

TITLE 17 PUBLIC UTILITIES & UTILITY SERVICES
CHAPTER 13 TELECOMMUNICATIONS
PART 8 SLAMMING AND CRAMMING PROTECTION (INTERIM)

1. **ISSUING AGENCY:** New Mexico Public Regulation Commission (“Commission”), 224 East Palace Avenue, Santa Fe, New Mexico 87501. [7-1-99]
2. **SCOPE:** This rule applies to every provider or seller of telecommunications services, billing aggregator, and billing agent which is subject to the jurisdiction of the Public Regulation Commission as provided by state or federal law, including all employees, officers, affiliates, and agents of any such person or entity. [7-1-99]
3. **STATUTORY AUTHORITY:** The New Mexico Slamming and Cramming Act, Laws 1999 Ch. 138, the New Mexico Constitution, art. II, § 2, the New Mexico Public Regulation Act, NMSA 1978 sections 8-8-4, and 8-8-15(C), NMSA 1978 section 63-7-1.1(A)(2), the New Mexico Telephone and Telegraph Company Certification Act, NMSA 1978 section 63-9-1 et seq., the New Mexico Telecommunications Act, NMSA 1978 section 63-9A-1 *et seq.*, the Cellular Telephone Services Act, NMSA 1978 section 63-9B-1 *et seq.*, and the Rural Telecommunications Act of New Mexico, Laws 1999 Ch. 295. [7-1-99]
4. **DURATION:** Temporary, until permanent rules are adopted pursuant to NMSA 1978 section 8-8-15(B). [7-1-99]
5. **EFFECTIVE DATE:** July 1, 1999, unless a later date is cited at the end of a section or paragraph. [7-1-99]
6. **OBJECTIVE:** The purpose of this rule is to establish standards and procedures to investigate and resolve allegations of unauthorized telecommunications charges (“cramming”) and unauthorized changes in telecommunications service providers (“slamming”). This rule shall be liberally construed to carry out its intended purposes. [7-1-99]
7. **DEFINITIONS:** As used in this rule:
 - 7.1. “Authorization” means a letter of agency or oral agreement which meets the requirements of these rules; [7-1-99]
 - 7.2. “Billing agent” means any local exchange company or any person that submits bills for telecommunications charges or telecommunications services to a customer; [7-1-99]
 - 7.3. “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; [7-1-99]

- 7.4. "Clear and conspicuous" when used in regard to notification or language means notice that would be reasonably apparent to an average customer or language that would be reasonably understandable to an average customer, provided that this definition shall not be construed to assume that an "average" customer will have any degree of expertise or sophistication regarding telecommunications services or charges; [7-1-99]
- 7.5. "Commission or NMPRC" means the New Mexico Public Regulation Commission; [7-1-99]
- 7.6. "Cramming" means:
- 7.6.1. charging a customer for telecommunications services that were not authorized by the customer;
 - 7.6.2. charging a customer for goods or services on a customer's telephone bill that are not telecommunications services; or
 - 7.6.3. using a sweepstakes, contest or drawing entry form as authorization to change or add telecommunications services to a customer's telephone bill;
- [7-1-99]
- 7.7. "Customer" means the individual whose name appears on the telephone bill, the individual responsible for payment of the telephone bill, or a household member or other individual previously designated in writing by the individual responsible for payment of the telephone bill as being authorized to make decisions concerning telecommunications charges or changes in provider. In the case of a corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any legal or commercial entity, customer means the individual previously designated in writing by the organization, corporation or other entity as responsible for payment of the telephone bill, or other decisions about telecommunications charges or changes in telecommunications service providers. No authorization designations allowed under this definition shall be effective unless contained in the account records of the local exchange company as of the date any charge or change in provider is made; [7-1-99]
- 7.8. "Local exchange company" means a provider that provides local exchange services; [7-6-99]
- 7.9. "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; [7-1-99]

7.10. "New provider" is any provider, including a reseller of long distance services, that did not bill for services on the customer's last previous telephone billing statement; [7-1-99]

7.11. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or any legal or commercial entity; [7-1-99]

7.12. "Provider" means a local exchange company, 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; [7-1-99]

7.13. "Seller" means a provider or other person that sells telecommunications services; [7-1-99]

7.14. "Slamming" means:

