

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE, Complainant,</p> <p>vs.</p> <p>TELSEVEN, L.L.C., Respondent.</p>	<p>DOCKET NO. FCU-05-52</p>
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ORDER ASSIGNING TO ADMINISTRATIVE LAW JUDGE

(Issued November 1, 2005)

On July 28, 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 Telseven, L.L.C. (Telseven). In the informal proceedings, Board staff considered the complaint of Linda Heady of Ottumwa, Iowa, who alleged that an unauthorized charge of \$7.39 for a one-minute directory assistance call was added to her phone bill. Telseven did not provide the Board with a response to the complaint and, on July 14, 2005, Board staff issued a proposed resolution finding Telseven in violation of the Board's rules because it did not provide proof that the customer authorized the charge for the directory assistance call.

In its July 28, 2005, petition, Consumer Advocate asserts civil penalties are necessary to deter future violations and credits alone will not stop the unlawful practice of cramming. The Board reviewed the record and found reasonable grounds for further investigation. On September 13, 2005, the Board issued an order docketing Consumer Advocate's petition for formal proceeding and directing Telseven to file a response to the petition.

The Board received Telseven's response on October 13, 2005. Attached to the response were copies of three letters Telseven had sent to Consumer Advocate in response to Consumer Advocate's petition. Telseven states that the disputed charge was for the directory assistance services it provided, its service is provided only through initiation or request by a customer, and that a customer must dial Telseven's access number to obtain and be billed for its service. Telseven states its records show that a call was made from the customer's telephone number on May 24, 2005, at 1:24 p.m. to an 800 number providing information about Telseven's directory assistance service, including the access number and rates for the service, and that the disputed call to Telseven's directory assistance access number originated from the customer's telephone number at 1:29 p.m. on May 24, 2005. Telseven also states its investigation shows that Telseven's 800 number was incorrectly listed on the Internet as the number for a hotel in Florida. Telseven suggests that the customer intended to call the hotel but reached Telseven instead, then dialed Telseven's access number, and may not have recognized the phone

number that appeared on the bill because it was not the one the customer dialed. Telseven states it has fully credited the customer's account. Telseven contends that because the directory assistance call was initiated by the customer, the charge for the call cannot be cramming under the Board's definition at 199 IAC 22.23(1) and there is no basis for a civil penalty.

On October 24, 2005, Consumer Advocate filed with the Board a reply to Telseven's response. Consumer Advocate acknowledges receiving the letters from Telseven but states the facts remain in dispute. Consumer Advocate states the customer denies dialing the numbers mentioned in the letters, denies initiating or requesting Telseven's directory assistance service, and denies authorizing the charges. Consumer Advocate acknowledges that the Board's definition of cramming excludes directory assistance calls initiated or requested by the customer, but contends this exception does not apply when such calls were not initiated or requested by the customer.

Consumer Advocate states its concern is the customer's complaint that she did not authorize the disputed charge, not whether billing standards or protocols require that the telephone bill show a number other than the one that was dialed. Consumer Advocate characterizes as speculative Telseven's explanation that the customer was trying to reach the hotel but reached Telseven instead and states that a hearing is necessary to resolve the factual dispute.

Because Telseven has now responded to Consumer Advocate's petition, 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 will 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/ Margaret Munson
Executive Secretary, Deputy

/s/ Curtis W. Stamp

Dated at Des Moines, Iowa, this 1st day of November, 2005.