

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

---

<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,</p> <p style="text-align:center">Complainant,</p> <p style="text-align:center">vs.</p> <p>SHARENET COMMUNICATIONS COMPANY,</p> <p style="text-align:center">Respondent.</p>	<p style="text-align:center">DOCKET NO. FCU-05-23</p>
---	---

---

**PROCEDURAL ORDER AND NOTICE OF HEARING**

(Issued June 1, 2005)

**Background**

On March 14, 2005, Ms. Charlene and Mr. Robert Rhoades (Rhoades) submitted a complaint to the Utilities Board (Board) disputing charges on their local telephone bill in the amount of \$44.82 billed on behalf of the Sharenet Communications Company (Sharenet) for a collect call from Orange, California. Ms. Rhoades stated that neither she nor her husband answered the telephone to an operator to receive a collect call and they should not have to pay for the call.

The details of the complaint are contained in informal complaint file number C-05-58, which is incorporated into the record in this case pursuant to 199 IAC 6.7.

Upon receiving the complaint, Board staff attempted to informally resolve the dispute. Board staff forwarded the complaint to Sharenet for response on March 16, 2005.

On March 28, 2005, Sharenet filed its response with the Board. Sharenet stated 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 the Weekly Suites of Orange in Orange, California, using Sharenet's automated collect system. Sharenet stated this system requires the called party to press the number one key to accept the collect call. It stated that pressing any other number or not pressing any key denies the call. Sharenet stated its switch received a positive response and nine minutes of conversation took place. Sharenet offered a credit of \$13.05 plus applicable taxes.

On March 31, 2005, Board staff issued a proposed resolution concluding that no cramming had occurred. Staff stated that due to the length of the call and the system that is used, Sharenet believed someone at the Rhoades residence accepted the call. Staff stated Sharenet had applied a partial credit for the call, that no further action appeared necessary, and informed the Rhoades what to do if they disagreed with the proposed resolution.

On April 13, 2005, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) petitioned the Board to commence a formal proceeding to consider a civil penalty for a cramming violation. The Consumer Advocate

asserted the proposed resolution was incorrect and there was nothing in the record to justify crediting Sharenet's response rather than the Rhoades' complaint. The Consumer Advocate alleged that the call was not accepted as alleged by Sharenet and therefore the charge was unlawfully crammed onto the Rhoades' telephone bill. The Consumer Advocate argued that a civil penalty should be imposed because a credit alone will not stop the unlawful practice. The Consumer Advocate asserted that a meaningful civil penalty is necessary to ensure compliance and deter future violations.

On May 2, 2005, Sharenet filed a motion to dismiss and response to the Consumer Advocate's petition. Sharenet asserted the Board's rules are clear that cramming does not include acceptance of collect calls, the call was accepted by someone at the Rhoades' home, and staff was correct in finding that no cramming violation occurred. Sharenet argued the petition should be dismissed. Sharenet further argued the dispute involves an interstate call and is outside the Board's jurisdiction. Sharenet asserted its records indicate that on February 9, 2005, someone affirmatively accepted the collect call and a call of more than nominal duration followed. Sharenet also argues civil penalties are inappropriate and requested the Board to affirm staff's proposed resolution and dismiss the petition.

On May 9, 2005, the Consumer Advocate filed a reply memorandum to Sharenet's motion and response. The Consumer Advocate argued that Sharenet assumes its position on the central factual question of whether the call was accepted

is true, and such assertions are unavailing on a motion to dismiss. The Consumer Advocate further argued Sharenet's position that the Board lacks jurisdiction is without merit and accepting the argument would render state law largely meaningless because most slamming and cramming complaints involve interstate or international services.

On May 25, 2005, the Board issued an order concluding there were reasonable grounds for further investigation, granting the Consumer Advocate's petition, denying Sharenet's motion to dismiss, docketing the case for formal proceeding, and assigning it to the undersigned administrative law judge.

Pursuant to the Board's order, Iowa Code §§ 476.3 and 476.103 (2005), and 199 IAC 6.5, a procedural schedule will be established and a hearing date set.