7.14.1. changing a customer's telecommunications service provider without the customer's authorization; or

7.14.2. using a sweepstakes, contest or drawing entry form as authorization to change a customer's telecommunications service provider;

[7-1-99]

7.15. "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. [7-1-99]

8. **RELATIONSHIP TO OTHER COMMISSION RULES:** Unless otherwise specified, this rule is not intended to supersede any other rule of the Commission but to supplement such rules. Nevertheless, if any provision of this rule is inconsistent with the provisions of any other Commission rule, the provisions of this rule shall apply. [7-1-99]

9. **PROHIBITED ACTS**

9.1 Any person that changes or causes a customer's telecommunications service provider or service to be changed without obtaining the customer's authorization in accordance with

17 NMAC 13.8

Slamming and

Cramming Protection

these rules is guilty of “slamming” and shall be subject to appropriate penalties as provided by law. [8-16-99]

9.2 Any person that places or causes a charge for telecommunications services to be placed on a customer’s telephone bill without having obtained the customer’s authorization in accordance with these rules is guilty of “cramming” and shall be subject to appropriate penalties as provided by law. [8-16-99]

9.3 Any person who places or causes a charge to be placed on a customer’s telephone bill for goods or services which are not telecommunications services is guilty of “cramming” and shall be subject to appropriate penalties as provided by law. [8-16-99]

10. CUSTOMER AUTHORIZATIONS

10.1 Customer authorization of any charge or change in provider on the customer’s telephone bill shall not be valid unless:

10.1.1 such authorization is contained in a letter of agency separate from any sales or solicitation material and which contains, in clear and conspicuous language, a full and complete description of any change process, including the identity of any new provider, and any charge for any product or service on the customer’s bill. The letter of agency shall also contain, in clear and conspicuous language, 1) a full and complete description of the rates, fees and charges associated with any new provider and any product or service on the customer’s telephone bill, 2) the customer’s name and billing address, 3) a notation of each telephone number to be covered by any change in provider, 4) if applicable, a statement that the customer intends to change from one provider to another, and 5) a statement that the customer knows that there may be a charge for the change in service. At a minimum, the letter of agency must be printed with a type of sufficient size and readable type to be clearly legible, comparable to the type size and style used in any promotional materials accompanying the sales/marketing offer. The letter of agency shall be signed by the customer before any change may be made in a customer’s provider, and before any charge for any product or service may be placed on a customer’s bill; or

10.1.2 such authorization is obtained pursuant to an oral agreement where the provider or seller originating the charge or change of provider records the entirety of any and all communications or conversations with the customer leading to such authorization, including all terms and conditions of any such charges or change in provider. Customer authorizations obtained pursuant to an oral agreement shall only be valid if the provider or seller originating the charge or change in provider provides the customer with a full and complete description of the rates, fees and

charges associated with any new provider and any product or service on the customer's telephone bill. The customer's authorization pursuant to an oral agreement shall be obtained before any change may be made in a customer's provider, and before any charge for any product or service may be placed on a customer's bill.

[8-16-99]

10.2 Customer authorization of any charge or change in provider or service on a customer's telephone bill that does not comply with the requirements of these rules shall be void and without effect, except that authorization is not required for charges related to the use of customer-initiated "dial-around" services such as "10-10-XXX", directory assistance, operator-assisted calls, and acceptance of collect calls. [8-16-99]

10.3 Customer authorization of any charge or change in provider or service on a customer's telephone bill shall be void and without effect if obtained using a sweepstakes, contest, or drawing entry form. [8-16-99]

11. INFORMATION ON CUSTOMER TELEPHONE BILLS

11.1 Any charge or change in provider shall be indicated on the customer's telephone bill in clear and conspicuous language and easily legible type. [8-16-99]

11.2 Any person that places or causes a charge to be placed on a customer's telephone bill, and any person that changes or causes a customer's provider to be changed shall:

11.2.1 clearly and conspicuously identify the name of the provider associated with each charge or change of provider on the telephone bill;

11.2.2 include a brief, clear and conspicuous description of the product, service, or change in provider to be placed on the customer's bill, including the amount charged for each product, service, or change in provider or service (including taxes and surcharges). The description must be sufficiently clear in presentation and specific enough in content so that customers can accurately assess that the services for which they are billed correspond to those that they have requested and received, and that the costs assessed for those services conform to their understanding of the price charged;

