

# NEW MEXICO PUBLIC REGULATION COMMISSION

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## MEMORANDUM

To: Arcy Baca  
From: Nancy Burns  
Date: 10/7/02  
RE: Statute of Limitations for Bill Collections

The statute of limitations for an open account is four years (NMSA Section 37-1-4) and the cause of action accrues on the date of the last item on the account (NMSA Section 37-1-6). I believe that a utility bill is considered an open account. Either party, a phone company or a customer, could bring a private cause of action for amounts underpaid or overcharged (collected or billed) for the previous four years. However, if the last incorrect bill was over four years ago, the statute of limitations would prevent collection if pled as a defense in a lawsuit to collect. The statute of limitations is a defense to a cause of action in a lawsuit. So I think that the statute of limitations imposes a four year limit on back billing if pled as a defense in a lawsuit. The Commission's rules do not limit back billing to four years. The statute of limitations does not make it illegal to try to collect back billing four years after accrual of the bill- it just means that a person attempting to collect after the statute of limitations has run in a lawsuit can be barred from collection if the statute of limitations is asserted as an affirmative defense in that lawsuit.