

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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<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>TELSEVEN, L.L.C.,</p> <p style="padding-left: 100px;">Respondent.</p>	<p style="text-align:center">DOCKET NO. FCU-05-52</p>
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**PROCEDURAL ORDER AND NOTICE OF HEARING**

(Issued November 10, 2005)

**Background**

On June 29, 2005, Ms. Linda Heady submitted a complaint to the Utilities Board (Board) alleging that Telseven, L.L.C. (Telseven) and [www.oanweb.com](http://www.oanweb.com) added a fraudulent charge of \$7.39 for a one-minute directory assistance call to her telephone bill. The details of the complaint are contained in informal complaint file number C-05-137, which is incorporated into the record in this case pursuant to 199 IAC 6.7.

Upon receiving the complaint, Board staff attempted to informally resolve the dispute. Board staff forwarded the complaint to OAN Services, Inc. (OAN), and requested a response. Board staff apparently did not forward the complaint directly to Telseven. OAN responded that it was an aggregator and stated a full credit had

been issued to Ms. Heady. On July 14, 2005, Board staff issued a proposed resolution concluding that neither Telseven nor OAN had provided proof that the Headys authorized the charges billed for a directory assistance call and finding Telseven and OAN in violation of the Board's rules.

On July 28, 2005, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) petitioned the Board to commence a formal proceeding to consider a civil penalty for a cramming violation. The Consumer Advocate asserted the proposed resolution was correct and a civil penalty should be assessed because a credit alone will not stop the unlawful practice.

On September 13, 2005, the Board issued an order finding reasonable grounds for further investigation, docketing the case for formal proceedings, and ordering Telseven to file a response to the Consumer Advocate's petition within 30 days of the order.

Telseven filed its response to the Consumer Advocate's petition on October 13, 2005. Telseven stated it had previously responded to the petition in three letters directed by the company to the Consumer Advocate and attached copies of the three letters to its response. Telseven stated the disputed charge was for the directory assistance service 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. It stated its records showed that a call was made from the customer's telephone number on May 24, 2005, at 1:24 p.m. to an 800 number that provided information about Telseven's directory assistance service,

including the access number and rates for the service. It further stated the call in question was then originated from the customer's number at 1:29 p.m. on May 24, 2005, to Telseven's directory assistance equal access number. Telseven also stated the number dialed by the customer is not the same number shown on the bill because "under the standards and protocols for billing directory assistance service, the call record must show the Nevada 702-555-1212 telephone number." Telseven also stated its investigation determined that Telseven's 800 number was incorrectly listed on the internet for the Best Western Hotel in Amelia Island, Florida, and the customer apparently intended to call the Best Western Hotel but reached Telseven instead. Telseven stated the customer then dialed the Telseven directory assistance equal access number given in the 800 message, thus incurring the contested charge in error. Telseven stated it had fully credited the charge to the customer's account. It contends because the directory assistance call was initiated by the customer, the charge for the call cannot be cramming pursuant to the Board's definition and there is no basis for consideration of a civil penalty.

On October 24, 2005, the Consumer Advocate filed a reply memorandum. The Consumer Advocate acknowledged receiving the letters but stated the facts remain in dispute. The Consumer Advocate stated the customer denies having dialed the numbers referenced in the letters, denies initiating or requesting Telseven's directory assistance service, and denies authorizing the charges. The Consumer Advocate acknowledged the definition of cramming excludes directory assistance calls when they are initiated or requested by the customer, but this

exclusion does not apply when the calls were not initiated or requested by the customer. The Consumer Advocate stated if the standards and protocols require the billing statement to show a number other than the one dialed by the customer, they may be problematical, although the focus of the petition is the customer's complaint that she did not authorize the billing. The Consumer Advocate further stated that Telseven's explanation of how the charge occurred was speculative, and a hearing is necessary to resolve the factual dispute.

On November 1, 2005, the Board issued an order assigning the case to the undersigned administrative law judge for further proceedings.

Pursuant to the Board's order, Iowa Code §§ 476.3 and 476.103 (2005), and 199 IAC 6.5, a procedural schedule will be established and a hearing date set.

The statutes and rules involved in this case include Iowa Code §§ 476.3 and 476.103 and Board rules at 199 IAC 1.8, 1.9, 22.23, and Chapters 6 and 7. Links to the Iowa Code and the Board's administrative rules (in the Iowa Administrative Code (IAC)) are contained on the Board's website at [www.state.ia.us/iub](http://www.state.ia.us/iub).

### **The issues**

The issues in this case generally involve Telseven's placement of the charge for a directory assistance call on Ms. Heady's telephone bill, whether Telseven complied with applicable law when it did so, whether Telseven provided acceptable proof of authorization to place its charge on Ms. Heady's telephone bill in accordance with applicable law, whether imposition of a civil penalty is appropriate, the factors regarding the amount of civil penalty in Iowa Code § 476.103(4)(b), and what should

be done to resolve the case. Other issues may be raised by the parties prior to and during the hearing.

**Prepared testimony and exhibits**

All parties will have the opportunity to present and respond to evidence and make argument on all issues involved in this proceeding. Parties may choose to be represented by counsel at their own expense. Iowa Code § 17A.12(4). The proposed decision that will be issued in this case must be based on evidence contained in the record and on matters officially noticed. Iowa Code §§ 17A.12(6) and 17A.12(8).

The submission of prepared evidence prior to hearing helps identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined concerning the statements already made in writing. The use of prepared testimony and submission of documentary evidence ahead of the hearing prevents surprise at the hearing and helps each party to prepare adequately so a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1) and (3).

