

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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| <p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,<br/><br/>Complainant,</p> <p>vs.</p> <p>VOICE MAIL SERVICES,<br/><br/>Respondent.</p> | <p>DOCKET NO. FCU-05-34</p> |
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**ORDER DOCKETING FOR FORMAL PROCEEDING AND  
SETTING DEADLINE FOR RESPONSE**

(Issued June 13, 2005)

On May 6, 2005, pursuant to Iowa Code §§ 476.3 and 476.103, 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 Voice Mail Services. 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 from Mr. Norbert Steger of Dubuque, Iowa, disputing charges on his local telephone bill for voice mail. The charge was submitted on behalf of Voice Mail Services. Mr. Steger stated he did not authorize the charge.

Board staff identified the matter as C-05-57 and, pursuant to Board rules, on March 16, 2005, forwarded the complaint to Voice Mail Services for response.

Voice Mail Services responded to the complaint on April 6, 2005, with a letter stating the service in question had been canceled after the customer called the customer cancellation line. Voice Mail Services stated it sent Mr. Steger two e-mails giving him the opportunity to cancel the service. The company attached what it referred to as a letter of agency and information provided by the customer when the service was ordered. Voice Mail Services stated that because it had a valid authorization, it determined no credit would be issued to the customer.

Board staff forwarded the company's response to Mr. Steger for his review. Mr. Steger noted that he would not have been able to cancel the service using the customer cancellation line because he did not have the company's phone number. Mr. Steger also stated that because he had no contact with Voice Mail Services, he would not have recognized and opened their e-mails because he does not open e-mails from unfamiliar sources. Mr. Steger speculated that the company got his personal information when he signed up on the Internet for grocery coupons, which he did not receive.

On April 22, 2005, Board staff issued a proposed resolution concluding that the letter of agency submitted by Voice Mail Services does not meet the Board's requirements for proof of authorization of service and the charges were the result of cramming. Staff noted that the printout sent by Voice Mail Services refers to a grocery coupon offer, which indicates the letter of agency was impermissibly combined with an inducement. Further, the letter of agency was not signed and dated. Staff also noted that the printout Voice Mail Services called a letter of agency

was actually a request for the customer's confirmation of information he had already provided on a previous screen.

On April 27, 2005, Voice Mail Services contacted Board staff by telephone to inquire about changing the proposed resolution. Staff restated its conclusions that the printouts submitted by the company did not show the page Mr. Steger would have seen and filled out before confirming the information. The company representative's version of events was that Mr. Steger would have completed all screens, received confirmation e-mails, called the company for a refund, and admitted signing up for the service. Voice Mail Services stated it would provide a full refund. Staff responded by stating that Mr. Steger denied signing up for service.

In its May 6, 2005, petition, Consumer Advocate asserts the proposed resolution should be augmented with a civil monetary penalty. 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 May 9, 2005, the Board received a letter dated May 6, 2005, from Voice Mail Services in which the company states that it had received the "second complaint" dated April 22, 2005. The Board suspects the company meant to refer to the proposed resolution dated April 22, 2005, as there has been only one complaint in this matter. Voice Mail Services states that it believes this matter was resolved during the phone call on April 27, 2005, and notes that it canceled the account and issued a full credit of \$29.90 plus tax. Voice Mail Services has not responded to Consumer Advocate's petition.

The Board has reviewed the record to date and finds there are reasonable grounds to warrant further investigation into this matter. Voice Mail Services has asserted that Mr. Steger signed up for its services and believes the matter has been resolved by closing the account and issuing a credit, while Mr. Steger continues to deny authorizing the charge for voice mail services. The Board will docket this matter for formal proceeding, but will delay establishing a procedural schedule to allow Voice Mail Services an opportunity to respond to the allegations raised in Consumer Advocate's petition.

**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 May 6, 2005, is granted. File No. C-05-57 is docketed for formal proceedings, identified as Docket No. FCU-05-34.

2. Voice Mail Services is directed to file a response to Consumer Advocate's petition on or before 30 days from the date of this order.

**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 13<sup>th</sup> day of June, 2005.