (basic, toll, and optional services) as a discreet service will foster competition by leveling the playing field for carriers. For example, some IXCs choose to issue their own bills to customers while others choose to bill through the LECs. Without prohibiting the disconnection of local service for non-payment of toll and optional services, the IXC that bills through the LEC has a competitive advantage over the IXC that issues its own bills due to the first IXC's lower uncollectibles associated with the ability of the ETC to leverage the collection of toll charges against basic service. In addition, when Verizon is approved to offer interLATA toll service in Maine, it would have a significant advantage over its competitors in the interLATA toll market if it were able to leverage the disconnection of its local service to collect its interLATA toll charges. The ability to use what essentially amounts to a monopoly service (basic service) as leverage against a competitive service (IXC) raises a fundamental fairness issue that cannot be ignored.

We are also unimpressed by the claim that IXCs benefit from allowing disconnection of local service for non-payment of toll charges. The ability of the ETC to disconnect local service is an extraordinarily powerful bill collection tool. The fact that the ETC sells the use of that tool (and receives revenues, it should be noted, that by FCC rule are not regulated) to IXCs or anyone else begs the question of whether the power it has over its customers should be used in any context other than nonpayment by the customer for basic service. Electricians and plumbers would probably like to

[7] All ILECs are also ETCs. It is possible for Competitive Local Exchange Carriers (CLECs) to also become ETCs. At the time of this rulemaking, however, only ILECs are ETCs in the State of Maine.

have the ability to disconnect local service for non-payment of their bills, and the ETCs could make some money by selling the disconnection threat to them; the logic of allowing that right, however, escapes us.

The final rules do not, however, prevent a carrier from disconnecting toll or optional services. In fact, by separating toll and optional services from basic service, the process for disconnecting toll and optional services becomes less restrictive. For instance, most of the limitations on disconnection relate to basic service. An ETC can still deny/disconnect toll or optional services provided to a customer who does not pay the bill for those services – the final rule does not prohibit it. The same is true for deposits. The final rules do not prohibit the collection of a deposit for toll and optional services. The final rules merely prevent the inclusion of these amounts with a deposit requirement for basic service. Again, the process for collecting a deposit for toll or optional services is less restrictive under the final rules than the existing rules.

Second, several commenters in Docket No. 2001-43 asserted that the initial rules were unnecessarily prescriptive and unreasonably burdensome. For instance, several commenters stated that the expansion of the existing requirements in Chapter 81 were unnecessary and burdensome. In response to these comments, we have modified the final rules so that the requirements imported from Chapters 81 and 86 into the final rules are not more prescriptive than the corresponding requirements that currently apply to telecommunication service providers under Chapters 81 and 86.

Third, several commenters noted in Docket No. 2001-43 the differences between the needs of residential and non-residential customers and asserted that the initial rules should apply only to residential customers. We acknowledge that the needs of residential and non-residential customers differ in many respects, but we continue to believe that the requirements of these rules should cover non-residential customers in certain specified contexts. We believe that the advantages of having a single rule for both residential and nonresidential customers outweigh the advantages of having two separate rules. In response to comments, however, we have modified sections of the final rules to make them consistent with the existing Chapter 86.

E. Format of this Order

Like the December 31st Notice, this Order addresses all three of the proposed rules. We believe that a single Order provides the best vehicle for comparing and contrasting the provisions of the three rules. To accomplish this, the Order is organized by discrete subject, such as “application for service,” “billing and payment standards” and “disconnection and termination procedures.” Within each subject area, we discuss comments received in this rulemaking, our response to those comments and the rationale behind our decisions that are reflected in the final rules. In many instances, our rationale for a provision in the final rules is the same as our rationale for comparable provisions in the amended rules as set forth in our December 31st Notice. In those cases, we do not repeat the explanation here, but direct the interested reader to the December 31st Notice for an explanation for the provisions in question.

III. DISCUSSION OF INDIVIDUAL SECTIONS

A. Purposes –Chapters 290, 291 and 292 - §1

Section 1 in each of the amended rules states that the three purposes of the rules are: (1) to inform customers; (2) to prevent discrimination and ensure reasonable access to service; and (3) to establish minimum consumer protection standards. We received no comments in this proceeding regarding the "purposes" sections of the amended rules and have made no changes to the corresponding sections in the final rules.

B. Definitions – Chapters 290, 291 and 292 - §2

We received no comments in this proceeding regarding the definition sections of the amended rules and have made no changes to the corresponding sections in the final rules.

C. Jurisdiction – Chapters 290, 291 and 292 - §3

Each of the amended rules applies to a different type of carrier or service provider and, to the extent not preempted by federal law, to the services provided by such carriers. Chapter 290 applies to all ETCs, Chapter 291 to all basic service providers that are not designated as ETCs, and Chapter 292 to all telecommunications carriers subject to the jurisdiction and supervision of the Commission that offer interexchange service. We received no comments in this proceeding regarding the jurisdiction sections of the amended rules and have made no changes to the corresponding sections in the final rules.

D. Emergency Moratorium – Chapters 290, 291 and 292 - §4

Each of the amended rules contains parallel emergency moratorium requirements. These provisions are based on language found in §15 of Chapter 81 but do not include the time limits contained in that section. We received no comments in this proceeding regarding the emergency moratorium sections of the amended rules and have made no changes to the corresponding sections in the final rules.

E. Non-Discrimination – Chapters 290, 291 and 292 - §5

This section of the amended rules requires the applicable carrier to provide service and apply credit and collections policies to applicants and customers without discrimination on the basis of race, color, ancestry, sex, age, national origin, religion, marital status, receipt of public assistance or the exercise of rights under state or federal consumer protection laws. We received no comments in this proceeding regarding the non-discrimination sections of the amended rules and have made no changes to the corresponding sections in the final rules.

F. Unfair or Deceptive Practices – Chapters 290, 291 and 292 - §6

This section of the amended rules is self-explanatory. A carrier may not use a company name that is deceptive or unreasonably confusing to consumers. All carriers are subject to the Maine Unfair Trade Practices Act, 5 M.R.S.A. §§ 205-A - 214 and related consumer protection statutes. We received no comments in this proceeding regarding the unfair or deceptive practices sections of the amended rules and have made no changes to the corresponding sections in the final rules.

G. Customer Privacy – Chapters 290, 291 and 292 - §7

Current Commission rules are silent on the confidentiality of customer records in the possession of a utility. 35-A M.R.S.A. § 704(5) and Chapter 89 of our rules only address the treatment of utility customer information in the possession of the Commission. Each of the initial rules included the same provision governing customer privacy, which would have required a carrier to maintain the confidentiality of a customer's personal information, including name, address, telephone number, usage and historic payment information. Without the specific written consent of the customer, that information could not have been released to any entity other than the Commission except for purpose of directory listings, debt collection by or for the carrier, credit reporting pursuant to state and federal law, or responding to law enforcement agencies pursuant to lawful process.

As discussed in the December 31st Notice, we received many critical comments regarding the customer privacy requirements in the initial rules. In response to those comments, we reviewed existing FCC rules regarding Billing Name and Address (BNA) and Customer Proprietary Network Information (CPNI) and determined that they provide sufficient protection of customer information. We therefore deleted the initial rules' customer privacy requirements from the amended rules and replaced them with the requirement that the carrier shall comply with the applicable FCC rules. In the December 31st Notice, we invited further input on whether this modification sufficiently balances a customer's privacy interests with a carrier's ability to provide service and discharge its obligations.