11.2.3 clearly and conspicuously display on each bill a toll-free number or numbers by which customers may inquire or dispute any charge contained on the bill. The toll-free number or numbers shall, at a minimum, be staffed during normal business hours with personnel able to provide sufficient information as necessary to respond to and resolve customer inquiries concerning any charge, service, or

change in provider on a customer's bill, provided that after normal business hours a customer is able to leave a recorded message on a 24-hour per day basis concerning any inquiry or complaint regarding unauthorized charges or changes in provider on the customer's telephone bill. If a customer's call to the toll-free number is recorded after normal business hours, the provider or its agent staffing the number must call the customer back by the end of the next business day and keep trying for three days. If the customer cannot be reached in three days, a letter must be sent to the customer stating that the contact could not be made and providing the toll-free number and operating hours when the customer may reach personnel able to assist the customer with resolving questions or complaints regarding unauthorized charges or changes in provider. A provider may list a toll-free number for a billing agent, clearinghouse, or other third party, provided that such party possesses sufficient information to answer questions concerning the customer's account and is fully authorized to resolve customer complaints on the provider's behalf. Each provider must make its business address available upon request to customers through its toll-free number; and

- 11.2.4 where charges or changes for two or more providers appear on the same telephone bill, separate such charges and provide clear and conspicuous notification of any change in provider, including notification to the customer that a new provider has begun providing service.

[8-16-99]

- 11.3 Where a customer's telephone bill contains charges for local exchange service, in addition to other charges, the bill must distinguish between charges for which non-payment will result in disconnection of basic local exchange service, and charges for which non-payment will not result in such disconnection. The local exchange carrier or its billing agent must clearly and conspicuously identify on the customer's telephone bill those charges for which non-payment will not result in disconnection of basic local exchange service. [8-16-99]

- 11.4 At least two times per year at regular intervals, the local exchange company or other billing agent shall deliver to each customer a bill stuffer or separate mailing which 1) explains procedures for resolving customer complaints concerning unauthorized charges or changes in provider on the customer's telephone bill, 2) includes the Commission's toll-free telephone number where customers can obtain assistance with resolving disputed charges or changes in provider, and 3) advises the customer of their right to be absolved of liability for any unauthorized charges or changes in provider for a period of 90 days. [8-16-99]

12. RESOLUTION OF CUSTOMER COMPLAINTS AND DISPUTES

17 NMAC 13.8
Slamming and
Cramming Protection

12.1 A customer may contact his or her local exchange company, authorized provider, or the unauthorized provider to report an unauthorized charge or change of provider. Any provider contacted by a customer concerning a disputed charge or change in provider shall notify the local exchange company about the disputed charge or change in provider or service within 24 hours. [8-16-99]

12.2 Upon receipt of notification by a customer, another provider, or the local exchange company of a disputed charge or change in provider on a customer's bill, a provider and any billing agent shall immediately cease all efforts to collect payment for the disputed charge or change. [8-16-99]

12.3 Customer complaints concerning disputed charges or changes in provider must be submitted to the Consumer Relations Division of the Commission Staff in writing. To expedite resolution of the complaint, the customer shall provide the Commission Staff with the following information:

12.3.1 a copy of the bill with the disputed charge or change in provider;

12.3.2 a brief discussion of any unauthorized charge or change in provider, including the dollar amount under dispute;

12.3.3 a brief discussion outlining the attempts made to resolve the disputed charge or change in provider;

12.3.4 the names and telephone numbers of the provider or providers contacted by the customer, and the approximate date of any such contact.

[8-16-99]

12.4 Upon receipt of a customer complaint concerning a disputed charge or change in provider, the Commission Staff shall mail a copy of the customer's complaint to the provider responsible for originating the disputed charge or change in provider, along with a request for verification of the customer's authorization of such charge or change in provider. To aid the Commission Staff in expediting resolution of complaints, each provider shall provide the Commission with the name, address, and telephone number of the appropriate individual or department designated to assist in resolving customer complaints concerning slamming and cramming. [8-16-99]

12.5 Within 14 days of the date on which Staff mails the notification of a customer complaint to any provider, the provider originating the disputed charge or change in provider shall submit verification to Staff of the customer's authorization of any such charge or change in provider in the form required under these rules. [8-16-99]

