

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,</p> <p style="text-align:center">Complainant,</p> <p style="text-align:center">vs.</p> <p>LEGACY LONG DISTANCE INTERNATIONAL, INC.,</p> <p style="text-align:center">Respondent.</p>	<p style="text-align:center">DOCKET NO. FCU-02-28 (C-02-405)</p>
--	--

**ORDER DENYING PETITION FOR PROCEEDING
TO IMPOSE CIVIL PENALTIES**

(Issued June 18, 2003)

On December 31, 2002, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition for a proceeding to impose civil penalties pursuant to Iowa Code § 476.103, asking that the Board review the proposed resolution in C-02-405, involving Legacy Long Distance International, Inc. (Legacy), and consider the possibility of assessing a civil penalty pursuant to Iowa Code § 476.103(4)"a." Based upon the record assembled in the informal complaint proceedings, which are a part of the record in this proceeding pursuant to 199 IAC 6.7, the events to date can be summarized as follows:

On November 22, 2002, the Board received a complaint from Fred Starling of Burlington, Iowa, against Legacy. Mr. Starling alleged that Legacy caused calling card charges to be placed on his local telephone bill without authorization.

On December 17, 2002, Billing Concepts, Inc. (Billing Concepts), responded to the complaint as billing agent for Legacy. In that response, Billing Concepts stated that while the calling card call in question was placed to Mr. Starling's home number, Mr. Starling's account was credited for the full amount of the charge (\$22.45) and no other bills would be sent to Mr. Starling to recover for the call.

On December 18, 2002, Board staff issued a proposed resolution describing these events and proposing that the credit offered by Billing Concepts and Legacy represented a fair resolution of the situation. No party other than Consumer Advocate has challenged the staff's proposed resolution.

Consumer Advocate argues that Legacy violated Iowa Code § 476.103 by placing unauthorized charges on Mr. Starling's local telephone bill. Consumer Advocate concludes that Mr. Starling's uncontroverted allegations constitute a cramming violation, which should be processed under § 476.103, and civil penalties should be assessed.

The Board does not agree with Consumer Advocate's analysis of § 476.103. Many cramming cases, like this one, appear to be the result of isolated errors that will not be deterred by civil penalties. In such cases, the appropriate resolution is to make the customer whole (since the errors are clearly not the customer's) at the expense of the carrier that committed the error. Iowa Code § 476.3 (2003) requires that the Board grant a request to initiate a formal proceeding if there is any

reasonable ground for investigating the complaint. Consumer Advocate has not offered any reasonable ground for further investigation of this matter. The request for a proceeding to impose civil penalties fails to address the proposed resolution or to request, or even suggest, any specific remedy beyond what has already been done. In the absence of any such request, there is no basis for further investigation of this matter.

The Board finds that a formal proceeding to consider civil penalties should only be initiated when there are reasonable grounds for further investigation. In the absence of such a reason, it would be a waste of resources to conduct a formal proceeding.

Based on the circumstances described above, the Board will deny Consumer Advocate's petition to docket this matter as a formal complaint proceeding.

IT IS THEREFORE ORDERED:

The "Petition For Proceeding To Impose Civil Penalty" filed on December 31, 2002, by the Consumer Advocate Division of the Department of Justice is denied.

UTILITIES BOARD

/s/ Mark O. Lambert

ATTEST:

/s/ Sharon Mayer
Executive Secretary, Assistant to

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 18th day of June, 2003.