

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 11th day of August, 2000.

GENERAL ORDER NO. 187.16

In the matter of promulgating proposed amendments to the Commission's Rules and Regulations for the Government of Telephone Utilities, 150 C.S.R. Series 6.

COMMISSION ORDER

By this order, the Commission adopts, as final, amendments to its Rules and Regulations for the Government of Telephone Utilities, 150 C.S.R. Series 6 (Telephone Rules), to become effective 60 days after this order's entry date. The Commission has made numerous stylistic and grammatical changes to the proposed amendments that are non-substantive in nature. These stylistic and grammatical changes will not be specifically addressed by the Commission but they are clearly delineated by strike through and underscoring in the final rules attached to this order.

I. Factual and Procedural Background.

By order entered March 31, 1998, the Commission proposed amendments to its Telephone Rules. The proposed amendments adopted numerous recommendations made in the Local Competition Task Force's May 7, 1996, report to the Commission in Case No. 94-1102-T-GI, which were intended to implement competition in the local exchange telecommunications market. The proposed amendments also incorporated various rulings by the Commission in proceedings filed with the Commission pursuant to the Telecommunications Act of 1996, codified at 47 U.S.C. §§151 et seq. (TA96). The Commission caused notice of its proposed rulemaking to be published in newspapers statewide.

A. Summary of the Proposed Amendments.

The proposed amendments make a number of changes to the definitions set forth in the Telephone Rules. The Commission also proposed amendments that would require carriers to comply with verification procedures before changing a subscriber's local service provider and would prohibit local carriers from interrupting basic service as the result of a reseller's inability to serve customers. In addition, the proposed amendments would eliminate the current provisions in the Telephone Rules dealing with equipment testing. The proposed amendments also would require all

telecommunications carriers -- both interexchange and local -- to file annual financial and statistical reports, though interexchange carriers (IXCs) with less than \$1 million in annual gross revenues in West Virginia would be exempted. The Telephone Rules' current service standards were also modified. Additionally, the Commission proposed removing all provisions dealing with emergency telephone systems from the current rules since those provisions were previously included in a new series of rules, 150 C.S.R. Series 25. See "Commission Order," General Order No. 187.14 (Dec. 24, 1997).

The proposed amendments included an accelerated rate filing procedure for interexchange carriers and made several changes to the provisions dealing with Tel-assistance. The Commission proposed removing the current Telephone Rules' provisions dealing with customer-owned public telephones and replacing them with new rules dealing with all payphones. In addition, the proposed amendments added a new section 14 to the Telephone Rules, dealing with certification requirements applicable to all telecommunications carriers. This new section would require a non-refundable, \$300 filing fee to be submitted with certificate applications and would establish detailed informational requirements applicable to local carriers' certificate applications. Section 14, as proposed, would also require resellers of local service to provide ubiquitous service throughout exchanges served. Finally, the Commission proposed to add a new section 15 to the Telephone Rules, setting forth specific procedures and requirements applicable to interconnection

between local exchange carriers (LECs), including procedures relating to Commission arbitration of interconnection agreements between carriers pursuant to TA96. Section 15 also incorporates TA96's provisions protecting rural telephone companies from competition.

B. Proceedings Before The Commission.

In accordance with the Commission's March 31, 1998, order, the following persons filed initial comments with the Commission on May 11, 1998: AT&T Communications of West Virginia, Inc. (AT&T); Bell Atlantic - West Virginia, Inc. (BA-WV); Citizens Telecommunications Company of West Virginia, Citizens Mountain State Telephone Company, and Citizens Telecommunications Company (collectively, Citizens); the Consumer Advocate Division of the Public Service Commission (CAD); WorldCom, Inc. (WorldCom); [See FootNote ¹](#) and West Virginia Cellular Telephone Corp. and Highland Cellular Telephone Company (collectively, the Cellular Companies). The following persons filed initial comments with the Commission on May 13, 1998: Commission Staff (Staff),

and the West Virginia Independent Group (Independent Group). [See FootNote ²](#)

As part of its initial comments filed on May 11, 1998, WorldCom filed a motion requesting the Commission to withdraw its proposed rulemaking on the grounds that the Commission may be operating from a different set of rules than those currently on file or on the Commission's Internet site. Specifically, WorldCom claimed that the Telephone Rules currently on file and displayed on the Commission's Internet site are identified as being effective September 26, 1995. The draft rules attached to the Commission's March 31, 1998, order contained some discrepancies when compared to the September 26, 1995, rules. WorldCom suggested that the Commission should dismiss this proceeding until it can ascertain which official rules are currently in effect before reproposing amendments to those rules.

In addition to WorldCom's motion, John D. Childers, an individual, filed a motion with the Commission on May 11, 1998, requesting an extension of the comment period on the grounds that the Commission had not published a notice in a way that "any significant numbers of affected parties could have knowledge of this proceeding and the attendant comment period."

On May 18, 1998, Sprint Communications Co., L.P. (Sprint), filed a letter advising that, although it would not be filing initial comments, it reserved the right to file reply comments.

A hearing on the Commission's proposed amendments to the Telephone Rules was held, as scheduled, on May 19, 1998. All persons submitting initial comments entered an appearance. Neither Sprint nor Mr. Childers entered an appearance. At the hearing's outset, the Commission denied Mr. Childers' motion on the grounds that the record contained a number of affidavits of publication of the notice, attached to the Commission's March 31, 1998, order, advising the public of the proposed amendments, applicable comment dates and the scheduled hearing date. The Commission declined to rule upon WorldCom's motion. BA-WV presented the testimony of two witnesses in support of its comments: Stanley J. Zoltek and Gale Y. Given. No other witnesses testified on behalf of any person submitting comments.

At the conclusion of the May 19, 1998, hearing, Staff requested that the Commission modify the procedural schedule by allowing the parties until May 29, 1998, to file reply comments. [See Transcript of Proceedings](#), p. 23 (Tr. at ____). In addition, Citizens requested that the Commission allow several more rounds of comments to be submitted: an initial round of comments regarding additional rules proposed by Staff on May 13, 1998, with such comments and initial reply comments to the Commission's proposed amendments due May 29, 1998; and a second round of further reply

comments to Staff's proposals only, to be filed by June 5, 1998. Tr. at 23-25. The Commission granted Citizens' motion and directed the parties to file their reply comments with the Commission on May 29, 1998, their initial comments regarding Staff's proposed additional rules likewise on May 29, 1998, and their replies regarding Staff's proposed additional rules on June 5, 1998. The Commission reduced its rulings to writing by order entered May 22, 1998.

In accordance with the Commission's order, the following parties filed reply comments and initial comments regarding Staff's proposed additional rules on May 29, 1998: Staff, the Independent Group, BA-WV, AT&T, CAD, and Citizens. Staff, BA-WV, AT&T and CAD filed reply comments regarding Staff's proposed additional rules on June 5,

DISCUSSION

As set forth more fully below, the Commission concludes that, subject to numerous changes reflecting the comments submitted by various persons in this proceeding or the Commission's own determinations regarding the proposed amendments, the Telephone Rules attached hereto as Appendix A should be adopted as final rules, to become effective 60 days after this order's entry date.

I. WorldCom's Motion To Dismiss.

The Commission concludes that WorldCom's motion to dismiss should be denied. While WorldCom is clearly correct in claiming that there are discrepancies between the proposed Telephone Rules and the rules currently in effect, the Commission's review of the two sets of rules leads it to conclude that those discrepancies are minor in nature and non-substantive. The discrepancies, for the most part, involve the numbering of rules. In several instances, minor wording differences exist which are the result of failing to properly identify (by strike through and underscoring) changes the proposed rules made to the current rules.

The following summarizes the discrepancies between the Telephone Rules, as proposed, and the September 26, 1995, version of the Telephone Rules (1995 rules).

Rule 1.7.: Definitions. In the 1995 rules, this provision was only one sentence. The proposed Telephone Rules added two sentences to Rule 1.7, referring to TA96 and dealing with references to singular and plural subjects. These sentences should have been underscored.

Rule 1.7.3.: "Base Rate Area." In the second line of the 1995 rules, the phrase "telephone utility" is used. In the proposed amendments, which strike Rule 1.7.3. altogether, the phrase used is "telephone company."

Rule 1.7.35.: "Main Station." The second line of the 1995 rules uses the phrase "or party line," while the proposed amendments, which delete the rule altogether, erroneously number the rule as

1.7.36. and omit "or party line" from the second line.

Rule 1.8.2.: Uniform system of accounts. The 1995 rules use the phrase "company notifies the Commission" in the second sentence. The proposed amendments erroneously omitted the word "notifies" in the second sentence.

Rule 2.1.3.: Customer billing. In the 1995 rules, there is no title to this section, the first paragraph is not lettered and the succeeding paragraphs are designated "a." through "d." The proposed amendments designated the first paragraph as and redesignated the remaining paragraphs "b." through "e." without properly underscoring or striking through the changes.

Rule 3.6.2.: Emergency operation. The first sentence of the 1995 rules includes the phrase "all central offices have some provision for emergency power." In the proposed amendments, the rule (now renumbered Rule 3.3.2), changes the phrase to "all central offices have adequate provision for emergency power" but omits to strikeout "some" and fails to underscore "adequate."

Rule 3.7.1.: Construction work near utility facilities. The proposed amendments renumber the rule as Rule 3.4.1, add a comma following "public" in the third line without underscoring, and move the phrase "such as identifying in a suitable manner the location of any underground facilities which may be affected by the work" from the end of the rule to the fourth and fifth lines without properly underscoring and striking through the language in the 1995 rule.

Rule 3.7.3.: Construction work near utility facilities. In the 1995 rules, the third line of the rule refers to "service piping or wiring on." The proposed amendment, now renumbered Rule 3.4.3., omits the phrase "service piping or wiring on," which should have been struck through since the proposed amendments replaced that phrase with the term "facilities," which itself was not underscored.

Rule 5.4.: Report format. The proposed amendments incorporated the 1995 version of Rule 5.4. into the language of new Rule 5.3., but failed to indicate this change by striking through former Rule 5.4., and underscoring that language in Rule 5.3.

Rule 6.2.3.: Held orders and held regrades. The 1995 rule consisted of five subsections, lettered "a." through "e." The proposed amendments eliminated subsection "a.," as shown by strike through, and renumbered the remaining subsections but failed to indicate the former subsections by strike through and underscoring of the new subsection designations.

Rule 6.4.3.: Local dial service requirements. In the 1995 rules, there are three sections numbered 6.4.1. through 6.4.3. The proposed amendments eliminate and strike through Rule 6.4.1., renumber the remaining sections, but do not indicate the changes in numbering by strike through.

The Commission found no other discrepancies between the 1995 rules and the proposed amendments. In the Commission's opinion, while unfortunate, the discrepancies found were of a minor, non-substantive nature and do not warrant reproposal of the amendments. Moreover, none of the other persons submitting comments expressed any difficulty with the proposed amendments and the Commission believes this supports its conclusion that the discrepancies were minor and did not prejudice any of the persons submitting comments.

II. Numbering of Rules.

In the final rules attached to this order, the Commission has adopted the numbering convention required by the Secretary of State and has revised the rules to be consistent with that convention. See 153 C.S.R. Series 6 (Effective June 7, 1996). However, this order addresses the parties' comments to the proposed amendments which were numbered inconsistently with 153 C.S.R. Series 6. The Commission will identify the final rules' numbers in brackets throughout this order. Further, the Commission notes that, in many of the final rules, reference is made to a particular "subsection," "subdivision," "paragraph," etc. These references are based on the text breakdown identified in the Secretary of State's rules, Table 153-6 A. For ease of reference, the Commission will restate that text breakdown here:

<u>Cite</u>	<u>Text Breakdown</u>
153 C.S.R.	Title
153 C.S.R. 6	Series
153 C.S.R. 6-1.	Section
153 C.S.R. 6-1.1.	Subsection
153 C.S.R. 6-1.1.a.	Subdivision
153 C.S.R. 6-1.1.a.1	Paragraph
153 C.S.R. 6-1.1.a.1.A.	Subparagraph
153 C.S.R. 6-1.1.a.1.A.1.	Part
153 C.S.R. 6-1.1.a.1.A.1.(a)	Subpart
153 C.S.R. 6-1.1.a.1.A.1.(a)(1)	Item
153 C.S.R. 6-1.1.a.1.A.1.(a)(1)(A)	Subitem

III. Adoption of Final Rules.

Given the large number of amendments proposed, together with the voluminous comments in response to those amendments, the Commission will first identify those proposed amendments that elicited comments of relatively minor nature and that were not the subject of controversy. These proposed amendments will be adopted, in accordance with the comments submitted. Next, the Commission will address, separately, each proposed amendment to the Telephone Rules that elicited substantive comments or were disputed by one or more of the persons filing comments with the Commission.

A. Non-Substantive Rule Changes.

The following rules will be revised in accordance with the parties' comments, since there are no serious disputes

regarding the substance of the proposed rules, and adopted as final rules:

<u>Proposed Rule</u>	<u>[Final Rule]</u>	<u>Final Action</u>
1.7.3.a.	[1.7.c.]	Delete the 14.4 Kbps requirement.
1.7.3.c.	[1.7.c.3.]	Revise to eliminate the requirement that subscribers of competitive LECs are automatically included in an LEC's local directory.
1.7.3.e.E.	[1.7.c.5.E.]	Revise to allow toll blocking where customers do not pay for properly billed long distance service.
1.7.3.f.	[1.7.c.6.]	Revise to address non-West Virginia companies that do not have the ability to block collect and third-party long- distance calls.
1.7.15.	[1.7.p.]	Use "geographic area" rather than "unit."
1.7.16.	[NA]	Eliminate the definition of "extended area service."
1.7.20.	[1.7.t.]	Include a definition of "interexchange carrier," consistent with Rule 9.1.3.b.
1.7.22.	[1.7.v.]	Revise the definition regarding the NID.
1.7.23.	[1.7.u.]	Revise the definition of "local call."
1.7.25.	[1.7.y.]	Revise the definition of "local exchange carrier."
1.7.26.	[1.7.z.]	Revise the definition of "local exchange service."
1.7.27.	[1.7.aa.]	Revise the definition of "local message."
1.7.29.	[1.7.cc.]	Revise the definition of "local service charge."
1.7.30.	[1.7.dd.]	Revise the definition of "long distance service."
1.7.35.	[1.7.ii.]	Revise the definition of "NID."
1.7.37.	[1.7.kk.]	Revise the definition of "number portability."
1.7.44.	[1.7.rr.]	Revise the definition of "reseller."
1.7.45.	[1.7.ss.]	Revise language.
1.7.52.b.	[1.7.tt.2.]	Delete extraneous language in the definition of "rural telephone company."
1.7.53.	[1.7.aaa.]	Revise the definition of "telecommunications carrier" and combine with definition of "telephone company."
1.7.54.	[NA]	Eliminate separate definition of "telephone company" and combine with definition of "telecommunications carrier."
1.7.58.	[1.7.eee.]	Revise language.
1.8.2.	[1.8.b.]	Revise language.
2.2.4.e.	[2.2.d.5.]	Revise language.
2.2.4.f.	[2.2.d.6.]	Revise language.
2.2.6.h.	[2.2.f.8.]	Revise language.
2.2.8.	[2.2.h.]	Revise language.
2.8.b.D.	[2.8.b.4.]	Revise language.
2.8.g.	[2.8.f.]	Renumber the rule.
4.1.	[4.1.]	Correct typographical error.
5.1.	[5.1.]	Revise language.
5.3.	[5.3.]	Modify the rule to make it applicable to all LECs, not just incumbent LECs.
5.4.	[5.4.]	Revise language.
6.5.6.c.	[6.5.f.3.]	Correct typographical error.
10.1.	[10.1]	Correct typographical error.
10.4.2.	[10.4.b.]	Correct typographical error.
10.5.1.	[10.5.a.]	Adopt clarifying language proposed by Staff.
10.7.1.	[10.7.a]	Correct typographical errors. Adopt language modifying the proposed rule consistent with Staff and AT&T recommendations.
10.7.2.a.	[10.7.b.]	Correct typographical errors. Adopt language modifying the proposed rule consistent with Staff and AT&T recommendations.
150-6-13.	[13.]	Revise the title of section.
13.1.10.c.	[13.1.j.3.]	Adopt modifications suggested by Staff.
13.1.15.a.	[13.1.o.1.]	Adopt modifications suggested by Staff.
14.2.1.a.	[14.2.a.1.]	Adopt modifications suggested by Staff.
14.2.2.b.	[14.2.b.2.]	Adopt modifications suggested by Staff.

