

were submitted on behalf of One Call. Board staff identified the complaint as C-05-104 and, pursuant to Board rules, on May 20, 2005, forwarded the complaint to One Call for response.

On June 13, 2005, the Board received a complaint from Mr. Virgil Dishman of Council Bluffs, Iowa, disputing charges for calls to New York and California he claimed he did not make. Mr. Dishman's bill indicated the calls were billed as hotel/motel guest calls. Board staff learned the charges were submitted on behalf of One Call. Board staff identified the matter as C-05-119 and, pursuant to Board rules, on June 15, 2005, forwarded the complaint to One Call for response.

In response to each complaint, One Call stated it 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 its service, it issued courtesy credits of \$26.46 plus tax to Mr. Espich and \$86.76 plus tax to Mr. Dishman.

Board staff issued a proposed resolution of Mr. Espich's complaint on June 13, 2005. Staff concluded that cramming occurred because Mr. Espich indicated that neither he nor anyone in his household would have placed the disputed international calls.

Board staff issued a proposed resolution of Mr. Dishman's complaint on June 27, 2005. Staff concluded that One Call was in violation of the Board's cramming rules because the company did not have Mr. Dishman's authorization to

bill for the calls. Staff observed that One Call's statement that the calls were placed using a 10-10 access number was inconsistent with billing for the calls as hotel/motel guest calls.

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

In the petitions for proceedings to consider civil penalties, Consumer Advocate supports the proposed resolutions finding cramming violations, but asserts the resolutions should be augmented with civil penalties to ensure compliance and deter future violations.

III. One Call's motion to dismiss and response

On July 18, 2005, One Call filed a motion to dismiss and a response to Consumer Advocate's petitions. With respect to the Espich complaint, One Call disagrees with staff's finding of a cramming violation and resists Consumer Advocate's request for civil penalties. One Call states that the disputed calls were 10-10 calls initiated by someone at Mr. Espich's home and argues that the 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.

With respect to the Dishman complaint, One Call continues to state that the calls at issue were 10-10 calls which are not subject to the Board's rules against cramming. One Call states that it did not initiate the phone calls, but merely transported and billed for them. One Call states it cannot control the numbers dialed by a customer but can only block identified numbers from completing calls, which it

has done in the present case. One Call argues that because it cannot proactively prevent calls from being initiated at the customer level, there is no conduct to be deterred by civil penalties.

In the alternative, One Call requests that if the Board grants Consumer Advocate's petitions, these matters 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, FCU-05-15, FCU-05-24, and FCU-05-25, the other dockets involving One Call that have already been consolidated and assigned to the Board's administrative law judge in previous Board orders.

IV. Consumer Advocate's reply

On July 28, 2005, Consumer Advocate filed with the Board a memorandum in reply to One Call's motion to dismiss Consumer Advocate's petitions for proceedings to consider civil penalties. Consumer Advocate argues that the exception in the Board's cramming rules for services initiated or requested by a customer does not apply in these cases because the customers did not initiate the services. Consumer Advocate asserts there is no support in the Board's rules or previous orders for legitimizing unauthorized calls. Consumer Advocate argues that further investigation is needed on the issues of One Call's role in the alleged violations and the company's ability to prevent the violations.

Consumer Advocate requests that the Board deny One Call's motion to dismiss and grant the petitions for proceedings to consider civil penalties. Consumer Advocate 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 to allow an opportunity to more precisely determine the nature of the calls, the reason that some of the calls were billed as hotel/motel guest calls, and the ability of a carrier such as One Call to prevent these types of calls.

The Board will grant Consumer Advocate's petitions for proceedings to consider civil penalties. The Board will deny One Call's motion 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 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, FCU-05-15, FCU-05-24, and FCU-05-25. Because those consolidated dockets have already been assigned to an administrative law judge (ALJ), these cases will also be assigned to the 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:

1. The petitions for proceedings to consider civil penalties filed by the Consumer Advocate Division of the Department of Justice in these dockets on

June 27 and July 1, 2005, are granted. Files C-05-104 and C-05-119 are docketed for formal proceedings, identified as Docket Nos. FCU-05-43 and FCU-05-45.

2. The motion to dismiss filed in Docket Nos. FCU-05-43 and FCU-05-45 by One Call Communications, Inc., on July 18, 2005, is denied.

3. Docket Nos. FCU-05-43 and FCU-05-45 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, FCU-05-15, FCU-05-24, and FCU-05-25.

4. Pursuant to Iowa Code § 17A.11(1)"b" and 199 IAC 7.1(4), Docket Nos. FCU-05-43 and FCU-05-45 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/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 9th day of August, 2005.