

This rule was filed as 17 NMAC 13.2.

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 11 TELECOMMUNICATIONS
PART 2 ADMINISTRATIVE FINES FOR TELECOMMUNICATIONS PROVIDERS

17.11.2.1 ISSUING AGENCY: New Mexico State Corporation Commission [New Mexico Public Regulation Commission].
[5-15-96; Recompiled 12/31/01]

17.11.2.2 SCOPE: This rule applies to any telecommunications provider as defined herein.
[5-15-96; Recompiled 12/31/01]

17.11.2.3 STATUTORY AUTHORITY: Authority for this rule derives from Article 11 of the New Mexico Constitution and Section 63-7-23 NMSA 1978.
[5-15-96; Recompiled 12/31/01]

17.11.2.4 DURATION: Permanent.
[5-15-96; Recompiled 12/31/01]

17.11.2.5 EFFECTIVE DATE: This rule shall take effect (date of publication in the New Mexico Register) [May 15, 1996.]
[5-15-96; Recompiled 12/31/01]

17.11.2.6 OBJECTIVES: The objectives of this rule are to provide procedural rules and regulations for the implementation of 63-7-23 NMSA 1978.
[5-15-96; Recompiled 12/31/01]

17.11.2.7 DEFINITIONS

A. For purposes of proceedings to impose administrative fines, and as used in this rule, the following terms have the meanings given in the cited section of the New Mexico Statutes Annotated 1978:

- (1) Commission, Section 63-7-23(A)(1) NMSA 1978.
- (2) Telecommunications provider, Section 63-7-23(A)(2) NMSA 1978.

B. For purposes of proceedings to impose administrative fines, and as used in this rule, the following terms have the meanings given here:

(1) **aggravating circumstances** means any circumstance attending a violation of any applicable law or rule or order of the Commission by a telecommunications provider which adds to its injurious consequences.

(2) **aggrieved by an order** means the order directly results in the denial of some personal or property right, or imposes a burden or obligation upon a telecommunications provider or other person.

(3) **Commission's Rules of Procedure** means the Rules of Procedure of the New Mexico State Corporation Commission which became effective November 14, 1985.

(4) **fraudulently concealed** means the employment of artifice planned to prevent inquiry or escape investigation or to mislead or hinder the acquisition of information that could lead to possible action under Section 63-7-23 NMSA 1978 or this rule.

(5) **mitigating circumstances** means any circumstance attending a violation of any applicable law or rule or order of the Commission by a telecommunications provider which reduces or partially extinguishes its injurious consequences.

(6) **preponderance of the evidence** means proof by the greater weight of evidence, establishing that which is sought to be proved is more probably true than not true.

(7) **proceedings to impose an administrative fine** means a proceeding initiated by the Commission pursuant to Section 63-7-23(D) NMSA 1978.

(8) **staff** means the staff of the Commission's Telecommunications Department.

(9) **State** means the State of New Mexico.

(10) substantial harm to the customers of the telecommunications provider means having a significant adverse impact on the quality of service or value of service provided to a customer of a telecommunications provider. [5-15-96; Recompiled 12/31/01]

17.11.2.8 PROCEDURAL RULES

A. The procedures in Section 63-7-23 NMSA 1978 and the Commission's Rules of Procedure shall apply to proceedings to impose an administrative fine; provided, however, in proceedings to impose an administrative fine, if any provision of this rule or 63-7-23 NMSA 1978 conflict with any provision of the Commission's Rules of Procedure, the provision of this rule or Section 63-7-23 NMSA 1978 shall apply.

B. The provisions of Rule 27 of the Commission's Rules of Procedure concerning intervention shall apply to proceedings to impose an administrative fine except that the Commission may grant the intervention only if it appears that the movant would be directly affected by the Commission's decision in the proceeding and that the movant possesses a substantial interest in the subject matter of the proceeding, or that participation of the movant may be in the public interest, or that the movant is a proper party under the law. [5-15-96; Recompiled 12/31/01]

17.11.2.9 PAYMENT OF ADMINISTRATIVE FINE

A. Payment of an administrative fine shall be made by certified check or money order payable to the "New Mexico State Corporation Commission" and should be delivered to the Commission's Chief Clerk, in accordance with the terms of the order imposing the administrative fine.

B. If payment of an administrative fine is not made in accordance with the terms of the order imposing the administrative fine, the Commission may, without further hearing, suspend or revoke the certificate of public convenience and necessity or other authority of the telecommunications provider to provide public telecommunications service in the state, or take other lawful action to enforce its order. [5-15-96; Recompiled 12/31/01]

17.11.2.10 LIMITATION OF REMEDIES: In addition to the imposition of an administrative fine, the Commission may order such other action or actions as may be appropriate, arising out of the same facts. An administrative fine ordered by the Commission shall be in addition to any other penalty provided by law. [5-15-96; Recompiled 12/31/01]

17.11.2.11 SEVERABILITY: If any section of this rule, or the applicability of any section to any person, telecommunications provider or circumstance, is for any reason held invalid by a court, the remainder of the rule, or the applicability of such provisions to other persons, telecommunications providers or circumstances, shall not be affected. [5-15-96; Recompiled 12/31/01]

History of 17.11.2 NMAC: [RESERVED]