

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

---

<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,</p> <p style="padding-left: 40px;">Complainant,</p> <p style="padding-left: 40px;">vs.</p> <p>USA VOICEMAIL SERVICE,</p> <p style="padding-left: 40px;">Respondent.</p>	<p>DOCKET NO. FCU-04-65</p>
---	-----------------------------

---

**ORDER ASSIGNING TO ADMINISTRATIVE LAW JUDGE**

(Issued April 7, 2005)

On December 28, 2004, pursuant to Iowa Code §§ 476.103 and 476.3, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition for a proceeding to consider a civil penalty for an alleged cramming violation committed by USA Voicemail Service (USA Voicemail).

In the informal complaint proceedings, Board staff considered the complaint of a customer disputing charges on his phone bill for voice mail service he said he did not order. USA Voicemail responded to the complaint, stating that the customer had opened the voice mail account through an on-line application, the account had been canceled, and a credit of \$51.80 had been issued. Attached to USA Voicemail's response was a copy of what it said was the application form.

Board staff issued a proposed resolution concluding that USA Voicemail had not provided sufficient proof of authorization to charge the customer. After the proposed resolution was issued, USA Voicemail provided Board staff with additional information stating that the customer had requested \$1,000 in grocery coupons along with voice mail service by clicking on a Web page pop-up advertisement. USA Voicemail attached a copy of a web page sample containing language disclosing the cost of the voice mail service. Board staff informed USA Voicemail that the proposed resolution finding a cramming violation would not change as a result of the additional information.

In its petition for proceeding to consider civil penalty, Consumer Advocate asserts credits alone will not stop the unlawful practice of cramming and that civil penalties are necessary to ensure compliance and deter future violations. The Board docketed the matter for formal proceedings in an order dated February 1, 2005, and directed USA Voicemail to respond to Consumer Advocate's petition.

On March 18, 2005, the Board received USA Voicemail's response to Consumer Advocate's petition. Attached to USA Voicemail's response as "Exhibit A" was what the company claims to be the Internet letter of authorization the customer saw and completed when signing up for service. "Exhibit B" is a "screen shot" copy of the customer's information, including the customer's name, address, and telephone number, and four digits of a social security number. USA Voicemail states it received this information after the customer checked the "select" box on the screen

to order the voice mail service. USA Voicemail also included in its response a decision of the Texas Public Utility Commission, in what the company claims was a similar case, finding that the company had provided sufficient documentation to prove compliance with regulations governing "internet enrollment." USA Voicemail states that the information in its response is sufficient to allow the complaint to be withdrawn.

On March 29, 2005, the Board received Consumer Advocate's reply to USA Voicemail's response. Having obtained the customer's response to the information submitted by USA Voicemail, Consumer Advocate states that the company's Exhibit A did not appear on the customer's computer screen on the date the company claims the customer signed up for service, and that the customer did not then or ever complete Exhibit A or otherwise authorize the charges. Consumer Advocate also states that the telephone number USA Voicemail alleges the customer provided had not been his telephone number since 2003. Consumer Advocate requests that the matter be set for hearing.

The Board already determined in its February 1, 2005, order that there is sufficient information to warrant further investigation into this matter. Because USA Voicemail has now responded to Consumer Advocate's petition, the Board will assign this matter to an administrative law judge (ALJ) for further proceedings pursuant to Iowa Code § 17A.11(1)"b" (2005) and 199 IAC 7.1(4). The ALJ will take all

appropriate action, which may include setting a hearing date, presiding at the hearing, and issuing a proposed decision.

**IT IS THEREFORE ORDERED:**

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, for further proceedings. The administrative law judge shall have the authority provided under 199 IAC 7.1(4)"a" through "j."

**UTILITIES BOARD**

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Sharon Mayer  
Executive Secretary, Assistant to

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 7<sup>th</sup> day of April 2005.