



identified the matter as C-05-14 and, pursuant to Board rules, on January 25, 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 the matter did not involve a slamming or cramming issue and 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 \$99.55 and placed a block on the customer's number to prevent further calls to its service.

On February 3, 2005, Board staff issued a proposed resolution of Ms. Deaton's complaint. Staff noted that a credit had been issued and a block was in place, but concluded that One Call was in violation of the Board's cramming rules because it did not have Ms. Deaton's authorization to bill for the disputed charges.

In its February 14, 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 March 7, 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.

One Call also argues that the Board should deny Consumer Advocate's petition because the proposed resolution does not specify any provision of Iowa law that One Call allegedly violated. One Call asserts that while the Board's rules define cramming, they do not directly prohibit cramming.

Alternatively, One Call asks that if the Board grants Consumer Advocate's petition, this matter be consolidated and considered with other dockets involving the same parties and similar issues already consolidated in the Board's January 13, 2005, order.

On March 17, 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. In addition, Consumer Advocate argues that One Call's assertion that the Board's rules do not prohibit cramming is without merit. Consumer Advocate 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," by 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 disputed calls and their capacity to prevent them.

The Board will grant Consumer Advocate's petition for proceeding to consider civil penalty. The Board will deny One Call's motion to dismiss Consumer Advocate's petition. Because this matter involves allegations similar to those raised in other dockets involving One Call, the Board will consolidate this matter with Docket Nos. FCU-04-54, FCU-04-63, FCU-04-64, FCU-05-1, and FCU-05-3.

**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 14, 2005, is granted. File C-05-14 is docketed for formal proceedings, identified as Docket No. FCU-05-8.
2. Docket No. FCU-05-8 is consolidated with Docket Nos. FCU-04-54, FCU-04-63, FCU-04-64, FCU-05-1, and FCU-05-3.
3. The "Motion to Dismiss Petition for Proceeding to Consider Civil Penalty" filed by One Call Communications, Inc., on March 7, 2005, is denied.

**UTILITIES BOARD**

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Margaret Munson  
Executive Secretary, Deputy

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 21<sup>st</sup> day of March, 2005.