- 12.6 Upon receipt of verification of a customer's authorization of any disputed charge or change in provider, the Commission Staff shall review such verification and make a determination concerning whether the authorization meets the requirements of these rules. [8-16-99]
- 12.7 Once the Commission Staff makes a determination concerning whether a disputed charge or change in provider was authorized by the customer in accordance with these rules, Staff shall promptly mail its determination to the customer and the provider originating the disputed charge or change in provider of its determination. If the customer wishes to contest Staff's initial determination concerning the customer's authorization of the disputed charge or change in provider, the customer shall have 30 days from the date Staff's initial determination is mailed in which to submit any additional evidence or information it believes should be considered by Staff and the Commission in making its final determination concerning the customer's authorization of the disputed charge or change in provider. The Staff shall promptly mail any such additional information or evidence submitted by the customer to the provider. [8-16-99]
- 12.8 If the customer contests Staff's initial determination concerning the customer's authorization of any disputed charge or change in provider by submitting information or evidence contesting the genuineness or authenticity of the customer's authorization submitted to Staff by the provider pursuant to section 12.5, within 15 days of the date Staff mails any such information to the provider, the provider may submit any additional evidence which may be necessary to establish the authenticity or genuineness of the customer's authorization of the disputed charge or change in provider, provided that the provider's right to submit such additional evidence shall not be construed to allow submission of the initial proof of customer authorization required under section 12.5 of this rule. [8-16-99]
- 12.9 After the time period for submission of addition evidence or information concerning the customer's authorization of a disputed charge or change in provider has expired, or upon receiving written notification that the customer or the provider does not wish to submit such additional evidence, Staff shall make a final determination concerning the customer's authorization of the disputed charge or change in provider in accordance with these rules. [8-16-99]
- 12.10 In making its final determination concerning the customer's authorization of a disputed charge or change in provider, Staff shall presume that a disputed charge or change in provider was not authorized whenever:
- 12.10.1 any provider fails to provide verification of customer authorization to the Commission Staff in the form and manner required under these rules; or

12.10.2 the Commission Staff determines that there is a lack of sufficient evidence confirming that the customer authorized any charge or change in provider in accordance with these rules.

[8-16-99]

12.11 After receipt of notification of Staff's final determination concerning the customer's authorization of a disputed charge or change in provider, if either the customer or the provider wishes to contest Staff's final determination it shall file a written appeal of Staff's determination with the Commission within 14 days. Thereafter, the Commission will review the evidence submitted in the course of Staff's investigation and issue an Order upholding or reversing Staff's final determination. Where appropriate, the Commission in its discretion may choose to assign a Hearing Examiner to conduct a hearing and take further evidence and testimony as the Commission deems necessary to reach a final determination concerning the customer's authorization of the disputed charge or change in provider. [8-16-99]

12.12 If no party files an appeal of Staff's final determination on the disputed charge or change in provider within the 14 day period provided for in these rules, Staff's determination shall become final and have the same force and effect as a final Commission Order for purposes of judicial review. [8-16-99]

12.13 After receipt of notification by a customer of a disputed charge or change in provider listed on a customer's bill, and after attempting to informally resolve any such dispute with the customer, if the customer fails to file a complaint with the Commission within 30 days of disputing such a charge or change in provider, a provider may submit a written request to the Commission for a determination of the customer's authorization of the disputed charge or change in provider in the same manner provided for in these rules for customer initiated complaints. In addition to the information required to be filed with a customer initiated complaint, at the time it files any such request for determination, the provider shall also provide the Commission Staff with verification of the customer's authorization of the disputed charge or change in provider in accordance with these rules. [8-16-99]

12.14 Upon receipt of a provider's request for determination of a customer's authorization of a disputed charge or change in provider which contains all of the information required under these rules, the Commission Staff shall notify the customer and proceed to make a determination concerning the customer's authorization of the disputed charge or change in provider in accordance with the rules for investigation of customer initiated complaints. [8-16-99]

13. PAYMENT OF DISPUTED CHARGES

13.1 After receipt of notification by a customer or the Commission Staff of a disputed charge or change in provider listed on a customer's bill, no provider, billing agent or local exchange company may require the customer to pay any portion of a disputed charge or any charge or fee related to a disputed charge or change in provider until the customer's authorization of the disputed charge or change in provider has been established in an investigation conducted pursuant to these rules. The local exchange company or any other person that serves as the billing agent shall not allocate any portion of a customer's payment to a disputed charge or change in provider until customer authorization of the disputed charge or change in provider has been verified in accordance with these rules. [8-16-99]

