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HOUSE BILL 36

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Max Coll

AN ACT

RELATING TO TELECOMMUNICATIONS; CREATING CRIMES; ENACTING THE
CRAMMING AND SLAMMING ACT; PRESCRIBING POWERS AND DUTIES OF
THE PUBLIC REGULATION COMMISSION; PROHIBITING CERTAIN
PRACTICES; PROVIDING FOR REVOCATION OF A CERTIFICATE OF
AUTHORITY OR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR CERTAIN ACTS; MAKING CERTAIN ACTIONS SUBJECT TO THE UNFAIR
PRACTICES ACT; PRESCRIBING CRIMINAL AND ADMINISTRATIVE
PENALTIES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. A new section of the Criminal Code is enacted
to read:

" [NEW MATERIAL] TELECOMMUNICATIONS FRAUD-- UNAUTHORIZED
CHANGE IN TELECOMMUNICATIONS PROVIDER-- UNAUTHORIZED CHARGES ON
TELEPHONE BILL. --

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A. As used in this section:

(1) "billing aggregator" means a person that bills customers for telecommunications services or telecommunications and nontelecommunications services that are provided by others;

(2) "customer" means the person whose name appears on the telephone bill or the person who is responsible for payment of the telephone bill;

(3) "telecommunications provider" means a telephone company, transmission company, telecommunications common carrier, telecommunications company, cellular or other wireless telecommunications service company, cable television service or telecommunications reseller; and

(4) "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.

B. It is unlawful for a telecommunications provider or billing aggregator to:

(1) intentionally charge a customer for telecommunications services or other services that were not authorized by the customer; or

(2) intentionally change a customer's telecommunications provider or bill a customer for a change in telecommunications provider without prior authorization for

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1 the change from the customer.

2 C. A telecommunications provider or billing
3 aggregator shall be held responsible for the actions of its
4 employees, affiliates, agents and contractors.

5 D. A telecommunications provider or billing
6 aggregator that violates the provisions of Subsection B of
7 this section is guilty of a misdemeanor and upon conviction
8 shall be punished by a fine of not more than one thousand
9 dollars (\$1,000) for each unauthorized charge or change in
10 telecommunications provider. "

11 Section 2. [NEW MATERIAL] SHORT TITLE. --Sections 2
12 through 11 of this act may be cited as the "Cramming and
13 Slamming Act".

14 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the
15 Cramming and Slamming Act:

16 A. "commission" means the public regulation
17 commi ssi on;

18 B. "cramming" means intentionally charging a
19 customer for telecommunications services that were not
20 authorized by the customer;

21 C. "customer" means the person whose name appears
22 on the telephone bill or the person who is responsible for
23 payment of the telephone bill;

24 D. "local exchange service" means the transmission
25 of two-way interactive voice communications within a local

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1 exchange area described in maps, tariffs or rate schedules
2 filed with the commission where local exchange rates apply;

3 E. "slamming" means intentionally changing a
4 customer's telecommunications provider or billing a customer
5 for a change in telecommunications provider without prior
6 authorization for the change from the customer;

7 F. "telecommunications provider" means a telephone
8 company, transmission company, telecommunications common
9 carrier, telecommunications company, cellular or other
10 wireless telecommunications service company, cable television
11 service or telecommunications reseller;

12 G. "telecommunications service" means the
13 transmission of signs, signals, writings, images, sounds,
14 messages, data or other information of any nature by wire,
15 radio, lightwaves or other electromagnetic means or goods and
16 services related to the transmission of information that are
17 provided by the telecommunications provider, but a good or
18 service that does not meet the definition of
19 "telecommunications service" does not become a
20 telecommunications service merely because it is bundled with a
21 telecommunications service for marketing or billing purposes;
22 and

23 H. "unauthorized charge" means a charge for a
24 telecommunications service that a customer did not order, but
25 does not include a charge for the use of an authorized

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1 telecommunications service.

2 Section 4. [NEW MATERIAL] TELECOMMUNICATIONS PROVIDERS--
3 LIABILITY-- COMMISSION ENFORCEMENT-- REMEDIES NOT EXCLUSIVE. --

4 A. A telecommunications provider may be held
5 liable for the actions of its employees, affiliates, agents
6 and contractors.

7 B. The commission shall enforce the provisions of
8 the Cramming and Slamming Act against a telecommunications
9 provider regulated in whole or in part by the commission or
10 against a telecommunications provider over whom the commission
11 is given regulatory authority by state or federal law.