- 14.2.2.e. [14.2.b.5.] Correct typographical error.
- 14.2.3. [14.2.c.] Correct typographical error.
- 14.4.1. [14.4.a.] Adopt language proposed by the Independent Group to the effect that there is no presumption regarding "eligible telecommunications carrier" status in a rural telephone company service area.
- 14.4.2.a. [14.4.b.1.] Renumber the rule to accommodate a new CAD rule.
- 14.4.2.b. [14.4.b.2.] Adopt new CAD rule consistent with changes in language suggested by Staff.
- 15.5.13.d.A. [15.6.d.1.] Reinstate the remainder of interconnection requirements set forth in Section 251(c) of TA96; renumber rule.
- Form 11-1. [NA] Adopt Staff changes to enhance communications with payphone service providers.

B. Substantive Rule Changes.

The following proposed rules are controversial and involve substantive issues which warrant more detailed discussion.

1. Section 1: General.

a. 1.7.12. [1.7.m.] Definition of "customer."

Rule 1.7.12, as proposed, would define "customer" as follows:

"Customer" -- Any person, firm, partnership, corporation, municipality, cooperative, organization, governmental agency, etc., ~~provided with~~ who purchases telecommunications services ~~by the~~ from a telephone company.

(i) Comments.

In its comments, BA-WV suggested revising the proposed rule to read:

"Customer" -- Any person, firm . . . who purchases, or on whose specific and named behalf is purchased, telecommunications services from a telephone company.

BA-WV asserted that this change addresses "gift billing" situations in which service is purchased by one person for the use of another. BA-WV Comments at 6. Staff opposed BA-WV's attempt to define customer synonymously with "user." Staff argued that the definition of "customer" needs to be strengthened to protect against "slamming" and "cramming" practices, not weakened. Staff Reply at 1. Staff suggested several ways persons can deal with "gift billing" and argued that, in any event, the Commission previously construed "customer" narrowly to mean the person in whose name service is rendered. Id. at 2, citing Stevens v. Columbia Gas of West Virginia, Case No. 80- 560-G-C, 68 ARPSCWV 2510 (March 19, 1981).

(ii) Decision and Rationale.

The Commission will adopt the rule, as proposed, and rejects BA-WV's proposed change. BA-WV's proposed change could be construed as a weakening of the definition of the term "customer," thereby encouraging illegal "slamming" or "cramming" practices. "Slamming" and "cramming" are activities that have generated considerable numbers of complaints in West Virginia and nationally, and have prompted action at the Federal Communications Commission (FCC) level.

b. 1.8.1. [1.8.a.] Uniform System of Accounts.

As proposed, Rule 1.8.1 states:

Under the authority of the West Virginia Code, Chapter 24, Article 2, Section 8, all local exchange ~~telephone~~

~~companies~~ carriers shall

maintain a "Uniform System of Accounts", as promulgated by the Federal Communications Commission ~~effective January 1, 1988,~~ and contained in Part 32 under Title 47 of the Code of Federal Regulations, ~~as~~ unless subsequently revised by this Commission by rule or decision. Interexchange carriers shall maintain adequate accounting records such that each interexchange carrier will be able to comply with the annual reporting requirements of this Commission.

(i) Comments.

AT&T suggested making the Uniform System of Accounts (USOA) applicable only to incumbent LECs, asserting that a variety of carriers, using different strategies, will enter the local exchange market as competition evolves. Requiring new entrants to comply with the USOA may impede competitors' market entry, AT&T claimed. AT&T Comments at 3. It was just this rationale, AT&T claims, that led the Commission to decline to impose USOA requirements on IXC's over twelve years ago. Id., citing MCI Telecommunications Corporation, Case Nos. 84-125-T-CN et al. (June 30, 1986). CAD opposed AT&T's suggestion, claiming that, if new entrants are incapable of keeping their books in conformity with the USOA, they should not be providing local service in the state. CAD Reply at 2.

(ii) Decision and Rationale.

The Commission will reject AT&T's suggested change to the proposed rule. In order for the Commission to carry out its regulatory oversight function, it needs to have a uniform system of accounting in place in order to determine what a carrier's real costs are. The Commission concludes that requiring carriers to conform to a uniform system of accounting _ established and mandated by the FCC in 47 C.F.R. Part 32 _ will assist the Commission in making sure that carriers report costs and expenses consistently. Because they are federally established accounting practices that have been in place for some time, the USOA should not constitute a barrier to entry into West Virginia's local market.

2. Section 2: Customer Relations.

a. 2.1.1. [2.1.a.] Customer billing.

Rule 2.1.1, as proposed, would provide:

Bills to customers shall be typed or clearly printed, rendered monthly, and shall contain a listing of all charges and the period of time covered by the billing period. ~~Local service charges for residential and commercial customers shall be itemized at initiation of service, whenever a change is made in local service, and once annually.~~ This

itemization shall list separately all items such as service options ~~extensions and other items~~ for which a flat monthly charge is made. ~~However, the telephone company is not required to itemize changes made in local commercial service for Centrex and large PBX customers.~~

(i) Comments.

AT&T recommended modifying the proposed rule to allow billing other than on a monthly basis, noting that the Commission previously authorized AT&T to bill on a bi-monthly basis. AT&T Comments, at 2-3, citing "Commission Order," AT&T Communications of WV, Case No. 95-0260-T-PW (April 11, 1995). AT&T recommended replacing "monthly" with "periodically" or with "monthly, bi-monthly, or quarterly." Id.

For its part, BA-WV suggested retaining the current rule but eliminating the monthly itemization requirement on the grounds such itemization will not enable the customer to manage his or her telephone bill any more effectively because charges for itemized optional features do not vary with usage.. BA-WV Comments at 19. However, BA-WV subsequently recommended adoption of AT&T's proposed changes to Rule 2.1.1. BA-WV Reply at 2-4.

Staff opposed BA-WV's recommendation, arguing that requiring subscribers to contact their carrier to determine what services they are being charged for is an unnecessary inconvenience and that any compliance costs incurred by LECs will be offset by reductions in time and resources responding to subscriber billing inquiries. Staff Reply at 3.

Staff also opposed AT&T's recommendation and suggested that the term "(if agreeable to the billed party)" should be added after "monthly." Id. at 8. In addition, Staff recommended appending the following language to the proposed rule: "Bills must show the actual name of the vender(s) [sic] for all charges listed and the toll-free telephone number(s) of the party(ies) empowered to resolve disputes concerning those charges." Staff Comments at 5. This change, Staff asserted, makes it easier for subscribers, or Staff, to resolve billing disputes.

CAD supported Staff's proposed modifications to Rule 2.1.1 and opposed BA-WV's recommendation, based on its belief that monthly itemization of service options could be an important customer billing safeguard, in light of increasing problems with erroneous or fraudulent billing practices. CAD Reply at 3. CAD opposed AT&T's recommended change on similar grounds. Id. at 4.

(ii) Decision and Rationale.

Rule 2.1.1 will be adopted, as proposed, subject to the following modifications. First, the Commission will modify the proposed rule to incorporate Staff's recommendation regarding identifying the vendor name for charges listed on the bill. The Commission agrees with Staff and

CAD that, in light of competition and the proliferation of carriers offering a multitude of different services, not to mention the consistently high levels of customer complaints regarding "slamming" and "cramming," more disclosure, not less, is sound regulatory policy. With respect to BA-WV's claim that providing a detailed itemization of charges every month would force it to incur additional billing costs out of proportion to the benefit to customers, the Commission is aware that BA-WV has been utilizing a monthly billing statement that provides a much more detailed itemization of charges for some time now. But in any event, the Commission believes that the regulatory and public policy underlying fuller disclosure of charges for services and features outweighs the unsubstantiated cost concerns voiced by BA-WV. Finally, none of the other carriers objected to the proposal to require itemization of charges on a monthly basis.

Second, the Commission will modify the proposed rule to incorporate AT&T's suggested change allowing billing on a less-than-monthly basis, provided such periodic billing arrangement is set forth in the carrier's Commission-approved tariff and provided that customers are allowed to opt out of such billing arrangement simply by notifying the carrier via a toll-free number, in writing or electronically. The Commission has previously allowed AT&T to implement billing on a less-than-monthly basis for certain low usage customers. This practice has not generated any appreciable volume of customer complaints with the Commission. Moreover, allowing flexibility in such billing practices may have competitive benefits that should be encouraged by the Commission.

b. 2.1.1.a. [2.1.a.1. & 2.1.a.2.] Charges for non-telecommunications services.

The Commission proposed adding the following new subsection to the Telephone Rules:

For good cause shown and pursuant to the specific and express approval of the Commission, bills may contain charges for non- telecommunications services or items; Provided, however, that no telecommunications services may be denied, interrupted or discontinued for failure of the billed party to pay any portion of the charges billed for non-telecommunications services or items. Further, in the case of partial payments of bills rendered, such partial payments shall first be applied to amounts owed for telecommunications services.

(i) Comments.

The Cellulares suggested that wireless providers should be exempted from the proposed rule because wireless service is typically not a subscriber's sole means of telecommunications service, terminated subscribers may well be able to obtain service from a competitor, and wireless carriers frequently bill for non-telecommunications services. Cellulares Comments at 1-2. Moreover, the proposed rule, the Cellulares argued, is inconsistent with the Commission's rule requiring wireless

carriers to apply the first \$0.75 collected from subscribers each month to the payment of the wireless E911 fee established in General Order No. 187.14. Id. at 2. Finally, the Cellulares noted that the Commission previously recognized that the risk of fraud to wireless carriers justifies their exemption from the deferred payment plan,

termination of service, and security deposit requirements in the rules. Id., citing "Commission Order," General Order No. 187.8 and "Commission Order," Vanguard Acquisition Corp., et al., Case No. 95-0034-C-T (Nov. 2, 1995). AT&T supported the Cellulars' proposal. AT&T Reply at 6.

Staff recommended modifying the last sentence of the proposed rule to read "applied to undisputed amounts owed for telecommunications services." Staff Comments at 5. Staff opposed exempting wireless carriers on the grounds that personal communications service (PCS) providers expect to replace wireline service to a large extent in the next few years and PCS customers deserved the same protection wireline customers receive. Staff Surreply at 5.

(ii) Decision and Rationale.

The proposed rule will be adopted, as modified herein. The Commission concludes that the Cellulars' arguments have merit and that wireless carriers should be exempted from the proposed rule's application. The discretionary nature of wireless service, together with wireless carriers' traditional billing for non-telecommunications services, warrants this exemption. Staff's comment that PCS providers expect to replace wireline service to a large extent in the next few years is speculation and does not warrant rejection of the Cellulars' proposed change. Past experience demonstrates just how long fundamental change in the telecommunications market can take, contrary to projections. Staff's proposed addition to the proposed rule appears reasonable and was not objected to by any of the other parties to this proceeding. Accordingly, that revision to the proposed rule will be adopted. Finally, the Commission will further revise the proposed rule to make it clear that taxes and other legally required charges may be included in bills for telecommunications services.

c. 2.1.1.b. [2.1.a.3. & 2.1.a.4.] Late Payment Penalties.

(i) Comments.

Staff proposed a new subsection to be added to the Telephone Rules to deal with late payment penalties. As proposed by Staff, the new section would provide:

No telephone company may charge a late payment fee unless allowed to do so by Commission-approved tariff. Such tariffed fees may not be levied unless the subscriber's bill clearly shows the date by which payment must be mailed, or made at a collection point, or via electronic means, in order for the fee to be avoided.

The proposed rule, Staff wrote, would help eliminate confusion among customers regarding what they have to do in order to avoid late payment penalties. Staff Comments at 3. CAD supported Staff's proposed rule. CAD Reply at 4.

AT&T supported Staff's proposal, but recommended substituting "received" for the phrase "mailed, or made at a collection point, or via electronic means." AT&T Reply at 2. The change, AT&T wrote, would better reflect standard billing practice in commercial transactions, i.e., establishing a date by which payment must be "received" in the office before a late payment fee is assessed rather than the date the customer mails payment. Id. AT&T argued that carriers cannot reasonably be expected to track when customers actually mail their payments in order to determine whether payment is late.

BA-WV opposed Staff's proposal with respect to the manner in which timely payment is determined. BA-WV claimed that it was unaware of any confusion on its customers' part regarding when payment would be considered late. Those customers, BA-WV wrote, receive bills that clearly state, on page one, that a 1% late payment charge will apply to any amounts not received by the due date. BA-WV Reply at 2-3. BA-WV's monthly bills further advise customers, on page two, that payments received on any business day will be credited to the customer's account the next business day, and that payments credited to the customer's account on or before the due date are considered on-time. Id. at 3. Like AT&T, BA-WV claimed that Staff's proposal would alter current, and long-established industry practice without any justification. Like virtually all vendors who receive payment by mail, BA-WV uses a fully automated process to open envelopes, remove payment and then discard the envelope _ and thus the postmark date. If Staff's proposal was adopted, carriers would have to manually check the envelope for postmarks for all payments received after the due date. The cost would be prohibitive. Id. BA-WV further pointed out that, even where payment is not received by the due date and is therefore delinquent, it allows its customers two additional "grace" days, until the "bill extract" date, before a late payment charge is imposed. Id. n. 1.

In response to AT&T's comments, CAD indicated that it did not oppose AT&T's comments so long as the delinquency period is extended to 30 days, in accordance with proposed Rule 2.1.6. CAD Surreply at 3.

(ii) Decision and Rationale.

The rule proposed by Staff should be adopted, with certain revisions in accordance with BA- WV and AT&T's comments and the Commission's own views. Late payment penalties should only be allowed where a carrier's Commission-approved tariff so provides. Furthermore, carriers seeking to collect late payment penalties must clearly and conspicuously indicate the payment due date on the bill. This date cannot be less than 20 days after the bill was rendered.

d. 2.1.2.b. [2.1.b.2.] Bills for toll service.

The proposed rules included the following new subsection addressing bills for toll service:

All charges for service, whether such charges are flat-rate or usage- based, shall appear on a bill rendered not later than sixty (60) calendar days beyond the date on which the charge was incurred.

(i) Comments.

Virtually every party submitting comments addressed this proposed rule.

Both Citizens and BA-WV recommended that all charges for service should appear on bills rendered not later than 90 days after the date the charge was incurred. Citizens Comments at 4; BA- WV Comments at 21-22. A longer period for rendering bills is necessary, they claimed, because they do not control the billing practices of other carriers for whom they provide billing services. BA-WV proposed changing the proposed rule to allow 90 days and appending the following proviso: "provided, however, that, irrespective of such ninety (90) day period, it shall be the object of all carriers to bill their customer charges as soon after such charges are incurred as is reasonably practicable." BA-WV Comments at 21-22.

WorldCom suggested revising the proposed rule to allow bills to include charges for service rendered up to 180 days prior to the billing date and, in cases involving toll fraud, for up to 1 1/2 years prior to the billing date. WorldCom Comments at 2. The Cellulars requested that wireless carriers should be exempt because of delays in receiving charges for roaming service. Cellulars Comments at 3. The Independent Group claimed that the 60-day time frame is appropriate for "1+" intrastate toll charges but a longer period of time, 120 days, is needed where intrastate operator assisted and casual calling/dial-around toll calls may be placed on a consumer's bill. Ind. Gr. Comments at 2. AT&T recommended that the rule should be revised to allow billing for charges up to 90 days or within two billing cycles, whichever is longer. AT&T Comments at 4-5.

In response, Staff contended that there is no excuse for a carrier to render a bill over 60 days old at a time when communications travel at the speed of light and when the Internet allows almost instantaneous transfer of information. Staff Reply at 3-4. CAD supported BA-WV's proposed change to Rule 2.1.2.b. CAD Reply at 4-5. AT&T likewise expressed support for a 90-day limit for billing for services rendered and supported the suggestion that wireless carriers should be exempt. AT&T Reply at 7-8.

(ii) Decision and Rationale.

The Commission concludes that the proposed rule should be adopted, with several of the changes advocated by WV, AT&T, Citizens and the Cellulars incorporated. First, the Commission will amend the rules to provide that all charges associated with wireline telecommunications service should appear on bills rendered not later than 60 days after the date the

charge was incurred. The Commission agrees with Staff's comment that, in an era where virtually all business transactions and exchanges of information are carried out electronically, there is no excuse for needing more than two months to obtain the information necessary to bill a customer for services used by that customer. However, the

Commission believes that the Cellulars' comments with respect to "roaming" charges should be taken into account and will extend the period within which bills must be rendered for wireless services to 90 days. As a final matter, the Commission will incorporate BA-WV's suggested language requiring carriers to bill for services as soon as practicable within the 60- and 90-day periods allowed under the rule.

e. 2.1.3.a. [2.1.c.1.] Statements of applicable rates.