In written comments filed in this Docket, TAM and AT&T expressed support for the modifications reflected in the customer privacy sections of the amended rules. CTC expressed concern that the amended rules would require carriers to comply with subsequently promulgated FCC rules without providing carriers notice or an opportunity for hearing. We have eliminated the phrase " as well as any subsequent Federal Communications Commission rules" from the rules. If the FCC significantly modifies its rules, we will consider any necessary amendment to our rules.

H. Customer Rights – Chapter 290 - §8

The customer rights section of the amended Chapter 290 required that an ETC provide a summary of a customer's rights and responsibilities to (1) all new

customers and (2) current customers affected by a significant change in the ETC's terms and conditions. The section further provided that notice may be given through direct mailing, or bill insert or by including the notice in the carrier's directory. As we noted in our December 31st Notice, this requirement, and the contents of the notice specified in the amended rule, are consistent with existing requirements in Chapter 81 that currently apply to all ETCs.

In its comments on the amended rule, TAM asserted that §8(A) is overbroad. "TAM suggests that the Commission amend the language of the proposed rule to reflect that, in the event of a significant change in terms and conditions, the company would not send a complete recitation of all customer rights set forth in §8(B), but would rather only send information pursuant to the change in the terms and conditions." We agree with TAM's comment and have eliminated the requirement in §8(A) that a §8(B) notice be sent to all customers when the company adopts a significant change in its terms and conditions. Consistent with TAM's recommendation, we have created a new §8(C) in the final rule that requires an ETC to provide a more limited notice to all current customers when it adopts a significant change in its terms and conditions. Section 8(C) provides that this more limited notice must thoroughly describe the change in question and may be provided either through a direct mailing or bill insert, or by including the notice in the ETC's directory.

I. Application for Service – Chapters 290 - §9; Chapter 291 - §8

Chapters 290 and 291 of the initial rules contained provisions governing the responsibilities of ETCs and non-ETCs when a customer applies for service. We received many comments in Docket No. 2001-43 regarding these provisions. These comments and our response and the corresponding changes in the amended rules are discussed at pages 10-14 of the December 31st Notice.

We received substantially fewer comments regarding the application for service requirements in the amended rules. These comments and our responses are summarized below.

1. Chapter 290

In comments filed in this proceeding, TAM and Verizon expressed concern about the requirement in §9(C) of the amended rule that an ETC must inform an applicant of the least cost class of basic service available to the applicant at the time the application is made. In its comments, TAM asserted that "there is no appropriate means of determining a 'lowest cost option' on a customer-by-customer basis" as required by §9(C). Such a calculation "would be far too subjective and difficult to accurately administer and would at the very least require at least one month of prior history from the customer representative of the customer's actual usage." TAM recommended that §9(C) be deleted from the rule or, alternatively, the rule be modified to "only require companies to disclose the cost of basic service with no other services."

In its comments in this Docket, Verizon noted that it:

> remains concerned that the reference [in §9(C)] in the rule to least 'cost' is likely to expose the LEC unfairly to future claims if the applicant makes a poor choice. There are numerous factors that influence an applicant's purchasing decision and affect the overall cost of service ordered. For example, Economy basic service is always the least published or tariffed 'cost' of basic service, but can actually result in a higher overall monthly bill if the applicant fails to consider calling patterns within the broader Premium basic service calling area.... The rule should require only the description of the lowest tariffed rate (or lowest 'price') for basic service, along with the limiting features of that lowest rate option. It should not be phrased in terms of 'cost' as too many factors known only to the applicant will determine the applicant's overall cost. (emphasis in original)

We are sensitive to the concerns expressed by TAM and Verizon regarding the requirement in Chapter 290, §9(C). To accommodate these concerns, we have modified §9(C) of the final rule to require that an ETC inform an applicant of the "lowest rate basic service plan" available at the time of the application for service. We also made similar textual changes to Chapters 291 and 292. We urge carriers to inform customers that the "lowest rate plan" may not be the cheapest option for the customer and that customers should take into consideration their specific calling patterns.

We also added section 9(D) to the final rule, which specifies that ETCs that properly condition the provision of service on one on the criteria contained in this section not be obligated to provide service to that customer if the customer fails to meet the required condition(s). This modification is meant to clarify that ETCs are not obligated to accept customers without condition and that a carrier can indeed reject the application of a customer who does not meet a condition(s) established in accordance with this section.

2. Chapter 291

In its comments in this docket, CTC noted that the December 31st Notice indicated that §8(E) of the amended Chapter 291 provides that the customer must request the information in question. CTC further noted that there is no such requirement in §8(E) of the amended rule and requests that such a requirement be added to §8(E). We agree with CTC's comment and have added the requested language to §8(E) in the final rule. This change also makes the language in Chapter 291 consistent with the language in Chapter 292.

J. Confirmation of Order with Written Terms and Conditions – Chapter 290 §10; Chapter 291 - §9; Chapter 292 - §8

The purpose of these sections is to provide a mechanism in each of the rules to allow a customer to confirm that he is receiving the terms and prices that he believes were promised by a telemarketer. We received several comments in Docket 2001-43 regarding the corresponding sections in the initial rules. These comments, and our response to these comments, are summarized on pages 14 and 15 of the December 31st Notice. Based on the comments in Docket No. 2001-43, we made the following changes to these sections in the amended rules: 1) the amended rules relate only to outbound sales calls and explicitly provide that orders for services generated by inbound calls from customers do not require written confirmation; 2) the amended rules require that the written confirmation be provided to the customer no later than the time the customer receives the first bill for each new service and allow the confirmation to be included with the first bill for each service;[8] and 3) the amended rules permit confirmation through electronic means in instances where the order was placed electronically.

We received comments from TAM and CTC regarding these sections of the amended rules. TAM asserted that the cost of complying with Chapter 290, §10 would be substantial. TAM asserted that "[w]hen a customer receives their bill, even when service was initiated through an outbound call, the customer will clearly have the opportunity to object to any charges at that point." TAM therefore urged that the Commission delete §10 from Chapter 290. As noted above, we have substantially narrowed the scope of this requirement in the amended rules. We believe that the requirements in Chapter 290 §10 strike a reasonable balance between the customer's need to confirm that she is getting the terms and prices she believes were promised by an ETC through outbound sales calls and the cost concerns regarding the required confirmation raised by commenters in Docket No. 2001-43 and by TAM in the instant proceeding. We have therefore preserved §10 in the final version of Chapter 290.

In its comments on the amended Chapter 290 §10, TAM also opposed the requirement in §10(C) that an ETC must provide written confirmation for an electronically placed order. TAM asserted that an electronically placed order should be treated as an inbound call and that the rule should be modified to not require confirmation for any electronic orders. We agree with TAM that an ETC should not have to provide confirmation when the customer initiates an electronic order. However, we believe that when an ETC promotes a service electronically, and the customer orders the service through electronic means, the ETC should still be required to provide written confirmation to the customer. We also note that electronic confirmation of orders is common practice in e-business today and should not be a burden for carriers. We have modified Chapter 290 §10(C) to provide that in such situations, the ETC may provide the required written confirmation electronically.

