

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, vs. MCI, INC., Respondent.	DOCKET NO. FCU-05-65
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ORDER GRANTING MOTION TO COMPEL

(Issued February 6, 2006)

On January 27, 2006, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a motion to compel discovery and request for expedited ruling. The Consumer Advocate stated that it had submitted seven data requests to MCI, Inc., (MCI) and that MCI had not provided responses. The Consumer Advocate stated the controversy had an antecedent history in another docket between the same parties, and provided details of that history in its motion. Essentially, in the prior case, MCI required the Consumer Advocate to obtain a waiver from the customer before MCI would release the requested information because it claimed turning over the customer's information would violate federal Customer Proprietary Network Information (CPNI) requirements in 47 U.S.C. § 222.

In this case, MCI takes the same position. The Consumer Advocate argues that 47 U.S.C. § 222 contains the following exception at paragraph (d)(2):

"Nothing in this section prohibits a telecommunications carrier from using, disclosing, or permitting access to customer proprietary network information obtained from its customers, either directly or indirectly through its agents . . . (2) . . . or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services."

The Consumer Advocate argues that the purpose of this proceeding is to protect users of telecommunications services from fraudulent, abusive, or unlawful use of or subscription to such services. Therefore, it argues, the exception in paragraph (d)(2) applies and MCI's refusal to provide discovery is without legal basis. The Consumer Advocate argues that MCI's requirement to provide a waiver ignores the clear language of the statutory exception and seeks to inject an improper, unnecessary and wasteful element into every case.

The Consumer Advocate attached copies of the disputed data requests with its motion. Data request number one requests a copy of MCI's "most recent audited financial statement and (if later) the most recent unaudited financial statement." Data requests two through seven request information related to the complaining customer's account and the transactions in dispute in the case.

MCI filed a resistance to the motion to compel on January 31, 2006. MCI stated that there is no valid discovery dispute because it had informed the Consumer Advocate the responses were ready, but the Consumer Advocate refused to provide

an appropriate waiver authorizing MCI to disclose confidential information about one of its customers and, therefore, the Consumer Advocate had chosen not to accept the responses. MCI argues that the sole issue in dispute is whether it can be forced to disclose confidential information about one of its customers. It argues that 47 U.S.C. § 222 imposes a general duty on all carriers to protect the confidentiality of their customers' CPNI. It further argues the purpose of that section is to protect the privacy of telephone customers by limiting the carrier's ability to disclose certain customer information. MCI noted the statutory exception cited by the Consumer Advocate, but argues that the customer, not the Consumer Advocate, is in the best position to determine what is appropriate and best for the customer's protection. MCI argues that the Consumer Advocate is neither the party whose information is being protected nor an arbiter of federal law.

MCI further argues that the rules implementing section 222 require MCI to establish and maintain policies to ensure it adequately protects its customers' CPNI, compliance with the rules is mandatory, and the Federal Communications Commission (FCC) does not take violations lightly. MCI argues that it is adhering to the FCC rules in the present case. MCI argues that to comply with the rules and satisfy the Consumer Advocate's discovery requests, it proposed the reasonable solution of requiring the customer to sign a waiver. MCI argues this solution provides the customer with control of the customer's information and allows the customer to decide whether disclosure and use of the information will be one that protects the

customer. MCI argues this approach has been used in another case and it has accepted a simple email message from the customer waiving the section 222 protections. It also argues the only protection MCI has from potential liability is a waiver. MCI argues this process is much easier than the process of negotiating a protective agreement. MCI argues the Consumer Advocate should obtain a waiver and stated that if it does, MCI will promptly turn over the requested information. MCI requested that the Consumer Advocate's motion to compel be denied.

On January 31, 2006, the Consumer Advocate filed a reply to MCI's resistance. The Consumer Advocate stated it had previously obtained waivers in another case only because MCI left it no choice short of delaying discovery while the issue was litigated. However, the Consumer Advocate stated it had previously told MCI it did not agree with the practice. The Consumer Advocate also stated its concern was adding unnecessary steps and delays. It further argued that in the previous case, MCI had demanded both a protective agreement and a waiver.

Analysis

Data request number one does not request information that meets the definition of CPNI in 47 U.S.C. § 222(h)(1). Therefore, MCI must provide the requested information to the Consumer Advocate.

In this case, the customer filed an informal complaint with the Utilities Board that included CPNI. The documents in the informal complaint file are open to the public. In addition, in this formal complaint case based on the same set of facts

involved in the informal complaint file, the customer will serve as a witness for the Consumer Advocate. Given these facts, the nature of this case, and the statutory role of the Consumer Advocate, the exception in 47 U.S.C. § 222(d)(2) and 47 C.F.R. § 64.2005(d) is broad enough to apply to the release of the customer's CPNI when MCI responds to the data requests. If MCI is concerned about the customer's privacy, the parties may execute an appropriate protective agreement.

The undersigned notes that this ruling only applies to the grant of the request for discovery in this particular case, given this particular set of facts. In addition, this ruling does not make any determination with respect to whether any of the requested information would be a public record under Iowa Code Chapter 22 if either party decides to introduce any of the information.

Board rule 199 IAC 7.15(4) states that prior to filing any motion related to discovery, the parties shall make a good faith effort to resolve the discovery dispute without the involvement of the Board or presiding officer. This appears to be one discovery dispute that could have been resolved by the parties with minimal cooperative effort on both sides.

IT IS THEREFORE ORDERED:

MCI must provide the information requested in data requests one through seven to the Consumer Advocate without the customer signing a waiver.

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 6th day of February, 2006.