

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,</p> <p style="text-align:center">Complainant,</p> <p style="text-align:center">vs.</p> <p>VERIZON SELECT SERVICES, INC.,</p> <p style="text-align:center">Respondent.</p>	<p style="text-align:center">DOCKET NO. FCU-05-57</p>
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**ORDER DENYING MOTION TO DISMISS AND  
ASSIGNING TO ADMINISTRATIVE LAW JUDGE**

(Issued December 19, 2005)

On August 29, 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 Verizon Select Services, Inc. (Verizon).

**I. Informal complaint proceedings**

In the informal proceedings, Board staff considered the complaint of Kerry Kirstein of Des Moines, Iowa, that his local telephone bill included unauthorized charges submitted by ILD Teleservices, Inc. (ILD), on behalf of Verizon. In response to the complaint, Verizon stated it has an agreement with ILD for billing, collection,

operator, and directory assistance services. Verizon stated its investigation showed that the disputed charges resulted from a collect call initiated from a payphone in California. Verizon stated that because Mr. Kirstein denied accepting the collect call, it issued a credit to his account.

On August 18, 2005, Board staff issued a proposed resolution finding that cramming occurred in this matter.

**II. Consumer Advocate's petition for proceeding to consider civil penalty**

In its August 29, 2005, petition, Consumer Advocate contends that the proposed resolution should be augmented with a civil penalty. Consumer Advocate argues a civil penalty is necessary to ensure compliance and deter future violations.

The Board reviewed the record, found reasonable grounds for further investigation and, on October 3, 2005, issued an order docketing Consumer Advocate's petition for formal proceeding and directing Verizon to file a response to the petition.

**III. Verizon's response and motion to dismiss**

On November 30, 2005, Verizon filed a response to and motion to dismiss Consumer Advocate's petition. Verizon states it disagrees with Board staff's finding that a cramming violation occurred and with Consumer Advocate's request for civil penalties. Verizon argues that the Board should reverse the proposed resolution and deny Consumer Advocate's request for further review because the Board's rules against cramming at 199 IAC 22.23(1) provide that "cramming does not include . . .

acceptance of collect calls." Verizon asserts the collect call in this case was accepted by someone at Mr. Kirstein's residence. Verizon states that since Consumer Advocate filed its petition, it has received verification from three sources that the collect call was accepted. Verizon states that switch and billing records from three independent sources show that a collect call was placed, transported, handled by a live operator, completed after the receiving party accepted the call, and lasted for more than five minutes. Finally, Verizon asserts that the Board does not have jurisdiction over this matter because the case involves an interstate call, and cites 47 U.S.C. § 152 and a ruling of the West Virginia Public Service Commission in support.

Verizon attached to its response an affidavit of John Ries, a Verizon employee stating, in part, that the length of the call indicates the accepting party did not mistakenly accept the call. Verizon also attached the call records from the various companies associated with the call.

#### **IV. Consumer Advocate's reply**

On December 6, 2005, Consumer Advocate filed a reply to Verizon's response. Consumer Advocate asserts that Verizon's argument that the switch and billing records and experience of its affiant support its claim that the call was accepted is inappropriate on a motion to dismiss. Consumer Advocate argues that for purposes of the motion to dismiss, the facts stated in the petition are assumed to be true and the petition alleges the call was not accepted.

Consumer Advocate contends the ruling cited by Verizon to support its argument that the Board lacks jurisdiction over a complaint involving an interstate call is not controlling in Iowa. Consumer Advocate asserts that the Iowa General Assembly has given the Board jurisdiction to address slamming and cramming complaints and that courts have rejected the argument that such state laws are preempted. Consumer Advocate suggests that accepting Verizon's argument would render state law meaningless since most slamming and cramming complaints involve interstate or international services. Consumer Advocate asks the Board to deny Verizon's motion to dismiss.

#### **V. Discussion**

In its October 3, 2005, order, the Board reviewed the record, found reasonable grounds for further investigation, and docketed Consumer Advocate's petition for formal proceeding. The Board has reviewed Verizon's response and motion to dismiss and Consumer Advocate's reply. For purposes of ruling on a motion to dismiss, the Board will take the allegations of the petition as true under those limited circumstances. The petition states a claim that, if proven, may justify the relief requested. The Board will therefore deny Verizon's motion to dismiss Consumer Advocate's petition. The Board will assign this case to its administrative law judge (ALJ) for further proceedings pursuant to Iowa Code § 17A.11(1)"b" (2005) and 199 IAC 7.3. 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 motion to dismiss filed in Docket No. FCU-05-57 by Verizon Select Services, Inc., on November 30, 2005, is denied.

2. Pursuant to Iowa Code § 17A.11(1)"b" and 199 IAC 7.3, Docket No. FCU-05-57 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 7.3.

**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 19<sup>th</sup> day of December, 2005.