

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,</p> <p style="text-align:center">Complainant,</p> <p style="text-align:center">vs.</p> <p>ONE CALL COMMUNICATIONS, INC.,</p> <p style="text-align:center">Respondent.</p>	<p style="text-align:center">DOCKET NO. FCU-06-13</p>
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ORDER DENYING REQUEST FOR INTERLOCUTORY REVIEW

(Issued May 18, 2006)

On May 5, 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 regarding a discovery motion issued on April 27, 2006, by the Utilities Board's (Board) administrative law judge (ALJ).

I. BACKGROUND

In this proceeding, Consumer Advocate is seeking a civil penalty against One Call Communications, Inc. (One Call), for an alleged cramming violation. In the informal proceeding, Board staff considered the complaint of a consumer who disputed charges billed by One Call for Internet Web access service the consumer denies authorizing. Consumer Advocate states it sent seven initial data requests to

One Call on February 16, 2006. In an order issued on February 21, 2006, the Board denied One Call's motion to dismiss, docketed the matter for formal proceeding, and assigned the case to its ALJ.

On February 23, 2006, One Call filed an action in federal district court alleging, in part, that the Board lacks jurisdiction over complaints involving calls to Internet service providers. On February 24, 2006, One Call filed with the Board a motion to stay this and other proceedings involving One Call pending resolution of the federal district court case.

On March 10, 2006, Consumer Advocate filed a motion to compel One Call to respond to its discovery requests. On March 20, 2006, the ALJ issued an order stating she would take no action on the motion to compel until after ruling on the motion for stay.

On April 24, 2006, the federal district court issued an order denying One Call's request for preliminary injunction and dismissing One Call's complaint. On April 25, 2006, the ALJ issued an order denying One Call's request for a stay.

II. ALJ'S ORDER

The ALJ addressed Consumer Advocate's motion to compel in her April 27, 2006, ruling. The ALJ reviewed Consumer Advocate's data requests and concluded that request numbers one through six meet the requirements of the relevant rules of civil procedure and seek information relevant to the subject matter of this proceeding.

The ALJ concluded that data request number seven appeared to have been

included by mistake and does not appear to relate to this case. The ALJ stated that if Consumer Advocate intended to include request number seven, it should redraft and resend the request so it is clear the request relates to issues in this docket.

III. CONSUMER ADVOCATE'S REQUEST FOR INTERLOCUTORY REVIEW

In its May 5, 2006, request for interlocutory review, Consumer Advocate states the issue presented for review is whether the ALJ's order erroneously denied Consumer Advocate's unresisted motion to compel a response to data request number seven. Consumer Advocate asks the Board to disapprove of the practice of denying unresisted motions. Consumer Advocate states data request number seven was not a mistake, intended for another case, or misdrafted, and asserts it is relevant to this proceeding.

Consumer Advocate argues granting its request for interlocutory review would expedite final resolution of this and future cases. Consumer Advocate asserts that review when the ALJ's proposed decision is entered would be unavailing because the issues raised here will be moot. One Call has not responded to Consumer Advocate's request for interlocutory review.

IV. ANALYSIS AND DISCUSSION

The Board has discretion regarding 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 may 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 Consumer Advocate's arguments and concludes it will not grant the request for interlocutory review of the ALJ's order. The Board finds this discovery dispute does not present the type of situation for which interlocutory review would be warranted. Granting the request would not expedite final resolution of this matter in any meaningful way. The ALJ's order already explains how Consumer Advocate should proceed if it wants One Call to respond to data request number seven. Any potential delay associated with clarifying and resubmitting the request does not justify interlocutory review.

Having assigned the case to the ALJ, the Board is reluctant to interfere with her administration of the matter. It is the ALJ's responsibility to preserve the record in this case and to oversee discovery and any related disputes between the parties.

The Board is confident that the ALJ will continue to direct the parties to cooperate in discovery and will take appropriate action in the event a party fails to do so. At this time, Board action is not necessary.

V. ORDERING CLAUSE

IT IS THEREFORE ORDERED:

The request filed May 5, 2006, by the Consumer Advocate Division of the Department of Justice for interlocutory review of the administrative law judge's "Procedural Order and Notice of Hearing and Ruling on Motion to Compel" issued in this docket on April 27, 2006, is denied.

UTILITIES BOARD

/s/ John R. Norris

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Curtis W. Stamp

Dated at Des Moines, Iowa, this 18th day of May, 2006.