

in his household was at home. The bill Mr. Walling received indicated the charge was submitted by One Call on behalf of a company named Navicomm. Mr. Walling stated he contacted Navicomm to ask about the charge but did not get an explanation about which Internet site was accessed. Mr. Walling also stated he did not get an answer by checking the Web fee validation site suggested by Navicomm. Board staff identified the matter as C-05-237 and forwarded the complaint to One Call for response.

The Board received One Call's response on December 22, 2005. One Call's response was submitted by Opticom Operator Services on One Call's behalf. One Call stated the charges were submitted on behalf of Navicomm for Internet Web site access and that someone in Mr. Walling's household used a computer to access Internet sites supported by Navicomm. One Call stated it issued a credit because the consumer was not aware that someone was using the service and placed a block on the consumer's line to prevent future charges.

On January 6, 2006, 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 consumer stated in the initial complaint that no one in his household was home at the time the Internet services were allegedly used.

II. Consumer Advocate's petition

In its January 17, 2006, 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 motion to dismiss

On February 6, 2006, One Call filed a motion to dismiss Consumer Advocate's petition. One Call states that Mr. Walling was billed directly by One Call for Web site access, a service over which the Board has no jurisdiction. One Call asserts that because the Board has no jurisdiction over Internet traffic, it has no jurisdiction over disputes relating to charges for accessing Internet Web sites.

IV. Consumer Advocate's reply

On February 16, 2006, Consumer Advocate filed a reply to One Call's motion to dismiss. Consumer Advocate states the basis for the disputed charge in this matter is an alleged phone call and 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-06-13.

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 January 17, 2006, is granted. File C-05-237 is docketed for formal proceeding, identified as Docket No. FCU-06-13.

2. The motion to dismiss filed in Docket No. FCU-06-13 by One Call Communications, Inc., on February 6, 2006, is denied.

3. Pursuant to Iowa Code § 17A.11(1)(b) and 199 IAC 7.3, Docket No. FCU-06-13 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 21st day of February, 2006.