12 C. Nothing in the Cramming and Slamming Act
13 affects any other remedies available in law.

14 Section 5. [NEW MATERIAL] CHANGE IN SERVICE OR
15 PROVIDER-- TELEPHONE BILLS. --

16 A. A charge for telecommunications service or a
17 change in telecommunications provider shall be conspicuously
18 indicated on the customer's telephone bill in clear,
19 unambiguous language and easily legible type. New
20 telecommunications services or a new telecommunications
21 provider shall be clearly indicated as "new" on the telephone
22 bill. Charges for local exchange service shall be itemized
23 separately from charges for other telecommunications services.

24 B. Charges for goods or services that are not a
25 telecommunications service shall not be included on a

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1 customer's telephone bill. Inclusion of those charges on a
2 customer's telephone bill is cramming.

3 C. If a customer disputes a charge or change in
4 telecommunications provider, the billing telecommunications
5 provider shall require verification from the initiating
6 telecommunications provider that the charge or change in
7 telecommunications provider was authorized by the customer
8 before attempting to collect for the charge or change. The
9 billing telecommunications provider shall not prorate a
10 customer's payment to include a disputed charge or change
11 until it has been verified.

12 D. A local exchange service provider shall not
13 disconnect or threaten to disconnect a customer's local
14 exchange service because the customer refuses to pay for
15 cramming or slamming.

16 Section 6. [NEW MATERIAL] SALES TO BE IN CLEAR
17 LANGUAGE-- FALSE OR MISLEADING INFORMATION-- VERIFICATION--
18 UNAUTHORIZED CHARGE OR CHANGE-- WRITTEN NOTIFICATION. --

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

22 B. The telecommunications provider shall approve
23 all sales scripts and written materials used by sellers.

24 C. A seller that attempts to persuade a customer
25 to purchase telecommunications services or change his

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1 telecommunications provider shall make adequate inquiry to
2 reasonably ensure that he is talking to the customer and not
3 someone who cannot authorize a telecommunications service or
4 change in telecommunications provider. The seller shall also,
5 at a minimum, clearly and unambiguously:

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

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

12 (3) explain the material terms and price of
13 the purchase or change in telecommunications provider.

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

19 E. When a seller contacts a customer by telephone
20 solicitation to sell a telecommunications service or change in
21 telecommunications provider, the seller shall provide for
22 third-party verification that clearly and unambiguously
23 restates the agreed-upon material terms and price of the
24 purchase or change. A copy of the agreement shall be mailed
25 to the customer within seventy-two hours.

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1 F. When selling through a written medium, the
2 seller shall ensure that the entire written agreement the
3 customer signs is in an easily readable format and font and
4 explains the material terms and price of the
5 telecommunications service to be provided. The written
6 agreement cannot differ substantively from the oral sales
7 discussion with the customer. A copy of the signed agreement
8 shall be provided to the customer at the time the customer
9 signs the agreement.

10 G. If the provisions of this section are not
11 complied with, the telecommunications provider is deemed to
12 have billed for an unauthorized charge or unauthorized change
13 in telecommunications provider.

14 Section 7. [NEW MATERIAL] UNAUTHORIZED CHARGES-- DELETION
15 FROM BILL OR PAYMENT-- HOLD HARMLESS-- FAILURE TO PAY
16 CONSTITUTES CRAMMING.--

17 A. When notified by a customer of a claimed
18 unauthorized charge on his telephone bill, the
19 telecommunications provider that submitted the charge has
20 three business days to investigate the claim and make a
21 determination. If the charge is found to have been authorized
22 and is correct, the telecommunications provider may sustain
23 the charge. If the charge is found to have been unauthorized,
24 the telecommunications provider shall:

25 (1) if the customer did not pay the

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1 unauthorized charge, notify the billing telecommunications
2 provider to delete the charge from the customer's telephone
3 bill and hold the customer harmless for any costs associated
4 with the unauthorized charge;

5 (2) if the customer paid the unauthorized
6 charge, hold the customer harmless for any costs associated
7 with the unauthorized charge and either return the amount paid
8 or credit the customer's telephone bill as the customer
9 chooses; and

10 (3) pay to the billing telecommunications
11 provider the administrative costs of changing the customer's
12 telephone bill.

13 B. Failure to promptly delete an unauthorized
14 charge or pay the costs of an unauthorized charge constitutes
15 cramming.