[8] The 5-day rescission period was also deleted from the initial rules.

CTC notes that most of its customers are medium/large business customers and that each customer must enter into a contract with CTC. CTC asserted that the requirements of these sections "would impose unnecessary and costly additional requirements upon CTC's contract/service initiation process that may actually conflict with provisions within the signed contract." CTC noted that these sections of the amended rules are targeted at telemarketers and asserted that because "entering a contract involves direct sales, even if the order was 'generated by outbound sales calls,' CTC believes these sections should not apply to business customers that enter into a contract with the carrier." CTC therefore recommended that these sections should be amended to either (a) apply only to residential customers or (b) exclude customers who are under contract with the carrier.

We agree that customers who enter into a contract with their carrier have access to additional information regarding the specific terms and conditions of the service they receive. We also believe that for customers who receive service pursuant to a contract, the contract itself provides sufficient written confirmation of the terms and conditions of service and that no further written confirmation is required. We therefore have modified Chapter 290, section 10; Chapter 291, section 9; and Chapter 292, section 8 to allow for a written contract for services to serve as "written confirmation" of the order as required by these sections, provided that the terms of the written contract conform to the requirements of these sections. Written confirmation of an order is required, however, in situations where the written contract does not address each of the requirements of this section. In such situations, the written notice may include only the requirements not included in the written contract.

K. Transfer of Service to Another Location – Chapter 290 - §11

Section 11(A) of the amended Chapter 290 was designed to clarify that a customer who transfers service from one location to another or who orders new service within 30 days of disconnecting prior service cannot be considered an "applicant." This provision is intended to prevent an ETC from imposing a deposit and other "applicant" requirements on persons who are merely transferring their service, but with a short intervening time lag. Section 11(B) provides that an ETC may transfer the customer's current account balance to the customer's new account when the customer requests a transfer of service to a new location. This provision is consistent with existing requirements in Chapter 81.

We received no comments regarding §11 of the amended Chapter 290 and have made no changes to the corresponding section in the final rule.

L. Notification of Price Increases and Changes in Terms and Conditions – Chapter 291 - §10; Chapter 292 - §9

In 2001, the Legislature enacted 35-A M.R.S.A. §7307, which relates to price increases for intrastate toll service. Among other things, the new law requires telephone carriers providing intrastate toll service to give 25-day advance notice of any

price increase or any change in terms and conditions that will result in a price increase. Section 7307 also provides that a customer who does not receive the required notice is not obligated to pay for any corresponding increases in the bill and requires the carrier to refund or credit any increased payments that were made without adequate notice. Chapter 291, §10 and Chapter 292, §9 of the amended rules reflect the requirements of §7307.

We included this requirement in Chapter 291, even though §7307applies only to toll service, because the Commission does not set non-ETC rates IXC rates). Thus, non-ETC customers are similarly situated with IXC customers in terms of a potential lack of awareness of a pending rate increase. The Legislature has made clear that customer awareness of rate increases is essential to a customer's ability to make decisions about service in a competitive market. An informed customer will have the opportunity to choose another carrier, if they so desire, before the rate increase takes effect.

In comments filed in this Docket regarding the amended Chapter 292, AT&T maintained that the that the 25-day notice requirement in §9(A) "does not allow providers to make changes in their offerings in order to keep up with changes in the competitive marketplace." AT&T contended that §9(A) would prevent carriers from making timely changes in rates and terms and conditions for customers who are billed on a bi-monthly or quarterly basis. AT&T requested that the 25-day notice requirement be reduced to one day. WorldCom also objected to the requirements of §9(A) in written comments filed in this docket. As noted above, however, the 25-day notice requirement is based on §7307 and is not within our discretion to modify in this rulemaking.

WorldCom also objected generally to the requirements in §9(B), which relate the form and content of the notice IXCs must provide to customers.

> The requirement [in §9(B)(1)] that such notice be in the form of a separate, personalized letter or bill insert is particularly burdensome since it would entail a major expense on an annual basis while providing no real additional benefit to the customer.... WorldCom requests the deletion of the provision [Chapter 292, §9(B)(5)] requiring carriers to notify customers of their right to cancel the service for which the rate increase applies prior to the charge taking effect.... It is unnecessary and unreasonable to require carriers to advise customers of the obvious."

In its written comments, AT&T asserted that it currently uses a variety of media to communicate rate changes to its customers and that "[c]arriers should be granted flexibility to determine which method of communication would be most effective under the circumstances."

We find that it is beneficial to notify customers of their right to cancel service and that such notice is not unduly burdensome. The notice can easily be included with the notice of the rate increase. We also find that the rule provides carriers with the flexibility requested by AT&T, i.e., the notice can be included as a message on customer bills, through an independent mailing, or through a bill insert. For these reasons, we did not modify this section.

AT&T further asserted that the notice requirements in Chapter 292, §9(A) are "not feasible in all instances." AT&T argued that it is impossible to provide such notice to "'casual users,' or individuals who use the AT&T network without specifying AT&T as their Primary Interexchange Company (PIC).... Accordingly, the rule should be modified to exclude customers who have not designated an IXC as its PIC." We agree with AT&T; however, section 2(I) of Chapter 292 defines "customer" as "a person who has applied for, been accepted and is receiving" service. Casual users do not satisfy this definition of "customer" and consequently do not require the 25-day notice established in §9(A). There is no need, therefore, to modify section 9(A).

M. Billing and Payment Standards – Chapter 290 - §12; Chapter 291 - §11; Chapter 292 - §10

As we noted in our February 2nd Notice in Docket No. 2001-43, the purpose of the sections governing billing and payment standards is to:

> promote consistency and ensure that state efforts compliment, and are consistent with, FCC and Federal Trade Commission (FTC) rules concerning consumer protection and cramming. Both the FCC's rules and our proposed rules will help consumers make informed choices and will facilitate telecommunications competition by setting minimum standards for bills. The proposed rules also ensure that information on bills is accurate, understandable, and useful and contains consistent definitions and labels for common charges.

We received many comments in Docket No. 2001-43 on the corresponding sections of the initial rules. In response to these comments, we made several changes to the billing and payment standards provisions of the amended rules. A summary of these comments and our response can be found at pages 16-18 of the December 31st Notice.

We received several additional comments about the billing and payment standards sections of the amended rules. As we did in the December 31st Notice, we have organized the following summary and discussion of the comments by the three sub-topics within the billing and payment provisions of the amended rules: (1) bill content; (2) bill format; and (3) miscellaneous provisions.

1. Bill Content

In comments submitted in this Docket, TAM argued that Chapter 290, §12(E)'s requirement to separate and itemize basic service and optional services "will add confusion and hinder the development of competition and innovative service packages for customers." TAM further contended that §12(E) is inconsistent with FCC Truth-in-Billing requirements. TAM therefore urged the Commission to delete §12(E) "and simply require that companies comply with the FCC Truth-in-Billing Rules."

