

himself as Marcus Welby accepted the calls. Ms. Reynolds stated she is the only person living at her home. Staff learned the charges were submitted on behalf of "Opticom, a/k/a One Call," and forwarded the complaint to One Call for response.

The Board received One Call's response on November 17, 2005. One Call stated its system is designed so that a collect call cannot be processed without being accepted by someone at the destination number, and the company's records indicate someone at the consumer's phone number pressed the number "1" on the telephone keypad to accept the calls. The company stated it placed a block on the consumer's line to prevent future access through its network. One Call recommended that Ms. Reynolds check with family members, friends, or visitors to determine whether they placed or accepted the calls without her knowledge. One Call also stated that because its investigation showed no error in processing or billing for the calls, it could not issue a credit, but noted that the consumer's local carrier had issued a recourse credit of \$139.47.

On December 2, 2005, Board staff issued a proposed resolution concluding that cramming occurred in this matter as a result of some type of fraud. Noting that the consumer's local carrier had reversed charges totaling \$213.72 to One Call, staff directed One Call not to bill for those charges again.

II. Consumer Advocate's petition

In its December 13, 2005, petition, Consumer Advocate argues that staff's 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 motion to dismiss

On January 3, 2006, One Call filed a motion to dismiss Consumer Advocate's petition. One Call argues Consumer Advocate's petition should be dismissed because Iowa's rules against cramming do not apply to acceptance of collect calls. One Call argues that the consumer's claim that she did not accept the collect calls is without merit because the company's records show the calls were accepted, connected, and that there was actual talking time totaling 165 minutes. One Call asserts that while Ms. Reynolds may not be the person who identified himself as Marcus Welby and accepted the calls, there is no dispute that someone did.

One Call asserts that by maintaining records showing the date and time of the request to change service and adequate verification of the person requesting the change in service, it satisfied the requirements of the Board's recently amended rules against unauthorized changes in service.¹ One Call argues that the consumer's denial that she accepted the calls does not overcome its evidence that the calls took place. One Call contends there is no action on its part to be deterred by civil penalties and asks the Board to dismiss Consumer Advocate's petition.

IV. Consumer Advocate's reply

On January 18, 2006, Consumer Advocate filed a reply to One Call's motion to dismiss. Consumer Advocate argues the motion to dismiss disregards the proper

¹ One Call refers to the amendments adopted by the Board in Re: Revised Rules for Telecommunications Providers, Docket No. RMU-05-6, "Order Adopting Rules," issued November 29, 2005. The amendments went into effect on January 25, 2006.

methods of determining controverted facts. Consumer Advocate argues that the petition alleges the calls were not accepted and, for purposes of ruling on a motion to dismiss, the Board takes those allegations as true. Consumer Advocate contends One Call's position would allow companies to escape responsibility for unauthorized changes in service if they comply with the requirement to maintain adequate verification records and that this position is contrary to Iowa law and the Board's purpose in amending its rules. Consumer Advocate suggests that the issue in this case is not whether One Call can produce records it claims show the calls were accepted, but whether the calls were accepted. Consumer Advocate asks the Board to deny One Call's motion to dismiss.

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 a civil penalty, identified as Docket No. FCU-05-74. For purposes of ruling on One Call's motion to dismiss the petition, the Board takes the allegations of the petition as true under those limited circumstances. The petition states a claim that the disputed charges were unauthorized and, if proven, that claim may justify the relief requested. The Board will therefore deny One Call'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 December 13, 2005, is granted. File C-05-204 is docketed for formal proceeding, identified as Docket No. FCU-05-74.

2. The motion to dismiss filed in Docket No. FCU-05-74 by One Call Communications, Inc., on January 3, 2006, is denied.

3. Pursuant to Iowa Code § 17A.11(1)(b) and 199 IAC 7.3, Docket No. FCU-05-74 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 31st day of January, 2006.