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HOUSE BILL 404

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

INTRODUCED BY

Pauline K. Gubbels

FOR THE UTILITIES AND TELECOMMUNICATIONS REVIEW COMMITTEE

AN ACT

RELATING TO TELECOMMUNICATIONS; ENACTING A NEW SECTION OF THE
UNFAIR PRACTICES ACT TO PROHIBIT UNAUTHORIZED CHANGES IN A
CUSTOMER'S TELEPHONE SERVICE PROVIDER OR UNAUTHORIZED
ADDITIONS TO A CUSTOMER'S BILL; IMPOSING FINES.

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

Section 1. A new section of the Unfair Practices Act is
enacted to read:

" NEW MATERIAL UNAUTHORIZED CHANGES IN TELEPHONE SERVICE
PROVIDER, TELEPHONE SERVICE OR PRODUCTS PROHIBITED. --

A. It is an unlawful practice within the meaning
of the Unfair Practices Act for any person to:

- (1) change, direct another person to change
or participate in processing a change in a customer's
telecommunications service provider without the customer's

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1 authorization; or

2 (2) charge, direct another person to charge
3 or participate in processing a charge for any product or
4 service through a customer's telephone bill without the
5 customer's authorization.

6 B. As used in this section:

7 (1) "authorization" means:

8 (a) a letter of agency separate from
9 any sales or solicitation material and that contains, in clear
10 and conspicuous language, a full and complete description of
11 the change in telecommunications service provider, and any
12 product or service to be charged to the customer's telephone
13 bill. The letter of agency shall contain, in clear and
14 conspicuous language, a full and complete description of the
15 rates, fees and charges associated with the new
16 telecommunications service provider, and the product and
17 service to be charged to the customer's telephone bill. The
18 letter of agency shall be signed by the customer before any
19 change may be made in a customer's telecommunications service
20 provider or any charge for any product or service may be
21 placed on a customer's telephone bill; or

22 (b) an audio recording of the
23 customer's clear and unambiguous agreement to the change in
24 telecommunications service provider, or to charges for a
25 product or service on the customer's telephone bill. The

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1 audio recording shall be complete, audible and uninterrupted
2 and shall include all sales and solicitations statements made
3 to the customer. The audio recording shall also include the
4 customer's clear and unambiguous disclosure of his identity
5 and authority to make a change or incur the charges on a
6 particular telephone billing account;

7 (2) "customer" means the person liable for
8 payment of the telephone bill, as set out in the telephone
9 bill account records;

10 (3) "telecommunications service" means the
11 offering for sale of the conveyance of voice, data or other
12 information at any frequency over any part of the
13 electromagnetic spectrum. "Telecommunications service" does
14 not include cable television service or broadcast service; and

15 (4) "telecommunications service provider"
16 means a person that provides telecommunications service.

17 C. Any customer authorization that does not comply
18 with the requirements of this section shall be void and
19 without effect.

20 D. No person shall use any sweepstakes, contest or
21 drawing of any kind to obtain a customer's authorization to
22 change a customer's telecommunications service provider or to
23 charge for any product or service through a customer's
24 telephone bill.

25 E. Any person who violates this section shall be

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1 liable to the customer's previously selected
2 telecommunications service provider in an amount equal to all
3 charges paid by a customer after each violation, in addition
4 to any other right, remedy or penalty available against the
5 violator pursuant to the Unfair Practices Act or any other
6 local, state or federal law. "

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 36 & 404

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

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

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

A. "billing aggregator" means a person that bills

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1 customers for goods or services provided by others and that
2 uses a local exchange company as a billing agent;

3 B. "commission" means the public regulation
4 commi ssi on;

5 C. "crammi ng" means:

6 (1) originating a charge to a customer for
7 telecommuni cations services that were not authorized by the
8 customer;

9 (2) originating a charge to a customer for
10 goods or services that are not telecommuni cations services; or

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

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

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

19 F. "local exchange services" means the
20 transmission of two-way interactive communi cations within a
21 local exchange area described in maps, tariffs or rate
22 schedules filed with the commi ssi on where local exchange rates
23 apply;

24 G. "provider" means a telephone company,
25 transmission company, telecommuni cations common carrier,

1 telecommunications company, cellular or other wireless
2 telecommunications service company, cable television service,
3 telecommunications reseller, billing aggregator or other
4 person that bills directly or has a billing contract with a
5 local exchange company;

6 H. "slamming" means:

7 (1) originating a change in a customer's
8 provider without the customer's authorization; or

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

12 I. "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 provider; provided that a good or service that
18 does not meet the definition of "telecommunications service"
19 does not become a telecommunications service merely because it
20 is bundled with a telecommunications service for marketing or
21 billing purposes.

22 Section 3. [NEW MATERIAL] COMMISSION POWERS AND
23 DUTIES. --

24 A. The commission has jurisdiction over a billing
25 aggregator to the extent of the billing aggregator's

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1 participation in billing for telecommunications services or
2 other goods or services through a customer's telephone bill.
3 Billing aggregators are subject to the provisions of the
4 Cramming and Slamming Act.

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

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

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

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

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

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

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

1 Section 5. [NEW MATERIAL] COMPLAINTS FILED WITH
2 COMMISSION-- RULES-- ADMINISTRATIVE PENALTIES. --

3 A. The following acts are prohibited:

- 4 (1) cramming or slamming; and
- 5 (2) disconnecting or threatening to
- 6 disconnect a customer's local exchange service because the
- 7 customer refuses to pay charges resulting from cramming or
- 8 slamming and the local exchange company has been notified of
- 9 the cramming or slamming.

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

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

- 19 (1) assess an administrative penalty not to
- 20 exceed ten thousand dollars (\$10,000) for each occurrence of
- 21 cramming or slamming or for each disconnection or threat to
- 22 disconnect; or
- 23 (2) after other sanctions have failed,
- 24 suspend or revoke the provider's certificate of authority or
- 25 certificate of public convenience and necessity for a

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1 deliberate pattern of cramming or slamming or disconnection or
2 threat of disconnection.

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

6 E. The administrative penalty provided for in this
7 section is in addition to any other penalties that may be
8 imposed pursuant to any other state law or any other remedies
9 available to consumers.

10 Section 6. [NEW MATERIAL] CRAMMING OR SLAMMING--CUSTOMER
11 ABSOLUTION.--

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

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

24 C. The commission shall promulgate rules that
25 govern procedures for how disputed charges or changes are

1 investigated and paid to the proper provider.

2 Section 7. [NEW MATERIAL] CHANGE IN SERVICE OR
3 PROVIDER-- TELEPHONE BILLS. --

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

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

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

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

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

23 C. A seller that attempts to persuade a customer
24 to purchase telecommunications services or change his provider
25 shall make adequate inquiry to reasonably ensure that he is

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1 talking to the customer. The seller shall also, at a minimum,
2 clearly and unambiguously:

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

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

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

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

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

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

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