We disagree with TAM. The FCC's Truth-in-Billing rules address bill "format" not bill "content." We find that it is necessary to provide certain information on bills so that customers are aware of the services for which they are paying, are able to track payments, and are able to contact the company with questions regarding their bills. The requirements of section 12(E) reflect this necessary information. We do agree with TAM, however, regarding the requirement in section 12(E)(13) that non-basic service charges be separately itemized for each carrier for whom the ETC provides billing services and that individual calls carried by other carriers be listed separately. This section is covered by the FCC's "Truth-in-Billing" rules and we have therefore deleted it from the final rule.

In comments filed in this Docket, Verizon asserted that Chapter 290, §12(E)(15) should not require an ETC to provide its mailing address to the customer. Verizon noted that it encourages customers to use its toll-free number to communicate questions or claims regarding customer service. "The rule should not mandate that LECs employ less effective and less timely techniques such as mail."

We agree with Verizon's comment and have deleted the requirement in Chapter 290, §(E)(15) that a bill include the address of the ETC's customer service representatives. We have made parallel changes to Chapter 291, §11(A)(13) and Chapter 292, §10(A)(17).

CTC asserted that "[i]f each state were to adopt their own set of requirements covering bill content, CTC would be in the position of having to add each state's requirements to their uniform billing system or totally restructuring their billing system to meet individual state requirements.... The additional costs imposed by the billing system modification or restructuring simply make it more difficult for CLEC's to compete with RBOC's and other major carriers." We agree in principle with CTC; however, we find that the information required by Chapters 291 and 292 is necessary for customers to fully understand their bill. We also find that the information required represents a good balance between the need for customers to fully understand their bills and the need for carriers to have flexibility with regards to the design of their bills. We also find that the majority of carriers already provide this information and will not need to modify their billing systems. We have therefore retained the "bill content" section in each of the final rules.

Several commenters took issue with various parts of Chapter 292, §10(A) of the amended rules. CTC argued that certain provisions of Chapter 292 are inconsistent with the existing requirements in Chapter 81. "For example, in Chapter 292, IXC's would be required to provide the following items which are not required by Chapter 81: Price per minute of measured calling, Price per minute for each calling period, Minimum bill amount, Billing increment, and Interstate rate (for late payments). In the case of these items, where applicable, they can be easily derived from the bill without requiring that they be separately included." CTC asserted that these additional requirements are burdensome and unnecessary, recommended that the Commission delete the additional requirements from the rules and "instead rely upon the requirement for carrier's bills to comply with the FCC 'Truth in Billing' rules."

WorldCom asserted that Chapter 292, §§10(A)(10), (12) and (13) "should be deleted from the revised rules." WorldCom argued that the information required by these subsections is not "fundamental to a customer's understanding of her rights and responsibilities" as stated by the Commission in the NOR. "Moreover, much of the information required can be reasonably and easily calculated from information already printed on the bill."

Verizon also objected to the requirements of Chapter 292, §§10(A)(10) and (11). "Verizon Maine does not show expressly – nor can it show without substantial additional programming and bill format changes – the rate per minute for each call." Verizon asserted that the rate per minute, per minute rate applied in each rate period and cents per minute for all toll calls can be easily determined by the subscriber from information that already appears on the bill. "This information, along with the itemized detail on each call as described above, should suffice to inform the customer whether he is receiving the per minute rate that was selected. Subsection 10 and 11 of the rule should therefore be deleted."

AT&T argued that the cost of complying with the price per minute requirement in Chapter 292, §10(A)(10) would be "prohibitively expensive. Moreover, it is not necessary to include this level of detail on all bills, because companies currently employ various media to communicate information to their customers regarding their specific calling plans and services. Accordingly, this provision should be removed."

We agree that the information required by Chapter 292 §§10(10), (11), (12) and (13) can be derived from other information already contained on an IXC's bill. We have therefore deleted Chapter 292, §§10(10), (11), (12), and (13) from the amended rule.

2. Bill Format

We have addressed the issue of bill format in the amended rules at Chapter 290, §12(F), Chapter 291, §11(B) and Chapter 292, §10(B). In each of these sections, we have required that the applicable carrier's bill format comply with the FCC's current Truth-in-Billing rules "as well as any subsequent Federal Communication

Commission rules enacted pertaining to 'Truth-in-Billing.'" In comments filed in this Docket, CTC argued that it is improper for the Commission to reference any rule changes not yet made by the FCC. We make the same changes for the same reasons to the proposed language in this section that we made in Section III(G) above.

3. Miscellaneous Provisions

The amended Chapter 290, §12(G) requires, among other things, that an ETC must notify the Commission's Consumer Assistance Division (CAD) if 10 or more of its Maine customers are affected by a billing error. In comments filed in this Docket, Verizon objected to the 10-customer requirement in §12(G). "Given the size of Verizon Maine's customer base, ten subscriber bills is too low a threshold for mandatory reporting. The notification requirement should be re-stated as a percentage of a LEC's customer base. This will ensure that the CAD is notified of any meaningful errors in the Verizon billing process." We disagree that the 10-customer threshold is too low. We believe that our Consumer Assistance Division needs to know about a billing error that affects 10 or more customers, regardless of the size of the carrier. We also have concerns about the percentage threshold suggested by Verizon. In this instance, we prefer a specific number threshold to a percentage threshold because it is simpler, easier to understand, requires no interpretation or calculation by an ETC or CAD and is easier to enforce.

In comments filed in this Docket regarding the amended rules, AT&T noted that Chapter 291, §11(C)(1) allows a non-ETC to issue a make-up bill for unbilled service that was provided within the last 12 months and requests that this section be amended to increase the period from 12 to 24 months. "This would be consistent with federal requirements applicable to the same issue." The 12-month period reflected in §11(C)(1) is consistent with the exiting requirements in Chapter 81 and Chapter 86. As noted at several points in the December 31st Notice, we have attempted to craft Chapters 290, 291 and 292 so that they are consistent with the requirements of Chapters 81 and 86 that currently apply to carriers. We therefore reject AT&T's request to modify §11(C)(1) and preserve the 12-month period for make-up bills that already applies to AT&T.

In comments on the amended rules filed in this Docket, WorldCom argued that Chapter 291, §11(C)(2):

> would require a non-ETC to refund any charge billed in excess of correct rates within the previous <u>six</u> years from the date of <u>discovery</u> or notice. The six-year statute of limitations dating from a customer 'discovery' is plainly excessive and unreasonable. Customers should be provided no more than six months to seek a refund, and WorldCom asks the Commission to modify the amended rules accordingly. (emphasis in original)

We disagree with WorldCom. Chapter 292 §11(C)(1) allows carriers to re-bill customers for unbilled service used in the previous 12 months. It stands to reason, therefore, that customers should be eligible for a refund for over-billed service for at least that same timeframe. Indeed, because carriers have a responsibility to ensure that customers are billed at the proper rates and control all the information necessary to detect a situation where a customer is being billed incorrectly, we find it is appropriate to require carriers to reimburse customers for a longer period of time than the period that carriers can collect for under-billed amounts. In addition, this requirement is consistent with Chapter 81. This section, therefore, remains unchanged in the final rule.

We added a provision, section 10(C), to Chapter 292, which reflects the same language as section 11(C) of Chapter 291 referenced above. This section was inadvertently left out of earlier iterations of Chapter 292. This section is consistent with the requirements of the current Chapter 81, as well as the corresponding sections of Chapter 290 and 291.