The Commission did not propose to amend Rule 2.1.3.a. The current rule provides:

Each telephone utility shall transmit by mail to each of its basic residential and business customers a clear and concise statement of the existing rate schedule applicable generally to residential and business customers.

(i) Comments.

AT&T suggested modifying the rule by replacing "telephone utility" with "local exchange carrier." AT&T Comments at 5. Staff opposed this change, arguing that there is no compelling reason why the rule should not apply to all telephone companies. Staff Reply at 9.

(ii) Decision and Rationale.

The Commission will retain the current rule. AT&T's suggested change is rejected because it creates a double standard that distinguishes between different, competitive markets in West Virginia. The modification proposed by AT&T would make LECs subject to greater obligations in providing their customers with information than carriers providing interexchange toll service, both intraLATA and interLATA. The Commission fails to see why LECs that provide intraLATA toll, or possibly interLATA toll service, should be subject to more stringent notice requirements than IXCs that compete against them in these markets. Imposing a more rigorous notice rule for LECs only seems anticompetitive. Moreover, it undercuts the Commission's policy favoring the provision of more information to customers in order to allow customers to make informed choices among competitors.

f. 2.1.6. [2.1.f.] Delinquent payments.

As proposed, Rule 2.1.6 provided:

Payment shall not be delinquent less than ~~twenty (20)~~ thirty (30) days

after such bill is mailed to the customer.

(i) Comments.

Citizens, AT&T, and BA-WV urged the Commission to retain the current rule (i.e., 20-day delinquency). Citizens Comments at 5; AT&T Comments at 5; BA-WV Comments at 23-24. Staff recommended revising the proposed rule by adding the phrase "or otherwise rendered" after "mailed." Staff Comments at 5. Staff opposed retention of the 20-day delinquency period on the grounds that it is inconsistent with other utility rules that define a bill as delinquent if not paid within 30 days of being rendered. Staff Reply at 4-5, citing 150 C.S.R. § 3-4.8.3.a. (Electric Rules), 150 C.S.R. § 4-4.8.3.a. (Gas Rules). Staff asserts that the commenters confuse the terms "due" and "delinquent;" the due date commonly found in most telecommunications tariffs is 20 days, while the term delinquent means the bill has exceeded the allowed period and companies can move forward with termination. Id. at 5. CAD supported Staff's position and suggested that the carriers' arguments that extending the period may increase uncollectibles is speculative. CAD Reply at 5.

(ii) Decision and Rationale.

The Commission will adopt the proposed rule, as modified by Staff. As Staff points out, the rule change makes the Telephone Rules consistent with Commission rules governing other utilities. Those rules make it clear that a customer is not considered delinquent until 30 days after the bill for service was mailed. The delinquency provisions are relevant

to termination of service, not the applicability of late payment penalties, which have already been discussed, and which can be charged if payment is not received 20 days after the bill was mailed. With respect to Staff's modification to the proposed rule, the Commission concludes that the modifying language should be adopted. Staff's modification is a reasonable effort to reflect the fact that many telecommunications carriers have now begun providing "e-bills" to customers via the Internet.

g. 2.2.1.b. [NA] Cramming.

CAD proposed an entirely new rule addressing "cramming"[See FootNote 3](#) practices by certain companies. CAD's proposed rule would provide:

b. Any Local Service Provider which provides billing services to third-party providers of goods or services must:

1) require as part of any agreement to provide billing services that such third-party provider disclose the precise nature of the services

which are being provided, and all other entities for whom such services are being provided, including any parents, subsidiaries, agents, principals, customers or other such entities on whose behalf the third-party provider is acting in any way ("related entities");

2) require proof that any such third-party provider of goods or services, and any and all related entities, are duly licensed and/or authorized to conduct business in the State of West Virginia prior to executing any agreement to provide billing services;

3) include terms in any agreement to provide billing services to a third-party provider of goods or services that failure to fulfill the notification and authorization requirements in subsection (2) constitutes an automatic breach of the agreement, and grounds for referring said entity to the Public Service Commission of West Virginia for possible enforcement action;

4) provide its telephone customers with an option to designate in writing the only services to which the customer is subscribing;

5) provide its telephone customers with an option to request that any billing for goods or services not included in those designated in writing by the customer be itemized on a separate insert to their monthly bill, which insert must be on a page of a different color from the remainder of the monthly bill; and

6) include within all monthly bills a toll free telephone number for a customer service representative devoted to investigating and addressing customer billing complaints.

(i) Comments.

CAD wrote that customers should have some option to place reasonable controls on their account in order to minimize their exposure to fraudulent practices, such as "cramming." [CAD Comments](#) at 2. While it claims it does not want to impose unduly expensive or burdensome solutions on local carriers, CAD stated that LECs must fulfill a minimal "gatekeeper" function if they are being paid a fee to bill on behalf of others and the charges appear on the LECs' bills. [Id.](#) Another approach suggested by CAD would to require all LECs to publish, prominently and on the monthly bill, the number for customer service representatives who investigate billing complaints. [CAD Comments](#) at 2. Once a complaint is made, the LEC should be required to respond to the customer in writing before the customer is required to pay any disputed charge. [Id.](#)

The Independent Group opposed CAD's proposal, writing that CAD had not demonstrated why the public interest is served by shifting the responsibility of ensuring a carrier's regulatory compliance from the third-party provider -- and ultimately, the Commission -- to the LEC. [Ind. Gr. Reply](#) at 3. The obligation to comply with Commission rules properly resides with the service provider rather than the LEC, and shifting that responsibility imposes additional costs

and burdens upon the LEC. Ind. Gr. Reply, at 3. The Independent Group also opposed CAD's suggestion that billing for goods or services not previously designated in writing by the customer should be itemized on a separate insert of a different color. Id. at 4. While noting its opposition to "slamming" and "cramming," AT&T likewise disagreed with CAD's proposed rule on the grounds that the number of customer service changes would make it an administrative "nightmare" to require the LEC to confirm such changes and to await receipt of a signed customer authorization before any change is implemented. AT&T Reply at 8-9.

On the other hand, Staff supported CAD's proposed rules, noting that companies are not obligated to place a prior restraint on consumers' ability to obtain new services but rather consumers would have a choice they do not currently have -- the choice to voluntarily restrict their future choices and delay subsequent change. Staff Surreply at 6. Staff noted that CAD's proposal is similar to carriers' current practice of offering blocking service for 900 numbers, collect calls and third-party calls, as well as preferred interexchange carrier (PIC) freezes. Id.

(ii) Decision and Rationale.

The Commission's decision to adopt Rule 2.1.a.1., as modified previously in this order, makes it clear that telecommunications carriers cannot place charges for non-telecommunications services on customers' bills. This general prohibition on such billing obviates the need to adopt CAD's proposed rule.

g. 2.2.1.c. [NA] Cramming.

CAD also proposed the following additional new rules dealing with cramming and related practices:

c. The Commission, upon finding that any provision of this section of the Rules has been violated, may take any or all of following action:

1) Lay a fine upon the violator for each violation. Such fine shall not exceed the applicable limits of the West Virginia Code.

2) Revoke the violator's certificate of public convenience and necessity.

(i) Comments.

CAD wrote that potential targets of fines or certificate revocations should include telephone companies that repeatedly fail to engage in prudent due diligence with regard to billing entities engaged in fraud on the public. CAD Comments at 4. The Independent Group opposed CAD's proposed Rule 2.2.1.c on the grounds that the penalties and certificate revocation provisions improperly shift the responsibility for improper practices of billing entities from those entities to the LEC. Ind. Gr. Reply at 3.

(ii) Decision and Rationale.

As with CAD's proposed Rule 2.2.1.b, the Commission's decision to generally prohibit telecommunications carriers from including charges for non-telecommunications services on customer bills makes it unnecessary to adopt CAD's proposed Rule 2.2.1.c. The Commission has sufficient statutory authority to enforce its rules and regulations and does not need to adopt a rule establishing sanctions for violations of CAD's anti-"cramming" rules.

h. 2.2.6.b. [2.2.f.2.] Denial or discontinuance of service.

Rule 2.2.6.b in its present form, provides:

b. The telephone company shall give written notice complying with Form 14-T sent first class mail, address correction requested, at least ten (10) days prior to the scheduled termination. At the time notice is given, a residential customer shall be advised of his rights under Rule 2.2.6.e. Written notice shall become invalid thirty (30) days after the date indicated on the notice for termination. At the time notice is given, a residential customer shall be

advised of his rights under Rule 2.2.6.e. Written notice shall become invalid thirty (30) days after the date indicated on the notice for termination. [sic] The telephone company shall also make at least two attempts at personal notice by telephone at least twenty-four (24) hours prior to termination. However, the inability of the telephone company to perfect personal notice shall not prevent the telephone company from terminating service. Discontinuance of service will not be made on a day that the business office is closed or on any day immediately preceding a day on which the business office is closed. Furthermore, discontinuance of service shall not be made earlier than 8:00 a.m., nor later than 4:00 p.m.

(i) Comments.

Although the Commission did not propose any amendments to Rule 2.2.6.b, both Staff and CAD recommended certain changes to the current rules. Staff proposed disallowing service

disconnections on Saturday, Sunday or holidays. Staff Comments at 5. For its part, CAD proposed language to be included in Rule 2.2.6(e), governing deferred payment plans, that would require the itemization of charges for which service may be terminated. CAD Comments, at 3. CAD's proposed Rule 2.2.6(e) would include the following proviso:

The customer shall be informed at the time a disconnect notice is issued of the option of a reasonable payment plan, including an itemization of those charges not in bona fide dispute related to basic service, the payment of which will prevent termination.

Id. at 8.

Citizens opposed Staff's limitation on disconnection, claiming that the current rule prohibits disconnection on a day or the day before its business office is closed, thereby giving the customer an immediate opportunity to pay the outstanding charges. Citizens Reply at 7. Furthermore, Citizens claimed that Staff's goal of regulatory uniformity does not support its proposal and that the proposal reduces a LEC's flexibility in a competitive market. Id. at 8. BA-WV likewise claimed that current industry practice in West Virginia -- in which business offices are closed on Saturdays -- accomplishes the same end Staff seeks. BA-WV Reply at 2. BA-WV similarly argued for competitive flexibility with respect to office hours and service terminations. Id.

In response, CAD urged the Commission to adopt Staff's amendments in order to avoid two or three-day service terminations. CAD Surreply at 3. Staff noted that the Commission adopted similar provisions prohibiting disconnections on Friday, Saturday or Sunday in other utility rules. Staff Surreply at 1, citing "Commission Order," General Order No. 184.10 (May 8, 1996), at 5 (Electric Rules); "Commission Order," General Order No. 185.12 (May 22, 1996), at 3 (Gas Rules). Furthermore, Staff argued, Friday terminations put customers at a disadvantage because Commission employees are unavailable on weekends and because many utilities no longer have business offices but rather "800" numbers and "virtual" offices. Id.

(ii) Decision and Rationale.

Staff's proposed revision to the current rule is reasonable and should be adopted. Although the telecommunications carriers' comments regarding their business decisions to maintain alternative office hours in the face of competition have merit, the problem is that the Commission is not staffed on Saturdays, Sundays or holidays. Even if customers can reach a carrier's representatives regarding restoring or maintaining service on such days, if the customer is unable to resolve the termination with the carrier, he or she will be unable to contact Commission staff to seek relief. This is the crux of the matter _ whether customers can avoid termination on days when Commission staff is not available. The Commission will also adopt CAD's proposed change, which appears reasonable and was unopposed.

i. 2.4.4. [2.4.d.] Insufficient reasons for denying/discontinuing service.

The current rule provides:

When the subscriber is of the age sixty-five (65) years or older, and such subscriber is living alone, denial or discontinuance of service shall not be made prior to contact with a near relative, i.e., son, daughter, niece, or nephew, or responsible third party. Where the West Virginia Department of Welfare is a party in interest, they are considered as

such third party. This exception shall also apply to any subscriber regardless of age, who is physically and/or emotionally incapacitated, and living alone.

(i) Comments.

Although the Commission did not propose any amendments to Rule 2.4.4, Staff proposed major changes to the current rule. Staff proposed that the Commission replace "Department of Welfare" with "Department of Human Resources [sic] (or successor agency)." In addition, Staff suggested that the following additional language should be appended to Rule 2.4.4:

The requirements of this rule shall be considered met if the eligible subscriber, at a minimum, is provided with the following:

a. Dial tone (without ability to receive incoming calls):

b. Ability to make "9-1-1" calls:

c. Ability to call the serving LEC's business office:

d. A recorded announcement, played whenever a caller tries to reach something other than "9-1-1" or the serving LEC's business office, which informs the caller that the line cannot receive incoming calls and can only be used to make emergency calls to 9-1-1 and to contact the telephone company's business office.

Staff Comments at 6. The appended language, Staff asserted, would allow serving LECs to use "Soft Dial Tone" to meet eligible subscribers' emergency medical calling needs.

In response, Citizens suggested that Staff's proposed Rule 2.4.4.b should be amended by adding "where available" following "9-1-1" to reflect the fact that 911 service is not yet ubiquitous in West Virginia. Citizens Reply at 8. Citizens opposed Staff's proposed Rule 2.4.4.c on the

grounds that compliance would be prohibitively expensive, if not technically infeasible. Separate programming would be required in order to enable affected customers to call the LEC office but block calls to other 7- or 10-digit numbers. Id. Moreover, such problems would be exacerbated in a resale environment. If the Commission adopts Staff's proposed rule, Citizens requested clarification regarding how the rule applies in a competitive environment, especially resale.

In reply, Staff noted that, in areas where 911 service is not available, such calls connect a caller with a "0" type operator who can quickly connect the caller with the appropriate emergency service provider. Staff Surreply at 6.

(ii) Decision and Rationale.

Staff's proposed changes to Rule 2.4.4 should be adopted for the most part. However, subsection 2.4.4.c. will be deleted and the language in subsection 2.4.4.d. modified to remove any reference to the customer's ability to reach the serving LEC's business office. The Commission sees no dire necessity for customers who are covered by Rule 2.4.4, and who are without service, to be able to reach the serving LEC's business office, in contrast to being able to make 911 calls. In light of the difficulties cited by Citizens, not the least of which is how to deal with the complexities of reaching the serving carrier's business office in a resale environment, and the general lack of necessity in contacting that office, this requirement should be dropped.

j. 2.4.5. [2.4.e.] Limitation on denial/discontinuance of basic local exchange service.

In its amendments, the Commission proposed the following new subsection be added to the Telephone Rules:

Basic Local Exchange Telephone Service, as defined in 1.7.3, shall be neither disconnected nor interrupted for non-payment of charges rendered for provision of Non-Basic Services, as defined herein, provided the customer pays for and continues to pay all charges, not in bona fide dispute, related to basic services.

(i) Comments.

Both AT&T and BA-WV argued that the proposed rule should be deleted in its entirety. AT&T Comments at 5-8; BA-WV Comments at 25-26. AT&T claimed that, of all the proposed amendments, this amendment would have the most significant, potential adverse financial impact on carriers and subscribers who pay their bills. The proposed rule, AT&T claimed, would result in higher rates due to higher LEC and IXC uncollectibles, would provide a disincentive for new carriers to enter the state, and contradicts the Commission's prior determination that, as a matter of policy, termination of local service for non-payment of undisputed interexchange charges was

reasonable. AT&T Comments, at 5-6, citing "Commission Order," Lawrence v. C&P Telephone Company of West Virginia, et al., Case No. 84-426-T-C (July 3, 1985). AT&T claimed that there is no evidence the current policy, established in Lawrence, adversely affects West Virginia subscribers, and further asserted that changing the policy only benefits subscribers who do not pay their bills. Id. at 6-8. Finally, AT&T argued, in an increasingly competitive market in which customers can "jump" from carrier to carrier, disconnecting local service for non-payment of interexchange charges is the "only effective" method of protecting LECs, IXCs and paying customers from the unscrupulous minority of non-paying customers. Id. at 8.

