

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;
TF-05-121
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On March 28, 2006, the Consumer Advocate Division of the Iowa Department of Justice (Consumer Advocate) filed a response to One Call's motion. Consumer Advocate argues the direct assessment is within the Board's discretion under Iowa Code § 476.10 and is appropriate because One Call has increased the burdens on Consumer Advocate and the Board by refusing to comply with its discovery obligations in these proceedings. Consumer Advocate argues that the fact that there are pending legal issues is no reason to invalidate the direct assessment. Consumer Advocate argues that the Legislature would not have authorized the Board to make assessments during the progress of a case if the question of assessment depended on the final outcome of a case.

The Board has considered One Call's request and Consumer Advocate's response and determines that, based on the facts of this case, it is appropriate to grant One Call temporary relief from payment of that portion of the direct assessment dated January 31, 2006, Invoice No. 19351, and any further direct assessments related to the complaint proceedings, Docket Nos. FCU-04-54 *et al.* The Board recognizes that it has discretion to assess parties directly throughout a proceeding pursuant to Iowa Code § 476.10 and that its ability to make direct assessments does not depend on the final outcome of a case. The Board's rules at 199 IAC 17.4(4) clarify how the Board exercises that discretion and provide that in determining whether to make a direct assessment, the Board will consider, among other factors,

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the nature of the proceeding and other factors deemed appropriate by the Board in a particular case. Here, One Call has asserted that complaints involving the types of calls at issue in these proceedings are not within the Board's jurisdiction. The Board believes that the question of whether it has jurisdiction over a particular type of complaint may be appropriate for consideration in determining whether to make a direct assessment in a particular case and will grant One Call's request for relief on a temporary basis. The Board has not yet ruled on the question of whether it has jurisdiction over these proceedings, nor has an answer been provided by the federal district court. Until that question is resolved, the Board will not require payment of assessments in these dockets, although it will continue to send assessment notices for accounting purposes. When the question of the Board's jurisdiction over the types of calls involved in these complaints is resolved, the Board will reconsider whether One Call must pay the direct assessments for the costs of these proceedings pursuant to Iowa Code § 476.10 and 199 IAC 17.4(4). The Board will then notify One Call whether it must pay the assessments.

In its motion, One Call states it received a direct assessment of costs in Docket Nos. FCU-04-54 *et al.* and TF-05-121. This order delaying payment of the direct assessment of costs applies only to Docket Nos. FCU-04-54 *et al.*, not to costs associated with TF-05-121. The Board's records show that the costs associated with

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TF-05-121 total \$160.63. Payment of the assessment for that amount is not delayed
by this order.

IT IS THEREFORE ORDERED:

Payment of direct assessments to One Call Communications, Inc., for costs in
Board 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, and FCU-05-45
is delayed until further action of the Board.

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 12th day of April, 2006.