N. Payment Arrangements – Chapter 290 - §13

The amended Chapter 290, §13 included a number of provisions relating to payment and payment arrangements that apply to ETCs only. As we noted in our December 31st Notice:

> We continue to believe that the fundamental differences between basic service and all other services justifies the requirement for separate payment arrangements for basic and non-basic services as well as different payment arrangement requirements for ETCs and non-ETCs. It is critical for customers to pay charges for which non-payment may result in the loss of their basic service prior to paying charges for services for which non-payment will not result in the loss of their basic service. The amended rules, therefore, continue to require ETCs to establish separate payment arrangements for basic and non-basic services and are silent on payment arrangements for non-ETCs.

We received no comments in this Docket regarding the amended Chapter 290, §13. Accordingly, we have made no changes to this section in the final rule.

O. Disconnection and Termination Procedures – Chapter 290 - §14; Chapter 291 – §12; Chapter 292 - §13

A discussion of the comments we received in Docket 2001-43 regarding the disconnection and termination procedures in the initial Chapters 290, 291 and 292 and our response can be found at pages 19-22 of the December 31st Notice. What

follows is a summary of the comments we received in this Docket regarding the disconnection and termination procedures set forth in the amended rules, and our responses to those comments.

1. Chapter 290

In comments regarding the amended rules submitted in this Docket, AT&T objected to the requirement "in the proposed rule" that prohibits a non-ETC from disconnecting basic service for the non-payment of non-basic services. AT&T has misread the amended rules. While Chapter 290, §14(C)(1) prohibits an ETC from disconnecting a customer's basic service for the non-payment of toll or other non-basic services, there is nothing in Chapter 291 that prohibits a non-ETC from disconnecting basic service for non-payment of any service provided by the non-ETC.

Section 14 of the final Chapter 290 is identical to §14 in the amended rule.

2. Chapter 291

In comments submitted in this Docket, AT&T recommended that §12(A) be modified so that the disconnection notice period for a non-ETC is the same 3-day period required for IXCs because "the same carrier can be both an IXC and a non-ETC." AT&T asserted that "[u]nder no circumstances should this notice period requirement exceed seven days." We disagree. Section 12(A) requires 14 days prior notice for disconnection of residential customers and 7 days prior notice for disconnection of non-residential customers. This requirement is consistent with Chapter 290 and with the existing requirements in Chapters 81 and 86 of our rules. Because the termination of service by a non-ETC would affect local service, it is critical for customers to have sufficient notice of a pending disconnection to be able to arrange for service through an ETC or another non-ETC. Customers have many more options for toll service than for basic service, e.g. other providers, prepaid calling cards and dial-around service. With these additional options, less prior notice is needed for the disconnection of toll service than for the disconnection of local service. We have therefore retained the 14-day notice requirement in section 12(A).

AT&T's comment did prompt us to modify §12(C) in the final rule. The amended rule required a non-ETC that provides basic service bundled with intrastate toll service to provide separate overdue amounts for the services provided in its disconnection notice. The final rule allows a non-ETC to send a single disconnection notice for both basic and toll service and requires only that the notice comply with the requirements for disconnection notices in Chapters 291 and 292. This gives a non-ETC the option of sending a combined disconnection notice, but requires that the combined notice provide 14 days notice prior to disconnection. This again is consistent with the notice requirement contained in Chapter 290 for the disconnection of basic service provided by an ETC. We also find that it would be confusing for a customer to receive a disconnection notice (from a non-ETC) that contains two disconnection dates – one for

basic service and one for toll service. If a non-ETC wishes to disconnect a customer's toll service in less than 14 days, it is free to do so. It must, however, issue separate notices: a 14-day notice for the basic service and a 3-day notice for the toll service.

3. Chapter 292

In the December 31st NOR, we said, "We also seek comment on the need to notify customers of a pending 'disconnection' by IXCs. With the numerous choices now available to customers for making long distance calls, e.g. other toll carriers, dial around, cellular phones, prepaid calling cards, is there a need to regulate the process by which IXCs terminate toll service or should this be a 'market' decision? Please provide a detailed explanation for your position on this issue." WorldCom gave the following response in its comments: "[I]n response to the Commission's request for comments on the need to notify customers of a pending disconnection by an IXC [NOR, page 22], WorldCom noted that customers generally receive multiple notices, particularly in nonpayment situations, advising them that their service will be disconnected if they do not take certain steps to correct the problems with their account. There is no need for the Commission to 'regulate' this process."

Sprint supported the 3-day notice period in §13(A). However, in its comments on the amended rules, Sprint asserted that the 3-day notice requirement in §13(A) is "unduly burdensome and unnecessary, given the highly competitive nature of the interstate toll market. IXC customers are provided ample notice of past due charges for toll usage on their bills and are aware that disconnection will occur if past due amounts are not satisfied within a specific timeframe.

In its comments on the amended rules, Sprint also noted that it "strongly supports the [spike provision in §13(D)] permitting an IXC to immediately disconnect a customer who has significantly increased its toll usage after receiving notice of an impending disconnection of toll service." Sprint supported the optional nature of the spike. Sprint asserted that for carriers who do not have the resources to develop a system to monitor this type of usage, the carrier rather than the PUC should determine the threshold. Finally, Sprint urged that, to avoid customer fraud, these thresholds should not be made available to the public.

In comments filed in this Docket, WorldCom acknowledged that the termination procedures in the amended Chapter 292 are an improvement over comparable procedures in the initial rule, but:

> still fail to specifically address situations involving fraud and suspected fraud. WorldCom believes [§13] should separately address termination for non-payment and termination for suspected fraud and high toll situations. The three-day written notice provision is reasonable for non-payment situations. However, the "spike in usage" provision in the newly added

> Subsection D is insufficient to protect both customers and IXCs from potential fraud. Indeed, the amended rules can still be interpreted to require multiple-day written notice where fraudulent behavior is likely. The spike in usage proposal would allow termination if a spike is identified but only after the written notice is provided. WorldCom uses its fraud protection practices as preventive measures. The Commission's proposal would severely limit WorldCom's ability to protect its customers and itself through its early warning and fraud control practices... WorldCom requests that the Commission add a section that would specifically permit carriers to terminate service without notice, or to terminate immediately on verbal notice in instances of fraud or suspected fraud." (emphasis in original)

We agree with the concerns expressed by the carriers regarding the 3-day notice requirement. While prior notice of a pending disconnection is a convenience to customers, it presents many potential problems in suspected fraud situations and may not be necessary in light of the high level of competition that exists in the toll market today. We find that there is a clear difference between basic service – whether provided by an ETC or a non-ETC - and toll service. Basic service is clearly a necessity, required for emergency services and the day-to-day communications needs of virtually all our citizens. Toll service, however, is much less central to customers' lives: indeed, in the context or our rate rebalancing efforts, we are often told that about half of our customers make no toll calls at all in an average month. It is clear, then, that this service, even if we characterize it as "essential," is in a materially different category than basic service.

Thus, we agree with Sprint and WorldCom that 3-day notice of a pending disconnection is unnecessary. We have eliminated the requirement in the final rule that carriers provide prior notice when they suspend or disconnect customers' "presubscribed" toll service. We require, however, that for as long as the suspension lasts, or until 30 days have passed following the disconnection, the customer attempting to complete a call using the suspended or disconnected service receive a recorded message that gives a toll-free number to reach the carrier and a statement that the customer may still be able to complete a long distance call using another carrier's "dial-around service" or a pre-paid calling card.