16 Section 8. [NEW MATERIAL] UNAUTHORIZED CHANGE IN
17 PROVIDER--AUTOMATIC SWITCHBACK AND PAYMENT--HOLD HARMLESS--
18 FAILURE TO PAY CONSTITUTES SLAMMING. --

19 A. When notified by a customer of a claimed
20 unauthorized change in telecommunications provider, the
21 telecommunications provider that benefited from the change has
22 three business days to investigate the claim and make a
23 determination. If the change is found to have been authorized
24 and is correct, the telecommunications provider may sustain
25 any charges for telecommunications services used by the

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1 customer, and it shall switch the customer back to his
2 previously selected telecommunications provider. If the
3 change is found to have been unauthorized, the
4 telecommunications provider shall:

5 (1) switch the customer back to the
6 previously selected telecommunications provider;

7 (2) hold the customer harmless for any
8 switching fees or other costs, the value of any lost premiums
9 to which the customer would have been entitled and, if the
10 customer paid the unauthorized telecommunications provider for
11 telecommunications services, either return the amount paid or
12 credit the customer's telephone bill as the customer chooses;

13 (3) pay to the authorized telecommunications
14 provider the cost of billed charges and hold that
15 telecommunications provider harmless for the cost of switching
16 fees, administrative costs or other costs incurred because of
17 the unauthorized change, if the customer did not pay for
18 charges billed by the unauthorized telecommunications
19 provider; and

20 (4) pay to the billing telecommunications
21 provider the administrative costs of changing and reinstating
22 the customer's telecommunications provider.

23 B. Failure to promptly switch a customer back to
24 his authorized telecommunications provider or to pay the costs
25 of an unauthorized change of telecommunications provider

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1 constitutes slamming.

2 Section 9. [NEW MATERIAL] SWEEPSTAKES AND CONTEST ENTRY
3 FORMS--USE CONSTITUTES CRAMMING OR SLAMMING. --A

4 telecommunications provider shall not use a sweepstakes,
5 contest or drawing entry form as authorization to change or
6 add telecommunications services to a customer's telephone bill
7 or change a customer's telecommunications provider. Use of
8 such form constitutes cramming or slamming, as applicable.

9 Section 10. [NEW MATERIAL] CRAMMING OR SLAMMING
10 PROHIBITED--COMPLAINTS FILED WITH COMMISSION--ADMINISTRATIVE
11 PENALTIES. --

- 12 A. Cramming or slamming is prohibited.
- 13 B. A customer or a telecommunications provider may
14 file a complaint with the commission alleging cramming or
15 slamming by a telecommunications provider.
- 16 C. Complaints shall be in a form prescribed by the
17 commission. The commission shall provide by rule for the
18 filing, investigation and hearing of complaints filed in
19 accordance with the provisions of the Cramming and Slamming
20 Act. The rules shall provide for adequate notice to the
21 complainants and the telecommunications provider and shall
22 provide both an opportunity to be heard. The commission may
23 combine complaints filed against the same telecommunications
24 provider.

25 D. If the commission finds after investigation and

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1 hearing that a telecommunications provider engaged in cramming
2 or slamming, it may:

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

6 (2) suspend or revoke the telecommunications
7 provider's certificate of authority or certificate of public
8 convenience and necessity for a deliberate and pervasive
9 pattern of cramming or slamming.

10 E. A person aggrieved by an order of the
11 commission may appeal the order to the district court as
12 provided in Section 39-3-1.1 NMSA 1978.

13 F. The administrative penalty provided for in this
14 section is in addition to any other penalties that may be
15 imposed pursuant to any other state law.

16 Section 11. [NEW MATERIAL] DEFENSE.--It is a defense for
17 the telecommunications provider to show through the use of
18 tape recordings, signed agreements, third-party verification
19 that meets federal requirements or other means that the
20 customer knowingly authorized the purchase of
21 telecommunications services or the change in
22 telecommunications provider.

