

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>ONE CALL COMMUNICATIONS, INC., TELLISS BILLING, AND ONE WEB DIRECT BILL,</p> <p style="text-align:center">Respondent.</p>	<p style="text-align:right">DOCKET NOS. FCU-04-54, FCU-04-63, FCU-04-64, FCU-05-1</p>
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**ORDER DOCKETING FOR FORMAL PROCEEDING, DENYING MOTIONS TO
DISMISS, CONSOLIDATING DOCKETS, SETTING DEADLINE FOR RESPONSE,
AND REQUESTING STATUS REPORT**

(Issued January 13, 2005)

On November 8, December 10, and December 28, 2004, and January 6, 2005, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) petitions for proceedings to consider civil penalties for alleged cramming violations committed by One Call Communications, Inc. (One Call). The petitions filed by Consumer Advocate on December 28, 2004, and January 6, 2005, name Telliss Billing (Telliss) and One Web Direct Bill (One Web Direct) as respondents in addition to One Call.

The petitions involve complaints from customers about charges for calls to the United Kingdom or visits to web sites the customers claim not to have made or authorized. The following summary of the customer complaints and pleadings arising

from those complaints is based on the records assembled in each of the informal complaint proceedings:

I. INFORMAL COMPLAINT PROCEEDINGS

On October 14, 2004, John Wilson of Des Moines, Iowa, submitted a complaint to the Board alleging his local telephone bill included an unauthorized charge of \$45.43 plus tax for a long distance call to the United Kingdom he claims he did not make. Board staff initially characterized the complaint as an unauthorized change of telecommunication service provider, identified the matter as C-04-227, and, pursuant to Board rules, on October 15, 2004, forwarded the complaint to One Call for response within ten days.

On October 20, 2004, Sheree Heard of Urbandale, Iowa, submitted a complaint to the Board alleging unauthorized charges on her local telephone bill. Ms. Heard disputed charges submitted on behalf of Telliss totaling \$59.70 plus tax and on behalf of One Call totaling \$129.80 plus tax. Ms. Heard also disputed separate charges from One Web totaling \$150 for access to an Internet web site. The bill from One Web noted that the cost for accessing the web site is \$6.99 per minute, including a \$5 per minute entertainment fee billed directly by One Web with the remaining \$1.99 per minute billed on the local phone bill for international long distance. Board staff identified the matter as C-04-238 and, pursuant to Board rules, on October 25, 2004, forwarded the complaint to One Web and One Call for their response within ten days. Board staff forwarded the complaint to Telliss on November 9, 2004, for response within ten days.

On October 25, 2004, Mr. Norbert Bempke of Davenport, Iowa, submitted a complaint to the Board alleging his local telephone bills included unauthorized charges totaling \$136.29 plus tax for long distance calls to the United Kingdom which he claims he did not make. Board staff identified the matter as C-04-242 and, pursuant to Board rules, on October 27, 2004, forwarded the complaint to One Call for response within ten days.

On October 25, 2004, Mr. Bradley Azeltine of Ames, Iowa, submitted a complaint to the Board alleging that his local telephone bill included unauthorized charges for long distance calls to the United Kingdom he did not make. Mr. Azeltine disputed charges submitted on behalf of Telliss totaling \$11.94 plus tax and on behalf of One Call totaling \$34.61 plus tax. Mr. Azeltine also disputed separate charges from One Web totaling \$34.95, including a \$4.95 late fee. Mr. Azeltine's complaint contains a detailed explanation of how he believes the charges were made. He describes a computer virus that installed a dial-up program which automatically disconnected his connection to his Internet server and dialed one of several numbers to a pay-per-view pornographic web site operated out of the United Kingdom. Mr. Azeltine states that as of October 18, 2004, he had been charged for three phone calls made by modem to the United Kingdom and for accessing a pay-per-view access web site. Mr. Azeltine states that these connections were made without his knowledge or authorization. Board staff identified the matter as C-04-243 and, pursuant to Board rules, on October 27, 2004, forwarded the complaint to One Call for response within ten days. On November 18, 2004, Board staff forwarded the

complaint to Telliss for response within ten days. On December 1, 2004, Board staff forwarded the complaint to One Web Direct Bill for response within ten days.

On November 3, 2004, Mr. Terry Johnson of Des Moines, Iowa, submitted a complaint to the Board alleging his local telephone bills included unauthorized charges totaling \$110.32 plus tax for long distance calls to the United Kingdom which he claims he did not make. Board staff identified the matter as C-04-247 and, pursuant to Board rules, on November 8, 2004, forwarded the complaint to One Call for response within ten days.

One Call responded to each complaint. The responses were submitted by Opticom Operator Services. In each response, One Call stated that it is a common carrier whose network was accessed to place the calls via a 10-10 access number. One Call explained that because the complaining customer in each case was not aware that someone was using One Call's service, it issued courtesy credits in the following amounts, which do not include taxes:

Mr. Wilson (C-04-227):	\$ 45.43
Mr. Bempke (C-04-242):	\$136.29
Ms. Heard (C-04-238):	\$129.80
Mr. Azeltine (C-04-243):	\$ 34.61
Mr. Johnson (C-04-247):	\$110.32

One Call also stated it placed blocks on each customer's number to prevent further calls to its service.

