

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>SPRINT COMMUNICATIONS COMPANY, L.P.,</p> <p style="text-align:center">Respondent.</p>	<p style="text-align:center">DOCKET NO. FCU-03-19</p>
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PROCEDURAL ORDER AND NOTICE OF HEARING

(Issued February 18, 2004)

Background

On January 14, 2003, Ms. Fikreta Mehmedovic filed a written complaint with the Utilities Board (Board). In her complaint, Ms. Mehmedovic stated she was not in charge of her home telephone service, that service was in her mother's name. She stated that Sprint Communications Company, L.P. (Sprint), kept sending bills in Ms. Mehmedovic's name. She further stated that the family's long distance telephone service had been changed to Sprint without their authorization. She stated she called Sprint in September to attempt to switch back to their original telephone company, but Sprint told her that only her mother could do it since service was in her mother's name. She stated that Sprint told her they would check into the matter, but the only thing that has happened is she continues to receive bills in her name rather

than her mother's. She stated her mother does not speak English and therefore would not switch companies. She further stated that the original company charged \$0.25 per minute for international calls to Bosnia and Sprint charged \$4 - \$5 per minute for calls to Bosnia. She asked why the family would even think about switching. She further stated she felt the family was being discriminated against because there is a language barrier. She also stated this had happened to other people from Bosnia, asked the Board to investigate Sprint, and requested assistance in resolving the problem. She enclosed a past due notice from Sprint's collections department stating the amount due was \$710.66 and that Sprint's practice was to report eligible debts to national credit bureaus.

Upon receiving the complaint, Board staff attempted to informally resolve the dispute. On January 16, 2003, Board staff forwarded the complaint to Sprint for response. Sprint responded by letter addressed to Ms. Mehmedovic and filed with the Board on February 10, 2003. Sprint stated an account was established on July 23, 2002, at the request of a Sprint sales associate, that third-party verification was performed, and that Sprint would enclose a copy of the third-party verification under separate cover. Sprint stated it had applied an interim credit of \$700.98¹ for the first 30 days of billing to the account, pending a ruling by the Board. Sprint filed a copy of the third-party verification tape on February 11, 2003.

¹ It is unclear why Sprint applied a credit of \$700.98 rather than \$710.66, the amount stated on the Sprint Collection Department statement dated January 4, 2003.

On February 12, 2003, Board staff sent the third-party verification tape to Ms. Mehmedovic and asked for a response.

Early on February 25, 2003, Board staff issued a proposed resolution telling Ms. Mehmedovic the Board had not received a response from her and that, in reviewing the third-party verification tape, Sprint obtained permission to change her long distance service. Therefore, Board staff found no slamming had occurred and that Ms. Mehmedovic was responsible for the charges billed to her. The letter informed Ms. Mehmedovic of the procedure if she disagreed with the proposed resolution.

Later on February 25, 2003, Board staff received a response from Ms. Mehmedovic. She stated this had been a big misunderstanding and that she did not call Sprint. She stated she called AOL, and did not want to switch telephone companies. She stated she thought she was talking with someone from AOL and did not know she was signing up for Sprint long distance. She reiterated she never would have switched from \$0.25 per minute to \$4 - \$5 per minute to call Bosnia. She further stated she would pay for the calls if Sprint charged reasonable prices but did not want to be charged for something she did not want in the first place. She stated English was not her first language.

On March 4, 2003, Sprint filed a copy of a letter it had sent to Ms. Mehmedovic informing her that the previous interim adjustment had been debited since there was no unauthorized switch to Sprint. Sprint stated it had entered an adjustment of \$350.49 on her account as a gesture of goodwill.

On March 5, 2003, Board staff issued a second proposed resolution taking the additional information Ms. Mehmedovic provided into account. Board staff found that Ms. Mehmedovic stated in her correspondence that she made an error and had made the calls. Board staff found that no slamming had occurred, noted that Sprint had credited her account in the amount of \$350.49, and told her to contact Sprint to make arrangements to pay off the remaining balance of \$350.49. Staff stated there appeared to be no further action required and informed Ms. Mehmedovic of the procedure if she disagreed with the proposed resolution. Ms. Mehmedovic did not challenge the proposed resolution.

