

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">v.</p> <p>ONE CALL COMMUNICATIONS, INC., and TELLISS BILLING,</p> <p style="text-align:center">Respondents.</p> | <p>DOCKET NO. FCU-05-3 (FCU-04-54, FCU-04-63, FCU-04-64, FCU-05-1)</p> |
|--|--|

**ORDER DOCKETING FOR FORMAL PROCEEDING, DENYING MOTION TO
DISMISS, AND CONSOLIDATING DOCKETS**

(Issued March 14, 2005)

On February 2, 2005, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition for a proceeding to consider civil penalties for alleged cramming violations committed by One Call Communications, Inc. (One Call), and Telliss Billing (Telliss). Based upon the record assembled in the informal complaint proceedings, the events to date can be summarized as follows:

On January 5, 2005, the Board received a complaint submitted by Mr. Gary Thelen of West Des Moines, Iowa, alleging his local telephone bill included charges for calls he did not make or authorize. The complaint alleged that One Call billed him for six calls to the United Kingdom and one call to Reno, Nevada, and Telliss billed

him for one call to the United Kingdom. Board staff identified the matter as C-05-2 and, pursuant to Board rules, on January 7, 2005, forwarded the complaint to One Call for response within ten days.

One Call's response to the complaint was submitted by Opticom Operator Services. 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 was not aware that someone was using One Call's service, it issued a courtesy credit of \$91.98 and placed a block on the customer's number to prevent further calls to its service.

In response to the complaint, Telliss explained that it bills on behalf of Premier Premium Communications, a third-party billing service for providers of pay-per-view Web sites. Telliss stated that the customer was billed because its network showed an Internet call made from a computer modem connected to the customer's telephone number. Telliss stated that it issued a credit of \$11.94 to Mr. Thelen and placed a block on his number to prevent future access to Web sites billed by Telliss.

On January 21, 2005, Board staff issued a proposed resolution of Mr. Thelen's complaint. Staff noted that credits had been issued and blocks were in place, but concluded that Telliss and One Call were in violation of the Board's cramming rules because they did not have Mr. Thelen's authorization to bill for the disputed charges.

In its February 2, 2005, petition, 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 February 22, 2005, One Call filed with the Board a response and motion to dismiss Consumer Advocate's petition. One Call asks that the Board reverse staff's proposed decision. One Call asserts that because the Board's rules against cramming specifically exclude 10-10 calls and because One Call did not initiate the calls and is unable to control numbers dialed by customers or their computer modems, there is no action on the part of One Call to be deterred by civil penalties. Alternatively, One Call asks that if the Board grants Consumer Advocate's petition, this matter be consolidated and considered with the other dockets involving the same parties and similar issues already consolidated in the Board's order dated January 13, 2005.

On March 3, 2005, Consumer Advocate filed with the Board a reply to One Call's response and motion to dismiss. Consumer Advocate states that it continues to rely on its previous arguments and supports One Call's request for consolidation.

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 this complaint may involve "modem hijacking," in which downloaded software containing a computer virus causes a customer's modem to dial a destination Web site without the customer's authorization. The Board believes that further investigation of this

complaint 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 respondents in facilitating the calls and their capacity to prevent them.

The Board will grant Consumer Advocate's petition for proceeding to consider civil penalties. The Board will deny One Call's motion to dismiss Consumer Advocate's petition. Because this complaint involves allegations similar to those raised in other dockets involving the same parties, the Board will consolidate this matter with Docket Nos. FCU-04-54, FCU-04-63, FCU-04-64, and FCU-05-1.

The Board notes that Consumer Advocate and Telliss have proposed a settlement agreement that addresses Consumer Advocate's claim against Telliss in this and other dockets and have scheduled a settlement conference for March 11, 2005. The Board requests Consumer Advocate and Telliss report to the Board on the status of the settlement negotiations after the conference.

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 February 2, 2005, is granted. File C-05-2 is docketed for formal proceedings, identified as Docket No. FCU-05-3.

2. Docket No. FCU-05-3 is consolidated with Docket Nos. FCU-04-54, FCU-04-63, FCU-04-64, and FCU-05-1.

3. The "Motion to Dismiss Petition for Proceeding to Consider Civil Penalty" filed by One Call Communications, Inc., on February 22, 2005, is denied.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 14th day of March, 2005.