

AN ACT

RELATING TO TELECOMMUNICATIONS; PROHIBITING CRAMMING AND SLAMMING; ABSOLVING CUSTOMERS OF CERTAIN LIABILITIES; PROVIDING POWERS AND DUTIES OF THE PUBLIC REGULATION COMMISSION; PROVIDING FOR SUSPENSION OR REVOCATION OF CERTIFICATES OF AUTHORITY OR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY; LIMITING CAUSES OF ACTION; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--Sections 1 through 9 of this act may be cited as the "Cramming and Slamming Act".

Section 2. DEFINITIONS.--As used in the Cramming and Slamming Act:

A. "billing aggregator" means a person that bills customers for goods or services provided by others and that uses a local exchange company as a billing agent;

B. "commission" means the public regulation commission;

C. "cramming" means:

(1) charging a customer for telecommunications services that were not authorized by the customer;

(2) charging a customer for goods or services that are not telecommunications services; or

(3) using a sweepstakes, contest or drawing entry form as authorization to change or add telecommunications services to a customer's telephone bill;

D. "customer" means the person whose name appears on the telephone bill or the person responsible for payment of the telephone bill;

E. "local exchange company" means a provider that provides local exchange services;

F. "local exchange services" means the transmission of two-way interactive communications within a local exchange area described in maps, tariffs or rate schedules filed with the commission where local exchange rates apply;

G. "provider" means a telephone company, transmission company, telecommunications common carrier, telecommunications company, cellular or other wireless telecommunications service company, cable television service, telecommunications reseller, billing aggregator or other person that bills directly or has a billing contract with a local exchange company;

H. "slamming" means:

(1) changing a customer's provider without the customer's authorization; or

(2) using a sweepstakes, contest or drawing entry form as authorization to change a customer's provider;

and

I. "telecommunications service" means the transmission of signs, signals, writings, images, sounds, messages, data or other information of any nature by wire, radio, lightwaves or other electromagnetic means or goods and services related to the transmission of information that are provided by the provider; provided that a good or service that does not meet the definition of "telecommunications service" does not become a telecommunications service merely because it is bundled with a telecommunications service for marketing or billing purposes.

Section 3. COMMISSION POWERS AND DUTIES.--

A. The commission has jurisdiction over a billing aggregator to the extent of the billing aggregator's participation in billing for telecommunications services or other goods or services through a customer's telephone bill. Billing aggregators are subject to the provisions of the Cramming and Slamming Act.

B. The commission shall enforce the provisions of the Cramming and Slamming Act against anyone regulated in whole or in part by the commission or over whom the commission is given regulatory authority by state or federal law.

C. The commission may hold a provider liable for the actions of its employees, officers, affiliates and

agents.

Section 4. RULES TO IMPLEMENT ACT.--The commission shall promulgate:

A. rules on what constitutes authorization of a change or addition to telecommunications services or change in provider for the purposes of determining cramming or slamming, including consideration of the rules on authorization adopted by the federal communications commission;

B. rules and standards on responsibilities of parties in cramming and slamming;

C. rules to establish an expedited consideration process for resolution of complaints filed with the commission, including the filing and investigation of complaints; and

D. other rules needed to implement the provisions of the Cramming and Slamming Act.

Section 5. COMPLAINTS FILED WITH COMMISSION--RULES--ADMINISTRATIVE PENALTIES.--

A. The following acts are prohibited:

(1) cramming or slamming; and

(2) disconnecting or threatening to

disconnect a customer's local exchange service because the customer refuses to pay charges resulting from cramming or slamming and the local exchange company has been notified of

the cramming or slamming.

B. A customer or provider may file a complaint with the commission alleging cramming or slamming. A customer may file a complaint alleging disconnection or threats of disconnection to local exchange service. The commission may combine complaints.