On March 12, 2003, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) petitioned the Board to commence an administrative proceeding to impose a civil penalty for a slamming violation of Iowa Code § 476.103 (2003). The Consumer Advocate referred to the allegation in the complaint that the telephone account is in Ms. Mehmedovic's mother's name, but Sprint billed Ms. Mehmedovic, and stated that this was without authorization from anyone. The Consumer Advocate stated Sprint's response and the voice recording do not address the concern regarding Sprint's prices. The Consumer Advocate stated the proposed resolution was incorrect and did not adequately address and resolve the legal and public policy concerns raised by Ms. Mehmedovic's complaint. The Consumer Advocate asserted Ms. Mehmedovic called AOL for Internet service, not Sprint for long distance telephone service, and neither Ms. Mehmedovic nor the Consumer Advocate understand how she ended up with both services. The Consumer

Advocate further asserted there was no agreement between Ms. Mehmedovic and Sprint on the terms and duties established by the oral contract claimed by Sprint, and the telling and controlling fact was Sprint's grossly excessive charges. The Consumer Advocate asserted no one would switch carriers given the difference in per minute price, alleged there was no agreement from Ms. Mehmedovic for Sprint long distance, and thus asserted Sprint slammed Ms. Mehmedovic in violation of Iowa law. The Consumer Advocate requested a formal proceeding, argued a civil penalty should be imposed to deter future slamming violations, and stated the Board should consider nine informal complaint files involving Sprint when determining the amount of a civil penalty. Sprint did not file a response to the Consumer Advocate's petition.

On January 8, 2004, the Board issued an order finding sufficient information to warrant further investigation, docketing the proceeding, and ordering Sprint to respond to the allegations raised in the Consumer Advocate's petition.

On January 23, 2004, the Consumer Advocate filed a request for leave to amend its petition. On January 29, 2004, the Board issued an order granting the request.

On January 30, 2004, Sprint filed a response to the Consumer Advocate's petition and a transcript of the verification tape. Sprint stated it had further investigated the complaint and it appeared from Sprint's records that Ms. Mehmedovic originally contacted AOL to sign up for Internet service. Sprint further stated that once the Internet service sale is completed, pursuant to a joint marketing

agreement, AOL asks the customer if he or she wishes to save on their long distance and talk with a Sprint representative. Sprint asserted that if the customer gives a positive response, the customer is transferred to Sprint. Sprint stated the customer is then offered a specific calling plan and the ability to receive two months of free AOL service for signing up with Sprint. Sprint further asserted Ms. Mehmedovic was put on a domestic long distance plan that carried a monthly fee and a \$0.07 per minute rate. Sprint asserted this plan did not have an international option and had the highest international rate. Sprint stated, based on the third-party verification tape, it is unclear whether Ms. Mehmedovic understood the benefits from the Sprint plan were for domestic calling only. Sprint asserts the tape makes it clear that she understood she was changing her long distance company to Sprint, and that as part of her plan, there was or could be a monthly fee. Sprint acknowledged in its response that Ms. Mehmedovic did not sign up for the Sprint plan that best suited her calling needs, which would have been an international calling plan. Sprint further stated that due to this set of facts, it had recalculated the amount Ms. Mehmedovic would have been charged had she been placed on the lowest available international rates, and this amount was \$68.78. Sprint further stated it had written off Ms. Mehmedovic's current balance in the amount of \$366.24 to a debt collection agency on July 17, 2003, and that due to the Board's January 8, 2004, order, it had voluntarily suppressed the collection efforts. Sprint further offered to recall the debt from the collections agency and to agree to a full refund in an effort to resolve the matter. Sprint asserted it did not intentionally place Ms. Mehmedovic on the wrong

calling plan, it did not slam her, and it did not mislead her. Sprint stated it would credit her account to zero and requested that the docket be dismissed. Sprint further asserted the third-party verification tape showed Ms. Mehmedovic authorized the change in service and that she stated she was an authorized person to change service. Sprint asserted the rates it charged for the international calls to Bosnia were in accordance with rates on the Sprint website consistent with FCC requirements. Sprint asserted that international calling rates were not within the Board's jurisdiction and its February 6, 2003, response to the complaint was proper. Sprint further asserted that any misunderstandings between Sprint and Ms. Mehmedovic concerning rates do not constitute a willful violation of law. Sprint further asserted the third-party verification tape showed it did not slam Ms. Mehmedovic. It denied its international calling rates are "grossly excessive." Sprint responded to each of the nine informal complaint cases that the Consumer Advocate argued the Board should consider when imposing a civil penalty, and asserted the cases do not show a history of prior violations of the slamming law.² Sprint asserted no civil penalty should be imposed because Sprint did not slam Ms. Mehmedovic's telephone number. Sprint argued that because there was no willful violation of the law, imposing a civil penalty would not deter future violations. Sprint asserted that civil penalties are not aimed at honest miscommunications or consumer misinterpretations of pricing amounts, and

² In its response at page 9, Sprint quoted a Board order it stated was issued in Docket No. FCU-03-11. This docket number is incorrect. The correct docket number is FCU-02-23, and the Board order quoted was issued on June 24, 2003.

requested the Board deny the request to impose a civil penalty and find there was no slamming.

