

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, vs. ONE CALL COMMUNICATIONS, INC., Respondent.	DOCKET NOS. FCU-05-24 FCU-05-25 FCU-04-54 FCU-04-63 FCU-04-64 FCU-05-1 FCU-05-3 FCU-05-8 FCU-05-12 FCU-05-15
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**ORDER DOCKETING FOR FORMAL PROCEEDINGS, CONSOLIDATING
DOCKETS, DENYING MOTIONS TO DISMISS, AND
ASSIGNING TO ADMINISTRATIVE LAW JUDGE**

(Issued May 27, 2005)

On April 18, 2005, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) two petitions for proceedings to consider civil penalties for alleged cramming violations committed by One Call Communications, Inc. (One Call). Based upon the record assembled in the informal complaint proceedings, the events to date can be summarized as follows:

I. Informal complaint proceedings

On March 16, 2005, the Board received a complaint from Joseph Larison of Iowa City, Iowa, disputing charges totaling \$48.20 on his local phone bill for a call to New York billed as a hotel/motel guest call. The charges were submitted on behalf of One Call, also known as Opticom Operator Services (One Call). Mr. Larison stated

he inquired about the charges and was told they were related to accessing a Web site. Mr. Larison denied making the call and stated he did not recall entering such a site. Board staff identified the matter as C-05-64 and, pursuant to Board rules, on March 18, 2005, forwarded the complaint to One Call for response.

On March 16, 2005, the Board received a complaint from John Graham of Des Moines, Iowa, disputing charges totaling \$15.88 on his local phone bill for a call to Dallas, Texas, billed as a hotel/motel guest call. The charges were submitted on behalf of One Call. Mr. Graham reported that he had inquired about the charges and was told they were related to accessing a Web site. Mr. Graham denied calling the number in question or authorizing any charge related to a Web site. Board staff identified the matter as C-05-65 and, pursuant to Board rules, on March 18, 2005, forwarded the complaint to One Call for response.

One Call's response to each complaint stated that One Call is a common carrier whose network was accessed to place the disputed calls using a 10-10 access number. In each case, One Call placed a block on the consumer's line to prevent further calls to its service. One Call explained that because the complaining consumers were not aware that someone was using One Call's service, it issued a courtesy credit of \$15.42 plus tax to Mr. Graham and \$46.80 plus tax to Mr. Larison.

Board staff issued a proposed resolution of Mr. Graham's complaint on April 4, 2005. Staff found no cramming violation, noting the block and credit that had been issued. Board staff issued a proposed resolution of Mr. Larison's complaint on

April 6, 2005. Staff concluded that One Call had violated the Board's rules against cramming because it did not have the consumer's authorization to bill for the charges. Staff noted that One Call's response to the complaint did not explain why hotel charges appeared on Mr. Larison's phone bill. Staff observed that One Call's statement that the call was placed using a 10-10 access number was inconsistent with billing for the call as a hotel/motel guest call.

II. Consumer Advocate's petitions for proceedings to consider civil penalties

In its petition regarding Mr. Larison's complaint in Docket No. FCU-05-24, Consumer Advocate supports staff's proposed resolution finding a cramming violation, but asserts the resolution should be augmented with a civil penalty to ensure compliance and deter future violations.

In its petition regarding Mr. Graham's complaint in Docket No. FCU-05-25, Consumer Advocate asserts staff's proposed resolution finding no cramming violation is incorrect. Consumer Advocate alleges the call was not made or authorized by Mr. Graham so the charge for the call was unlawfully crammed onto Mr. Graham's phone bill. Consumer Advocate also argues a civil penalty is necessary to ensure compliance and deter future violations.

III. One Call's motions to dismiss and responses

On May 6, 2005, One Call filed motions to dismiss and responses to Consumer Advocate's petitions in Docket Nos. FCU-05-24 and FCU-05-25. In

Docket No. FCU-05-24, One Call asks the Board to reverse staff's proposed resolution finding a cramming violation and resists Consumer Advocate's request for civil penalties. One Call states that Consumer Advocate offers no evidence that One Call was responsible for causing the call or acted improperly in billing for the call. One Call argues that Iowa's rules against cramming do not apply to 10-10 calls. One Call states that the call in question originated from the consumer's telephone or modem and that One Call did not initiate the call but merely transported and billed for the call. One Call states it has no affiliation with any Web sites that could be responsible for the possible hijacking of the consumer's modem and did not receive any financial compensation from any third party as a result of the call. One Call notes it has issued a credit and blocked future calls.

