

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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<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>MSMB2B.COM,</p> <p style="padding-left: 40px;">Respondent.</p>	<p>DOCKET NO. FCU-05-17</p>
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**ORDER DOCKETING FOR FORMAL PROCEEDING AND  
SETTING DEADLINE FOR RESPONSE**

(Issued April 21, 2005)

On March 18, 2005, 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 MSMB2B.Com (MSMB2B). Based upon the record assembled in the informal complaint proceedings, the events to date can be summarized as follows:

On February 9, 2005, the Board received a complaint from Blair Overton of Waterloo, Iowa, disputing a charge of \$49.95 on the local telephone bill for Overton Funeral Home for a service identified as "12-15 ISP Monthly." Mr. Overton stated this charge was for "unknown services." The charge was submitted on behalf of

MSMB2B. Mr. Overton stated he contacted MSMB2B to ask about the charge and was told that one of his employees authorized the charge. Mr. Overton stated that the employee refuses all requests from telemarketers. Mr. Overton also stated that MSMB2B indicated its representative would call him and play a recording demonstrating that the disputed charge was authorized. Mr. Overton stated that MSMB2B never played the recording for him.

Board staff identified the matter as C-05-30 and, pursuant to Board rules, on February 23, 2005, forwarded the complaint to MSMB2B for response within ten days. MSMB2B did not respond to the complaint.

On March 9, 2005, Board staff issued a proposed resolution finding MSMB2B in violation of Board rules by default. Staff directed the company to fully credit the charges and close the account.

In its March 18, 2005, petition, Consumer Advocate asserts the proposed resolution should be expanded to clarify that companies cannot escape civil penalties by ignoring allegations of violation. Consumer Advocate argues that civil penalties are necessary because they will deter future violations and credits alone will not stop the unlawful practice of cramming.

On April 1, 2005, Board staff received a correspondence by e-mail from MSMB2B in which the company describes its contact with Mr. Overton's employee and the company's standard operating sales and confirmation procedures. Attached to the message was a copy of the verification recording.

The Board has reviewed the record to date and finds there is sufficient information to warrant further investigation into this matter. MSMB2B has now provided information that may be useful in determining whether the disputed charge was properly authorized, but has not yet directly responded to Consumer Advocate's petition. The Board will docket this matter for formal proceeding, but will delay establishing a procedural schedule to allow MSMB2B an opportunity to respond to the allegations raised in Consumer Advocate's petition.

The Board cautions MSMB2B that failure to respond to Board inquiries and orders is a serious violation. The degree to which a party participates in the Board's investigation of informal complaints and provides timely responses to Board orders is an important factor in determining the size of the penalty for any violation. The Board urges MSMB2B to respond to this and future Board orders and inquiries on a timely basis.

**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 18, 2005, is granted. File C-05-30 is docketed for formal proceedings, identified as Docket No. FCU-05-17.

2 MSMB2B.Com is directed to file a response to Consumer Advocate's petition on or before May 18, 2005.

**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 21<sup>st</sup> day of April, 2005.