



long distance service and did not authorize the charges. Board staff identified the matter as C-05-25 and, pursuant to Board rules, on February 8, 2005, forwarded the complaint to One Call for response within ten days.

On February 15, 2005, the Board received a complaint from Daniel Brown, Jr., of Ankeny, Iowa, disputing charges appearing on his local telephone bill for long distance calls to the United Kingdom. The charges were billed on behalf of One Call. Mr. Brown noted that he does not have long distance service and did not make the calls. Board staff identified the matter as C-05-34 and, pursuant to Board rules, on February 16, 2005, forwarded the complaint to One Call for response within ten days.

One Call's response to both complaints was submitted by Opticom Operator Services on One Call's behalf. In each response, One Call stated that the matter did not involve a slamming or cramming issue. One Call stated 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 \$180.64 to Ms. Martin and \$15.42 to Mr. Brown. One Call also stated that blocks were now in place to prevent further calls from the customers' numbers to its service.

Board staff issued a proposed resolution of Ms. Martin's complaint on February 17, 2005, and a proposed resolution of Mr. Brown's complaint on March 1, 2005. In each case, Board staff noted the credits and blocks, but found that One Call

was in violation of the Board's cramming rules because it did not have the customer's authorization to bill for the disputed charges.

In its March 3 and March 9, 2005, petitions, Consumer Advocate supports staff's proposed resolutions, but argues they should be augmented with civil penalties because credits alone will not stop the unlawful practice of cramming.

On March 21 and March 22, 2005, One Call filed with the Board motions to dismiss and responses to Consumer Advocate's petitions. One Call contends that Consumer Advocate offers no evidence in the petitions that One Call was responsible for causing the calls or that One Call acted improperly when billing for the calls. Further, One Call states that the proposed resolutions do not specify any provision of Iowa law that One Call allegedly violated. One Call restates its assertion that while the Board's rules define cramming, they do not directly prohibit cramming.

One Call also argues that accepting Consumer Advocate's assertion that the provisions of 199 IAC 22.23(2) apply to cramming would create an unworkable outcome, especially in cases involving individual long distance calls. One Call argues that the Board or the Legislature could not have intended that each long distance call appearing on a customer's bill would be deemed a separate service subject to authorization and verification requirements.

One Call also restates arguments made in other dockets involving similar issues that the Board's rules against cramming specifically exclude 10-10 calls, which One Call claims is the type of call at issue in both of these cases. One Call claims

that it can only block identified numbers from completing calls and it has done so in the present case. One Call argues that because it is not able to proactively prevent calls from being initiated at the customer level, there is no conduct to be deterred by civil penalties.

One Call requests the Board deny Consumer Advocate's petitions and reverse staff's proposed resolutions. Alternatively, One Call asks that if the Board grants Consumer Advocate's petitions, these matters be consolidated and considered with other dockets involving the same parties and similar issues already consolidated in the Board's January 13, 2005, and March 14, 2005, orders.

On March 30, 2005, Consumer Advocate filed with the Board a reply to One Call's responses and motions to dismiss. Consumer Advocate states that it continues to rely on its previous arguments and supports One Call's requests for consolidation. Consumer Advocate argues that One Call's new argument that the Board and Legislature could not have intended that a long distance call be considered a separate service for which authorization and verification are required mischaracterizes Consumer Advocate's position and misreads the rule. Consumer Advocate claims that it would be absurd to require verification of each call and that 199 IAC 22.23(1) does not require verification but does require authorization.

Consumer Advocate argues that by adopting language in Docket No. RMU-99-7 ensuring that services initiated or requested by the customer would not be

inaccurately characterized as cramming, the Board dispensed with the verification requirement for individual calls, but not with the authorization requirement.

The Board has reviewed the record to date and finds there is sufficient information to warrant further investigation into these matters. The Board notes that these complaints may involve "modem hijacking," in which unrequested software containing a computer virus causes a customer's modem to dial a destination Web site without the customer's authorization. It appears 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 role of the respondent in facilitating the calls, its capacity to prevent them, and the degree to which civil penalties can punish past acts and deter future acts.

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. Because this complaint involves allegations similar to those raised in other dockets involving the same parties, the Board will consolidate these proceedings with Docket Nos. FCU-04-54, FCU-04-63, FCU-04-64, FCU-05-1, FCU-05-3, and FCU-05-8.

**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 March 3, 2005, is

granted. File C-05-25 is docketed for formal proceedings, identified as Docket No. FCU-05-12.

2. The petition for proceeding to consider civil penalty filed by the Consumer Advocate Division of the Department of Justice on March 9, 2005, is granted. File C-05-34 is docketed for formal proceedings, identified as Docket No. FCU-05-15.

3. Docket Nos. FCU-05-12 and FCU-05-15 are consolidated with Docket Nos. FCU-04-54, FCU-04-63, FCU-04-64, FCU-05-1, FCU-05-3, and FCU-05-8.

4. The motion to dismiss filed by One Call Communications, Inc., in Docket No. FCU-05-12 on March 21, 2005, is denied.

5. The motion to dismiss filed by One Call Communications, Inc., in Docket No. FCU-05-15 on March 22, 2005, is denied.

**UTILITIES BOARD**

/s/ John R. Norris

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 12<sup>th</sup> day of April, 2005.