23 Section 12. Section 57-12-2 NMSA 1978 (being Laws 1967,
24 Chapter 268, Section 2, as amended) is amended to read:

25 "57-12-2. DEFINITIONS.--As used in the Unfair Practices

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1 Act:

2 A. "person" includes, where applicable, natural
3 persons, corporations, trusts, partnerships, associations,
4 cooperative associations, clubs, companies, firms, joint
5 ventures or syndicates;

6 B. "seller-initiated telephone sale" means a sale,
7 lease or rental of goods or services in which the seller or
8 his representative solicits the sale by telephoning the
9 prospective purchaser and in which the sale is consummated
10 entirely by telephone or mail, but does not include a
11 transaction:

12 (1) in which a person solicits a sale from a
13 prospective purchaser who has previously made an authorized
14 purchase from the seller's business; or

15 (2) in which the purchaser is accorded the
16 right of rescission by the provisions of the Consumer Credit
17 Protection Act, 15 U.S.C. 1635 or regulations issued pursuant
18 thereto;

19 C. "trade" or "commerce" includes the advertising,
20 offering for sale, sale or distribution of any services and
21 any property and any other article, commodity or thing of
22 value, including any trade or commerce directly or indirectly
23 affecting the people of this state;

24 D. "unfair or deceptive trade practice" means any
25 false or misleading oral or written statement, visual

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1 description or other representation of any kind knowingly made
2 in connection with the sale, lease, rental or loan of goods or
3 services or in the extension of credit or in the collection of
4 debts by any person in the regular course of his trade or
5 commerce, which may, tends to or does deceive or mislead any
6 person and includes but is not limited to:

7 (1) representing goods or services as those
8 of another when the goods or services are not the goods or
9 services of another;

10 (2) causing confusion or misunderstanding as
11 to the source, sponsorship, approval or certification of goods
12 or services;

13 (3) causing confusion or misunderstanding as
14 to affiliation, connection or association with or
15 certification by another;

16 (4) using deceptive representations or
17 designations of geographic origin in connection with goods or
18 services;

19 (5) representing that goods or services have
20 sponsorship, approval, characteristics, ingredients, uses,
21 benefits or quantities that they do not have or that a person
22 has a sponsorship, approval, status, affiliation or connection
23 that he does not have;

24 (6) representing that goods are original or
25 new if they are deteriorated, altered, reconditioned,

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1 reclaimed, used or secondhand;

2 (7) representing that goods or services are
3 of a particular standard, quality or grade or that goods are
4 of a particular style or model if they are of another;

5 (8) disparaging the goods, services or
6 business of another by false or misleading representations;

7 (9) offering goods or services with intent
8 not to supply them in the quantity requested by the
9 prospective buyer to the extent of the stock available, unless
10 the purchaser is purchasing for resale;

11 (10) offering goods or services with intent
12 not to supply reasonable expectable public demand;

13 (11) making false or misleading statements of
14 fact concerning the price of goods or services, the prices of
15 competitors or one's own price at a past or future time or the
16 reasons for, existence of or amounts of price reduction;

17 (12) making false or misleading statements of
18 fact for the purpose of obtaining appointments for the
19 demonstration, exhibition or other sales presentation of goods
20 or services;

21 (13) packaging goods for sale in a container
22 that bears a trademark or trade name identified with goods
23 formerly packaged in the container, without authorization,
24 unless the container is labeled or marked to disclaim a
25 connection between the contents and the trademark or trade

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1 name;

2 (14) using exaggeration, innuendo or
3 ambiguity as to a material fact or failing to state a material
4 fact if doing so deceives or tends to deceive;

5 (15) stating that a transaction involves
6 rights, remedies or obligations that it does not involve;

7 (16) stating that services, replacements or
8 repairs are needed if they are not needed; [~~or~~]

9 (17) failure to deliver the quality or
10 quantity of goods or services contracted for; [~~and~~]

11 (18) misrepresenting the terms, conditions or
12 price of an offer to change a person's telecommunications
13 provider or change or add telecommunications service; or

14 (19) making false or misleading statements or
15 otherwise misrepresenting or deceiving a person in order to
16 have the person change his telecommunications provider or
17 agree to a change or addition to telecommunications service;
18 and

19 E. "unconscionable trade practice" means any act
20 or practice in connection with the sale, lease, rental or
21 loan, or in connection with the offering for sale, lease,
22 rental or loan, of any goods or services or in the extension
23 of credit or in the collection of debts which to a person's
24 detriment:

25 (1) takes advantage of the lack of knowledge,

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ability, experience or capacity of a person to a grossly
unfair degree; ~~[or]~~
(2) results in a gross disparity between the
value received by a person and the price paid; or
(3) results in an unauthorized change in the
person's telephone provider or an unauthorized change or
addition to telecommunications service. "

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

3
4
5
6 February 9, 1999

7
8 Mr. Speaker:

9
10 Your BUSINESS AND INDUSTRY COMMITTEE, to whom has
11 been referred

12
13 HOUSE BILLS 36 AND 404

14
15 has had it under consideration and reports same with
16 recommendation that it DO NOT PASS, but that

17 HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE
18 FOR HOUSE BILLS 36 AND 404

19
20 DO PASS, and thence referred to the JUDICIARY
21 COMMITTEE.

