

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
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ORDER REGARDING MOTION TO COMPEL

(Issued April 27, 2006)

On February 15, 2006, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a supplement to its motion to compel discovery in this proceeding with the Utilities Board (Board). The Consumer Advocate requested an order requiring One Call Communications, Inc. (One Call) to respond to data request numbers 102 through 108 by a date certain in the immediate future. The Consumer Advocate argued the data requests seek follow-up information regarding certain of the information contained in One Call's financial statements, and the information is relevant, or at least reasonably calculated to lead to the discovery of relevant information, on the issues of "whether One Call has been playing some role in the apparent scam, whether it has profited from the apparent scam, and whether it has an ability to bring its own allegedly unauthorized charges to a halt."

On February 24, 2006, One Call filed a motion to stay these proceedings. One Call did not directly respond to the motion to compel. On March 10, 2006, the Consumer Advocate filed a resistance to the motion to stay. On March 17, 2006, One Call filed a reply to the Consumer Advocate's resistance.

On March 20, 2006, the undersigned issued an order that, among other things, stated that no action would be taken on the Consumer Advocate's motion to compel until after ruling on the motion for stay. The order also required the parties to file briefs regarding the motion to stay. On April 25, 2006, the undersigned issued an order denying the motion to stay.

Discovery procedures applicable in civil actions are available to the parties in contested cases before the Board. Iowa Code § 17A.13 (2005). "The rules providing for discovery and inspection shall be liberally construed and shall be enforced to provide the parties with access to all relevant facts. Discovery shall be conducted in good faith, and responses to discovery requests, however made, shall fairly address and meet the substance of the request." Iowa R. Civ. P. 1.501(2). "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party." Iowa R. Civ. P. 1.503(1). "As this rule makes clear, a party is entitled to discover any information that is not privileged and that is relevant to the subject matter of the lawsuit. [citation omitted.] Relevancy to the subject matter of the lawsuit is broader than relevancy to the precise issues in the pleadings because the rule allows discovery of inadmissible

information as long as it leads to the discovery of admissible evidence." Mediacom Iowa, LLC, v. City of Spencer, 682 N.W.2d 62, 66 (Iowa 2004).

Data request numbers 102 through 108 appear to meet the requirements of the relevant rules of civil procedure and appear to seek information relevant to the subject matter of this proceeding. However, One Call has not responded directly to the Consumer Advocate's motion to compel. It is not clear whether One Call has already provided part or all of the requested information. It is also not clear whether One Call has any objections to providing the requested information or the length of time it will need to provide the requested information.

Subrule 199 IAC 7.15(2) provides that unless otherwise ordered or agreed, data requests shall be either responded or objected to, with concisely stated grounds for relief, within seven days of receipt. For the purposes of this rule and this order, the date of receipt of data requests 102 through 108 is deemed to be May 1, 2006.

Parties have an obligation to work with each other in good faith to resolve discovery issues. 199 IAC 7.15(4); Iowa R. Civ. P. 1.501(2). If One Call has difficulty providing the required answers on or before May 8, 2006, it must notify the Consumer Advocate on or before May 8, 2006, and attempt to work out the difficulty. If One Call has an objection to any of the data requests, it must provide its objections to the Consumer Advocate on or before May 8, 2006. In either of these circumstances, both parties are required to act reasonably and negotiate in good faith in an attempt to resolve the situation. After negotiating in good faith, if the parties cannot resolve the situation, they may file an appropriate motion. 199 IAC 7.15(5).

IT IS THEREFORE ORDERED:

The parties are hereby ordered to comply with the requirements contained in
the body of this order.

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 27th day of April, 2006.