BA-WV likewise argued that, in Lawrence, the Commission determined that allowing termination of local service for non-payment of interexchange charges served the interests of ratepayers, LECs and IXCs. BA-WV Comments at 25. The proposed rule, BA-WV claimed, goes beyond merely overturning Lawrence, because it prohibits LECs from not only denying local service for non-payment of IXC charges, but also prohibits LECs from denying local service for non-payment of charges for long distance, discretionary (e.g., Custom Calling) and other non-basic services that the LECs themselves provide. Id. The problem, BA-WV wrote, lies in partial payment situations. BA-WV claimed that its billing system does not allow it to determine, absent manual analysis, whether local charges are being satisfied while other charges are not. Id. Moreover, the proposed rule diminishes the value of BA-WV's billing and collection service and would reduce revenues from those services. Id. at 26. Finally, the low number of customers who fail to pay their bills on time, and the even smaller number who actually have their service denied, does not justify the higher operating costs and uncollectibles that would result from a change in current policy. Id.

Citizens recommended that the Commission replace the phrase "Non-Basic Services" with "services not regulated by the Public Service Commission." Citizens Comments at 6. CAD argued that the final rule should reference the Commission's ability to impose fines allowable under state law for any violation of Rule 2.4.5. CAD Comments at 3-4.

Staff disagreed with BA-WV, AT&T and Citizens and advocated adoption of Rule 2.4.5., as proposed. Staff claimed that BA-WV's assertion that it is unable to allocate partial payments is not credible because BA-WV's current tariff provides that it will not terminate or suspend, without prior Commission authorization, any Commission-regulated service for which payment has been made, due to non-payment of non-regulated service. Staff Reply at 5, citing Bell Atlantic - WV, P.S.C. Tariff No. 201, Section 1.F.3, ¶ 2, at p. 36. Moreover, Staff claimed that BA-WV has stated, informally, that it does not suspend or terminate local service for non-payment of many non-basic services (e.g., fax services, 900 calls, long distance calling card plans, Internet access fees). Staff contended that BA-WV has resolved its partial payment problem for many of the items that Staff would regard as non-basic services. The only non-Commission regulated services for which BA-WV disconnects local service for non-payment are interstate and international toll calls billed on behalf of IXCs. Id. Staff asserted that allowing BA-WV to terminate local service for unpaid IXC charges extends its monopoly power in the local market and allows IXCs to use the threat of disconnection as a collection tool. This, Staff suggested, is inconsistent with the expansion of

competition in telecommunications markets. Id. at 5-6.

Staff also disputed AT&T's claim that the current policy allowing disconnection of local service for non-payment of an IXC charge poses little problem. Staff cited situations involving IXC practices with respect to charges for 900 number entertainment services, which are frequently international toll calls. Under current rules and practice, customers can be billed substantial amounts for such calls and AT&T's typical response to customer requests for assistance is to "reluctantly" agree to a one-time, 50% adjustment. Id. at 6. AT&T benefits by 900 number vendors escaping regulation because it can expect BA-WV to disconnect local service for non-payment of the 900 number charges.

Finally, with respect to arguments based on Lawrence, Staff argued that circumstances have changed since that

decision was rendered. Staff noted that carriers today possess the technology for toll restriction and blocking, that the intimate and interdependent relationship between AT&T and BA-WV no longer exists, that various markets and services are deemed competitive, and that non-paying subscribers can "jump" from vendor to vendor in a number of markets today. Id. at 6-7. Therefore, Staff wrote, the Commission should adopt the proposed rule, which looks to the future -- when AT&T and BA-WV are competing LECs. Id. at 7.

In addition, Staff urged the Commission not to adopt Citizens' suggested change to the proposed rule. Staff claimed that it is vital that basic telephone services be fully protected by the Commission at a time when competition, service options, and rate plans are proliferating. Local service, in contrast to optional services, is a lifeline and "must not be held hostage to other nonessential services," Staff argued. Staff Reply at 10.

CAD supported Staff's proposal, arguing that the Commission should uphold full toll service denial, as the Wyoming state commission did, as an appropriate remedy for failure to pay undisputed toll charges. CAD Reply at 7-8, citing Re: US West Communications, Inc., 184 P.U.R.4th 207, 208 (Wyo. P.S.C. Jan. 14, 1998). Adoption of the proposed rule allows subscribers to have access to local, emergency and directory assistance service -- if they remain current on their bills for local service. Such a rule is sound policy, CAD asserted, since toll service denial attaches the sanction to the service for which the customer has failed to pay. Id. at 8. Moreover, CAD argued, BA-WV's and AT&T's arguments regarding uncollectibles is speculative. If, however, the Commission is persuaded by those arguments, CAD suggested it should convene a general investigation before continuing to uphold the right to disconnect local service for failure to pay toll charges. Id.

In its reply, BA-WV asserted that new approaches carriers are taking toward bundling different types of service, such as intraLATA service with local service, or local service with non- basic services, makes the proposed rule unworkable. BA-WV Reply at 4-5. Bundling and packaging of services will, BA-WV argued, obliterate the historic distinctions among local, toll and other -- vertical, optional, discretionary -- services. Id. at 5. Moreover, the creation of different

local calling areas by different, competing LECs, will render the proposed rule unworkable. Id.

(ii) Decision and Rationale.

After considering the commenters' arguments, the Commission concludes that the proposed rule should be adopted.

One of the primary pillars of the arguments advanced by BA-WV and AT&T is the Commission's 15-year old decision in Lawrence. In that case, the Commission concluded, after a lengthy proceeding, that local carriers should be allowed to terminate customers' local service for non-payment of long distance bills pursuant to billing and collection agreements between the local carriers and the IXC's. The Commission's decision in Lawrence was based on then-current technical capabilities of local carriers and IXC's, as well as economic benefits the local carriers derived from their billing and collection agreements with IXC's. Lawrence, 69 P.U.R.4th at 680. The technical issues considered by the Commission focused on: (1) the ability of C&P Telephone (BA-WV's predecessor) to allocate partial payments; (2) C&P Telephone's ability to selectively terminate customers; and (3) the ability of AT&T to control access to its network. Id. at 673-74. With respect to the first technical issue, the Commission noted that C&P Telephone's billing system, in 1985, did not have the capability to allocate partial payments (i.e., bills showed only a total amount due, not amounts due for local and interexchange service). The Commission accepted C&P Telephone's contention that the cost to reprogram that billing system would be substantial, though Staff opined that the cost of reprogramming was not as high as C&P Telephone estimated and that the company had the capability in 1985 to handle dual balance billing. Id.

As for C&P Telephone's ability to selectively terminate customers, the Commission noted that the three types of electromechanical switches used by C&P Telephone and some other LECs were not, in 1985, designed for selective denial without reprogramming or modification. Nor could the LECs deny operator handled calls without the development of additional software. Id. at 674. Addressing the third technical issue, AT&T's ability to control access to its network, the Commission noted that AT&T would not have its own network call denial system in place until 1986 and, prior to that time, AT&T would have to rely on LECs to deny access to delinquent long distance customers. Id. Only in exchanges offering equal access could AT&T obtain the network information necessary to be able to control access to its network independently. Id.

To put it mildly, a lot has changed in telecommunications technology since 1985. BA-WV's billing system is far more sophisticated today than it was in 1985. Monthly bills rendered by BA- WV now provide separate line item charges for numerous services, such as applicable taxes and fees, usage-based charges, peak and off-peak billing, flat-rate charges, charges for discretionary services and charges for long distance calls made through use of IXC access codes. Moreover, as Staff noted in its comments, BA-WV's current practice in dealing with customer complaints suggests that the problem of dealing with partial payments is not as problematic as it once was. As for switching technology, the telecommunications industry has come a long, long way from 1985.

Digital switches are now deployed in every exchange in West Virginia. These switches, unlike the electromechanical switches considered by the Commission in Lawrence, can easily be programmed to selectively deny non-paying customers access to long distance service. Finally, with the advent of equal access throughout West Virginia in August 1997, all IXCs have the capability of receiving calling number data that allows them to independently deny access to their own long distance networks. In short, the technical problems underpinning the Commission's decision in Lawrence no longer apply.

That leaves the economic issues considered by the Commission in Lawrence. The Commission considered two economic issues: (1) the value of termination authority in billing and collection agreements, and (2) the benefits of current billing arrangements. With respect to the first issue, the Commission concluded that the billing and collection service offered by LECs would be less valuable to IXCs if the LECs were unable to terminate local service for non-payment of long distance charges. Lawrence, 69 P.U.R.4th at 675. The Commission noted that testimony suggested that IXCs' uncollectibles would increase up to 6-7% without LEC termination of local service. Id. As for the benefits of the current billing arrangements, the Commission concluded that the revenue LECs receive for their billing and collection service generally contributes to lower rates for basic service. Id. at 674-75. The Commission observed that, if AT&T ceased using C&P Telephone's billing and collection service, C&P Telephone's revenues would be reduced by approximately \$8 million, which would translate into an additional \$1.50 across-the-board rate increase. The revenues lost by Citizens' predecessor (GTSE) would translate into a \$1.85 increase in customers' local rates. Id. at 675. Some other benefits customers would lose, the Commission noted, were the time and money saved writing one monthly check and using one envelope to mail payments. Id.

As with technical issues, much has changed since 1985. For one thing, as Staff pointed out in its comments, the interdependent relationship between AT&T and C&P Telephone has ended. Many of AT&T's customers in West Virginia are now billed separately by AT&T; the same is true for other large IXCs. Much of the revenue fallout from the loss of billing and collection arrangements has probably already been felt by the LECs. More importantly, competition in the local telecommunications market has arrived. Many of the IXCs are themselves now authorized to provide local service; some have even begun providing local service, either through resale of the incumbent LEC's service or a combination of resale and facilities-based service. As a practical matter, competitors may be at a disadvantage if the incumbent LEC can more readily leverage its "bottleneck" facilities to provide increased revenue by being able to terminate local service at the switching location, something resellers and some facilities-based competitors will have more difficulty doing.

In addition, the Commission notes that many state commissions have acted to prohibit local carriers from terminating local service for non-payment of long distance charges, including: California, Colorado, Idaho, Minnesota, New York, North Carolina, Ohio, Oregon, South Dakota,

and Virginia. [See FootNote ⁴](#) The Commission believes that should reverse Lawrence, consistent with current technical capabilities, existing economics, and the movement toward greater competition in the local telecommunications market and, in the future, competition in the intrastate long distance market in West Virginia.

k. 2.6.11. [2.6.k. & 2.6.l.] Directories.

The current rule states:

Each directory shall contain rate schedules by mileage band for inter and intra state message toll calls. Such listings shall show the rates for direct dial calls and operator handled calls in each applicable time period. In addition each directory may contain representative rate schedules for inter and intra state toll calls.

(i) Comments.

Both BA-WV and the Independent Group recommended that the current rule should be deleted in its entirety. BA-WV Comments at 27; Ind. Gr. Comments at 4. Staff indicated that it agreed that the current Rule 2.6.11 should be deleted and proposed that it should be replaced with the following rule:

Each Telephone Company shall, without charge and on a 24-hour per day, 7 day per week basis, provide to the public applicable rate and charge information regarding local, intrastate and interstate calling. Such information may be provided directly by the telephone company and/or through the use of one or more other entities capable of providing the information. Such information shall be available by each of the following means:

- a. Free telephone call;
- b. E-Mail;
- c. Internet web site.

Telephone Companies may also provide such information in a printed format available by mail and/or direct customer pickup and such information may also be faxed to customers desiring fax transmittal.

Staff Reply at 7. In addition, Staff recommended that the current Rule 2.6.12, which states "[i]llustrative service connection and installation charges for residential service shall be listed in each directory," should be replaced with the following rule:

Service connection and installation (where appropriate) charge information shall be made available by Telephone Companies exactly as required for calling rate and charge information by Rule 2.6.11.

Id. Staff contended that "timely, free, and around the clock" rate and charge information is essential for customers' informed decisions, especially in light of the "dizzying array" of service options and the likelihood such options will increase as competition increases. Staff Reply at 7.

BA-WV opposed Staff's proposals on the grounds that, while customers have a right to timely information about available telecommunications services, that right does not extend to having a service representative on duty to answer any rate question at any time. BA-WV Surreply at 4. BA-WV claimed that few businesses, and no state agency, maintain offices 24 hours a day to field customer/constituent questions. Moreover, while BA-WV does maintain 24-hour operator services, those operators are not -- and should not be -- trained to answer questions about the full range of available services. Such questions, BA-WV argues, should be directed to business office personnel during normal business hours -- from 8:00 a.m. to 6:00 p.m. Id. at 4. Staff offered no explanation why customers cannot ask questions during a normal 10-hour business period. BA-WV also requested three months to implement the requirement that its tariffs be posted on the Internet. Id.

(ii) Decision and Rationale.

Staff's proposed rules will be adopted, but revised to eliminate the 24-hour per day, seven day per week customer service representative requirement. Telephone companies should instead

be allowed to operate according to normal business hours. The Commission agrees with BA-WV that being able to contact the telephone company during its normal business hours is sufficient for any customer seeking information about the company's rates and charges. In addition, the Commission will, within this order rather than in the rules, provide telephone companies with a 3- month period within which to put their tariffs on the Internet. This timetable for compliance with this provision of the rules appears reasonable.

l. 2.8. [2.8.] Changes in subscriber carrier selections.

The Commission proposed to add a new section to the Telephone Rules to deal with changes in subscriber carrier selections. Rather than setting forth the new rules in their entirety, the Commission will set forth only those portions

that were the subject of substantive disputes among the commenters. The relevant provisions of proposed Rule 2.8 state:

a. No telecommunications carrier shall submit or execute a change in a subscriber's selection of a provider of local exchange telephone service or interexchange telecommunication's service except in accordance with the verification procedures stated in this section.

b. In order for a telecommunications carrier to obtain subscriber confirmation of a request for a change in local exchange telephone service or a change of presubscribed interexchange carrier (PIC) providing intrastate toll service, a telecommunications carrier must, from the customer of record:

A. Obtain written authorization through letters of agency; or

B. Obtain electronic authorization through the use of a toll-free telephone number;

Or Must:

C. Orally verify the change of carrier request through an appropriate independent third party; or

D. Send an information package, including a pre-paid, returnable postcard within three days of the subscriber's request for a change of carrier, and wait fourteen (14) days before submitting the subscriber's order to the local exchange carrier.

(i) Comments.

Citizens recommended that the Commission's rules should provide that a change in local exchange carrier should be made only upon receipt of a letter of agency (LOA), together with a statement that the customer authorizes the local carrier to disclose customer private network information. Citizens Comments at 6.

Only AT&T responded to Citizens' recommendations, opposing them on the grounds that the FCC specifically rejected a proposal identical to that made by Citizens. AT&T Reply, at 10. AT&T claimed that requiring new entrants to obtain signed LOAs in order to change their local carrier is not required under Section 222 of the Communications Act of 1934, 47 U.S.C. § 222, and may thwart the obligations imposed on incumbent LECs under Section 251 of TA96 by placing an anti-competitive hurdle in the path of competition. Id. at 11. Section 222(c)(1), AT&T noted, permits the sharing of customer records necessary for competitive carriers to provide service.

(ii) Decision and Rationale.

The Commission will adopt the rule as proposed and reject Citizens' proposed changes. Citizens' proposed changes conflict with the provisions of H.B. 2924. Among other things, W. Va. Code § 24-2E-1(a)(3) and (b) provide that changes in subscriber selections of providers of telephone service shall be authenticated by third-party verification, by LOA from the subscriber, by electronic authorization, or by recorded oral confirmation. Limiting provider changes to LOAs only, as Citizens proposed, is not an option. In addition, the Commission notes that several minor revisions were made to ensure that the final rules are consistent with the provisions of H.B. 2924, which was enacted March 12, 1999, and which took effect June 10, 1999. H.B. 2924 added a new article -- 2E -- to Chapter 24 of the W. Va. Code, and addressed "slamming" by placing limits on the transfer of phone service.

m. 2.8.d. [2.8.d.] Maintaining documentation re: change requests.

As proposed, Rule 2.8.d states:

Carriers shall retain, for at least six months, hard copy or electronic documentation of carrier change requests in which they become the requestor's chosen carrier. Such documentation shall be supplied to the Commission upon request.

The proposed rule is targeted at "slamming." [See FootNote 5](#)

(i) Comments.