The statutes and rules involved in this case include Iowa Code §§ 476.3 and 476.103 and Board rules at 199 IAC 1.8, 22.23, and Chapters 6 and 7. Links to the Iowa Code and the Board's administrative rules (in the Iowa Administrative Code (IAC)) are contained on the Board's website at [www.state.ia.us/iub](http://www.state.ia.us/iub).

### **The issues**

The issues in this case generally involve Sharenet's placement of charges related to a collect call on the Rhoades' telephone bill, whether Sharenet complied with applicable law when it did so, whether someone at the Rhoades' home accepted the collect call, whether imposition of a civil penalty is appropriate, the factors regarding the amount of civil penalty in Iowa Code § 476.103(4)(b), and what should

be done to resolve the case. Other issues may be raised by the parties prior to and during the hearing.

**Prepared testimony and exhibits**

All parties will have the opportunity to present and respond to evidence and make argument on all issues involved in this proceeding. Parties may choose to be represented by counsel at their own expense. Iowa Code § 17A.12(4). The proposed decision that will be issued in this case must be based on evidence contained in the record and on matters officially noticed. Iowa Code §§ 17A.12(6) and 17A.12(8).

The submission of prepared evidence prior to hearing helps identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined concerning the statements already made in writing. The use of prepared testimony and submission of documentary evidence ahead of the hearing prevents surprise at the hearing and helps each party to prepare adequately so a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1) and (3).

**Party status and communication with the Board**

The Consumer Advocate and Sharenet are currently the parties to this proceeding. If the Rhoades wish to become a party to this case, they must notify the Board in writing in accordance with the procedural schedule established in this order.

Each party other than the Consumer Advocate must file an appearance identifying one person upon whom the Board and the other parties may serve all orders, correspondence, or other documents. 199 IAC 7.2. The written appearance must substantially comply with 199 IAC 2.2(15). The appearance must include the docket number of this case as stated in the caption above. The appearance must be filed in accordance with the procedural schedule set forth in this order with the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319. The appearance must be accompanied by a certificate of service that conforms to 199 IAC 2.2 and verifies that a copy of the document was served upon the other parties. Since Sharenet's attorneys filed a motion to dismiss that includes the information required in an appearance, Sharenet will not be required to file an appearance unless the individual to be served changes.

Any party who communicates with the Board should send an original and ten copies of the communication to the Executive Secretary at the address above, accompanied by a certificate of service. One copy of the communication should also be sent at the same time to each of the other parties to this proceeding, except that three copies must be served on the Consumer Advocate. 199 IAC 1.8(4)"c." These

requirements apply, for example, to the filing of an appearance or to the filing of prepared testimony and exhibits with the Board.

These procedures are necessary to comply with Iowa Code § 17A.17, which prohibits ex parte communication. Ex parte communication is when one party in a contested case communicates with the judge without the other parties being given the opportunity to be present. In order to be prohibited, the communication must be about the facts or law in the case. Calls to the Board to ask about procedure or the status of the case are not ex parte communication. Ex parte communication may be oral or written. This means the parties in this case may not communicate about the facts or law in this case with the undersigned administrative law judge unless the other parties are given the opportunity to be present, or unless the other parties are provided with a copy of the written documents filed with the Board.

Pursuant to 199 IAC 6.7, the written complaint and all supplemental information from the informal complaint proceedings, identified as Docket No. C-05-58, are part of the record of this formal complaint proceeding.

The materials that have been filed in this docket are available for inspection at the Board Records and Information Center, 350 Maple Street, Des Moines, Iowa 50319. Copies may be obtained by calling the Records and Information Center at (515) 281-5563. There will be a charge to cover the cost of the copying. Board orders are available on the Board's website at [www.state.ia.us/iub](http://www.state.ia.us/iub).

All parties should examine Iowa Code §§ 476.3, 476.103, and Board rules at 199 IAC 1.8 and 22.23, and Chapters 6 and 7, for substantive and procedural rules that apply to this case.