On February 13, 2004, the Board issued an order assigning the case to the undersigned administrative law judge.

Pursuant to Iowa Code §§ 476.3(1) and 476.103(4), and 199 IAC 6.5, a procedural schedule will be established and a hearing regarding this complaint will be held if needed.

The statutes and rules involved in this case include Iowa Code §§ 476.3 and 476.103 and Board rules at 199 IAC 1.8, and Chapters 6, 7, and 22. A link to the Board's administrative rules (in the Iowa Administrative Code (IAC)) is contained on the Board's website at www.state.ia.us/iub.

The issues

The issues in this case generally involve the change of Ms. Mehmedovic's (or her mother's) long distance telephone service to Sprint, whether Sprint complied with state and federal law when it changed Ms. Mehmedovic's (or her mother's) service and subsequently billed Ms. Mehmedovic, whether Sprint refused to change the service back to the original provider when requested by Ms. Mehmedovic in September 2002, whether Sprint's rates and service to the Mehmedovic family was unjust, unreasonable, discriminatory, or otherwise in violation of any provision of law, whether imposition of a civil penalty is appropriate, and what should be done to resolve the case. Other issues may be raised by the parties prior to and during the hearing.

Prepared testimony and exhibits

All parties will have the opportunity to present and respond to evidence and make argument on all issues involved in this proceeding. Parties may choose to be represented by counsel at their own expense. Iowa Code § 17A.12(4). The proposed decision that will be issued in this case must be based on evidence contained in the record and on matters officially noticed. Iowa Code §§ 17A.12(6) and 17A.12(8).

The submission of prepared evidence prior to hearing helps identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined concerning the statements already made in writing. The use of prepared testimony and submission of documentary evidence ahead of the hearing prevents surprise at the hearing and helps each party to prepare adequately so a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1) and (3).

Party status and communication with the Board

The Consumer Advocate and Sprint are currently the parties to this proceeding. If Ms. Mehmedovic and/or her mother wish to be a party to this case, they must notify the Board in writing in accordance with the procedural schedule established in this order.

Each party must file an appearance identifying one person upon whom the Board and the other parties may serve all orders, correspondence, or other documents. 199 IAC 7.2. The written appearance must substantially comply with 199 IAC 2.2(15). The appearance must include the docket number of this case as stated in the caption above. Appearances must be filed at the earliest practical time with the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319. The appearance must be accompanied by a certificate of service that conforms to 199 IAC 2.2 and verifies that a copy of the document was served upon the other parties.

Any party who communicates with the Board should send an original and ten copies of the communication to the Executive Secretary at the address above, accompanied by a certificate of service. One copy of the communication should also be sent at the same time to each of the other parties to this proceeding except that three copies must be served on the Consumer Advocate. 199 IAC 1.8(4)"c." These requirements apply, for example, to the filing of an appearance or to the filing of prepared testimony and exhibits with the Board.

Ex parte communication is prohibited as provided in Iowa Code § 17A.17. Parties or their representatives and presiding officers shall not communicate directly or indirectly in connection with any issue of fact or law in a contested case except upon notice and an opportunity for all parties to participate. The undersigned administrative law judge is the presiding officer in this case.

Pursuant to 199 IAC 6.7, the written complaint and all supplemental information from the informal complaint proceedings, identified as Docket No. C-03-17, are part of the record of this formal complaint proceeding.

The materials that have been filed in this docket are available for inspection at the Board Records and Information Center, 350 Maple Street, Des Moines, Iowa 50319. Copies may be obtained by calling the Records and Information Center at (515) 281-5563. There will be a charge to cover the cost of the copying.

All parties should examine Iowa Code §§ 476.3, 476.103, and Board rules at 199 IAC 1.8 and Chapters 6, 7, and 22 for substantive and procedural rules that apply to this case.

Stipulation of Facts and Prehearing Brief

The facts underlying this case have already been the subject of an informal complaint proceeding. Therefore, it is appropriate that the parties file a stipulation of facts, so that only facts in dispute need be resolved in this formal complaint proceeding. In addition, it is appropriate that the parties file prehearing briefs that identify and discuss their respective positions. Finally, the parties must discuss whether it is possible to settle this case without further formal proceedings and the involvement of the undersigned administrative law judge.

IT IS THEREFORE ORDERED:

1. If the parties are unable to settle this case, on or before March 10, 2004, the parties must file a document stipulating to as many of the facts in this case as possible. The stipulation must also identify which facts remain in dispute and

need to be resolved. The parties must also state whether they believe a hearing is necessary in this case, or whether the case could be submitted on the stipulated facts, prefiled testimony and evidence, and the prehearing briefs. If Ms. Mehmedovic and/or her mother wish to become a party to this case, they must file written notice with the Board no later than March 10, 2004, and must join in the stipulation of the parties.