One advantage of this approach is that it does not require us to be involved in the minutia of any IXC's particular toll fraud prevention program, nor does it have us interfere unnecessarily in a contractual relationship that ought to be as free from regulatory intervention as possible. Further, we find that carriers are unlikely to abuse the right to disconnect customers: carriers are far more interested in keeping presubscribed customers (at least those who pay and do not engage in fraud) than in

cutting them off. Moreover, we find that the consequences of being "disconnected" from IXC service are not dramatic. The recording should protect customers who might be surprised (having failed to pay through inadvertence or whose phones are being used for fraudulent purposes without their knowledge), while giving carriers a usable tool in combating fraud and unauthorized use.

Section 13(E) of the amended rules requires carriers to physically prevent the customer from placing a call over the network so as to protect disconnected customers from being subjected to so-called "casual caller" rates that are often 3-4 times higher than regular rates. In its comments on the amended rules, Sprint stated that it "wholeheartedly supports the Commission's objective [in §13(E)] of preventing disconnected customers from placing calls at casual caller rates" and notes that it has already initiated a blocking procedure that will accomplish this objective.

In its comments in this Docket, WorldCom asserted that Chapter 292, §13(E), which requires that disconnection result in a full network block:

> should be limited to disconnections that result from circumstances of non-payment or fraud. This requirement should not also apply to account cancellations where a customer switches his or her IXC for competitive reasons. If the customer is blocked from the network after account cancellation, they will also be blocked from using the network for dial around calls (i.e. 10xxx). It does not follow that a customer who chooses to switch his or her long distance company should be prevented from using dial around services that use the company's network. It is unlikely that a customer knows which network a specific dial around service uses, and would therefore be confusing [sic] as to why a call they intend to make is blocked.

We agree with WorldCom and have added a sentence to §13(E) in the final rule that provides that this requirement does not include dial-around access to an IXC's network, regardless of the reason for the disconnection. We note that this does not prohibit a carrier from blocking a customer's access to its network completely, if it so chooses. We also note that §13(E) is now §13(B) in the final rule.

P. <u>Medical Emergency – Chapter 290 -§15; Chapter 291 - §13; Chapter 292 – §13(C)</u>

Our discussion of the comments filed in Docket No. 2001-43 regarding the medical emergency provisions of the initial rules can be found at pages 23-24 of the December 31st Notice. What follows is a summary of the comments on the medical

emergency provisions of the amended rules that were filed in this Docket and our response to those comments.

In comments filed in this Docket, Verizon stated that it continues to object to the provision in the proposed rule that would prohibit recovery by Verizon Maine of lawfully incurred non-recurring costs to establish service to an applicant with a medical emergency who has been disconnected by a non-ETC. Verizon protests also that the obligation to continue service to a subscriber who develops a medical emergency is not assessed uniformly on both ETCs and non-ETCs. It is manifestly unfair to allow a non-ETC to serve subscribers profitably for months, or years, and then drop the customer outright if a medical emergency arises.

We stated in the December 31st Notice that "we continue to believe that ETCs and IXCs (in some situations) must ensure that customers whose lives may depend upon their phone service not lose such service. This does not mean that we believe customers should receive free service. In situations where a prolonged period of non-payment is possible, a telephone carrier may request a waiver of this provision and propose an alternative to the outright disconnection of the customer's service (such as the proposal made by the "Telephone Companies" in its comments referenced above)."

In its comments on the amended rules, Verizon further argued that:

> [i]f the Commission maintains its position that non-ETCs may refuse to continue service to a subscriber with a medical emergency, the Commission should make payment of Verizon Maine's non-recurring service installation costs <u>by the transferring CLEC</u> a prerequisite of the CLEC's ability to discontinue service to their subscriber. Verizon notes that a similar arrangement making the transferor CLEC liable for Verizon's non-recurring retail charges has been employed by the Commission in allowing CLECs to withdraw local service to non-medical emergency residence subscribers. (emphasis in original)

We agree with Verizon's comment and have added language to the final Chapter 291, §13(D) that directs a non-ETC to pay the ETC the non-recurring, retail installation costs associated with the transferred customer.

In its comments on the amended rules, Verizon further noted that while the December 31st Notice indicated that subscribers will have only 3 business days to furnish certification of a medical emergency, the amended Chapter 290, §15(B) still affords the subscriber 5 calendar days in which to obtain certification. Verizon is correct and we have amended §15(B) accordingly. We also modified §15(B), as well as §13(C) of Chapter 291, to clarify that the the term "physician" means any person licensed by

Maine Board of Licensure in Medicine, his or her agent, or any Maine-licensed mental health counselor.

We modified section 13(A) of Chapter 291 to allow for the disconnection of basic service (without transfer to an ETC) after the declaration of a medical emergency by a customer, in situations where a household has mulitple phone lines and that at least one phone line with basic service will remain active after the disconnection. This modification makes this section consistent with the corresponding section of Chapter 290.

We also deleted section 13(F) from Chapter 291 which required non-ETCs to notify customers of their obligation to pay for service provided during a medical emergency. This language is unnecessary, in light of the fact that non-ETCs are not obligated to retain customers who declare a medical emergency.[9] In addition, if a non-ETC chooses to retain a customer who has declared a medical emergency, the non-ETC is not prevented from attempting to collect the costs associated with the service; it is simply not obligated to attempt collection by this section.

In comments filed in this Docket, CTC asserted that "[i]n both Chapters 290 and 291, the medical emergency provision only applies to residential customers. For the same reasons that the Commission chose to apply the medical emergency provisions in Chapters 290 and 291 to residential customers only, CTC recommends Chapter 292 §13(C) be amended to apply only to residential customers as well."

In comments filed in this Docket, Sprint noted that the December 31st Notice stated that customers with medical emergencies will have three days within which to obtain a certificate of medical emergency, but §13(C) of the amended Chapter 292 does not reflect this modification. Sprint further asserted that §13(C) should be modified to "include language to require the customer to physically provide the certification of medical emergency to the IXC within five business days."

Upon consideration of Sprint and CTC's comments, as well as the fact that E-911 will soon be implemented on a statewide basis,[10] we have eliminated section 13(C) from the final rule. We find that with the implementation of E-911 on a statewide

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[9] Section 13(D) of Chapter 291 allows a non-ETC to transfer a customer who has declared a medical emergency to an ETC, provided that the non-ETC pays the ETC the non-recurring installation costs for the transferred customer.

[10] As of the date of this Order, E-911 has been implemented in the majority of Maine, with the exception of portions of Hancock County and all of Aroostook County. We understand from the Emergency Services Communications Bureau of the Department of Public Safety that E-911 will be implemented in Aroostook County within the next three to four months and that Hancock County is currently negotiating the implementation of E-911 in the areas of the county where the service has not already been implemented.

basis, very few, if any, customers will need to make a toll call to reach emergency services. We also find that dial-around service or a pre-paid calling card will allow customers to reach physicians or other services that do require a toll call. In addition, customers may seek a waiver of our rules in unique situations where they must make a toll call reach a care provider.

