

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  OFFICE OF CONSUMER ADVOCATE,  Complainant,  vs.  ONE CALL COMMUNICATIONS, INC.,  Respondent.	DOCKET NOS. FCU-04-54 FCU-04-63 FCU-04-64 FCU-05-1 FCU-05-3 FCU-05-8 FCU-05-12 FCU-05-15 FCU-05-24 FCU-05-25 FCU-05-43 FCU-05-45 FCU-05-74 FCU-06-13
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**ORDER DENYING REQUEST FOR INTERLOCUTORY REVIEW**

(Issued March 31, 2006)

On March 27, 2006, pursuant to 199 IAC 7.25, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a request for interlocutory review of an order of the Utilities Board's (Board) administrative law judge (ALJ) dated March 20, 2006, and a request for expedited consideration.

**I. BACKGROUND**

Consumer Advocate is seeking civil penalties against One Call Communications, Inc. (One Call), in 14 dockets assigned to the Board's ALJ. On February 24, 2006, One Call filed a motion to stay these proceedings. One Call explained that it filed a request for declaratory ruling and injunctive relief against the

Board in federal district court on February 23, 2006. In that suit, One Call alleges the Board lacks jurisdiction over complaints involving interstate and international calls and calls to an Internet service provider (ISP), which are the subject of these proceedings. One Call asked the ALJ to stay these proceedings pending resolution of the federal district court case, arguing that a stay is necessary to protect its rights asserted in the federal case and to avoid rendering the federal suit ineffectual. Consumer Advocate filed its resistance to the motion for stay on March 10, 2006.

## **II. ALJ's ORDER**

In an order dated March 20, 2006, the ALJ considered the motion for stay of agency action. The ALJ concluded that the parties had not correctly analyzed the question of whether a stay should be granted and directed them to brief that issue using the principles stated in Iowa Code § 17A.19(5)(c), previous Board orders cited in the ALJ's order, and any other relevant authority. The ALJ ordered the parties to submit the briefs on or before April 7, 2006.

The ALJ's order also discussed several other issues, procedural matters, and pending motions, the nature and status of which are explained in the order. The ALJ stated that she would take no action with respect to certain motions until after ruling on One Call's motion to stay.

### **III. CONSUMER ADVOCATE'S REQUEST FOR INTERLOCUTORY REVIEW**

In its request for interlocutory review, the Consumer Advocate asserts that by deferring action on certain matters until after ruling on the motion to stay, the ALJ effectively grants the stay requested by One Call, and that granting the stay was erroneous and should be reversed. Consumer Advocate asserts the issues which the ALJ requests the parties to brief have already been briefed by the parties in federal court, although Consumer Advocate acknowledges that the ALJ may not have had the benefit of seeing the briefs submitted in the federal action. Consumer Advocate asserts the public interest is served by moving the proceedings forward and asks for an early order from the Board vacating the additional briefing due on April 7, 2006. Consumer Advocate asks the Board to vacate the stay, or to direct the ALJ to vacate the stay, and to restore the proceedings to the position they would have been in if the stay had not been granted.

### **IV. ANALYSIS AND DISCUSSION**

It is within the Board's discretion whether it should entertain interlocutory appeals from an order issued by an ALJ. The Board has stated that it does not want to encourage the filing of interlocutory appeals, but understands that certain situations require intervention to serve the interests of justice. Re: Office of Consumer Advocate v. Qwest Corporation and MCI WorldCom Communications, Inc., Docket No. FCU-02-5, "Order Affirming Administrative Law Judge Decision and Denying Request for Hearing," issued September 13, 2002.

Rule 199 IAC 7.25 provides that upon written request of a party or on its own motion, the Board may review an interlocutory order of the presiding officer. In determining whether to review an interlocutory order, the Board may consider the extent to which granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of the interlocutory order by the Board at the time it reviews the proposed decision would provide an adequate remedy.

The Board has considered these factors and concludes that it will not grant Consumer Advocate's request for interlocutory review of the ALJ's order. Granting Consumer Advocate's request would not expedite final resolution of these proceedings in any meaningful way. Having assigned these cases to the ALJ, the Board is reluctant to interfere with the proceedings absent a compelling reason to do so, and the Consumer Advocate has failed to identify such a reason. The Board shares Consumer Advocate's concern about moving the proceedings forward toward completion, and trusts that the ALJ will move as rapidly as the parties themselves will allow to conclude these proceedings.

The Board notes Consumer Advocate's objection to what it asserts is duplicative briefing of the issues. Because the Board is not granting Consumer Advocate's request for interlocutory review, the Board neither endorses nor questions the ALJ's decision to ask for the briefs. However, the Board suggests that if the parties have already briefed the issues for the court, they could request that the ALJ take official notice of the briefs pursuant to Iowa Code §§ 17A.12 and 17A.14 and file copies with the Board for the ALJ's consideration.

As of the date of this order, the Board has not received a response from One Call to Consumer Advocate's motion for interlocutory review. In the interest of expediency, as requested by Consumer Advocate, the Board will not wait for a reply from One Call before issuing this order, but will consider any objections One Call may wish to raise to this ruling after the order is issued.

**V. ORDERING CLAUSE**

**IT IS THEREFORE ORDERED:**

The request for interlocutory review of the administrative law judge's "Order Regarding Motions and Regarding Board Order Assigning Docket No. FCU-06-13" issued March 20, 2006, filed by the Consumer Advocate Division of the Department of Justice on March 27, 2006, is denied.

**UTILITIES BOARD**

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

Dated at Des Moines, Iowa, this 31<sup>st</sup> day of March, 2006.