The Independent Group suggested that the Commission defer action to address "slamming" until the FCC completes action on its Notice of Proposed Rulemaking, pursuant to Section 258 of TA96. [Ind. Gr. Comments](#) at 3-5. Furthermore, a recent Minnesota state court decision called states' ability to regulate slamming into question. [Id.](#) at 3-4, [citing State v. Minimum Rate Pricing, Inc.](#), File C1-97-008435 (Minn. Dist. Ct., Ramsey County, 2nd Judicial Dist., April 13, 1998). Alternatively, the Independent Group suggested that the Commission may wish to cross-reference the applicable FCC rules -- 47 C.F.R. §§ 64.1100 and .1150 -- until the FCC acts. [Id.](#) at 4.

In response, CAD argued that the Commission should not await FCC action before adopting the proposed rule. CAD cited the large number of slamming complaints received by the Commission, for both residential and business customers. [CAD Reply](#) at 8. Further, CAD claimed that the Minnesota state court decision is not dispositive of the FCC and states' respective jurisdiction over "slamming." CAD urged the Commission to adopt a "hard line" at least with respect to intraLATA service and cited the Pennsylvania commission's recent policy fining slammers up to \$1,000 per day per slammed customer until a complaint is resolved. [Id.](#) at 8-9.

(ii) Decision and Rationale.

The proposed rule will be adopted, with minor modifications. Rule 2.8.d will be revised to require records to be kept for at least two years rather than six months. H.B. 2924 made it a requirement that records verifying subscriber service provider changes must be kept for at least two years. [See W. Va. Code § 24-2E-1\(b\)\(5\).](#)

n. 2.8.h.A & B [2.8.h. & 2.8.i.] New Staff rule.

Staff proposed adding two additional subsections to Rule 2.8:

2.8.h.A. Whenever a LEC subscriber receives a change in his or service status due to subscriber request or to late payment (or nonpayment) and whenever a LEC subscriber makes a change in presubscribed IXC (or is subjected to an unauthorized presubscription change, i.e., "slamming"), the serving LEC shall, at the time of service restoral or presubscription restoral, inform the customer that his or her IXC account status may have

been changed and that such change could result in billing changes and that questions regarding any of that should be directed to the customer's IXC(s).

2.8.h.B. Under no circumstances shall a LEC or an IXC bill someone a "casual calling," random calling," etc. type rate, charge or fee for a call made over a telephone line presubscribed to the IXC which carried the call.

(i) Comments.

Staff subsequently suggested that, in an effort to promote competition, its proposed Rule 2.8.h.B should be modified by deleting the phrase "for a call made over a telephone line presubscribed to the IXC which carried the call." [Staff Reply](#) at 11. Staff claimed that customers often wrongly assume that, when their service is reconnected, their service -- including toll service -- will include the same rates and charges that applied before disconnection. Staff claimed that IXC non-presubscription charges were never intended to apply when a customer has presubscribed to an IXC but, for some reason, no longer has an active account with that carrier. [Staff Comments](#) at 1-2. Staff contended that its proposed rules will reduce this problem.

Staff's proposed new rules provoked strong opposition from Citizens, BA-WV and AT&T. With respect to proposed Rule 2.8.h.A, Citizens wrote that the rule should require the IXC -- rather than the LEC -- to provide the contemplated notice since changes in an IXC's calling plan are matters between the customer and the IXC, not the LEC. [Citizens Reply](#) at 3. BA-WV opposed proposed Rule 2.8.h.A on the grounds that Staff erroneously assumes that the LEC ordinarily contacts the customer in the normal course of restoring service. [BA-WV Reply](#) at 3. In most cases, BA-WV claimed, the customer pays the bill and service is automatically restored. Staff's proposal would require LECs, at

considerable time and expense, to call the customer when there is no local service-related reason to do so. Id. Like Citizens, BA-WV argued that the customer's long distance account and its status should be treated as a matter between the customer and the IXC. Id. at 3-4.

In its further reply comments, BA-WV noted that the rule appears to apply whenever a LEC subscriber makes a change in presubscribed IXC. BA-WV Surreply at 5. BA-WV claimed that it makes no sense for it to advise an AT&T "Dime-A-Minute" plan customer who has decided to switch to MCI that the customer should call AT&T to determine whether AT&T's toll discount plan can be retained. BA-WV further asserted that the proposed rule is unclear with respect to advising customers to call their IXC when there is a change in the customer's service status -- itself an undefined concept -- due to late payment. Id. BA-WV noted that since an IXC ordinarily will not know that the customer was late in paying a bill and thus the customer's toll plan likely would not have changed, requiring the LEC to advise the customer to contact the IXC makes no sense. Id. at 5-6.

As for proposed Rule 2.8.h.B, Citizens suggested that the proposed rule be revised to apply to IXCs only. Citizens claimed that, where a LEC provides billing and collection services for an IXC, the LEC typically has no ability to change the rating given a call by the IXC; all such information is provided by the IXC and the LEC simply prints the charges onto the LEC's bill. Citizens Reply to Staff at 3. Without costly upgrades, Citizens' billing system is incapable of cross-checking an IXC's charges against the presubscription status of a particular customer. Id. Finally, Citizens argued that the duty to rate calls carried by an IXC properly rests with the IXC. However, Citizens did agree that questions regarding rates sometimes arise when a customer selects a new presubscribed IXC and the LEC processes the change before the IXC establishes a customer account. To avoid higher rates being charged by the IXC in such situations, Citizens recommended revising proposed Rule 2.8.h.B to prohibit an IXC from billing casual calling rates or charges for calls made from a line presubscribed to it and for which it has established an account. At a minimum, Citizens suggested that the rule should be changed to permit IXCs to issue credits retroactively. Id. at 4. Citizens raised one other issue, namely what happens when a presubscribed customer nonetheless uses an access code (such as 1010XXX) to reach the IXC to which the line is presubscribed. Citizens noted that such calls typically appear to IXCs as casual calls. Id. Claiming that it would be unduly burdensome for IXCs to cross-check all apparently casually dialed calls, and that the customer bears some responsibility for the applicable charge in these situations, Citizens suggested that the proposed rule should be modified to exclude situations where the customer uses an access code to reach the IXC to which the line is presubscribed. Citizens recommended adding the following language: "An IXC may not assess 'casual calling' rates or charges for calls placed from a telephone line presubscribed to that IXC, and for which the IXC has established an account, except where the caller dials an access code to reach the presubscribed IXC." Citizens Reply to Staff at 4.

For its part, AT&T stated that the relationship between proposed Rule 2.8.h.B and the rest of Section 2.8 was unclear, since that subsection does not address changes in subscriber carrier selections and Staff's comments did not clarify the intent behind the proposed rule. AT&T Reply at 3. Moreover, AT&T noted that the terms "casual calling" and "random calling" are not defined or described in the proposed amendments. AT&T suggested Rule 2.8.h.B should not be adopted.

CAD, on the other hand, endorsed Staff's proposed Rule 2.8.h.A and suggested that, while LECs should not be unduly burdened with discussing the rate plans of other carriers, some minimum notification that new or newly reconnected customers should directly contact their chosen IXC is appropriate. CAD Reply at 9. With respect to proposed Rule 2.8.h.B, CAD stated that it believes Staff's proposal does not go far enough and recommended that the rule should be amended to provide an absolute ban on casual calling surcharges or fees by any carrier -- regardless of their presubscribed status. Id. at 9-10. CAD recommended that the rule should be revised to read: "Under no circumstances shall a LEC or an IXC bill someone a 'casual calling,' 'random calling,' 'dial-around,' etc. type rate, charge, surcharge or fee." Id. at 10. While CAD did not object to clarifying Rule 2.8.h.B in accord with AT&T's comments, it opposed Citizens' argument that the absolute proscription on casual calling rates in Rule 2.8.h.B should apply only to IXCs and urged

the Commission to apply the proscription "across the board." CAD Surreply at 5.

In response to the criticisms levied at proposed Rule 2.8.h.B, Staff indicated that it did not object to placing the subsection elsewhere in Section 2 of the Telephone Rules. Staff Surreply at 4. Staff also suggested adding the definition of "casual calling" and "random calling" in order to clarify the rule's application:

"Casual Calling" -- The use, on a per-call basis, of long distance service by means of accessing an interexchange telecommunications carrier through use of that carrier's access code. This term is synonymous with the term "random calling" and is sometimes referred to as "dial-around calling."

Id.

(ii) Decision and Rationale.

Staff's proposed Rule 2.8.h.A will be adopted, but will be revised to make it clear that LECs' obligation to provide the required information to customers arises only when the customer contacts the LEC to restore service. Requiring LECs to spend a few seconds to provide a general advisory to customers that their interexchange service may have changed and that they should contact their toll carriers to ensure that they are properly billed for toll service is not a significant burden and will help alleviate the confusion and frustration customers experience when they are served by different carriers. Moreover, the Commission's revision comports with CAD's recommendation that some minimum notice should be provided to telecommunications customers.

With respect to Rule 2.8.h.B, it is reasonable to adopt the rule as proposed by Staff, subject to several revisions. The Commission agrees with Citizens' proposed changes to reflect the presubscription status of a customer, or a customer's effort to reach the carrier to which the customer is presubscribed through use of an access code. The Commission also finds CAD's suggestion, i.e., that the prohibition on "casual calling" should apply across the spectrum of carriers and should not be limited to IXCs only, is reasonable and should be adopted. Finally, the Commission will adopt, with some modifications, Staff's definition of "casual calling" in order to clarify the rule's application. These modifications expand the scope of the proscription on charging presubscribed customers "casual calling" rates at all levels -- local, intrastate toll, and interexchange, interstate toll -- in accordance with CAD's suggestion.

o. Rule 2.8.h.C. [2.8.j.] New Staff rule.

In its reply comments, Staff proposed another new rule, Rule 2.8.h.C, to provide as follows:

Whenever a telephone number change or a presubscribed interexchange

carrier (PIC) assignment, change or reactivation is made to a telephone line, the local exchange carrier which made the telephone number change or the PIC assignment, change or reactivation shall, within three business days of the implementation of the telephone number change or PIC assignment, change or reactivation, notify the beneficiary interexchange carrier (IXC). Within three business days of receipt of such notification, the beneficiary IXC shall determine if an active account exists for the affected line. If none exists, the beneficiary IXC shall, within three business days of such determination, attempt to contact the subscriber associated with the affected line and inform the subscriber of the lack of an account for that line. For purposes of this rule, the beneficiary IXC shall be the IXC associated with the PIC code which becomes assigned to the telephone line pursuant to the implementation of any of the changes mentioned in this rule.

Staff Reply at 11.

(i) Comments.

Staff wrote that, in its experience, many people do not adequately know what is involved in establishing and maintaining accounts with LECs and toll carriers. This results in subscribers being charged higher rates than they expect because their account status changed, without their knowledge, and they were charged default rates. Id. Staff noted that default rates are normally the high base rates on which discount plans are based.

In response, BA-WV recommended that, if the rule is adopted by the Commission, it should be amended to provide that LECs need only establish an electronic or other automated system that provides for furnishing the information required by the rule. BA-WV Surreply at 6. BA-WV noted that it has put in place an automated system -- "Exchange Electronic Access" or XEA -- which provides the type of information that would have to be furnished other carriers under the proposed rule. However, not all carriers have elected to acquire the equipment necessary to interface with XEA. BA-WV argued that LECs should not be required to "chase down" those carriers, at the LEC's expense. Id.

Citizens suggested that the proposed rule should be amended to require notification of reconnection following a temporary disconnection only if the LEC notified the IXC of the temporary disconnection of service. Citizens Surreply at 3-4.

(ii) Decision and Rationale.

Staff's proposed rule will be adopted, albeit in substantially revised form. As an initial matter, the Commission finds BA-WV's arguments that LECs should not be required to "chase down" IXCs that do not access electronic or other automated systems capable of providing the requisite information to be reasonable and should be incorporated in the final rule. Citizens

comments also appear to be reasonable and should be incorporated in the final rule. Finally, the Commission concludes that the time frames suggested by Staff within which the IXC is required to take action are administratively unworkable. Tying IXC action to "receipt" of notice by the IXC could be construed to make the LECs guarantors of the notice _ i.e., requiring an LEC to take action to ensure the IXCs have in fact received the requisite notice. Moreover, the entire process for the IXC to determine what to do to contact the customer is limited to six business days. This is too short. The Commission concludes that it is reasonable to simply require IXCs to attempt to contact their customers of any account problems within 30 days following the provision of notice by the LEC. Finally, the Commission will separate the final rule into two subsections to make it read more clearly.

3. Section 6: Standards of Quality of Service.

a. 6.1. [6.1.] Basic telephone company obligations.

(i) Comments.

AT&T recommended that the title of this section should be changed to "Basic local exchange carrier obligations" on the grounds that Rule 6.1 describes the obligations of LECs providing service in West Virginia. AT&T Comments at 9. Staff disagreed with AT&T's characterization of Rule 6.1, arguing that there is no reason that the requirements in Rule 6.1 -- providing adequate quantities of reliable service, keeping suitable records, and requiring courteous, considerate and efficient performance by carrier employees -- should not also apply to IXCs. Staff Reply at 9.

(ii) Decision and Rationale.

The current title of Rule 6.1 will be retained. Most of the provisions in Section 6 of the Telephone Rules deal with local exchange service, rather than either intraLATA or interLATA toll service and, for the most part, these provisions specifically refer to local service or the local exchange carrier. See, e.g., 150 C.S.R. §§ 6-6.2.1.a and 6.2.3.a. This would appear to support AT&T's comments. However, the Commission agrees with Staff that some of the requirements of Rule 6.1 should be universally applicable to entities providing telecommunications service within West Virginia, whether local or toll. Accordingly, AT&T's comments will be accommodated by making it clear, in the body of the rules themselves, precisely where the standards apply to LECs only, as opposed to all telephone companies.

b. 6.1.8.a. & 6.1.8.b. [6.1.h.1. & 6.1.h.2.] Subscriber loop requirements.

Staff proposed that a new rule 6.1.8, entitled "subscriber loop requirements," should be adopted by the Commission. This rule would provide:

a. Where analog voice telecommunications service is

provided to a subscriber, the local distribution circuit (loop) shall meet the following specifications when are taken at the LEC's Network Interface Device connecting point.

A. Loop Current: 23 m/A or more

B. Circuit Loss: -8 db or more

C. Circuit Noise: 20 dbmC or less

D. Power Influence: 80 db or less

E. Balance (Power Influence minus Circuit Noise): 60 db or more.

b. Where digital telecommunications is provided to a subscriber, the loop shall be able to pass data, from the subscriber to the switching location electrically nearest the subscriber, at a minimum speed of 56 Kbps when appropriate send/receive devices are utilized at the LEC's NID connecting point and the switching location.

(i) Comments.

Staff claimed that its proposed rules were necessary to deal with the dilemma of what data capabilities should be provided to subscribers. Since it is not feasible to assign a meaningful minimum data speed to voice-grade analog lines, Staff recommended that the Commission should require certain parameters to be met. Staff Comments at 2-3. As for digital service, Staff asserted that 56 kilobits per second (Kbps) is a reasonable minimum standard to prescribe for all lines so that rural subscribers are not denied reasonable access to the Internet and other data-dependent services. Id. at 3.

BA-WV suggested several modifications to proposed Rule 6.1.8.a to reflect current engineering standards. BA-WV Reply at 4; Tr. at 20-21 (Zoltek). See FootNote⁶ BA-WV further advised that it would meet with Staff and Citizens in an effort to reach a stipulation regarding these standards. Staff endorsed BA-WV's proposed modifications to Rule 6.1.8.a regarding loop current and current loss but opposed all other modifications recommended by BA-WV. Staff Surreply at 2. With

respect to circuit noise and power influence, Staff argued that the deviations suggested by BA-WV could significantly affect use of a modem for communicating with the Internet. Id.

The Independent Group did not oppose Staff's proposed Rule 6.1.8.b but recommended that the Commission adopt the following, new Rule 6.1.8.c, which would give carriers time to bring their systems into compliance with Staff's proposals.

Carriers may seek a waiver of the requirements of Section 6.1.8.b to the extent that the provision of digital telecommunications service is not technically or economically feasible.

Ind. Gr. Reply at 6.

Citizens and BA-WV flatly opposed Staff's proposed Rule 6.1.8.b. Citizens argued that the proposed rule assumes that all digital telecommunications services are capable of carrying data. This is not necessarily the case. Citizens Reply at 4-5. For example, while digital channel service (DCS) See FootNote⁷ lines may allow data transmission, such lines are not designed or guaranteed to provide such capability, let alone transmission at a particular rate. Id. at 5. BA-WV suggested that digital transmission speeds should be specified for each digital service offering contained in the carrier's approved tariff rather than set forth as a unitary standard in the rules. BA-WV Reply at 5, citing Tr. 21 (Zoltek). Service rates vary with transmission speed, BA-WV noted, and requiring all data services to operate at speeds of 56 Kbps results in higher rates being charged for customers whose data applications function well at slower speeds. Id.