Q. Warm Jack – Chapter 290 - §16; Chapter 291 - §14 of the Amended Rules

The initial and amended Chapters 290 and 291 required ETCs and non-ETCs to maintain a "warm jack" or similar service in all residences after disconnection. A warm jack allows a consumer to plug in a phone and dial the local emergency services number. We received many comments regarding the warm jack provisions of the initial rules. These comments and our response are summarized at pages 24-25 of the December 31st Notice. In the December 31st Notice, we noted that:

> [w]hile we have included the warm jack requirement in the amended rules, we need more information about warm jack issues before we can make a final decision about whether to retain it. We therefore invite further comment on the warm jack provision's impact on the E-911 database and numbering resources and any other limitation or constraint the requirement would impose on carriers.

In comments on the amended rules filed in this Docket, the Department of Public Safety, Emergency Services Communication Bureau (Bureau) asserted that it "is very concerned that there is no standard requirement of the local exchange carriers when soft or warm dial tone is activated.... LECs currently have a variety of practices regarding this issue." The Bureau asserted that LECs that choose to leave dial tone in vacant or disconnected premises "must also maintain the Automatic Location (ALI) record.... The LECs are responsible for their own service updates on an ongoing basis and for correcting errors encountered during the processing of E 9-1-1 calls." Regarding the warm jack provisions of the amended rules, the Bureau made three recommendations:

1. If service has been disconnected and the LEC leaves soft or warm dial tone, the ALI record should be removed. When 9-1-1 is dialed, the number should route to the default PSAP for the NXX and not route, for example, to the business office or other location.

2. If service has been temporarily suspended by the LEC, <u>not</u> at the customer's request (i.e. non-payment) and the LEC leaves soft or warm dial tone, the ALI record should remain in the database, for the NXX and not route, for example, to the business office or other location.

3. If service has been suspended temporarily at the customer's request (i.e. Seasonal) and the LEC leaves soft or warm dial tone, the number should remain in the ALI database. When 9-1-1 is dialed, the number should route to the primary PSAP for the address. Should the number be called, the caller should hear a message stating, "this number is temporarily disconnected at the customer's request."

In comments filed in this Docket, CTC asserted that "[t]hough the Commission clearly indicated in the Notice of Rulemaking that this provision is intended to cover service after disconnection of basic service at residences, it is not readily apparent upon reading the proposed regulations that it pertains to residential customers only. Therefore, CTC recommends that these provisions be amended to cover residential customers only."

In its comments on the amended rules, TAM "strongly urges the Commission to remove the Warm Jack issue from this proceeding and establish a new proceeding which will be able to include all parties who may be interested in this problem."

In its comments on the amended rules, Verizon "concurs with the Notice (at 25) that a separate proceeding is required to evaluate the claim that left-in-place dial-tone once a customer has been disconnected (i.e. 'warm jack') is in the public interest." Verizon asserted that several issues, including the following, must be addressed before a decision on warm jacks can be made: (a) impacts on loop plant utilization; (b) numbering utilization; (c) the State's E-911 efforts; (d) how the requirement would apply to CLECs provisioning local service over Verizon's unbundled facilities or through resale of Verizon Maine's services; (e) funding and cost recovery of warm jacks; and (f) which State agency is responsible for paying the LECs for their costs associated with the provision of warm jacks or, alternatively, how the costs of warm jacks can be targeted, made explicit, and recovered in a non-discriminatory way from all service providers. Verizon states that "[u]nless and until these concerns and other are addressed, a provision requiring warm jacks should not become part of Chapter 290."

We have reviewed the comments regarding warm jack issues and have determined that the warm jack provisions should be removed from Chapters 290 and 291. There are two major policy issues presented by the warm jack question: should warm jacks be required and, if so, under what circumstances? We appreciate the comments regarding warm jack issues presented to us in Docket No. 2001-43 and this Docket. We have determined, however, that those comments do not provide sufficient information for us to answer the two policy questions. Accordingly, we have deleted the warm jack provisions in the final rules and will consider the warm jack issue in a separate rulemaking.

R. Reconnection of Service – Chapter 290 - §16

A discussion of the reconnection of service provisions of the initial Chapter 290, including our response to comments, can be found at page 25 of the December 31st Notice. We received one comment regarding the reconnection of service provisions in the amended rule. In comments filed in this Docket, Verizon stated that it opposed the requirement in §17(A)[11] that a customer disconnected for non-payment must have service restored within one business day after the cause of disconnection has been removed. Verizon asserted that this requirement is "overbroad" because it:

> fails to distinguish between service disconnected temporarily for non-payment (what Verizon terms service "suspension") and outright disconnection. If a customer's service is disconnected for non-payment, the service is 'suspended' by Verizon for a period of generally ten days, to allow the customer to contact Verizon and negotiate a repayment plan on any outstanding balance due. During this period of service 'suspension,' it is possible for Verizon to generally restore service within one business day. However, after the passage of time (typically ten days following suspension with no communication from the customer) the suspended service becomes "final disconnection." When final disconnection occurs, the subscriber's telephone number is put back in vintaging for reassignment and facilities pairs used to provide service to the disconnected customer can be reassigned to meet other service requests. Thus, once Verizon's disconnection becomes "final," service cannot be "restored;" the subscriber must reapply for new service. Under such circumstances, the due date for new service will be the same as all other requests for new service. Verizon cannot provision service under such circumstances within one business day of the request. Verizon therefore urges a modification of [Chapter 290, §16(A) of the final rule] to provide at the end of the last sentence that reconnection within one business day is only required if the cause of the disconnection has been removed 'within the first ten days following disconnection of service."

Verizon's request is reasonable. We have therefore amended §16(A) of the final Chapter 290 to include the clarification sought by Verizon.[12] We adopted the

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[11] Section 16(A) in the amended Chapter 290.

[12] Because we deleted the warm jack provisions from the amended Chapter 290 (§16) and Chapter 291 (§14), all subsequent sections in the final rules have been

10-day time period as suggested by Verizon. We find that 10 day period represents a reasonable amount of time for the carrier to keep an account open in its billing system, thereby allowing the reconnection of service within one-business after the cause of disconnection is removed, and a reasonable of time for the customer to resolve the issue that caused the disconnection. We also realize that other carriers may keep accounts active for longer periods of time and thus are able to reconnect customers within one-business day more than 10 days from the disconnection date. This is acceptable pursuant to the rule and the carriers are urged to continue this practice.

S. Optional Service Providers – Chapter 290 - §17

This section of the amended Chapter 290 sets forth the type of information an ETC that also provides optional services must convey to potential customers. The corresponding provision in the initial rule, and comments we received regarding that provision, are discussed at pages 25 and 26 of the December 31st Notice. We received no comments in this Docket regarding this section of the amended Chapter 290 and have made no changes to the corresponding section in the final rule.

T. Service Option Disclosure – Chapter 292 - §11

This section of the amended Chapter 292 establishes the information an IXC must provide to an applicant or customer who requests information about the various service plans offered by the IXC. The corresponding provision in the initial rule, and comments we received regarding that provision, are discussed at page 26 of the December 31st Notice. We received no comments in this Docket regarding this section of the amended Chapter 292. We did modify this section, however, by replacing the word "cost" with the word "rate" for the same reasons this change was made to the corresponding language in section 9(C) of Chapter 290 and section 8(E) of 291.[13]

U. Marketing Efforts – Chapter 292 - §12

This section of the amended Chapter 292 establishes requirements for IXCs that conduct direct and/or mass marketing activities. The corresponding provision in the initial rule, and comments we received regarding that provision, are discussed at pages 26 and 27 of the December 31st Notice. We received no comments in this Docket regarding this section of the amended Chapter 292 and made no changes to this section in the final rule.