**Party status and communication with the Board**

The Consumer Advocate and Telseven are currently the parties to this proceeding. If Ms. Heady wishes to be a party to this case, she must notify the Board in writing in accordance with the procedural schedule established in this order.

Telseven has filed the information required to be included in an appearance with its response to the Consumer Advocate's petition and therefore does not need to file an appearance pursuant to 199 IAC 7.2.

Any party who communicates with the Board should send an original and ten copies of the communication to the Executive Secretary at the address above, accompanied by a certificate of service. One copy of the communication should also be sent at the same time to each of the other parties to this proceeding, except that three copies must be served on the Consumer Advocate. 199 IAC 1.8(4)"c." These requirements apply, for example, to the filing of prepared testimony and exhibits with the Board.

These procedures are necessary to comply with Iowa Code § 17A.17, which prohibits ex parte communication. Ex parte communication is when one party in a contested case communicates with the judge without the other parties being given the opportunity to be present. In order to be prohibited, the communication must be about the facts or law in the case. Calls to the Board to ask about procedure or the status of the case are not ex parte communication. Ex parte communication may be oral or written. This means the parties in this case may not communicate about the facts or law in this case with the undersigned administrative law judge unless the

other parties are given the opportunity to be present, or unless the other parties are provided with a copy of the written documents filed with the Board.

Pursuant to 199 IAC 6.7, the written complaint and all supplemental information from the informal complaint proceedings, identified as Docket No. C-05-137, are part of the record of this formal complaint proceeding.

The materials that have been filed in this docket are available for inspection at the Board Records and Information Center, 350 Maple Street, Des Moines, Iowa 50319. Copies may be obtained by calling the Records and Information Center at (515) 281-5563. There will be a charge to cover the cost of the copying. Board orders are available on the Board's website at [www.state.ia.us/iub](http://www.state.ia.us/iub).

All parties should examine Iowa Code §§ 476.3, 476.103, and Board rules at 199 IAC 1.8 and 22.23, and Chapters 6 and 7, for substantive and procedural rules that apply to this case.

Iowa Code § 476.103(4)(a) provides that a service provider who violates a provision of the cramming statute, a rule adopted pursuant to the statute, or an order lawfully issued by the Board<sup>1</sup> pursuant to the statute, is subject to a civil penalty of not more than \$10,000 per violation, which, after notice and opportunity for hearing, may be levied by the Board. Each violation is a separate offense. Iowa Code § 476.103(4)(b) provides that a civil penalty may be compromised by the Board. It further provides that in determining the amount of the penalty, or the amount agreed on in a compromise, the Board may consider the size of the service provider, the

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<sup>1</sup> In this case, the term "Board" includes the Board itself and the undersigned administrative law judge.

gravity of the violation, any history of prior violations by the service provider, remedial actions taken by the service provider, the nature of the conduct of the service provider, and any other relevant factors.

**IT IS THEREFORE ORDERED:**

1. If Ms. Heady wishes to become a party to this case, she must file written notice with the Board no later than December 1, 2005. If Ms. Heady becomes a party to this case and wishes to file prepared testimony and a brief, she must do so on or before December 1, 2005.

2. On or before December 1, 2005, the Consumer Advocate and any intervenors must file prepared direct testimony and exhibits and a prehearing brief. The prepared direct testimony may refer to any document already in the record, and parties do not need to refile exhibits already submitted in the informal complaint process and made a part of the record. In prepared testimony and exhibits, the Consumer Advocate must address the issues discussed above, support each of the allegations made in its petition, and file any other evidence not previously filed. The Consumer Advocate should use exhibit numbers one and following. In its prehearing brief, the Consumer Advocate must explain why it believes imposition of a civil penalty would be appropriate and in accordance with applicable law in this particular case.

3. On or before December 22, 2005, Telseven must file prepared testimony and exhibits and a prehearing brief. Telseven may refer to any document in the record, and does not need to refile exhibits already submitted in the informal

complaint process and made a part of the record. In its prepared testimony and exhibits, Telseven must address the issues discussed above, support each of the allegations made in its response and letters to the Consumer Advocate, and file any other evidence not previously filed. Telseven should use exhibit numbers 100 and following. In its prehearing brief, Telseven must explain why it believes imposition of a civil penalty would not be appropriate and would not be in accordance with applicable law in this particular case.

4. If any party wishes to have a witness connected to the hearing by telephone conference call, the party must file written notice with the Board as soon as possible, and no later than January 12, 2006.

5. If the Consumer Advocate or any intervenor is going to file prepared rebuttal testimony and exhibits or a rebuttal brief, it must do so by January 12, 2006.

6. A hearing for the presentation of evidence and the cross-examination of witnesses will be held in Board Conference Room 3, 350 Maple Street, Des Moines, Iowa, on Tuesday, January 24, 2006, beginning at 9:30 a.m. Each party must provide a copy of its prepared testimony and exhibits to the court reporter. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at 515-281-5256 no later than five business days prior to the hearing to request that appropriate arrangements be made.

7. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination will become part of the evidentiary record of these proceedings. Pursuant to 199 IAC 7.2(6), the party making reference to the

data request must file one original and three copies of the data request and response with the Executive Secretary of the Board at the earliest possible time.

8. Any person not currently a party who wishes to intervene in this case must meet the requirements for intervention in 199 IAC 7.2(7). The person must file a petition to intervene on or before 20 days following the date of issuance of this order, unless the petitioner has good cause for the late intervention. 199 IAC 7.2(8).

**UTILITIES BOARD**

/s/ Amy L. Christensen  
Amy L. Christensen  
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

Dated at Des Moines, Iowa, this 10<sup>th</sup> day of November, 2005.