CAD argued that there was no reason to eliminate minimal data transmission requirements but did not object to the Independent Group's proposed Rule 6.1.8.c. CAD Surreply at 6-7.

(ii) Decision and Rationale.

Staff's proposed Rule 6.1.8.a, as modified by BA-WV with respect to loop current and current loss, should be adopted. With respect to data transmission standards in Staff's proposed Rule 6.1.8.b, the Commission rejects Staff's proposal to adopt 56 Kbps as a minimum transmission speed for all digital telecommunications services. Both Citizens' and BA-WV's arguments appear to be well-founded and militate against adoption of a unitary standard for all digital telecommunications services. The Commission will instead adopt BA-WV's suggestion and require data transmission speeds to be specified for each digital service offering set forth in a carrier's Commission-approved tariff. Where a particular digital service is not designed or intended to

transmit data, the carrier can so indicate in its tariff. Finally, in view of the Commission's action with respect to Rule 6.1.8.b, there is no need to promulgate the waiver provision suggested by the Independent Group.

c. 6.4.2. [6.4.b.] Local dial service requirements.

The Commission proposed the following changes to Rule 6.4.2:

~~Where existing central office equipment will permit, and W~~with the exception of numbers that are changed coincident with the issuance of a new directory, intercept service ~~will~~ shall be provided by the telephone company in accordance with the following: intercept services, either operator or mechanical, shall be provided for each non-working and changed telephone numbers until assigned, reassigned, or no longer listed in the main directory ~~where equipment permits, for that telephone number.~~ Such intercept shall, insofar as feasible and appropriate, provide the caller with the replacement telephone number if one exists. In instances where provision of a replacement number is infeasible or inappropriate, the intercept service shall inform the caller that the called number is a non-working number. A reasonable length of time shall separate telephone number reassignments.

(i) Comments.

Citizens noted that it currently provides the new telephone number to intercept callers, if appropriate, in some, but not all, exchanges. Deployment of this service would not be feasible until Citizens completes a statewide deployment of CLASS features, scheduled to be completed by December 31, 1999. Citizens Comments at 7. For its part, BA-WV claimed that providing intercept service for residential customers for more than 60 days was unnecessary because its historical experience, and lack of complaints, demonstrates that 60 days is sufficient. Moreover, it would be extremely labor intensive and costly to tie intercept service to the directory publication cycle since service representatives would have to determine the next directory publication date for the area where the service has been disconnected or changed. BA-WV Reply at 5-6. No reason for the proposed change was presented, BA-WV asserted.

(ii) Decision and Rationale.

The Commission will adopt the proposed rule, with changes to reflect BA-WV's comments. As drafted, the proposed rule appears overly confusing and does not offer the advantage of a fixed period of time for which intercept service is provided. Rather than leaving it to the carriers and Staff to dispute what constitutes a "reasonable" period for providing intercept service, the Commission will incorporate BA-WV's existing practice into its rules. The Commission notes that

BA-WV has been providing intercept service for 60 days for residential customers for some time and Staff has not objected to this period as unreasonable. The Commission considers this to be prima facie evidence that 60 days is a reasonable length of time to provide intercept service for residential customers. For business customers, one year appears reasonable in order to provide such customers with the benefits of their advertising. Finally, adoption of a 60-day period during which intercept service must be provided offers the advantage of freeing up phone numbers for reassignment more quickly and reduces local number exhaustion.

With respect to Citizens' comments, there is no need to establish a waiver for intercept service since Citizens expects to have completed statewide deployment of CLASS features by the end of 1999 -- well before the final rules adopted by the Commission take effect. In addition, the Commission should adopt a waiver provision for LECs which can demonstrate that compliance with the proposed rule is not technically feasible.

d. Rules 6.5.5 & 6.5.8. [6.5.e. & 6.5.h.] Maintenance Requirements.

As proposed, Rule 6.5.5 would provide:

Whenever ~~the~~ service ~~must be~~ is interrupted for the purpose of working on transmission facilities and/or their supporting apparatus and/or switching location ~~the distribution system or central office equipment,~~ this such work shall be done at a time which will cause the least inconvenience to subscribers, and those who will be most seriously affected by such interruptions shall, so far as ~~possible~~ feasible, be notified adequately in advance.

(i) Comments.

Staff suggested adding the following language to the proposed rule:

LECs shall notify a 9-1-1 answering center of any planned outage which will affect, for 15 minutes or longer, 25 or more access lines served by that 9-1-1 answering center.

Staff Comments at 7. In addition, Staff recommended that a new rule, 6.5.8., should be added to the rules. This rule would provide:

6.5.8. LECs shall immediately notify a 9-1-1 answering point of any service outage which affects the area served by that 9-1-1 answering point.

The Independent Group and Citizens objected to Staff's suggested changes in several

respects. Citizens complained that the Staff's proposed additions needed clarification. With respect to Staff's proposed 6.5.8., Citizens claimed that the rule would be overbroad and vague since it literally would require notification to a 9-1-1 answering point whenever a single customer's service is out. Citizens Reply at 5. In addition, the meaning of "affect" in both rules is unclear, Citizens asserted, and it requested clarification whether the outage must be of a type that makes it impossible for 911 callers to reach the 9-1-1 answering point, as well as clarification regarding how large an outage triggers the notification requirement. Id. at 6. Citizens suggested that a trigger point for notification should be used, and recommended outages affecting 200 or more lines for more than 2 hours. Id. The Independent Group suggested that each rule should be revised to require LECs to make "reasonable efforts" to notify the 9-1-1 answering point of the outage. Ind. Gr. Reply at 7. BA-WV recommended that, with respect to 6.5.8, notification should be required only in cases of major service outages.

In response to these comments, Staff indicated that the trigger point suggested by Citizens was reasonable and should be incorporated in each rule. Staff Surreply at 6. CAD also responded to these comments. CAD did not object to specifying the type and size of service outage that triggers the notification requirement, but believes a 2-hour outage threshold should be rejected as too long. CAD Surreply at 7-8. With respect to the Independent Group's suggestion, CAD flatly opposed any attempt to require only "reasonable efforts" to notify the 9-1-1 center since that language merely watered down the notification requirement. Id. at 8.

(ii) Decision and Rationale.

The Commission concludes that Rule 6.5.5. should be adopted, with certain revisions. First, the Commission will incorporate Citizens' suggested notification trigger level, to which Staff agreed, but with one change to reflect CAD's comments. Notification will be required when any planned outage involves 200 access lines or more. However, the Commission agrees with CAD that a two-hour threshold for notification is too long. One hour seems a reasonable compromise. With respect to the Independent Group's comments, the Commission agrees with CAD that requiring "reasonable efforts" to contact the 9-1-1 answering point in the context of planned outages or planned work that may result in outages is too weak. Where a LEC must interrupt service to work on its facilities, it should be required to contact the 9-1-1 center in advance, just like customers. With respect to unanticipated outages, which is the focus of Rule 6.5.8., the Independent Group's comments are more valid. Therefore, the Commission will adopt the Independent Group's suggestion, though it will be strengthened to require telephone companies to take "all reasonable actions" to notify the 9-1-1 center or appropriate emergency services personnel of any unanticipated service outages that affect more than 200 access lines for one hour or more.

e. Rule 6.7.1. [6.7.a.] Public Interest Telephones.

The Telephone Rules amendments, as proposed, would have deleted the following provision relating to payphones:

~~6.7.1. In each exchange, at least one (1) public telephone will be available to the public on a twenty-four (24) hour basis. This public telephone shall be located in a prominent location, provided with a directory and lighted at night, if practicable.~~

Although no party objected to the proposed deletion of this rule, the Commission will withdraw the proposed amendment and retain the rule as currently written. In the Commission's general investigation regarding public interest payphones, Case No. 98-0430-T-GI, the task force established in that proceeding recommended that no Commission action regarding providing for public interest payphones was necessary, precisely because Telephone Rule 6.7.1. made adequate provision for such payphones. Based on that recommendation, the Commission concluded that no action needed to be taken with respect to public interest payphones. See "Commission Order," GI Re: Public Interest Payphones, Case No. 98-0430-T-GI (Sept. 22, 1998), at 2 and Conclusion of Law No. 2. See FootNote 8 Deletion of the rule, as proposed, would eliminate the only provision for public interest payphones in the Commission's rules and would require a reevaluation of the decision in Case No. 98-0430-T- GI.

f. 6.7.2. [NA] New Staff rule.

In its initial comments, Staff proposed that a new Rule 6.7.2. should be added to the Telephone Rules, which would provide as follows:

Each CMRS provider, as such is defined in the West Virginia Code § 24-6-2, shall route 9-1-1 calls to the appropriate county answering point. The appropriate county answering point shall be determined by mutual agreement of the 9-1-1 directors of affected counties with 9-1-1 service and county emergency service directors of affected counties without 9-1-1 service.

(i) Comments.

Staff claimed that the proposed rule would codify existing practice, would prevent undue delay in deciding how 9-1-1 calls should be routed by the rapidly growing number of cellular and PCS sites in the State, and would give Staff the authority it needs to resolve wireless 9-1-1 call routing conflicts. Staff Comments at 2. In addition, Staff argued, the proposed rule would also protect wireless carriers from accusations that they are responsible for 9-1-1 call routing decisions. Id. AT&T suggested that the following clarifying language should be added to the end of Staff's proposed rule:

Provided, however, a CMRS provider is not required to perform selective routing to multiple answering points within a given county prior to a county's request for 'Phase I' enhanced 911 services pursuant to 47 CFR § 20.18 (d) and (f)."

This modification is necessary, AT&T claimed, to make it clear that wireless carriers do not have to perform more advanced, selective routing to multiple public safety answering points (PSAPs) within a given county prior to the county's request for "Phase I" enhanced 911 services, pursuant to applicable FCC rules. AT&T Reply at 5. Pursuant to FCC rules, wireless carriers must relay certain information -- generally referred to as Phase I information -- to the designated PSAP, but only so long as the designated PSAP has requested the enhanced service, can receive and utilize the data, and a cost recovery mechanism is in place. AT&T Reply at 5, citing 47 C.F.R. §§ 20.18(d) & (f). One feature associated with Phase I technology, AT&T noted, is the ability to more selectively route wireless enhanced 911 calls to PSAPs. Id. at 6.

(ii) Decision and Rationale.

In view of the fact that all rules relating to emergency telephone service have previously been moved to Series 25 of the Commission's rules, the Commission concludes that the proposed rule should be deleted in its entirety. This provision may be re-proposed or a different rule proposed in the next rulemaking affecting Series 25.

4. Section 9: Accelerated rate filing procedures for IXC's.

The Commission proposed an entirely new set of rules dealing with accelerated filing procedures for IXC's. Several of those new rules were addressed in the parties' comments.

a. 9.1.2. [9.2.] Notice period.

As proposed, Rule 9.1.2 would provide:

A telecommunications carrier seeking any of the changes delineated in 9.1.1, above, must provide a notice period of not less than fourteen (14) business days by billing inserts to customers or by Class I legal advertisement in the carrier's affected service area.

(i) Comments.

BA-WV wrote that, while providing public notice of rate and service changes is generally appropriate, the Commission should reconsider the proposed customer notice requirements in light of the advent of competition in the long distance market. Carriers bringing new long distance services to market should be allowed to decide how they wish to bring those services to prospective

customers' attention, BA-WV asserted. BA-WV Comments at 30. The proposed rule's mandate that two types of notice -- bill inserts and Class 1 legal advertisements -- be used in all cases is overly broad and inappropriate in some instances. For example, notice of new services cannot be given to "customers," since by definition there are no customers for those services. Id. The important point is that customers be given appropriate notice, with the form of notice left to the carrier's reasonable discretion. Id. at 30-31. Notice should be filed with the Commission in all cases, BA-WV wrote, with 14 days' notice given, noting that this is the notice period provided for in BA-WV's current Incentive Regulation Plan approved in Case No. 97-1461-T-PC.

AT&T supported BA-WV's suggested changes. AT&T Reply at 11. In addition, AT&T suggested that the Commission should revise the rule to provide for 14 calendar days' notice, as opposed to business days. AT&T Comments at 10. Changing the notice period to business days, AT&T argued, effectively decelerates the process. Moreover, AT&T asserted, there was no evidence to support abandoning the calendar day element, which was adopted in 1986 in a generic proceeding in which the Commission streamlined interexchange carrier regulation to promote competition, based upon the evidence presented to it. Id. Citizens supported AT&T's arguments against adoption of a 14-business day requirement. Citizens Reply at 3.

CAD opposed BA-WV's proposed changes to the rule but supported both BA-WV and AT&T's change from 14 business days to calendar days. CAD Reply at 11. CAD asserted that relying on carriers' good will in notifying customers of rate changes would be improper, and that the carriers have a reasonable option -- between bill inserts or Class 1 legal advertisements. Id.

(ii) Decision and Rationale.

After considering the parties' comments, the Commission concludes that the proposed rule should be revised as suggested by BA-WV and adopted. The proposed rule was intended to codify prior Commission practice with respect to interexchange service tariffs. This practice was established in a 1986 ruling of the Commission. See "Final Order," MCI Telecommunications Corporation, Case Nos. 84-125-T-CN, et al. (June 30, 1986). In that order, the Commission streamlined procedures for interexchange toll carriers and resellers by requiring such carriers, when seeking to implement new rates, charges or service offerings, to: (1) file proper tariffs; (2) to give a reasonable notice period of not less than 14 days, with rates going into effect thereafter unless otherwise ordered by the Commission; and (3) to submit a "Report of Tariff Changes" pursuant to Rule 41 of the Commission's Rules and Regulations for the Government of the Construction and Filing of Tariffs of Public Utilities and Common Carriers by Motor Vehicle, 150 C.S.R. Series 2 (Tariff Rules). MCI Order, at 21. This streamlined procedure was adopted on a trial, or experimental, basis and the Commission made it clear that, if such streamlined procedures did not benefit the public, they could be withdrawn or modified. Id. n. 3 and Conclusions of Law No. 3. By allowing new interexchange rates, charges or services to be implemented on not less than 14- days' notice, the Commission expressly waived Tariff Rules 23 and 25. Id. n. 4. Finally, the Commission expressly prohibited all interexchange carriers from engaging in any form of anti-

competitive behavior, including rate deaveraging. MCI Order, at 15.

Nowhere in the MCI Order did the Commission specify the manner in which notice of new interexchange rates, charges or service offerings were to be made. Instead, Staff or other interested persons were free to object to the manner of notice proposed in an interexchange tariff filing. The Commission's streamlined procedure for interexchange rates, charges or service offerings has worked well over the past 14 years. BA-WV's proposed revisions accurately codify that existing practice. There is no apparent reason to restrict the notice requirements as the proposed rule would

have done.

b. 9.1.3. [NA] Docketing.

Rule 9.1.3, as proposed, would provide:

Absent public protest or protest by the Consumer Advocate Division, correctly filed, legally sufficient and properly noticed tariff changes shall not be docketed by the Executive Secretary's office unless Commission Staff finds that any proposed tariff change violates any of the following conditions:

a. Rates shall not be geographically deaveraged.

b. Operator surcharges shall not exceed those of interexchange carriers having at least \$1 million in annual gross revenues.

c. Surcharges shall not be permitted for carrier access by means of access code dialing.

d. All rules on terminations shall be followed; or

e. Any other reason Staff finds sufficient other reason to request that the filing be docketed.

(i) Comments.

AT&T claimed that the proposed rule is confusing and recommended rewording the proposed rule. AT&T Comments at 11. CAD supported AT&T's suggested changes. CAD Reply, at 12. BA-WV proposed deleting proposed Rule 9.1.3.b. altogether on the grounds that the practical difficulties of calculating and adhering to a pre-determined cap are simply too great. BA-WV Comments at 32. BA-WV suggested that the market will eliminate carriers that charge unreasonably high rates.

Staff opposed BA-WV's suggestion and instead recommended modifying the rule as follows:

b. Operator surcharges shall not exceed those of the dominant interexchange carrier ~~carriers having at least \$1 million in annual gross revenues.~~

Staff Reply at 12. BA-WV found Staff's proposed modifications unacceptable, since Staff's revision did not define the relevant market for purposes of "dominance," nor did it define how "dominance" was determined, and finally, Staff's revision made it unclear what options the "dominant" carrier had with respect to changing its surcharges. BA-WV Surreply at 8.

