

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>ONE CALL COMMUNICATIONS, INC.,</p> <p style="padding-left: 40px;">Respondent.</p>	<p style="text-align:center">DOCKET NO. FCU-05-73</p>
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**ORDER DOCKETING FOR FORMAL PROCEEDING AND
ASSIGNING TO ADMINISTRATIVE LAW JUDGE**

(Issued January 25, 2006)

On December 13, 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 One Call Communications, Inc. (One Call).

I. Informal complaint proceeding

In the informal proceeding, Board staff considered the complaint of Norbert and Mary Billard of Edgewood, Iowa, that they were charged \$109.55 by One Call for services they did not authorize. Attached to the complaint was a copy of the bill from One Call indicating the charges were for four instances of "internet web access" on

October 16, 2005. Board staff identified the matter as C-05-215 and forwarded the complaint to One Call for response.

The Board received One Call's response on November 21, 2005. One Call's response was submitted by Opticom Operator Services on One Call's behalf. In the response, One Call stated it had issued a full credit because the complaining consumers were not aware that someone was using the service that resulted in the charges. One Call also placed a block on the consumers' line to prevent future charges. One Call stated the charges were submitted on behalf of a company named Navicomm for Internet Web site access. One Call stated someone in the consumers' household used a computer to access the Internet site.

On December 2, 2005, Board staff issued a proposed resolution concluding that cramming occurred in this matter. Staff noted that while One Call stated the disputed charge was for Internet Web site access, the consumers stated in the initial complaint that they did not have Internet access at the time the charges were billed.

II. Consumer Advocate's petition

In its December 13, 2005, petition, Consumer Advocate argues the proposed resolution should be augmented with a civil penalty, asserting that a penalty is necessary to deter future violations and because credits alone will not stop the unlawful practice of cramming.

III. One Call's answer

On January 3, 2006, One Call filed an answer and affirmative defenses responding to Consumer Advocate's petition. One Call denies Consumer Advocate's assertion that the disputed charges were unauthorized and denies that cramming

occurred. One Call asserts it is possible to connect to the Internet without a formal arrangement with an Internet provider. As affirmative defenses, One Call asserts Consumer Advocate fails to state a claim upon which relief may be granted; the disputed charges were authorized; One Call's switch records verify the disputed calls originated from the consumers' phone number; and those records show multiple attempts from that phone number to initiate calls to the same destination Web site. Finally, One Call asserts that the consumers were billed directly for Internet Web site access and that the Board has no jurisdiction over that service.

IV. Consumer Advocate's reply

On January 18, 2006, Consumer Advocate filed a reply to One Call's answer. Consumer Advocate asserts the Board has jurisdiction over telecommunications services, including phone calls. Consumer Advocate argues the purpose of Iowa Code § 476.103 is to protect consumers from unauthorized changes in telecommunications service, which are defined in § 476.103(2) to include "the addition . . . of a telecommunications service for which a separate charge is made to a consumer account." Consumer Advocate states a separate charge was made for the calls in question. Consumer Advocate argues the statutory purpose would be defeated if companies are allowed to circumvent the statute by saying they are billing for Internet Web site access rather than phone calls.

V. Discussion

The Board has reviewed the record to date and finds there are reasonable grounds to warrant further investigation into this case. The Board will docket Consumer Advocate's petition for proceeding to consider civil penalty, identified as

Docket No. FCU-05-73. 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 December 13, 2005, is granted. File C-05-215 is docketed for formal proceeding, identified as Docket No. FCU-05-73.

2. Pursuant to Iowa Code § 17A.11(1)(b) and 199 IAC 7.3, Docket No. FCU-05-73 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 25th day of January, 2006.