13.2 After receipt of notification by a customer or the Commission Staff of a disputed charge or change in provider listed on a customer's bill, no provider or local exchange company may disconnect or threaten to disconnect a customer's local exchange service because the customer refuses to pay charges resulting from the disputed charge or change in provider until the customer's authorization of the disputed charge or change in provider has been established in an investigation conducted pursuant to these rules. [8-16-99]

13.3 After investigation of a customer complaint concerning any disputed charge or change in provider, if the Commission Staff makes a final determination that such charge or change in provider was not authorized in accordance with these rules, the provider originating the unauthorized charge or change in service provider shall, as applicable:

13.3.1 within 30 days refund the full amount of any unauthorized charges paid by the customer;

13.3.2 within 30 days remove any unauthorized charges from the customer's bill;

13.3.3 promptly restore the customer's service to the authorized provider; and

13.3.4 promptly credit any amounts paid by the customer to the authorized provider.

[8-16-99]

13.4 Any charges or fees for deletion of an unauthorized charge or restoration of service to the authorized provider, and any other costs, fees, or charges of any kind imposed or required as a result of any unauthorized charge or change in provider shall be paid by the provider responsible for originating the unauthorized charge or change in provider. [8-16-99]

13.5 After investigating any disputed charge or change in provider, if the Commission or Staff determines that such charge or change in provider was authorized by the customer

in accordance with these rules, Staff shall promptly notify the customer and the provider originating such charge or change in provider of its determination, and the provider or billing agent may resume billing the customer for any such charge or change in provider authorized by the customer. [8-16-99]

13.6 Customer Absolution-- If the Commission or Staff determines that a disputed charge or change in provider was not authorized by the customer, the customer shall be absolved of all liability for any and all such unauthorized charges or change in provider during the first 90 days after the unauthorized charge or change in provider first appeared on the customer's bill. [8-16-99]

13.7 Notwithstanding any other provision of these rules, if a customer has failed to report an unauthorized charge or change in provider and as a result has incurred or paid charges or fees in excess of the initial 90 day period from when that charge or change in provider first appeared on the customer's bill, the Commission may determine whether the customer should be held liable for any portion of such charge or change in provider incurred or paid beyond the initial 90 day period, provided that in no event shall a customer be held liable for any charges or fees related to an unauthorized change in provider beyond the initial 90 day absolution period which is in excess of the amount of any such charges or fees the customer would have been liable for to the customer's authorized provider. [8-16-99]

13.8 In the event that the Commission or Staff makes a final determination that a customer should be liable for any portion of an unauthorized charge or change in provider beyond the initial 90 day absolution period provided for in these rules, the authorized provider or the local exchange company or other billing agent may attempt to collect any credited amounts of such charges or fees from the unauthorized provider. If the authorized provider, local exchange company or billing agent is unable to reach an agreement with the unauthorized provider as to the correct amount of such credited payments to be collected from the unauthorized provider, it may submit a complaint requesting a determination to the Commission, along with sufficient information to enable the Commission to make a determination on the appropriate amount of any such payments or credits. [8-16-99]

14. SALE AND VERIFICATION OF TELECOMMUNICATIONS SERVICES

14.1 All providers shall approve all sales scripts and written materials used by its sellers, including contract sellers. [8-16-99]

14.2 Any 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. [8-16-99]

14.3 All sellers shall, at a minimum, clearly and unambiguously:

14.3.1 identify himself or herself and the provider that he or she is asking the customer to use or the telecommunications service he or she is asking the customer to purchase; and

14.3.2 explain all the material terms and price of the purchase and inform the customer of the fact that a fee may be charged for any change in provider.

[8-16-99]

14.4 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. [8-16-99]

15. **EMERGENCY FINDINGS:** The Commission finds that slamming and cramming practices present an immediate threat to the general welfare of the public and that it is necessary and proper to adopt these rules on an emergency basis as provided by section 8-8-15(C) of the Public Regulation Commission Act, 1978 NMSA § 8-8-1 *et seq.*