One Call asks the Board to clarify staff's proposed resolution consistent with the Board's order in MCI WorldCom Communications, Inc., "Order Denying Request for Formal Proceeding and Clarifying Proposed Resolutions," File C-04-273 (April 28, 2005) (MCI order), to state that One Call did not directly violate the Board's rules against cramming.

In response to the Graham complaint in Docket No. FCU-05-25, One Call asks the Board to affirm staff's proposed resolution finding no cramming violation and deny Consumer Advocate's petition. One Call argues Consumer Advocate's petition should be dismissed because the Board's rules against cramming do not apply to telecommunications services initiated or requested by the customer, including dial-

around services such as 10-10 numbers. One Call states that because Board staff found no cramming violation, civil penalties are not appropriate. One Call states that even if the Board finds the charges on Mr. Graham's bill were unauthorized, Consumer Advocate's petition still should be denied. One Call observes that the facts of this case suggest that the call in question resulted from modem hijacking. One Call argues that under the Board's MCI order, in cases of modem hijacking where it is clear that the carrier is as much of a victim as the consumer, it is not appropriate to find the carrier liable for violating the Board's rules against cramming.

One Call asserts it did not initiate the call in dispute and cannot control the numbers dialed by consumers or their modems, so there is no action on its part to be deterred by civil penalties.

In both Docket Nos. FCU-05-24 and FCU-05-25, One Call alternatively asks that if the Board grants Consumer Advocate's petition, the matter be consolidated with Docket Nos. FCU-04-54, FCU-04-63, FCU-04-64, FCU-05-1, FCU-05-3, FCU-05-8, FCU-05-12, and FCU-05-15, the other dockets involving One Call that have already been consolidated in previous Board orders.

IV. Consumer Advocate's reply

On May 20, 2005, Consumer Advocate filed with the Board a reply to One Call's motions to dismiss in Docket Nos. FCU-05-24 and FCU-05-25. Consumer Advocate disputes One Call's assertion that Iowa's cramming rules do not apply to 10-10 calls. Consumer Advocate states that calls initiated or requested by a

customer do not fall under the prohibition of cramming, but argues the exception does not apply in these cases because the calls were not initiated or requested by the customers.

Consumer Advocate asserts it is not clear at this point what One Call's role is in what appears to be a scam or whether One Call is able to stop the violations. Consumer Advocate also notes that the Board's MCI order involved an isolated incident, which cannot be said of the present cases. Consumer Advocate requests the Board to deny One Call's motions to dismiss and supports One Call's request for consolidation.

V. Analysis

The Board has reviewed the record to date and finds there are reasonable grounds to warrant further investigation into each of these cases. It appears that further investigation of these complaints is necessary, in order to allow an opportunity to more precisely determine the true nature of the calls, the reason the calls were billed as hotel/motel guest calls, and the capacity of a carrier such as One Call to prevent these types of calls and related charges.

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 these complaints involve allegations similar to those raised in other dockets involving the same parties, the Board will

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consolidate these proceedings with Docket Nos. FCU-04-54, FCU-04-63, FCU-04-64,
FCU-05-1, FCU-05-3, FCU-05-8, FCU-05-12, and FCU-05-15.

Finally, because One Call has responded to Consumer Advocate's petitions and Consumer Advocate has replied to One Call's motions to dismiss, the Board concludes it would be appropriate at this time to assign all of the consolidated dockets involving One Call 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 petitions for proceedings to consider civil penalties filed by the Consumer Advocate Division of the Department of Justice in these dockets on April 18, 2005, are granted. Files C-05-64 and C-05-65 are docketed for formal proceedings, identified as Docket Nos. FCU-05-24 and FCU-05-25.

2. Docket Nos. FCU-05-24 and FCU-05-25 are consolidated with Docket Nos. FCU-04-54, FCU-04-63, FCU-04-64, FCU-05-1, FCU-05-3, FCU-05-8, FCU-05-12, and FCU-05-15.

3. The motions to dismiss filed in Docket Nos. FCU-05-24 and FCU-05-25 by One Call Communications, Inc., on May 6, 2005, are denied.

4. Pursuant to Iowa Code § 17A.11(1)"b" and 199 IAC 7.1(4), Docket Nos. FCU-04-54, FCU-04-63, FCU-04-64, FCU-05-1, FCU-05-3, FCU-05-8, FCU-05-12,

DOCKET NOS. FCU-05-24, FCU-05-25, FCU-04-54, FCU-04-63, FCU-04-64,
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FCU-05-15, FCU-05-24, and FCU-05-25 are 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/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 27th day of May, 2005.