Citizens claimed that Rule 9.1.3.e. was overbroad and gave Staff unlimited discretion to request the docketing of any tariff change. Citizens Comments at 7. Citizens suggested rewording the rule to provide that Staff may request the docketing of a tariff change if it finds that the change violates the Commission's rules or an applicable statute.

(ii) Decision and Rationale.

Upon further consideration, and after reviewing its 1986 decision in MCI Corp., the Commission concludes that proposed Rule 9.1.3 should not be adopted. As discussed above, the streamlined procedure for tariffing interexchange rates, charges and service offerings has worked well over the past 14 years. That procedure has included docketing such tariff filings. The Commission believes that the docketing process is necessary in order to allow the Commission, Staff and others, to track new and changed rates, charges and offerings over time. If the docketing process was abandoned altogether, valuable information could be lost. Moreover, the Commission has not been able to decide upon any alternatives to the current docketing process. While the docketing process may ultimately be abandoned, or modified, the Commission will not do so now.

In light of the Commission's decision not to adopt proposed Rule 9.1.3, proposed Rule 9.1.4, which would have dealt

with exceptions to the no-docketing rule, likewise will not be adopted.

5. Section 10: Reduced rates for low-income residential customers.

a. 10.7.2.b. [10.7.b.] Non-certification of revenue deficiencies.

The proposed rules added the following new subsection:

The Commission may by order, may certify such revenue deficiencies to the West Virginia Tax Dept. for purposes of recovery of the shortfalls pursuant to appropriate legislative action.

(i) Comments.

AT&T recommended that the subsection should be deleted because it appeared to anticipate amendment of the W. Va. Code to allow recovery of revenue deficiencies resulting from participation in the expanded federal Lifeline program -- something the W. Va. Code currently prohibits. If the W. Va. Code is amended to allow recovery of such deficiencies in the future, the Telephone Rules can be amended to address the qualifications established by the Legislature. AT&T Comments at 13. Alternatively, AT&T suggested amendment of the preceding subsection to provide:

Unless otherwise authorized by state law, revenue deficiencies associated with the service described in 10.7.1, above, shall not be recoverable through Commission certification to the W. Va. Department of Tax and Revenue [of] such shortfall.

Id. CAD supported AT&T's recommendations that proposed Rule 10.7.2.b. should be deleted in its entirety and clarifying language added to proposed Rule 10.7.2.a. CAD Reply at 12.

(ii) Decision and Rationale.

The proposed Rule 10.7.2.b should not be adopted. Instead, AT&T's suggested revisions to proposed Rule 10.7.2.a appear reasonable and should be adopted.

6. Section 11: Payphones.

In the proposed amendments to the Telephone Rules, the Commission deleted Section 11, which previously was entitled "Customer owned public telephones," and proposed a new Section 11, entitled "Payphones." Parties submitting comments recommended changes to a number of the provisions of the new section.

a. 11.2.1. [11.2.a.] Rates and charges.

Rule 11.2.1, as proposed, stated that:

There shall be no charge for calls made to 9-1-1 or to any other bona fide emergency telephone number.

(i) Comments.

Staff proposed that the phrase "or to any other bona fide emergency telephone number" should be deleted because most areas of the State have, or shortly will have, 9-1-1 service. Moreover, proposed Rule 11.3.12.a. requires free payphone access to "0"-type operators, who can route callers to appropriate emergency numbers. Therefore, the quoted phrase is unnecessary and confusing. Staff Comments at 8. CAD suggested that the Commission should simply specify those

two access requirements, i.e., 9-1-1 or "0"-type operators. CAD Reply, at 12.

(ii) Decision and Rationale.

The Commission concludes that the proposed rule should be adopted with CAD's suggested changes. CAD's proposal appears reasonable and appropriately clarifies the effect of the rule.

b. 11.3.6. [11.3.f.] Overpayment.

Rule 11.3.6, as proposed, provides:

Coin-accepting payphones shall automatically return unused coins, but need not provide change for overpayment due to use of coins of greater denomination than required.

(i) Comments.

BA-WV supported the proposed rule but suggested requiring payphones to provide notice to users of the procedure to obtain refunds by appending the following sentence: "PSPs shall, however, post instructions on their payphones for obtaining a refund of such change." BA-WV Comments at 33. Staff agreed with BA-WV's suggested change. Staff Reply at 8. CAD urged the Commission to modify Rule 11.3.6 to require all payphones to either: (1) provide change for overpayment; or (2) provide a toll free number, in a prominent place on the payphone, which can be dialed to obtain credit for the overpayment, either in the form of cash back or some type of credit arrangement with the PSP. CAD Comments at 4. Accordingly, CAD suggested appending the following phrase: "and shall either provide change for overpayment due to use of coins, or prominently display a toll free number where full refund, credit or reimbursement from the PSP can be obtained. See Rule 11.4.1(c)." CAD claimed that the issue is particularly relevant following BA-WV's increase in the coin rate for its payphones (from \$0.25 to \$0.35). Customer use of two quarters, if they do not have correct change, corresponds to a 43% unearned premium over the coin rate. Id.

Citizens opposed CAD's recommendations for the following reasons: (1) payphones are not designed to provide change and redesigning and deploying payphones that can provide change would be cost prohibitive; (2) operating costs for change-returning payphones would be significantly higher because additional visits by technicians would be needed to refill change dispensers; (3) many payphone users use calling cards rather than change reducing the magnitude of the windfall and the harm to consumers CAD cites; (4) consumers have not made many complaints about payphones' failure to provide change; and (5) the administrative costs to process refund requests would be prohibitive in comparison to the amount of the refund. Citizens Reply at 5-6. Additional costs would also be incurred to create West Virginia-specific placards to provide refund information. Id.

(ii) Decision and Rationale.

After considering the parties' arguments, the Commission concludes that the proposed rule should be amended, in accordance with BA-WV's recommendations, and adopted. The Commission believes that it is reasonable to require PSPs to provide a toll free number, on the payphone, where refunds for overpayments may be obtained. However, the Commission does not believe CAD's suggestion that payphones be required to provide change should be adopted. Citizens sets forth several good arguments regarding the impracticalities of requiring payphones to provide change. Further, the Commission does not see why requiring payphones to provide change is necessary in light of the fact that the payphone market has been deregulated. See "Commission Order," Bell Atlantic - WV, Case No. 97-0643-T-T (May 22, 1998). In a competitive market, PSPs should be allowed to charge as much as the market will bear for coin calls. The Commission can, in the context of its periodic review of "market failures" in the payphone market (Case No. 98-0430- T-GI), always consider whether coin rates are inflated by monopolistic practices of PSPs. At this point, however, no action to address such "market failures" appears to be warranted.

c. 11.3.15. [11.3.o.] Routing of "0-" calls.

Proposed Rule 11.3.15 states:

"0-" calls shall be immediately routed to a live operator fully capable of routing emergency calls made from the payphone's location.

(i) Comments.

Although Staff recommended only that a typographical error in the proposed rule should be corrected, CAD suggested that the proposed rule should be amended to specifically require that "0" type operators be able to "timely and adequately" route emergency calls. CAD Reply at 12-13.

(ii) Decision and Rationale.

The Commission concludes that the proposed rule should be adopted, as revised in accordance with the typographical change suggested by Staff and CAD's suggested revision.

d. 11.4.1.d. [11.4.a.4.] Information displayed on payphones.

The proposed amendments to the Telephone Rules addressed the information to be displayed on payphones and provided, in part:

The following information shall be conspicuously and clearly displayed on the front of each payphone:

* * *

d. the payphone service provider's name, address, telephone number and the Public Service Commission identification number.

(i) Comments.

Citizens urged the Commission to eliminate the requirement that a placard displaying a Commission identification number must be provided. Compliance with this provision would require West Virginia-specific placards to be produced, which would provide information of little value to consumers, at significant expense to payphone operators. Citizens Comments at 7. Although Staff agreed with Citizens' arguments, it recommended the following language modifying Rule 11.4.1.d.:

d. the payphone service provider's name, address, and telephone number ~~and the Public Service Commission identification number.~~

Staff Reply at 10.

(ii) Decision and Rationale.

The Commission will adopt the proposed rule, as modified by Staff. Unlike posting payphone overpayment refund information, which the Commission considers to be reasonable and appropriate, requiring that payphones display their Commission identification number does not appear to be reasonable or necessary. It is difficult to conceive what benefit customers derive from knowing the Commission identification number of the payphone they are using. Moreover, any payphone can be adequately identified by its physical location.

7. Section 14: Certification requirements for all intrastate carriers.

Another new section added to the Telephone Rules, Section 14 sets forth those certification requirements applicable to all intrastate telecommunications carriers.

a. 14.3. [14.3.a. - 14.3.c.] Suspension or Revocation of Certificate.

As proposed, Rule 14.3. provides:

Excessive subscriber complaints against a carrier shall be a basis for suspension or revocation of a carrier's Certificate of Public Convenience and Necessity if, after hearing, the Commission determines such complaints to be

meritorious. In all proceedings, the

Commission shall give to the carrier notice of the allegations made against it and afford the carrier with an opportunity to be heard concerning those allegations, prior to the suspension or revocation of the carrier's Certificate of Public Convenience and Necessity or other formal action. The burden of establishing the adequate provision of service is upon the carrier.

(i) Comments.

Staff recommended that the above-quoted rule should be redesignated Rule 14.3.a. and proposed that the Commission adopt two additional subsections to Rule 14.3. The new subsections would provide:

b. Other reasons for which a carrier's certificate may be suspended or revoked by the Commission, pursuant to due investigation, public hearing (where warranted) and Commission order, are:

A. Failure to timely and satisfactorily file Commission-required reports;

B. Failure to timely and satisfactorily address and resolve, as appropriate, legitimate and reasonable customer complaints;

C. Failure to timely and satisfactorily respond to lawful Commission orders;

D. Inability of the Commission, pursuant to due effort, to contact carrier.

c. Provision of any intrastate telecommunications service subject to regulation by the Commission, without the provider having a valid certificate of public convenience and necessity from the Commission, may invalidate the charge(s) levied for such service. This sanction also applies where service, which should be provided under Commission-approved tariff, is provided without the provider having the necessary tariff authority.

Staff Comments at 3-4. Staff contended that the suggested rules would facilitate the timely suspension and revocation of LEC and IXC certificates "where the carrier is not operating in the public interest." Id. at 4. Rule 14.3.c., Staff claimed, would "duly" penalize carriers who fail to operate in accordance with the Commission's certification and tariffing requirements, noting that

in a "number of instances . . . IXC's have begun operating in West Virginia without even applying for a certificate." Id.

No one opposed Staff's recommended Rule 14.3.b. However, Staff's proposed Rule 14.3.c. drew fire from other parties. BA-WV suggested that Staff's proposed Rule 14.3.c. is illegal because nothing in Chapter 24, Article 4 of the W. Va. Code delegates to the Commission, either expressly or by necessary implication, the sort of financial forfeiture that is provided for in Staff's proposal. BA-WV Reply at 5. Citizens supported BA-WV's arguments. Citizens Surreply at 5. CAD, on the other hand, urged the Commission to adopt Rule 14.3.c. as proposed by Staff, arguing that BA-WV's argument should be rejected and claiming that Staff's proposal is "a wholly appropriate disgorgement provision that applies only to in-state income obtained in violation of state law." CAD Surreply at 8. The proposed rule does not purport to require "forfeiture" of the violating entity's unrelated assets, CAD argued, and if the rule is adopted and implemented, and a court determines that it exceeds the Commission's authority, the Legislature can address the issue. Id. Staff also considered "strange" BA-WV's argument that the proposed rule is illegal in light of the Commission's authority to regulate utility rates, which are contained in tariffs, and which would not be approved unless the utility is certificated. Staff Surreply at 3.

(ii) Decision and Rationale.

The Commission will adopt proposed Rule 14.3., with minor revisions, and rejects Staff's proposal to add two new subsections, b. and c., to the Telephone Rules. The Commission does not believe that it is necessary to specify "other reasons" for which a carrier's certificate of public convenience and necessity can be suspended or revoked. It suffices to revise the rule to make it clear that the Commission may suspend or revoke a carrier's certificate for such other reasons

as the Commission determines warrant such action. With respect to Staff's proposed subsection c., the Commission does not find clear authority in the W. Va. Code for the disgorgement provision Staff would add and therefore will not adopt such provision.

b. 14.4.2. [14.4.b.2.] Ubiquitous Provision of Service.

In its comments, CAD proposed a new subsection to Rule 14.4.2. that would state:

b. Notwithstanding the provisions of subsection (a) above, nothing in this section shall affect the obligations of incumbent local exchange carriers to offer telecommunications services to all customers within an exchange served by the incumbent local exchange carrier.

CAD Comments at 5. The originally proposed Rule 14.4.2. would be redesignated Rule 14.4.2.a.

(i) Comments.

CAD claimed that its proposed subsection makes it clear that incumbent LECs, who by definition serve customers over their own facilities, have a continuing obligation to serve all customers within an exchange, unlike new entrants who, if they provide facilities-based service, are not so obligated under Rule 14.4.2.a. Id. Staff generally agreed with CAD's recommendation but suggested that the Commission should simply add clarifying language to its proposed Rule 14.4.2. that would make it clear that the relaxed service obligations applicable to facilities-based service apply only to non-incumbent local exchange carriers. Staff Reply at 9.

(ii) Decision and Rationale.

The Commission will adopt CAD's proposed addition to the rules in light of the lack of opposition to that addition and its apparent reasonableness.

8. Section 15: Interconnection.

a. 15.1.1.h. [15.1.a.8.] New Staff rule.

In its comments, Staff proposed that the following new subsection be added to proposed Rule 15.1.1., which sets forth the interconnection obligations applicable to all LECs:

All Local Exchange Carriers shall:

_____ * * *

h. not provide intrastate service to any interexchange telecommunications carrier (IXC) or any local exchange carrier (LEC) until determining that the IXC or the LEC is properly certificated by the Commission to provide IXC or LEC service in West Virginia.

(i) Comments.

Staff argued that its proposed subsection would prevent LECs and IXCs from illegally providing service before they obtain certificates, something which Staff claims has happened on several occasions with respect to IXCs. Staff Comments at 1. Furthermore, Staff noted, such a regulation has existed for years with respect to customer-owned payphones. Finally, Staff asserted that the regulation imposes a very minor burden on LECs. Id. CAD supported Staff's proposed rule as written. CAD Reply at 14.

Staff's proposed subsection provoked a flurry of comments from other parties. The

Independent Group expressed support for Staff's arguments but suggested that the language in Staff's proposed rule should be modified to eliminate the requirement that an LEC not provide service until it determines whether a

requesting IXC or another LEC is properly certificated. Ind. Gr. Reply at 7-8. The Commission, not LECs, is the proper party to police certification of carriers the Independent Group argued, and there is no independent need for the LEC to "determine" whether another carrier is properly certificated prior to providing service to that carrier. Id. at 8. The Independent Group suggested the following revision to Staff's proposed rule:

h. not provide intrastate service to any interexchange telecommunications carrier (IXC) or any local exchange carrier (LEC) until ~~determining~~ that ~~the~~ IXC or ~~the~~ LEC provides information to the LEC that it is properly certificated by the Commission to provide IXC or LEC services in West Virginia.

Id.

Both Citizens and BA-WV expressed strong opposition to Staff's proposed Rule 15.1.1.h. Citizens wrote that the proposed rule would require it to renegotiate its billing and collection agreements, which currently only require the other party to have appropriate FCC authorization. Citizens Reply at 2. While Citizens is willing to modify those agreements to require the other party to have appropriate authorization from the state as well, and had begun discussions with larger billing and collections customers along those lines, Citizens asserted that compliance may be more problematic for those carriers that use clearinghouses rather than contracting directly with it. Citizens stated that it believes an LEC should be considered in compliance if, by contract, it requires clearinghouses to ensure that all carriers billing West Virginia customers through the clearinghouse are properly certificated. In support of its suggestion, Citizens noted that there are over 4500 sub- CICs (e.g., Carrier Identification Codes) that bill through its largest billing and collection customer and each sub-CIC represents a separate carrier with which Citizens would have to contract. Id.

