

pending terminations are provided to customers. On the federal level, there are regulations that instruct utility companies on the procedure for notifying utility customers of pending cancellations of service. The Federal Communications Commission's (FCC) regulations, for example, contain several provisions that direct long distance telephone service providers to give their customers written notice upon discontinuance of service. The FCC's rules require that all domestic carriers apply to the FCC for authority to discontinue service, and, as part of that application, to notify all affected customers of a planned discontinuance of service and submit a copy of the application to the public utility commission and to the government of the state in which the discontinuance is proposed, as well as to the Secretary of Defense. 47 CFR 63.71(a). Non-dominant international carriers are also required to provide written notice to customers at least 60 days prior to discontinuance of service. See 47 CFR 63.19. Although the FCC's rules require written notice, they do not specifically prohibit the use of electronic methods to transmit the notice to customers.

The FCC's rules allow some transactions and communications to be made by electronic means, including electronic posting of the terms and conditions of service that describe the procedure for termination of service. The FCC allows telephone companies to use electronic methods and signatures for letters of agency, and authorizations or verification of a subscriber's request to change his or her preferred carrier selection. See 47 CFR 64.1130. These rules require that letters of agency submitted with an electronic signature include the consumer disclosures required by section 101(c) of ESIGN. 47 CFR 64.1130(i). In the *Domestic Detariffing Order*² and the *International Detariffing Order*³, the FCC also allowed long distance carriers to provide information regarding rates and conditions of service on Internet web

sites rather than through traditional tariff filings. See 47 CFR § 42.10, 61.72. As part of the congressional energy conservation policies adopted in the early and mid 1990s, Congress enacted special rules and standard procedures for utility companies to follow during terminations of gas and electric service. See 15 U.S.C. 3204; 16 U.S.C. 2625(g). These rules refer to procedures that are to be prescribed by state utility and regulatory commissions directing utility service providers to provide reasonable prior notice to consumers of pending termination or discontinuance of service and to allow consumers an opportunity to dispute the reasons for the termination. *Id.* In general, states and municipal governments have adopted regulations to govern disconnection notice procedures for utility companies.

In some cases, these regulations also apply to municipal utilities as well as privately-owned companies. For example, Nebraska's regulations provide that: "[n]o municipal utility owned and operated by a village furnishing water, natural gas or electricity at retail . . . shall discontinue service to any domestic subscriber for nonpayment of any past due account unless such utility first gives written notice by mail to any subscriber at least seven days prior to termination." Neb.Rev.Stat. Ann. § 70-1603 (2002). Under this regulation, notice must be given to the consumer by first-class mail or in person and service must continue for at least seven days after notice has been given. *Id.* at § 70-1605. The amount of time for each notice varies among the states; however, most states require written notice of utility service disconnection to be given in advance by mail or in person.⁴

The ESIGN exception for utility cancellation notices means utility companies are not allowed to provide notices of cancellation of gas, water, telephone, or electric service through electronic means or using an electronic signature. Approximately 40 states have adopted Uniform Electronic Transactions Act (UETA) laws, which allows the states to be removed from the operation of ESIGN by adopting their own electronic transactions law in accordance with section 102(a)(1) of ESIGN. See National Conference of Commissioners on Uniform State Laws at <http://www.nccusl.org/nccusl/LegislativeByState.pdf>. The utility cancellation notice exception has not been incorporated into all state uniform electronic transactions laws, and therefore, electronic notice of utility

cancellation may be allowed by some states. The absence of an exception in a state UETA law for utility cancellation notices does not automatically make these documents subject to that law. In some cases, the state or municipal utility laws and regulations control the format and procedure for providing notice to consumers of cancellation of utility services and may authorize formats other than paper writings.

The ESIGN section 103 evaluation of the utility cancellation notices exception is intended to evaluate the current status of the law and procedure regarding this issue in preparation for a report to Congress on whether this exception remains necessary to protect consumers. This evaluation is not a review or analysis of laws relating to these documents for the purpose of recommending that Congress draft legislation or propose changes to those laws, but to advise Congress of the current state of law, practice, and procedure regarding this issue since the passage of the ESIGN Act in 2000. Comments filed in response to this Notice should not be considered to have a connection with or impact on specific, ongoing federal and state court proceedings or administrative rulemaking proceedings concerning utility cancellation notices.

Invitation to Comment

NTIA requests that interested parties, including members of the bar, courts and consumer representatives, submit written comments on any issue of fact, law, or policy that may assist in the evaluation required by section 103(c). We invite comments from all parties that may be affected by the removal of the utility cancellation notices exception from the ESIGN Act including, but not limited to, state agencies and organizations, national and state bar associations, consumer advocates, and utilities and administrative law practitioners. The comments will assist NTIA in evaluating the potential impact of the removal of this exception from ESIGN on consumers, utility companies, legal professionals, and state electronic transactions laws. The following questions are intended to provide guidance as to the specific subject areas to be examined as a part of the evaluation. Commenters are invited to discuss any relevant issue, regardless of whether it is identified below.

1. What methods, if any, are available to protect utility service customers if the utility cancellation notices exception is removed from the ESIGN Act?

2. Discuss state and municipal utility regulation and consumer protection

² Second Report and Order, 11 FCC Rcd 20,730 (1996) (*Domestic Detariffing Order*); stay granted, *MCI Telecommunications Corp. v. FCC*, No. 96-1459 (D.C. Cir. Feb. 13, 1997); Order on Reconsideration, 12 FCC Rcd 15,014 (1997) (*Domestic Detariffing Order on Reconsideration*); Second Order on Reconsideration and Erratum, 14 FCC Rcd 6004 (1999) (*Domestic Detariffing Second Order on Reconsideration*); stay lifted and *aff'd*, *MCI WorldCom, Inc., et al. v. FCC*, 209 F.3d 760 (D.C. Cir. April 28, 2000), Memorandum Report and Order, DA 00-2586 (CCB, rel. Nov. 17, 2000) (*Domestic Transition Order*).

³ In the Matter of 2000 Biennial Regulatory Review, Policy Concerning the International, Interexchange Marketplace, Report and Order, 16 FCC Rcd 10,647 (2001) (*International Detariffing Order*).

⁴ Compare New Hampshire, N.H.Rev. Stat. Ann. § 363.B:1(2002) (10days) and New York, N.Y.[Pub.Serv.] § 34.1(2002) (15days).