

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>MCI, INC.,</p> <p style="padding-left: 100px;">Respondent.</p>	<p style="text-align:center">DOCKET NO. FCU-05-53</p>
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**ORDER DOCKETING FOR FORMAL PROCEEDING, DENYING MOTION TO DISMISS, AND ASSIGNING TO ADMINISTRATIVE LAW JUDGE**

(Issued September 16, 2005)

On July 28, 2005, 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 MCI, Inc. (MCI). Based upon the record assembled in the informal complaint proceeding, the events to date can be summarized as follows:

On June 20, 2005, the Board received a complaint from Clara Putz of Macksburg, Iowa, disputing a charge of \$308.19 on her phone bill for a call to the United Kingdom she claims not to have made. Ms. Putz stated she sent two requests to MCI to have the charge investigated and removed from her account and

called MCI's customer service line several times. Ms. Putz complained that MCI refused to credit her account for a call she did not make.

Board staff identified the matter as C-05-123 and, pursuant to Board rules, on June 21, 2005, forwarded the complaint to MCI for response. MCI responded to the complaint on June 30, 2005, stating that Ms. Putz was a longstanding MCI customer with no history of placing international calls. In a letter to Ms. Putz dated June 30, 2005, MCI explained that its records show a direct dialed call to the United Kingdom was made on February 26, 2005, from Ms. Putz's home telephone number and that she was billed according to her calling plan in an amount of \$308.19 for the call that lasted 120 minutes. MCI issued a one-time courtesy credit of \$359.90 to the account.

Board staff issued a proposed resolution of the complaint on July 21, 2005, concluding that a billing error, not cramming, caused the charge to be placed on Ms. Putz's bill.

In its July 28, 2005, petition for proceeding to consider civil penalty, Consumer Advocate contends the proposed resolution was legally incorrect. Consumer Advocate argues that if Ms. Putz did not make the call, the unauthorized billing fits within the relevant statutory and regulatory definition of "change in service" and "cramming," and the violation is therefore established. Consumer Advocate also asserts the initial unauthorized billing was compounded by MCI's refusal to credit the

charges after multiple requests from the customer. Consumer Advocate argues a civil penalty will help secure prompt reversal of charges in future cases.

On August 17, 2005, MCI filed a motion to dismiss. MCI notes that Consumer Advocate alleges only that Ms. Putz denies making the call, does not dispute Board staff's finding that a billing error occurred, and gives no reason why the Board should discount the findings of its staff. MCI asserts that Consumer Advocate has failed to allege facts sufficient to justify formal proceedings. MCI states that it is well established that civil penalties will not deter inadvertent errors, and Consumer Advocate has not alleged that this case involves anything other than an alleged billing error. MCI contends that Consumer Advocate's petition for civil penalties is based on its belief that MCI could have given Ms. Putz better customer service and states that it would be inappropriate to initiate formal proceedings for the sole purpose of scrutinizing MCI's customer service. MCI asks that the Board find that Consumer Advocate has failed to allege any facts warranting formal proceedings and deny Consumer Advocate's petition for proceeding to consider civil penalty.

Consumer Advocate filed a reply memorandum with the Board on August 30, 2005. Consumer Advocate notes that the absence of staff finding an unauthorized change is not determinative and that whether there was an unauthorized change in service depends on the law and the evidence. Consumer Advocate states that in this case the disputed bill shows a separate charge for a telecommunications service to a customer's account and that the only question regarding a violation is whether that

charge was authorized. Consumer Advocate states that its petition alleges the charge was not authorized and, for purposes of a motion to dismiss, the allegations of the petition are assumed to be true.

On the issue of penalty, Consumer Advocate notes that the issue of whether civil penalties will deter inadvertent errors is currently the subject of a judicial review proceeding in Polk County District Court and that it has not yet been established that the alleged violation in this case was inadvertent. Consumer Advocate also identifies several matters needing further investigation that have been mentioned in previous Board rulings involving disputed charges, including the company's relationship to the destination of the call, whether the company had a role in causing the call to be originated, whether it profited from the call, and the company's capacity to prevent the call. Consumer Advocate contends these issues require further investigation in this case.

In response to MCI's assertion that its response to Ms. Putz's initial inquiries is irrelevant, Consumer Advocate argues that the statute encourages resolution of complaints without Board involvement and the prompt reversal of charges and that all appropriate factors are considered in determining the amount of penalty. Consumer Advocate asks the Board to deny MCI's motion to dismiss.

The Board has reviewed the record to date and finds there are reasonable grounds to warrant further investigation into this case. It appears that further investigation is necessary to allow an opportunity to more precisely determine the

nature of the disputed call, how the charge appeared on Ms. Putz's phone bill, and, because Ms. Putz denies making the call, whether the charge was authorized, among other issues.

The Board will grant Consumer Advocate's petition for proceeding to consider a civil penalty. The Board will deny MCI's motion to dismiss Consumer Advocate's petition. Because MCI has responded to Consumer Advocate's petition and Consumer Advocate has filed a reply to MCI's motion to dismiss, this case is ready to be assigned to the Board's 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:**

1. The petition for proceeding to consider civil penalty filed by the Consumer Advocate Division of the Department of Justice in this docket on July 28, 2005, is granted. File C-05-123 is docketed for formal proceeding, identified as Docket No. FCU-05-53.
2. The motion to dismiss filed in Docket No. FCU-05-53 by MCI, Inc., on August 17, 2005, is denied.
3. Pursuant to Iowa Code § 17A.11(1)"b" and 199 IAC 7.1(4), Docket No. FCU-05-53 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

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 16<sup>th</sup> day of September, 2005.