

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>SHARENET COMMUNICATIONS COMPANY,</p> <p style="padding-left: 40px;">Respondent.</p>	<p>DOCKET NO. FCU-05-23</p>
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**ORDER DOCKETING FOR FORMAL PROCEEDING,
DENYING MOTION TO DISMISS, AND
ASSIGNING TO ADMINISTRATIVE LAW JUDGE**

(Issued May 25, 2005)

On April 13, 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 an alleged cramming violation committed by Sharenet Communications Company (Sharenet). Based upon the record assembled in the informal complaint proceedings, the events to date can be summarized as follows:

On March 14, 2005, the Board received a complaint submitted by Charlene and Robert Rhoades of Des Moines, Iowa, alleging their local telephone bill included charges totaling \$44.82 submitted on behalf of Sharenet for a collect call from

Orange, California. Ms. Rhoades stated that neither she nor her husband accepted the call. Board staff identified the matter as C-05-58 and, pursuant to Board rules, on March 16, 2005, forwarded the complaint to Sharenet for response.

Sharenet submitted its response to the complaint on March 28, 2005, stating it is an operator services provider that processes collect and other types of calls, many of which originate from pay telephones and hotels. Sharenet stated that the disputed call was placed from a pay telephone at a hotel in Orange, California, using Sharenet's automated collect system that requires the called party to press the number 1 to accept the call. Sharenet stated its records indicate that its system received a positive response followed by a nine-minute call. Sharenet noted it had issued a credit of \$13.05 plus tax reflecting a reduction of the charge.

On March 31, 2005, Board staff issued a proposed resolution finding that cramming did not occur. Staff stated that due to the length of the call and the system used, Sharenet believed that someone at the Rhoades' residence accepted the charges.

In its April 13, 2005, petition, Consumer Advocate states the proposed resolution is incorrect and asserts there is nothing in the record to justify crediting Sharenet's response rather than the Rhoades' complaint. Consumer Advocate alleges the call was not accepted and the charges were unlawfully crammed on to the Rhoades' telephone bill. Consumer Advocate argues that civil penalties should be imposed because credits alone will not stop the unlawful practice of cramming.

On May 2, 2005, Sharenet filed a motion to dismiss and response to Consumer Advocate's petition. Sharenet supports the proposed resolution finding no cramming violation. Sharenet argues Consumer Advocate's request for formal proceeding should be denied because Board staff correctly found no cramming violation; the Board's rules provide that acceptance of collect calls is not cramming; the dispute involves an interstate call and is outside of the Board's jurisdiction; the length of the call, being of more than nominal duration following a positive response indicating acceptance of the call at the Rhoades' residence shows the call was not inadvertent; and because Mr. and Mrs. Rhoades did not provide any additional information in response to the staff's proposed resolution. Sharenet also asserts that civil penalties are not appropriate because staff found no violation. Sharenet asks the Board to affirm staff's proposed resolution and dismiss Consumer Advocate's petition.

On May 9, 2005, Consumer Advocate filed a reply to Sharenet's motion to dismiss. Consumer Advocate states that Sharenet's argument assumes that Sharenet's position on the factual question of whether the call was accepted is true, rather than the Rhoades' position. Such an assertion has no effect in the context of a motion to dismiss. Consumer Advocate also states that Sharenet's argument that the Board lacks jurisdiction is without merit and that accepting the argument would render state law against slamming and cramming largely meaningless because most complaints involve interstate or international services.

The Board has reviewed the record to date and agrees with Sharenet that the Board's rules against cramming do not apply to accepted collect calls. However, there is a dispute regarding whether the collect call was in fact accepted by someone at the Rhoades' residence. Board staff favored Sharenet's explanation that the collect call was accepted, given the positive response to the call and the duration of the call, but the Board is not bound by the proposed resolution. Thus, the Board concludes there are reasonable grounds for further investigation.

The Board will grant Consumer Advocate's petition for proceeding to consider civil penalties. The Board will deny Sharenet's motion to dismiss Consumer Advocate's petition and will docket this matter for formal proceeding. Because Sharenet has responded to Consumer Advocate's petition and resists Consumer Advocate's request for civil penalties, and Consumer Advocate has filed a reply to Sharenet's motion and response, the Board will assign the docket 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:

1. The petition for proceeding to consider civil penalty filed by the Consumer Advocate Division of the Department of Justice on April 13, 2005, is

granted. File C-05-58 is docketed for formal proceedings, identified as Docket No. FCU-05-23.

2. The "Motion to Dismiss Petition for Proceeding to Consider Civil Penalty" filed by Sharenet Communications Company on May 2, 2005, is denied.

3. 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/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 25th day of May, 2005.