2. If the parties are unable to stipulate to all the facts of this case, prefiled testimony and exhibits must be filed only with respect to the facts that remain in dispute and need to be resolved in this proceeding.

3. If needed pursuant to paragraph two, on or before March 24, 2004, the Consumer Advocate and any intervenors must file prepared direct testimony and exhibits and a prehearing brief. The prepared direct testimony may refer to any document already in the record, and parties do not need to refile exhibits already submitted in the informal complaint process and made a part of the record. In prepared testimony and exhibits, the Consumer Advocate and any intervenors must address the issues discussed above, and file any other evidence not previously filed. In its prepared testimony and exhibits, the Consumer Advocate must address under whose name(s) the account exists, who has authorization to switch providers on the account, the affirmative answers Ms. Mehmedovic gave on the third-party verification tape regarding authority to change the account and apparently authorizing Sprint to change the long distance carrier on the account, the call Ms. Mehmedovic allegedly made to Sprint in September 2002 requesting that Sprint switch the account back to

the original carrier, the total amount of Sprint charges on Ms. Mehmedovic's (or her mother's) account, and the total amount of credit that Sprint provided to the account, unless this information was provided in the stipulation of facts. The Consumer Advocate should use exhibit numbers one and following. In its prehearing brief, the Consumer Advocate must state what actions it believes would be necessary to bring this matter to a proper resolution, and why such actions would be appropriate and in accordance with applicable law.

4. If needed pursuant to paragraph two, on or before April 7, 2004, Sprint must file prepared testimony and exhibits and a prehearing brief. Sprint may refer to any document in the record, and does not need to refile exhibits already submitted in the informal complaint process and made a part of the record. In its prepared testimony and exhibits, Sprint must address the issues discussed above and file any other evidence not previously filed. In its prepared testimony and exhibits, Sprint must address under whose name(s) the account exists, who has authorization to switch providers on the account, the call Ms. Mehmedovic allegedly made to Sprint in September 2002 requesting that Sprint switch the account back to the original carrier in which Sprint allegedly refused to do so, saying that only Ms. Mehmedovic's mother could request the switch, the total amount of Sprint charges on Ms. Mehmedovic's (or her mother's) account, and the total amount of credit that Sprint provided to the account, unless this information was provided in the stipulation of facts. Sprint must address whether it has already recalled the debt from the collections agency and credited the account back to zero, or whether this action is dependent on the

outcome of this docket. Sprint must address whether it has reported this debt to any credit bureau as stated in the Sprint Collection Department statement dated January 4, 2003, and any further contacts with any credit bureau regarding this account. In the first proposed resolution, Board staff requested Sprint to provide proof that a written notice of the service change was provided to the customer within 30 days of the effective date of the change pursuant to 199 IAC 22.23(2)"c." Sprint must provide such proof unless it was provided with the stipulation of facts. Sprint must address whether it has conducted training or taken any other steps with respect to its marketing representatives and employees so that customers are placed in the correct calling plan to best meet the customer's needs. If it has, Sprint must explain what it has done. Sprint should use exhibit numbers 100 and following. In its prehearing brief, Sprint must state what actions it believes would be necessary to bring this matter to a proper resolution, and why such actions would be appropriate and in accordance with applicable law.

5. If the Consumer Advocate or any intervenor is going to file prepared rebuttal testimony and exhibits, it must do so by April 14, 2004.

6. A hearing for the presentation of evidence and the cross-examination of witnesses will be held in the Board Hearing Room, 350 Maple Street, Des Moines, Iowa, on Wednesday, April 21, 2004, commencing at 10 a.m. Each party must provide a copy of its prepared testimony and exhibits to the court reporter. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at 1-515-281-5256 no later than Wednesday,

April 14, 2004, to request that appropriate arrangements be made. Pursuant to Iowa Code Chapter 622A, if a party or a witness cannot speak or understand the English language, an interpreter to assist the person in the hearing will be provided at no cost to the person. Persons who need an interpreter, or the person's representative, should contact the Board at 1-515-281-5256 no later than Wednesday, April 7, 2004, to request that appropriate arrangements be made.

7. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination will become part of the evidentiary record of these proceedings. Pursuant to 199 IAC 7.2(6), the party making reference to the data request must file one original and three copies of the data request and response with the Executive Secretary of the Board at the earliest possible time.

8. Any person not currently a party who wishes to intervene in this case must meet the requirements for intervention in 199 IAC 7.2(7). The person must file a petition to intervene on or before 20 days following the date of issuance of this order, unless the petitioner has good cause for the late intervention. 199 IAC 7.2(8).

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 18th day of February, 2004.