

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE</p> <p style="padding-left: 40px;">Complainant,</p> <p style="padding-left: 40px;">vs.</p> <p>MCI, INC.,</p> <p style="padding-left: 40px;">Respondent.</p>	<p style="text-align:center">DOCKET NO. FCU-05-65</p>
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ORDER DOCKETING FOR FORMAL PROCEEDING, DENYING MOTION TO DISMISS, AND ASSIGNING TO ADMINISTRATIVE LAW JUDGE

(Issued December 20, 2005)

On November 4, 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 slamming or 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:

I. Informal complaint proceedings

On September 19, 2005, the Board received a complaint from Alice Steele of Merrill, Iowa. Mrs. Steele stated her son, Mr. Del Steele, switched her phone service from MCI to Qwest Corporation (Qwest) effective July 15, 2005; MCI switched the

service back on August 7, 2005, without approval; and MCI billed her for services after she switched away from MCI.

Board staff identified the matter as C-05-187 and, pursuant to Board rules, on September 20, 2005, forwarded the complaint to MCI for response. MCI did not respond to the complaint.

Board staff issued a proposed resolution of the complaint on October 21, 2005, finding by default that MCI violated the Board's rules. Staff directed MCI to fully credit all charges and close the account.

After the proposed resolution was issued, MCI provided the Board with a copy of a letter dated October 26, 2005, it sent to Mr. Steele responding to the complaint. MCI stated its review of the account shows that MCI received notification and processed an order to discontinue service with MCI on August 19, 2005; the account was cancelled as of August 29, 2005; Mrs. Steele paid \$36.83 to MCI for service received in July 2005; and MCI issued a refund check for \$36.83.

II. Consumer Advocate's petition

In its November 4, 2005, petition, Consumer Advocate argues the proposed resolution should be expanded to clarify that companies cannot avoid civil penalties by ignoring allegations of violation and that default cases are compelling ones for civil penalties because companies might choose the most egregious cases in which to default. Consumer Advocate argues civil penalties are necessary to ensure compliance and deter future violations. Consumer Advocate refers to MCI's

October 26, 2005, letter and states it does not adequately explain what happened. Attached to the petition are copies of e-mail messages between Consumer Advocate and Qwest regarding Mrs. Steele's account history.

III. MCI's response and motion to dismiss

On November 28, 2005, MCI filed a response to and motion to dismiss Consumer Advocate's petition. MCI states it strives to meet required deadlines for informal complaints, takes its responsibility to file timely responses seriously, has taken action with the representative who filed the late response, and has initiated a review process to ensure timely response to complaints.

MCI disputes Consumer Advocate's claim that if civil penalties are not assessed in default cases, companies will choose to default in the most egregious cases. MCI states that its act of responding to the complaint after the proposed resolution was issued shows it was not trying to hide facts by defaulting. Also, MCI states this case appears to be an isolated example and claims that it does not have a record of late responses. MCI suggests civil penalties are not warranted for a first offense.

MCI explains that it continued to bill Mrs. Steele because it did not receive notice of any change in service before August 19, 2005. MCI states that its service remained active until it was notified by the new provider that the switch had been completed. MCI argues that, at most, this case involves a miscommunication

between Qwest and MCI regarding Mrs. Steele's switch to Qwest and that civil penalties will not deter miscommunication.

MCI asks the Board to find that Consumer Advocate has failed to allege any facts that warrant formal proceedings and deny Consumer Advocate's petition.

IV. Consumer Advocate's reply

On December 6, 2005, Consumer Advocate filed a reply to MCI's response. Consumer Advocate states it routinely withdraws petitions for penalty proceedings where a company provides a satisfactory response even though the response may be late. Consumer Advocate argues that MCI's response does not resolve the controversy. Consumer Advocate states that Qwest's records about Mrs. Steele's account history do not confirm MCI's response and that the e-mails from Qwest show that MCI did receive notification of the switch. Consumer Advocate argues this factual dispute cannot be resolved by the motion to dismiss. Consumer Advocate asserts that Qwest's records show a new switch initiated by MCI, not a continuation of service, and that MCI offers no response to this alleged new switch.

In response to MCI's claim that this case involves a miscommunication, Consumer Advocate states there is no evidence of miscommunication and even if the alleged slam were caused by miscommunication, civil penalties would still be warranted. Consumer Advocate asks the Board to grant its petition for proceeding to consider civil penalty and deny MCI's motion to dismiss.

V. Discussion

The Board has reviewed the record to date and finds there are reasonable grounds to warrant further investigation of this case. The Board will grant Consumer Advocate's petition for proceeding to consider civil penalty. 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 MCI'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 petition for proceeding to consider civil penalty filed by the Consumer Advocate Division of the Department of Justice in this docket on November 4, 2005, is granted. File C-05-187 is docketed for formal proceeding, identified as Docket No. FCU-05-65.

2. The motion to dismiss filed in Docket No. FCU-05-65 by MCI, Inc., on November 28, 2005, is denied.

3. Pursuant to Iowa Code § 17A.11(1)"b" and 199 IAC 7.3, Docket No. FCU-05-65 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 20th day of December, 2005.