Similarly, BA-WV opposed Staff's proposed rule, arguing that it improperly made the LECs police the Commission's certification requirements. Once an IXC or competitive LEC assures an LEC that it has been properly certificated, the LEC should not be expected to do more. BA-WV Reply at 6. BA-WV cites the large numbers of IXCs that seek certification, as well as the level of inquiry required where certification is granted upon a condition subsequent -- such as having approved tariffs -- as examples of the burden imposed on incumbent LECs under Staff's proposed rule. The Commission has ample authority to punish "rogue" carriers. Id. Finally, BA-WV offered to provide Staff with periodic lists of all carriers to whom it provides service. Id. at 7. BA-WV later indicated that it agreed with the Independent Group's suggestion that an IXC or competitive LEC should be required to provide information to the incumbent LEC representing that it has been properly certificated and that the incumbent LEC is entitled to rely on that representation. BA-WV Surreply at 8-9.

(ii) Decision and Rationale.

The proposed rule will be adopted, though modified in accordance with the Independent Group's suggestion. The Commission agrees with the Independent Group that the burden should be placed on IXCs or competitive LECs to demonstrate, in the first place, that they are properly certificated.

b. 15.3.1. [15.3.a.] Good faith negotiations.

Rule 15.3.1 of the Telephone Rules, as proposed, provides:

Any telecommunications carrier may request interconnection with any LEC. A telecommunications carrier requesting interconnection with a LEC must have first applied for or obtained a certificate of public convenience and necessity to provide local exchange services within West Virginia pursuant to Section 14.1 above.

(i) Comments.

AT&T asserted that the Commission must amend the rule in two respects. Noting that the first sentence of the proposed rule evidences the Commission's intent to allow all telecommunications providers to interconnect with any LEC, all carriers should be allowed to request interconnection, regardless of the type of service for which they have been certificated. This is consistent with 47 U.S.C. § 251(c)(1), AT&T asserted. AT&T Comments at 13-14. Second, AT&T suggested that the proposed rule should be revised to recognize the fact that wireless carriers are not required to obtain a certificate before providing service. Id. at 14-15. AT&T's revisions would read as follows:

Any telecommunications carrier may request interconnection with any LEC. A telecommunications carrier requesting interconnection with a LEC must have first applied for or obtained a certificate of public convenience and necessity to provide ~~local exchange~~ telecommunications services within West Virginia pursuant to Section 14.1 above, provided that such a certificate is required by the Commission.

The Independent Group opposed AT&T's proposal that the certificate requirement should be broadened, asserting that the rule, as proposed by the Commission, ensures that the services for which interconnection can be sought under Sections 15.1.1 and 15.1.2, are exchange and exchange access services. Altering the scope of what may be requested pursuant to 47 U.S.C. § 251 may lead to confusion and argument over the Commission's authority to govern the provision of intrastate access services. Ind. Gr. Reply at 5-6. AT&T's suggested change could be misused to suggest that

an IXC may seek interconnection negotiations for intrastate access services purchased from an LEC in order to terminate and originate interexchange service. This type of request is not contemplated by 47 U.S.C. § 251(c). Id. at 6.

(ii) Decision and Rationale.

The rule will be adopted but revised to incorporate AT&T's change with respect to wireless carriers. The Independent Group's argument against AT&T's proposed substitution of "telecommunications" for "local exchange" is reasonable since AT&T's revision could be construed to expand the interconnection and other obligations imposed in Section 251 of TA96 beyond "exchange" and "exchange access" services. On the other hand, AT&T's point concerning wireless carriers is well taken. State commissions do not have the authority to regulate the entry of either commercial or private mobile radio service providers (e.g., wireless carriers). See 47 U.S.C. § 332(c)(3). It would therefore be inappropriate to make interconnection with a wireless carrier's network contingent on the wireless carrier having a certificate the Commission cannot require. The Commission will also revise Rule 15.3.1. to make it clear that the interconnection obligations apply only to incumbent LECs, in accordance with Section 251 of TA96.

c. 15.4.1.a. [NA] Procedures for negotiations.

Section 15.4. of the proposed rules deals with procedures for negotiation of agreements for interconnection, access to network elements or resold telecommunications services. Rule 15.4.1.a., as proposed, states:

The negotiations required by this Section shall conclude within one hundred and thirty five (135) days of the receipt of the bona fide request.

(i) Comments.

BA-WV recommended that the 135-day limit on negotiations between parties to an agreement should be deleted because TA96 does not specify any time by which interconnection negotiations must be concluded but, rather, merely provides that either party to negotiations may seek state commission arbitration from the 135th to 160th day (inclusive) after the date on which the incumbent LEC receives the request for negotiation. Furthermore, BA-WV argued, parties commonly continue negotiations even after an arbitration request has been filed and often resolve their differences before the conclusion of arbitration. Imposition of an artificial deadline may prevent parties from reaching agreement. BA-WV Comments at 34. CAD opposed BA-WV's recommendation, arguing that deletion of the 135-day negotiation window would only serve to potentially delay the negotiation and arbitration process. The public interest supports fixing the time frame, and the Commission can deal with the issue of subsequent settlement during the course of arbitration, CAD claimed. CAD Reply at 14.

(ii) Decision and Rationale.

BA-WV's recommendation is well-taken and the proposed rule will be deleted in its entirety. Nothing in TA96 requires negotiating carriers to cease negotiations upon the filing of a request for arbitration. Instead, TA96 merely provides a window of time within which one or both parties to the negotiations must seek arbitration. It does not preclude the parties from continuing to seek an agreement. Nor does precluding the parties from continuing negotiations to resolve their differences, even while an arbitration proceeding is pending, make sense.

d. 15.5.10.b.E. [15.5.j.4.E.] - Rights of third persons.

The Commission proposed certain rules dealing with the rights of third persons to intervene in proceedings for Commission arbitration of unresolved issues stemming from negotiations for an interconnection agreement. The Independent Group addressed the following subsection in its comments:

b. Third persons may petition the Commission to be allowed to participate, on a limited basis, in a compulsory arbitration proceeding hereunder. Such petition shall be filed with the Commission on or before the fourteenth (14th) calendar day following the date the petition requesting Commission arbitration was filed, and shall state with specificity the grounds upon which limited participation is sought. If the Commission grants a petition to participate, such participation shall be limited as follows:

_____ * * *

E. The petitioner shall not file exceptions or petitions for reconsideration of the Commission's decision.

(i) Comments.

While it generally supported subsection 15.5.10.b., the Independent Group suggested that Rule 15.5.10.b.E. should be deleted in its entirety. As the Independent Group noted, TA96, and the Commission's proposed rules, recognize that an interconnection agreement cannot discriminate against another carrier not party to the agreement. The offending subsection, the Independent Group maintained, bars a non-negotiating party from exercising its procedural due process rights to contest decisions it believes are contrary to TA96's principles. Ind. Gr. Comments at 6-7. None of the other parties filing comments in this proceeding responded to the Independent Group's arguments.

(ii) Decision and Rationale.

The Commission will adopt the Rule 15.5.10.b. as proposed and rejects the Independent Group's arguments that subparagraph E should be deleted. The Commission previously ruled that non-parties to interconnection agreement negotiations submitted for arbitration were prohibited from filing either exceptions or petitions for reconsideration. See "Commission Order," MCI Telecommunications Corporation, Case No. 97-1210-T-PC (Nov. 4, 1998), at 6 and Conclusions of Law No. 7. Third persons, who are not parties to the interconnection negotiations or agreement, are likewise not "parties" entitled to file exceptions with the Commission pursuant to W. Va. Code § 24-1-9. Similarly, such persons should not be allowed to file petitions for reconsideration of the Commission's arbitration decision. However, persons who believe that the Commission's arbitration decision would result in the approval of an interconnection agreement that violates the standards set forth in 47 U.S.C. § 252(e)(2) have two opportunities to have their concerns considered by the Commission: first, in their post-hearing statements in the arbitration proceeding; and second, by intervening in the proceeding for approval of the arbitrated interconnection agreement.

IV. Other Matters.

The Commission concludes that all telecommunications carriers should be directed to review their currently-approved tariffs and determine whether any provisions in those tariffs are inconsistent with the final rules being adopted in this order. Where tariffs are inconsistent with the final rules, telecommunications carriers should revise and re-file those tariffs with the Commission. If a telecommunications carrier fails to revise any tariff provision that is inconsistent with the final rules adopted in this order, such provisions will be considered invalid unless expressly exempted from the rules' operation.

FINDINGS OF FACT

1. By order entered March 31, 1998, the Commission proposed amendments to its Telephone Rules.
2. The proposed amendments adopted numerous recommendations made in the Local Competition Task Force's

May 7, 1996, report to the Commission in Case No. 94-1102-T-GI, which were intended to implement competition in the local exchange telecommunications market.

3. The proposed amendments also incorporated various rulings by the Commission in proceedings filed with the Commission pursuant to the Telecommunications Act of 1996, codified at 47 U.S.C. §§151 et seq. (TA96).

4. The Commission caused notice of its proposed rulemaking to be published in newspapers statewide.

5. In accordance with the Commission's March 31, 1998, order, the following persons

filed initial comments with the Commission on May 11, 1998: AT&T, BA-WV, Citizens, CAD, WorldCom, and the Cellular Companies. WorldCom also filed a motion requesting the Commission to withdraw its proposed rulemaking on the grounds that the Commission may be operating from a different set of rules than those currently on file or on the Commission's Internet site.

6. In addition to WorldCom's motion, John D. Childers, an individual, filed a motion with the Commission on May 11, 1998, requesting an extension of the comment period on the grounds that the Commission had not published a notice in a way that "any significant numbers of affected parties could have knowledge of this proceeding and the attendant comment period."

7. The following persons filed initial comments with the Commission on May 13, 1998: Staff and the Independent Group.

8. On May 18, 1998, Sprint Communications Co., L.P. (Sprint), filed a letter advising that, although it would not be filing initial comments, it reserved the right to file reply comments.

9. A hearing on the Commission's proposed amendments to the Telephone Rules was held, as scheduled, on May 19, 1998. All persons submitting initial comments entered an appearance. Neither Sprint nor Mr. Childers entered an appearance.

10. At the hearing's outset, the Commission denied Mr. Childers' motion on the grounds that the record contained a number of affidavits of publication of the notice, attached to the Commission's March 31, 1998, order, advising the public of the proposed amendments, applicable comment dates and the scheduled hearing date. The Commission declined to rule upon WorldCom's motion.

11. At the May 19, 1998, hearing, BA-WV presented the testimony of two witnesses in support of its comments: Stanley J. Zoltek and Gale Y. Given. No other witnesses testified on behalf of any person submitting comments.

12. The following parties filed reply comments to the Commission's proposed rules and initial comments regarding Staff's proposed additional rules on May 29, 1998: Staff, the Independent Group, BA-WV, AT&T, CAD, and Citizens.

13. Staff, BA-WV, AT&T and CAD filed reply comments regarding Staff's proposed additional rules on June 5, 1998.

14. The Commission adopts, as if fully restated, all recitals of fact set forth herein.

CONCLUSIONS OF LAW

1. The Telephone Rules attached hereto as Appendix A should be adopted as final rules, to become effective 60 days after this order's entry date.

2. WorldCom's motion to dismiss should be denied. While WorldCom is clearly correct in claiming that there are discrepancies between the proposed Telephone Rules and the rules currently in effect, the Commission's review of the two sets of rules leads it to conclude that those discrepancies are minor in nature and non-substantive.

3. All telecommunications carriers should be directed to review their currently-approved tariffs and determine whether any provisions in those tariffs are inconsistent with the final rules being adopted in this order. Where tariffs are inconsistent with the final rules, telecommunications carriers should revise and re-file those tariffs with the Commission.

4. If a telecommunications carrier fails to revise any tariff provision that is inconsistent with the final rules adopted in this order, such provisions will be considered invalid unless expressly exempted from the rules' operation by the Commission.

5. The Commission adopts, as if fully restated, all legal conclusions set forth herein.

ORDER

IT IS, THEREFORE, ORDERED that the Telephone Rules attached hereto as Appendix A are adopted as final rules, and shall become effective October 10, 2000.

IT IS FURTHER ORDERED that WorldCom, Inc.'s May 11, 1998, motion to dismiss is denied.

IT IS FURTHER ORDERED that all telecommunications carriers are directed to review their currently-approved tariffs and determine whether any provisions in those tariffs are inconsistent with the final rules being adopted in this order. Where tariffs are inconsistent with the final rules, telecommunications carriers should revise and re-file those tariffs with the Commission.

IT IS FURTHER ORDERED that, if a telecommunications carrier fails to revise any tariff provision that is inconsistent with the final rules adopted in this order, such provision will be considered invalid unless expressly exempted from the rules' operation by the Commission.

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall cause a copy of this order, together with the attached rules, to be filed with the Secretary of State upon this order's entry.

IT IS FURTHER ORDERED that, upon entry hereof, this proceeding shall be removed from the Commission's active docket of cases.

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this order upon all parties of record by United States First Class Mail and upon Commission Staff by hand delivery.

ARC

go18716cb.scawpd

PWP/pwp

[Attachment A](#)

APPENDIX A

Footnote: 1 ¹WorldCom subsequently merged with MCI Telecommunications Corporation. and, for a time, the merged company was known as MCI WorldCom. Recently, however, WorldCom announced that MCI would be dropped from the merged company's name. Therefore, all references in this order to the merged company will continue to be to WorldCom.

Footnote: 2 ²The West Virginia Independent Group consists of the following telephone companies: Armstrong Telephone Company - Northern Division; Armstrong Telephone Company - West Virginia; Hardy

Telecommunications, Inc.; Spruce Knob Seneca Rocks Telephone, Inc.; War Telephone Company; and West Side Telephone Company.

Footnote: 3 ³"Cramming" refers to the practice of including charges for non- telecommunications services on bills for telecommunications service.

Footnote: 4 ⁴See *In re. Rules Designed to Deter Slamming, Cramming and Sliding*, Rulemaking 97-08-001, Decision No. 00-03-020 (Cal. P.U.C. March 2, 2000); *O'Bryant v. US West Communications, Inc.*, 132 P.U.R.4th 417, 1992 WL 159940 (Colo. P.U.C. April 1, 1992); *Telephone Customer Relations Rules*, IDAPA 31.41.01, Rule 310.03 [Idaho]; *In re. Local Disconnection and Toll Blocking Charges*, Docket No. P-999/CI- 96-38 (Minn. P.U.C. June 4, 1996); "Memorandum, Order and Resolution," *Rules and Regulations Contained in 16 NYCRR, Chapter VI, Telephone and Telegraph Corporations*, Case No. 90-C-1148 (N.Y. P.S.C. Jan. 17, 1992); "Order Directing Revision of Rules," 2000 WL 192172 (N.C.U.C. Jan. 14, 2000); *In re. Disconnection of Basic Local Exchange Service for the Nonpayment of Charges Associated with Services Other Than Local Exchange Service*, Case No. 95-790-TP-COI (Ohio P.U.C. June 12, 1996); Or. Admin. R. 860-021-505(8), and *In re. Rule Relating to Disconnection of Local Exchange Service*, Order No. 89-662 (Ore. P.U.C. May 22, 1989); *Service Standards for Telecommunications Companies*, S.D. Admin. R. 20:10:33:31 (Eff. Dec. 27, 1998) [South Dakota]; *In re. Termination of Local Exchange Services for Failure to Pay for Long Distance Service*, Case No. PUC970113, 1999 WL 1040198 (Va. S.C.C. Sept. 10, 1999).

Footnote: 5 ⁵"Slamming" refers to a telecommunications carrier's submission of a request to change a subscriber's carrier without proper authorization from the subscriber.

Footnote: 6 ⁶BA-WV recommended the following modifications: (1) Loop current -- substitute 20mA of current to a 400 ohm load; (2) Circuit loss -- set 1kHz circuit loss on standard voice grade circuits that have been designed using the Revised Resistance Design nominally at 8.5db; (3) Circuit noise -- set the standard at 30dbmC; (4) Power influence - - set the standard at 90db. With respect to circuit noise and power influence, BA-WV advised that its engineers generally do not take corrective action unless the levels it proposes are met or exceeded.

Footnote: 7 ⁷Digital Channel Service is typically used to provide direct-inward-dialing and direct-outward-dialing capability to PBXs, as well as to provide two-way trunking. *Citizens Reply* at 4-5.

Footnote: 8 ⁸In its order in Case No. 98-0430-T-GI, the parties and Commission erroneously referred to the subject rule as *Telephone Rule* 6.8.1.