

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE, Complainant,</p> <p>vs.</p> <p>ONE CALL COMMUNICATIONS, INC., Respondent.</p>	<p>DOCKET NO. FCU-05-74</p>
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**AMENDED PROCEDURAL ORDER AND NOTICE OF HEARING
AND RULING ON MOTION TO COMPEL**

(Issued April 27, 2006)

On February 3, 2006, the undersigned administrative law judge issued a procedural order and notice of hearing setting the hearing in this case for April 20, 2006. On February 24, 2006, One Call Communications, Inc. (One Call), filed a motion with the Utilities Board (Board) to stay this proceeding and two others. The Consumer Advocate Division of the Department of Justice (Consumer Advocate) resisted the motion and One Call filed a reply to the resistance. In an order issued March 20, 2006, the parties were ordered to file briefs regarding the motion to stay.

On February 24, 2006, the Consumer Advocate filed a motion to compel, in which it requested that One Call be ordered to respond to data request numbers 1-13 by a date certain in the immediate future. One Call did not directly respond to the

motion to compel. In the March 20, 2006, order, the undersigned stated she would take no action with regard to the motion to compel until after ruling on the motion to stay.

On February 28, 2006, the Consumer Advocate filed prefiled direct testimony, a prehearing brief, and a request to change the hearing date in this proceeding. In the order issued March 20, 2006, the hearing set for April 20, 2006, was cancelled, and the hearing was not rescheduled pending issuance of an order regarding the motion to stay. The requirements that One Call file its prefiled testimony, exhibits and brief by March 24, 2006, and that the Consumer Advocate file its rebuttal by April 7, 2006, were suspended until further order.

On April 25, 2006, the undersigned issued an order denying the motion to stay. Therefore, a new procedural schedule and hearing date should be set for this proceeding. Since the parties have a number of cases between them pending before the Board, the undersigned will establish a more relaxed procedural schedule than would ordinarily be set. See Board Docket Nos. FCU-04-54 through FCU-05-45 and FCU-06-13.

MOTION TO COMPEL

In its motion to compel filed February 24, 2006, the Consumer Advocate stated it had sent data requests 1-13 to One Call on February 13, 2006. The Consumer Advocate further stated One Call had not provided the answers by the due date of February 20 and had not responded to the Consumer Advocate's email

messages regarding the data requests. The Consumer Advocate attached the data requests to the motion and stated they go to the heart of the case.

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 1-13 meet the requirements of the relevant rules of civil procedure and 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 1-13 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 15, 2006,¹ it must notify the Consumer Advocate on or before May 15, 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 15, 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:

1. On or before May 25, 2006, One Call must file prepared testimony and exhibits and a prehearing brief. One Call may refer to any document in the record,

¹ The May 15, 2006, date is intentionally set beyond the seven-day period in the rule due to the requirements of other pending cases before the Board involving these parties. See Board Docket Nos. FCU-04-54 through FCU-05-45 and FCU-06-13.

and does not need to refile exhibits already submitted in the informal complaint process and made a part of the record. In its prepared testimony and exhibits, One Call must address the issues discussed in the "Procedural Order and Notice of Hearing" issued February 3, 2006, support each of the allegations made in its response to the informal complaint and motion to dismiss, and file any other evidence not previously filed. One Call should use exhibit numbers 100 and following. In its prehearing brief, One Call must explain why it believes imposition of a civil penalty would not be appropriate and would not be in accordance with applicable law in this particular case.

2. If the Consumer Advocate or any intervenor is going to file prepared rebuttal testimony and exhibits or a rebuttal brief, it must do so on or before June 22, 2006.

3. If any party wishes to have a witness connected to the hearing by telephone conference call, the party must file written notification with the Board no later than June 22, 2006.

4. A hearing for the presentation of evidence and the cross-examination of witnesses will be held in Board Conference Room 3, 350 Maple Street, Des Moines, Iowa, on Thursday, July 6, 2006, commencing at 9:30 a.m. Each party must provide a copy of its prepared testimony and exhibits to the court reporter. Persons with disabilities requiring assistive services or devices to observe or participate should

contact the Board at 1-515-281-5256 no later than five business days prior to the hearing to request that appropriate arrangements be made.

5. The parties must comply with the requirements regarding data request numbers 1-13 contained in the body of this order.

6. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination will become part of the evidentiary record of these proceedings. Pursuant to 199 IAC 7.23(4)"d," the party making reference to the data request must file one original and three copies of the data request and response with the Executive Secretary of the Board at the earliest possible time.

7. Any person not currently a party who wishes to intervene in this case must meet the requirements for intervention in 199 IAC 7.13. The person must file a petition to intervene on or before 20 days following the date of issuance of this order, unless the petitioner has good cause for the late intervention. 199 IAC 7.13(1).

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.