C. If the commission finds after investigation and hearing that a provider engaged in cramming or slamming or disconnected or threatened to disconnect a customer's local exchange service, it may:

(1) assess an administrative penalty not to exceed ten thousand dollars (\$10,000) for each occurrence of cramming or slamming or for each disconnection or threat to disconnect; or

(2) after other sanctions have failed, suspend or revoke the provider's certificate of authority or certificate of public convenience and necessity for a deliberate pattern of cramming or slamming or disconnection or threat of disconnection.

D. A person aggrieved by an order of the commission pursuant to this section may appeal to the district court as provided in Section 39-3-1.1 NMSA 1978.

E. The remedies and penalties provided for in the Cramming and Slamming Act are in addition to any other penalties that may be imposed pursuant to any other state law

or any other remedies available to consumers.

Section 6. CRAMMING OR SLAMMING--CUSTOMER ABSOLUTION.-

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A. A customer who is crammed or slammed is absolved of liability for charges resulting from the cramming or slamming during the first ninety days after the cramming or slamming appeared on the customer's telephone bill. Nothing in this subsection affects the local exchange company or other billing agent from collecting credited amounts from the provider that crammed or slammed.

B. The customer may contact his local exchange company, his authorized provider or the unauthorized provider to report a cramming or slamming. The contacted provider shall notify the local exchange company promptly about the customer's allegation of cramming or slamming.

C. The commission shall promulgate rules that govern procedures for how disputed charges or changes are investigated and paid to the proper provider.

Section 7. CHANGE IN SERVICE OR PROVIDER--TELEPHONE BILLS.--

A. A new charge for telecommunications service or a change in telecommunications provider shall be conspicuously indicated on the customer's telephone bill in clear, unambiguous language and easily legible type. Charges for local exchange service shall be itemized separately from

charges for other telecommunications services.

B. The local exchange company that serves as the billing agent shall not allocate a customer's payment to a disputed charge or change until the charge or change has been verified.

Section 8. SALES TO BE IN CLEAR LANGUAGE--FALSE OR MISLEADING INFORMATION--VERIFICATION--UNAUTHORIZED CHARGE OR CHANGE--WRITTEN NOTIFICATION.--

A. As used in this section, "seller" means a provider or other person that sells telecommunications services.

B. The provider shall approve all sales scripts and written materials used by its sellers, including contract sellers.

C. A seller that attempts to persuade a customer to purchase telecommunications services or change his provider shall make adequate inquiry to reasonably ensure that he is talking to the customer. The seller shall also, at a minimum, clearly and unambiguously:

(1) identify himself and the company for which he works;

(2) identify the provider that he is asking the customer to use or the telecommunications service he is asking the customer to purchase; and

(3) explain the material terms and price of

the purchase or change in provider.

D. A seller shall not use false or misleading information or tactics that would be considered by a prudent person to be pressure tactics to convince the customer to purchase a telecommunications service or change a provider.

E. The commission shall prescribe by rule the requirements for clearly and unambiguously selling and verifying the sale of telecommunications services or providers.

Section 9. CRAMMING OR SLAMMING--DAMAGE TO CREDIT--
PENALTY--CIVIL ACTION BARRED.--

A. A person shall not injure or threaten to injure a customer's credit because the customer refuses to pay charges resulting from cramming or slamming. A person who violates the provisions of this section is guilty of a fourth degree felony and shall be sentenced as follows:

(1) for threatening to injure a customer's credit, a fine not to exceed one thousand dollars (\$1,000) per occurrence; and

(2) for injuring a customer's credit by providing a false, misleading or negative report about the customer to a credit reporting agency, a fine not to exceed ten thousand dollars (\$10,000) per occurrence.

B. A person is barred from bringing a civil action against a customer to collect for charges resulting

from cramming or slamming.

Section 10. TEMPORARY PROVISION--RULES.--It is the intent of the legislature that the public regulation commission begin its rulemaking process in time to have rules required by Section 4 of the Cramming and Slamming Act adopted and promulgated by July 1, 1999.

Section 11. APPLICABILITY.--This act applies to telecommunications services provided to customers on or after July 1, 1999.

Section 12. EFFECTIVE DATE.--The effective date of the provisions of Sections 1 through 9 of this act is July 1, 1999.