Iowa Code § 476.103(4)(a) provides that a service provider who violates a provision of the cramming statute, a rule adopted pursuant to the statute, or an order lawfully issued by the Board<sup>1</sup> pursuant to the statute, is subject to a civil penalty of not more than \$10,000 per violation, which, after notice and opportunity for hearing, may be levied by the Board. Each violation is a separate offense. Iowa Code § 476.103(4)(b) provides that a civil penalty may be compromised by the Board. It further provides that in determining the amount of the penalty, or the amount agreed on in a compromise, the Board may consider the size of the service provider, the gravity of the violation, any history of prior violations by the service provider, remedial actions taken by the service provider, the nature of the conduct of the service provider, and any other relevant factors.

### **Stipulation of Facts and Prehearing Brief**

The facts underlying this case have already been the subject of an informal complaint proceeding. Therefore, the parties are encouraged, although not required, to file a stipulation of facts, so that only facts in dispute need to be resolved in this formal complaint proceeding. In addition, it is appropriate that the parties file prehearing briefs that identify and discuss their respective positions.

---

<sup>1</sup> In this case, the term "Board" includes the Board itself and the undersigned administrative law judge.

**IT IS THEREFORE ORDERED:**

1. The parties are encouraged, but not required, to file a stipulation of facts. Such stipulation must be filed on or before June 15, 2005.
2. If the Rhoades wish to become a party to this case, they must file written notice with the Board no later than June 15, 2005.
3. On or before June 22, 2005, the Consumer Advocate and any intervenors must file prepared direct testimony and exhibits and a prehearing brief. The prepared direct testimony may refer to any document already in the record, and parties do not need to refile exhibits already submitted in the informal complaint process and made a part of the record. In prepared testimony and exhibits, the Consumer Advocate must address the issues discussed above, support each of the allegations made in its petition, and file any other evidence not previously filed. The Consumer Advocate should use exhibit numbers one and following. In its prehearing brief, the Consumer Advocate must explain why it believes imposition of a civil penalty would be appropriate and in accordance with applicable law in this particular case. If the Rhoades become a party to this case and wish to file prepared testimony and a brief, they must do so on or before June 22, 2005.
4. On or before July 13, 2005, Sharenet must file prepared testimony and exhibits and a prehearing brief. Sharenet may refer to any document in the record, and does not need to refile exhibits already submitted in the informal complaint process and made a part of the record. In its prepared testimony and exhibits,

Sharenet must address the issues discussed above, support each of the allegations made in its responses, and file any other evidence not previously filed. Sharenet should use exhibit numbers 100 and following. In its prehearing brief, Sharenet must explain why it believes imposition of a civil penalty would not be appropriate and would not be in accordance with applicable law in this particular case.

5. If any party wishes to have a witness connected to the hearing by telephone conference call, the party must file written notice with the Board no later than July 13, 2005.

6. If the Consumer Advocate or any intervenor is going to file prepared rebuttal testimony and exhibits or a rebuttal brief, it must do so by July 27, 2005.

7. A hearing for the presentation of evidence and the cross-examination of witnesses will be held in Board Conference Room 3, 350 Maple Street, Des Moines, Iowa, on Tuesday, August 9, 2005, commencing at 10 a.m. Each party must provide a copy of its prepared testimony and exhibits to the court reporter. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at 515-281-5256 no later than five business days prior to the hearing to request that appropriate arrangements be made.

8. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination will become part of the evidentiary record of these proceedings. Pursuant to 199 IAC 7.2(6), the party making reference to the

data request must file one original and three copies of the data request and response with the Executive Secretary of the Board at the earliest possible time.

9. Any person not currently a party who wishes to intervene in this case must meet the requirements for intervention in 199 IAC 7.2(7). The person must file a petition to intervene on or before 20 days following the date of issuance of this order, unless the petitioner has good cause for the late intervention. 199 IAC 7.2(8).

**UTILITIES BOARD**

/s/ Amy L. Christensen  
Amy L. Christensen  
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

Dated at Des Moines, Iowa, this 1<sup>st</sup> day of June, 2005.