

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>VOICEXPRESS,</p> <p style="padding-left: 100px;">Respondent.</p>	<p style="text-align:center">DOCKET NO. FCU-05-50</p>
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ORDER ASSIGNING TO ADMINISTRATIVE LAW JUDGE

(Issued November 10, 2005)

On July 21, 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 VoiceXpress.

In the informal proceedings, Board staff considered the complaint of Marvin Jackson of Marion, Iowa, who alleged that his phone bill included an unauthorized charge of \$14.95 for a service he did not order. Mr. Jackson stated his wife had completed an online survey but did not know that by doing so she was ordering a service that resulted in the disputed charge. VoiceXpress responded to the complaint stating that Mrs. Jackson completed a survey on an Internet Web site where the company's service was offered and where billing and terms for the service

were clearly disclosed. VoiceXpress provided copies of what it labeled as a sample Web page and a page containing customer information. VoiceXpress also stated the service had been canceled and a refund was issued.

In its proposed resolution, Board staff concluded VoiceXpress violated the Board's cramming rules by failing to follow the standards outlined in the Board's rules for letters of agency, noting that the company had improperly combined the letter of agency with an inducement of free grocery coupons and that the letter of agency was not clearly legible.

In its July 21, 2005, petition, Consumer Advocate states Mr. and Mrs. Jackson deny the sample Web page provided by VoiceXpress appeared on their computer screen and deny ordering the service.

The Board reviewed the record, found reasonable grounds for further investigation, and on August 30, 2005, issued an order docketing Consumer Advocate's petition for formal proceeding and directing VoiceXpress to file a response to the petition.

VoiceXpress filed a response on October 7, 2005, denying the proposed resolution is correct and stating that a civil penalty is not warranted. VoiceXpress argues the proposed resolution is erroneously based on a determination that the screen on the Web site is a letter of agency. VoiceXpress states that the Board's rule on letters of agency, 199 IAC 22.23(2)"b," provides that a letter of agency shall be a separate document containing language "having the sole purpose of authorizing a

service provider to initiate a preferred service provider change," while the order for voice mail service involved in this case is an order for an additional service and does not initiate a preferred service provider change. Further, VoiceXpress asserts the Board's rules define, but do not prohibit, cramming, and the Board has no authority to impose a civil penalty based on a determination of cramming.

Consumer Advocate filed a reply memorandum on October 28, 2005.

Consumer Advocate contends VoiceXpress's argument that there is no Board rule prohibiting cramming is without merit. Consumer Advocate argues the intent of the legislature to prohibit unauthorized changes in service is clear and the term "change in service" reaches both unauthorized changes in provider and unauthorized charges. Consumer Advocate argues the Board ruled in Re: MCI WorldCom Communications, Inc., Board File No. C-04-273, "Order Denying Request for Formal Proceeding and Clarifying Proposed Resolutions," issued April 28, 2005, that its rules do prohibit unauthorized changes. Consumer Advocate contends the argument advanced by VoiceXpress that a letter of agency is only required for changes in service provider and not changes adding services fails as a defense to the cramming charge because here the customers deny having seen the computer screen and therefore did not order the service. Consumer Advocate states there was no authorization for the charge and no compliant verification and that the verification requirements apply to all changes in service.

Because VoiceXpress has now responded to Consumer Advocate's petition and Consumer Advocate has filed its reply to that response, the Board will assign this matter to its 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/ Judi K. Cooper
Executive Secretary

/s/ Curtis W. Stamp

Dated at Des Moines, Iowa, this 10th day of November, 2005.