

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,</p> <p style="padding-left: 100px;">Complainant,</p> <p style="padding-left: 100px;">vs.</p> <p>VCI COMPANY,</p> <p style="padding-left: 100px;">Respondent.</p>	<p style="text-align:center">DOCKET NO. FCU-05-39</p>
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ORDER ASSIGNING TO ADMINISTRATIVE LAW JUDGE

(Issued August 1, 2005)

On June 3, 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 slamming violation committed by VCI Company (VCI).

On May 5, 2005, Ms. Lora Bennett of Parkersburg, Iowa, submitted a complaint to the Board that VCI "took over" her phone service without her permission. In response to the complaint, VCI stated a third-party verification was performed, an account was started, and Ms. Bennett provided a social security number, address, birth date, and phone number. VCI explained that it could not retrieve the recording of the verification because the identification number recorded in the database had been entered incorrectly.

On May 27, 2005, Board staff issued a proposed resolution of Ms. Bennett's complaint. Staff noted that without proof of authorization, staff had no assurance that the verification was properly completed. Staff concluded that because VCI could not produce the recording of the third-party verification, staff would record the case as slamming. Staff directed VCI to fully credit the account and to refrain from any collection activity related to the charges.

In its June 3, 2005, petition, Consumer Advocate asserts that the proposed resolution should be augmented with a civil penalty. Consumer Advocate argues that a civil penalty is necessary to ensure compliance and deter future violations and because credits alone will not stop the unlawful practice.

The Board reviewed the record in the informal proceeding and concluded there were reasonable grounds to warrant further investigation into the matter. In an order issued on July 5, 2005, the Board granted Consumer Advocate's petition for a proceeding to consider a civil penalty and set a deadline for VCI to respond to the petition.

VCI filed its response with the Board on July 21, 2005. As background, VCI explains that it provides local exchange service to 3,500 consumers in Iowa who qualify for Lifeline and Link-Up assistance and does not engage in telemarketing. VCI states that its records show that on April 14, 2005, Ms. Bennett contacted VCI to inquire about the company's services and provided personal identification information as part of the subscription process. VCI states it can provide its records of Ms. Bennett's information as proof that she contacted the company, subject to the Board issuing an appropriate protective order. VCI asserts that because it does not

telemarket or obtain customer lists that might include personal information, the only means by which VCI could have obtained the information is by Ms. Bennett contacting the company.

VCI does not contest the proposed resolution's finding of slamming and asks that the Board approve the proposed resolution. VCI urges the Board not to impose a civil penalty. VCI argues that a civil penalty is not appropriate because the cases cited by Consumer Advocate in its petition are irrelevant; VCI has evidence, other than the verification it cannot produce, that Ms. Bennett contacted VCI and approved it to be her local exchange carrier; and civil penalties will not promote compliance or deter future violations because VCI has adopted procedures to prevent slamming.

VCI asserts that to the extent its request for the Board to approve the proposed resolution can be considered a request for a compromise of a civil penalty, a review of the criteria in Iowa Code § 476.103(4)"b" and 199 IAC 22.23(5)"b" suggests that the Board should forebear from assessing civil penalties.

On July 25, 2005, Consumer Advocate filed with the Board a reply to VCI's response. Consumer Advocate asserts that not being able to produce a recording of a third-party verification is a serious violation and that accepting VCI's argument would render the verification requirement useless. Consumer Advocate states that Ms. Bennett does not deny contacting VCI, but does deny approving VCI as her carrier. Consumer Advocate argues that the only direct evidence on the question of whether Ms. Bennett ordered the service is her claim that she did not. Consumer Advocate argues that providing personal identification information is not the same as ordering the service in question and that VCI can do more to prevent slamming.

The Board already determined in its July 5, 2005, order that there are reasonable grounds to warrant further investigation into this matter. Because VCI has now responded to Consumer Advocate's petition and Consumer Advocate has replied to that response, the Board will assign this matter 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 may take all appropriate action, which may include setting a hearing date, presiding at the hearing, and issuing a proposed decision.

IT IS THEREFORE ORDERED:

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 1st day of August, 2005.