In its response to the Wilson and Johnson complaints in C-04-227 and C-04-247, One Call stated the phone number in question had not been switched to One Call's service and that "[t]his is not a slam issue."

On November 9, 2004, Board staff sent requests to One Call for additional information regarding the Bempke and Azeltine complaints, including the 10-10 access number that was called, whether the 10-10 access number is used for information services, One Call's relationship with the service provider, and whether the block would work to prevent a computer modem from making calls to its network. In response, One Call indicated that it provided only transport, validation, and billing for the calls in question; it did not initiate the calls; it does not have a relationship with information service providers; and that the block does nothing to a customer's computer modem, but that no matter what the modem does, a call placed to the two telephone numbers previously identified will not be billed by One Call.

Telliss was named in, and responded to, the Azeltine and Heard complaints. Telliss responded that in each case the customer was billed because its network showed Internet calls made from a computer modem connected to the customer's telephone number. Telliss issued credits of \$11.94 to Mr. Azeltine and \$41.79 to Ms. Heard and placed blocks on their numbers to prevent future access to web sites billed by Telliss.

One Web was named in the Azeltine and Heard complaints. An entity named National One Telecom, Inc. (National One), responded to Ms. Heard's original complaint to the Consumer Protection Division of the Iowa Department of Justice. National One has the same mailing address as One Web. National One indicated it is a third-party billing service for providers of pay-per-view web sites. National One stated it billed Ms. Heard because its vendors showed a call was made from her

telephone number. National One stated it issued a full credit and placed a block on Ms. Heard's phone number. The Board did not receive a response from either One Web or National One regarding Mr. Azeltine's complaint.

II. PROPOSED RESOLUTIONS AND CORRESPONDING PLEADINGS

On October 26, 2004, Board staff issued a proposed resolution of Mr. Wilson's complaint in C-04-227 concluding that no slamming occurred in the matter because no change was made to Mr. Wilson's preferred long distance carrier. Staff noted that an unknown party had accessed One Call's network using a 10-10 number, that One Call had issued a credit and placed a block, and that no further action was necessary.

In its November 8, 2004, petition, Consumer Advocate asserts that the proposed resolution in C-04-227 is incorrect because it does not address whether the charge(s) placed on Mr. Wilson's telephone bill were unauthorized and constitute a cramming violation. Consumer Advocate asserts the proposed resolution should be augmented with a civil penalty because a credit alone will not stop an unlawful practice and civil penalties are necessary to ensure compliance and deter future violations.

On November 29, 2004, One Call filed with the Board a motion to dismiss Consumer Advocate's November 8, 2004, petition for proceeding to consider civil penalty. One Call contends that Consumer Advocate's petition should be dismissed because Iowa's cramming rules do not apply to 10-10-XXX calls. One Call argues that Mr. Wilson's denial of placing the call should not affect the Board's analysis

because 10-10-XXX calls are simply not subject to the Board's cramming rules and because it is undisputed that a call to the 10-10-XXX number was initiated from Mr. Wilson's home. One Call suggests two possible explanations for how the call was initiated: Either it was made by an unknown person in the customer's household or the customer was the victim of a computer virus. One Call contends that because it has no ability to prevent calls from being initiated at the customer level, there is no conduct to be deterred by civil penalties.

On December 8, 2004, Consumer Advocate filed with the Board a memorandum in response to One Call's motion to dismiss. Consumer Advocate urges the Board to deny One Call's motion. Consumer Advocate contends that Iowa's cramming rules do not contain a blanket exemption for 10-10-XXX calls and the rules exempt calls only when they are initiated or requested by the customer. Consumer Advocate challenges One Call's statement that it is undisputed that someone placed a call to the 10-10-XXX number and states that the fact that someone placed the call does not necessarily constitute a defense to a charge of cramming. Regarding One Call's suggestion about how the call was initiated, Consumer Advocate contends that speculation about what facts will be proven by the evidence is inappropriate in the context of a motion to dismiss. Consumer Advocate states that it will withdraw its petition for a civil penalty if investigation shows the alleged cramming was beyond One Call's control, but at this point it is not clear what role One Call has played and what ability One Call has to stop the allegedly unauthorized charges.

On November 22, 2004, Board staff issued a proposed resolution of Mr. Bempke's complaint in C-04-242. Staff concluded that One Call was in violation of the Board's cramming rules because it did not have Mr. Bempke's authorization to bill for the disputed charges.

On November 30, 2004, Board staff issued a proposed resolution of Mr. Johnson's complaint in C-04-247. Staff concluded that One Call did not provide acceptable proof as to who the 10-10-XXX provider was and therefore violated the Board's cramming rules.

