

On August 9, 2004, Madelene Perkins of Tabor, Iowa, submitted a complaint to the Board against MCI alleging that her long distance telephone service provider was changed without her authorization. Board staff identified the complaint as C-04-200 and, pursuant to Board rules, on August 12, 2004, forwarded the complaint to MCI for response within ten days.

On August 24, 2004, MCI responded to the complaint, indicating that its records showed that in response to a call from a telemarketer on February 5, 2004, Mrs. Perkins authorized the switch to MCI and that an account was established under the name of Tom Perkins for interlata long distance and local toll service. MCI was not able to locate the recording of the third party verification it claims was completed. MCI also stated that it had issued an adjustment to the account to reflect a zero balance and had canceled the account.

On September 2, 2004, Board staff issued a proposed resolution concluding that slamming had occurred in this matter. Board staff stated that without a recording of the verification, it could only conclude that slamming occurred. Staff noted that no further action was necessary because MCI had issued a credit in the amount of \$26.90 plus the cost of any collection fees and had canceled the account.

In its September 8, 2004, petition, Consumer Advocate asserts that the proposed resolution should be augmented with a civil monetary penalty because crediting a complaining customer's account will not by itself stop the unlawful practice of slamming. Consumer Advocate asserts that a civil penalty is necessary to ensure

compliance and deter future slamming violations. Consumer Advocate requests that the Board docket this complaint for a formal proceeding.

On September 28, 2004, MCI filed an answer to and motion to dismiss Consumer Advocate's petition for proceeding to consider civil penalty. MCI states that it took all reasonable steps when it initiated the account and therefore MCI believes the account was established with proper verification. MCI says that it followed applicable laws in establishing the customer's account. In support of that claim, MCI describes the contact history showing when the outbound call to the customer was made and subsequently referred to a third party verifier. MCI states that the recording of the verification was lost due to a technical error that resulted in an archival tape not being recorded by the third party verifier.

MCI resists Consumer Advocate's call for civil penalties, asserting that civil penalties would not further public policy goals nor prevent the technical malfunction that MCI identifies as the cause of the loss of the recording.

MCI asserts that the only purpose of Consumer Advocate's petition is to obtain civil penalties. MCI argues that civil penalties are not appropriate in this case because such penalties would not deter unlawful activities or practices, civil penalties were not intended to punish a party for the inadvertent technical error of a third-party, and there is no willful act in this case that warrants the assessment of civil penalties. MCI argues that Consumer Advocate's petition fails to provide the Board with reasonable grounds to initiate a formal proceeding and therefore must be dismissed.

On October 1, 2004, Consumer Advocate filed a memorandum responding to MCI's answer and motion to dismiss. Consumer Advocate asserts that crediting customer accounts is an insufficient response to the problem of slamming and asserts that civil penalties can reduce the incidence of slamming. Consumer Advocate argues that if MCI had followed the law, the recording of the third-party verification would have been retained. Consumer Advocate states that MCI offers no proof that the customer authorized the switch in service. Consumer Advocate asserts that even if proof of authorization were available, there would be no basis for dismissal because for the purpose of considering a motion to dismiss, the allegations of the complaint are assumed to be true.

The Board has reviewed the record to date. The Board finds that reasonable grounds exist for further investigation of this matter, particularly in light of the facts of this case in which a recording of the third-party verification is not available. By itself, the mere assertion that consideration of civil penalties might deter future slamming violations might not be sufficient to justify further formal proceedings, but, in this case, the lack of the required verification leads the Board to conclude that there are reasonable grounds for further investigation. The Board will deny MCI's motion to dismiss and will docket this matter for formal proceeding. Because MCI has responded to Consumer Advocate's petition and disputes Consumer Advocate's request for civil penalties, the Board will assign the docket to an administrative law judge (ALJ) for further proceedings pursuant to Iowa Code § 17A.11(1)"b" (2003) and

199 IAC 7.1(4). The ALJ will, among other things, set a hearing date, preside at the hearing, and issue a proposed decision.

IT IS THEREFORE ORDERED:

1. The "Petition for Proceeding to Consider Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on September 8, 2004, is granted. File C-04-200 is docketed for formal proceeding, identified as Docket No. FCU-04-47.

2. The motion to dismiss filed by MCI WorldCom Communications, Inc., on September 28, 2004, in Docket No. FCU-04-47 is denied.

3. Pursuant to Iowa Code § 17A.11(1)"b" and 199 IAC 7.1(4), this docket is assigned to the Board's administrative law judge, Amy Christensen, to conduct a hearing and issue a proposed decision. The administrative law judge shall have the authority provided under 199 IAC 7.1(4)"a" through "j."

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 11th day of October, 2004.