1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999

3 HBIC/HB 36

Page 19

4 Respectfully submitted,

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9 Debbie A. Rodella, Vice
10 Chairwoman

11
12 Adopted _____
13 (Chief Clerk)

Not Adopted _____
(Chief Clerk)

14
15 Date _____

16
17 The roll call vote was 11 For 0 Against

18 Yes: 11

19 Excused: Luna

20 Absent: None

21 J: \99BillSWP\H0036
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1 HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
2 HOUSE BILLS 36 & 404
3 **44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999**

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7
8 AN ACT

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

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
19 through 9 of this act may be cited as the "Cramming and
20 Slamming Act".

21 Section 2. [NEW MATERIAL] DEFINITIONS. -- As used in the
22 Cramming and Slamming Act:

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

B. "commission" means the public regulation

commi ssi on;

C. "crammi ng" means:

(1) originating a charge to a customer for telecommunications services that were not authorized by the customer;

(2) originating a charge to 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. "slammi ng" means:

(1) originating a change in 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;

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1 and

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

12 Section 3. [NEW MATERIAL] COMMISSION POWERS AND
13 DUTIES. --

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

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

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

26 Section 4. [NEW MATERIAL] RULES TO IMPLEMENT ACT. -- The
27 commission shall promulgate:

28 A. rules on what constitutes authorization of a

1 change or addition to telecommunications services or change in
2 provider for the purposes of determining cramming or slamming,
3 including consideration of the rules on authorization adopted
4 by the federal communications commission;

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

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

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

13 Section 5. [NEW MATERIAL] COMPLAINTS FILED WITH
14 COMMISSION-- RULES-- ADMINISTRATIVE PENALTIES. --

15 A. The following acts are prohibited:

16 (1) cramming or slamming; and

17 (2) disconnecting or threatening to
18 disconnect a customer's local exchange service because the
19 customer refuses to pay charges resulting from cramming or
20 slamming and the local exchange company has been notified of
21 the cramming or slamming.

22 B. A customer or provider may file a complaint
23 with the commission alleging cramming or slamming. A customer
24 may file a complaint alleging disconnection or threats of
25 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

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1 disconnected or threatened to disconnect a customer's local
2 exchange service, it may:

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

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

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

15 E. The administrative penalty provided for in this
16 section is in addition to any other penalties that may be
17 imposed pursuant to any other state law or any other remedies
18 available to consumers.

19 Section 6. [NEW MATERIAL] CRAMMING OR SLAMMING--CUSTOMER
20 ABSOLUTION. --

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

28 B. The customer may contact his local exchange

1 company, his authorized provider or the unauthorized provider
2 to report a cramming or slamming. The contacted provider
3 shall notify the local exchange company promptly about the
4 customer's allegation of cramming or slamming.

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

8 Section 7. [NEW MATERIAL] CHANGE IN SERVICE OR
9 PROVIDER-- TELEPHONE BILLS. --

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

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

20 Section 8. [NEW MATERIAL] SALES TO BE IN CLEAR
21 LANGUAGE-- FALSE OR MISLEADING INFORMATION-- VERIFICATION--
22 UNAUTHORIZED CHARGE OR CHANGE-- WRITTEN NOTIFICATION. --

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

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

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

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

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

10 (3) explain the material terms and price of
11 the purchase or change in provider.

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

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

19 Section 9. [NEW MATERIAL] CRAMMING OR SLAMMING--DAMAGE
20 TO CREDIT--PENALTY--CIVIL ACTION BARRED.--

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

25 (1) for threatening to injure a customer's

1 credit, a fine not to exceed one thousand dollars (\$1,000) per
2 occurrence; and

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

7 B. A person is barred from bringing a civil action
8 against a customer to collect for charges resulting from
9 cramming or slamming.

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

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

18 Section 12. EFFECTIVE DATE.--The effective date of the
19 provisions of Sections 1 through 9 of this act is July 1,
20 1999.

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HBIC/HB 36 & 404

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FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999

March 15, 1999

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred
HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE
FOR
HOUSE BILLS 36 AND 404, as amended

has had it under consideration and reports same with
recommendation that it DO PASS.

Respectfully submitted,

Michael S. Sanchez, Chairman

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Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

No: None

Excused: Aragon

Absent: None

H0036JU1

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