On December 6, 2004, One Call responded to the proposed resolutions in the Bempke and Johnson complaints by filing a request for formal proceedings in C-04-242 and C-04-247. In the request, One Call states that it provided only transport, validation, and billing services for the disputed calls which were made by dialing a 10-10-XXX number, that it did not initiate the calls, and does not have a relationship with the destination web site. One Call disputes Board staff's findings in the Bempke and Johnson complaints that it violated the Board's cramming rules and requests that the Board reverse staff's finding. One Call contends the Board's cramming rules do not apply to 10-10-XXX calls; that staff's conclusion was based on its finding that One Call did not provide the identity of the company to which the 10-10-XXX number belonged, and that this was irrelevant and unfair; that it cannot be guilty of cramming when the information available to it indicates the calls were initiated by the customer and appropriate for billing; and that it should not be held

liable under the cramming rules for being an unknowing participant in what could be an Internet scheme or virus.

On December 10, 2004, Consumer Advocate filed with the Board a petition for a proceeding to consider a civil penalty for an alleged cramming violation by One Call in the Johnson complaint, C-04-247. Consumer Advocate supports the staff's proposed resolution but argues it should be augmented with a civil penalty because a credit alone will not stop the unlawful practice of cramming.

On December 22, 2004, One Call filed with the Board a response to Consumer Advocate's December 10, 2004, petition. One Call requests that the Board dismiss Consumer Advocate's petition or, alternatively, that the Board consolidate the dockets.

On December 16, 2004, Board staff issued a proposed resolution of Mr. Azeltine's complaint in C-04-243 concluding that because Telliss and One Call did not have Mr. Azeltine's authorization to bill for the disputed charges, they were in violation of the Board's cramming rules. Board staff concluded that One Web violated Board rules by failing to respond to the complaint.

On December 27, 2004, Board staff issued a proposed resolution of Ms. Heard's complaint in C-04-238, concluding that cramming occurred because the customer indicated no calls were placed with One Web, Telliss, or One Call. Staff noted that all respondents had issued credits and that Telliss would reverse an additional charge to ensure all charges were credited.

On December 28, 2004, and January 6, 2005, respectively, Consumer Advocate filed with the Board petitions for proceedings to consider civil penalty in the Azeltine and Heard complaints, C-04-243 and C-04-238. In each petition, Consumer Advocate asserts the proposed resolution should be augmented with a civil penalty because credits alone will not stop the unlawful practice of cramming. One Call, Telliss, and One Web have not responded to Consumer Advocate's petitions in C-04-243 and C-04-238.

III. DISCUSSION

The Board has reviewed the record to date and finds there is sufficient information to warrant further investigation into this matter. The Board notes that all of these complaints appear to involve "modem hijacking," in which downloaded software containing a computer virus causes a customer's modem to dial to a destination Web site. The Board believes that further investigation of these complaints is necessary, given the need to more precisely determine whether the Board's rules against cramming apply to these kinds of allegedly unauthorized charges and the roles of the various respondents in facilitating the calls and their capacity to prevent them.

The Board will grant Consumer Advocate's petitions for proceedings to consider civil penalties. The Board will deny One Call's motions to dismiss Consumer Advocate's petitions. The Board will grant One Call's request for formal proceedings in C-04-242 and C-04-247. In light of the similarity of these complaints, the Board will consolidate all of the dockets into one proceeding.

The Board is not aware of whether the parties are currently engaged in settlement discussions or whether negotiations would be productive. The Board will delay establishing a procedural schedule until February 11, 2005, and will request that the parties submit a report to the Board regarding the status of this matter on or before that date. Any party wishing to proceed directly to hearing should promptly notify the Board in writing and the Board will establish a procedural schedule.

IV. ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The petitions for proceeding to consider civil penalty filed by the Consumer Advocate Division of the Department of Justice on November 8, December 10, December 28, 2004, and January 6, 2005, are granted. File C-04-227 is docketed for formal proceedings, identified as Docket No. FCU-04-54. File C-04-247 is docketed for formal proceedings, identified as Docket No. FCU-04-63. File C-04-243 is docketed for formal proceedings, identified as Docket No. FCU-04-64. File C-04-238 is docketed for formal proceedings, identified as Docket No. FCU-05-1.
2. One Call Communications, Inc.'s "Request for Formal Proceeding" filed with the Board on December 6, 2004, is granted. Files C-04-242 and C-04-247 are docketed for formal proceedings, identified as FCU-04-63.
3. Docket Nos. FCU-04-54, FCU-04-63, FCU-04-64, and FCU-05-1 are consolidated.

4. The "Motion to Dismiss Petition for Proceeding to Consider Civil Penalty" filed by One Call Communications, Inc., on November 29, 2004, is denied.

5. The request to dismiss Consumer Advocate's December 10, 2004, petition made by One Call Communications, Inc., in its December 22, 2004, "Response to OCA Petition for Proceeding to Consider Civil Penalty" is denied.

6. One Call Communications, Inc., Telliss Billing, and One Web Direct Bill are directed to file a response to Consumer Advocate's December 28, 2004, and January 6, 2005, petitions on or before February 11, 2005.

7. The parties shall submit a status report to the Board on or before February 11, 2005, as described in this order. Any party wishing to proceed directly to hearing in this matter shall promptly notify the Board in writing.

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 13th day of January, 2005.