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renumbered. Thus, the reconnection of service provisions that were located at §17 of the amended Chapter 290 can be found at §16 in the final Chapter 290.

[13] See section 2(I) of this Order for an explanation of this modification.

V. Dispute Resolution Procedures – Chapter 290 - §18; Chapter 291 – §14; Chapter 292 – §14

Each of the three initial rules contained a similar provision regarding dispute resolution. Several commenters in Docket No. 2001-43 offered input on the dispute resolution provisions of the initial rules. Those comments and our reaction can be found at pages 27-29 of the December 31st Notice. The comments we received on the dispute resolution procedures of the amended rules in this Docket and our responses are summarized below.

Among other things, each of the amended rules required that the applicable carriers provide customers who call to resolve billing or service disputes with an opportunity to speak with a live customer representative. In comments filed in this Docket, AT&T asserted that Chapter 292, §14(B)'s requirement that a customer be given an opportunity to talk to a live attendant under certain circumstances is "unnecessary." AT&T argued that customers have a variety of ways to get information about services and accounts. AT&T further noted that, "customers are becoming increasingly accustomed to using automated service to address all aspects of consumer issues."

As we noted in our December 31st Notice, this provision in each of the amended rules represents a compromise that was intended to provide customers with access to information about billing and service disputes while affording some flexibility to the carriers as to how to provide that access. We acknowledge that IVR systems are useful and that customers are becoming more familiar with their use. We also find, however, that customers must have access to a live customer representative to discuss and resolve certain issues. When customers do need to discuss an issue with a live customer representative, they should be able to reach that person within a reasonable amount of time. One of the most common customer complaints the Commission receives, especially against the larger IXCs, is that customers cannot reach a live customer representative to resolve their issue. The customer is then forced to contact the CAD to resolve the matter, when the issue could have and should have been resolved with the carrier. For these reasons, we have not modified this section in the final rules.

The amended rules also (1) required a carrier to provide requested information to the CAD within 10 business days of its receipt of the request and (2) required the CAD to complete its investigation of a complaint and issue a written decision "as soon as practicable." In comments filed in this Docket, TAM supported the requirement in Chapter 290, [now codified at §18(G)(3)], that the company provide information requested by the CAD within 10 days "so long as there is also a limitation on the CAD's time for resolution of the dispute." TAM suggested amending §18(G)(4) so that "the CAD be required to resolve disputes within 90 days and, if no resolution is possible in 90 days, that the CAD issue a formal declaration to all parties at that point indicating the status of the proceeding and an estimated completion date."

In the December 31st Notice, we responded to a similar request for a limitation on the time the CAD has to investigate a complaint as follows:

> Though the CAD has a self-imposed goal of resolving all complaints within 30 days of their receipt, this is not possible with some complaints. With the increasing number of services being offered by carriers and the increasing number of carriers offering service, customer complaints are becoming more numerous and more complex. The CAD must have the time necessary to thoroughly research a complaint to render a fair and reasonable decision. In addition, because the CAD often relies on information provided by carriers to resolve complaints, unscrupulous carriers could intentionally withhold information requested by the CAD and cause the CAD to exceed the time limit for resolving complaints.

We continue to believe that placing a limit on the time the CAD has to investigate a complaint is both impracticable and unwise. We therefore have not modified this section in the final rules.[14]

In comments filed in this Docket, WorldCom noted that Chapter 292, §14(F) allows only 10 calendar days for an IXC to appeal a CAD decision. WorldCom asserted that "[i]t is unreasonable to expect or require a carrier to review CAD decisions, obtain the necessary internal input and respond within ten (10) calendar days after the date of the decision, particularly when many of these decisions are <u>not</u> posted on the Maine Commission's Internet site and carriers may not receive a copy of the decision for several days after the date of the decision.... WorldCom asks the Commission to modify the appeal deadline to at least fifteen (15) <u>business</u> days after the date of the decision." (emphasis in original)

Chapter 81 currently allows five calendar days for a carrier or a customer to appeal a CAD decision. The 10-calendar-day appeal period reflects a doubling of the period established in Chapter 81. We also note that §14(F) sets the appeal period for both carriers and customers. In setting the appeal period in these rules, we have attempted to balance the needs and interests of both carriers and customers regarding appeals of CAD decisions. We believe that the 10-day appeal period reflected in each of the amended rules is reasonable and have made no changes to the appeal period in the final rules.

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[14] If carriers believe there are situations where the CAD takes an unreasonable amount of time to resolve complaints, they should bring this to the attention of the Director of the CAD or the Commission.

W. Records; Reports – Chapter 290 - §19

The amended Chapter 290 contained a provision that imposed several recording and reporting requirements on ETCs.[15] We received no comment in this Docket regarding §19 and have made no changes to this section in the final rule.

X. Waiver – Chapter 290 - §20; Chapter 291 - §16; Chapter 292 – §15

Each of the amended rules included a provision that would have permitted the Commission to waive any provision in each rule that is not required by statute. No commenter addressed the waiver provisions in the amended rules. Accordingly, the waiver provisions from the amended rules have been incorporated into the amended rules without substantive modification.

IV. FISCAL AND ECONOMIC IMPACT

5 M.R.S.A. §8057-A(1) requires the Commission to estimate the fiscal impact of the final rules. In the December 31st Notice, we indicated that we expected the fiscal impact of the amended rules to be minimal and invited comments on the fiscal impacts of the amended rules. No party offered any specific comments regarding the fiscal impact of the amended rules.

Accordingly, we

ORDER

1. That the attached Chapter 290, "Standards for Billing, Credit and Collection, and Customer Information for Eligible Telecommunications Carriers Providing Basic Telephone Service;" Chapter 291, "Standards for Billing, Credit and Collection, and Customer Information for Non-Eligible Telecommunications Carriers;" and Chapter 292, "Standards for Billing, Credit and Collection, and Customer Information for Interexchange Carriers" are hereby approved.

2. That the Administrative Director shall send copies of this Order and the attached final rules to:

   a. All telephone utilities operating in Maine;

   b. The American Association of Retired People (AARP);

[15] These record keeping and reporting requirements were codified at §20 of the amended version of the rule and are codified at §19 of the final Chapter 290.

c. The Maine Community Action Association;

d. The Maine Council of Senior Citizens;

f. The Maine State Housing Authority;

g. The Maine State Planning Office;

h. The Department of Public Safety;

i. The Department of the Attorney General;

j. The E911 Implementation Bureau;

k. Any person who has filed within the past year a written request for notice of rulemakings;

l. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and

m. Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333-0015 (20 copies).

3. That the Public Information Coordinator shall post a copy of this Order and final rules on the Commission's World Wide Web page (http://www.state.me.us.mpuc/).

Dated at Augusta, Maine, this 20th day of June, 2002.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond (Dissenting in part – see attachment)