STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, v. ILD TELECOMMUNICATIONS, INC., Respondent.	DOCKET NO. FCU-06-34

ORDER DOCKETING FOR FORMAL PROCEEDING, DENYING MOTION TO DISMISS, AND ASSIGNING TO ADMINISTRATIVE LAW JUDGE

(Issued July 7, 2006)

On March 31, 2006, pursuant to Iowa Code §§ 476.3 and 476.103, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition for a proceeding to consider a civil penalty for an alleged cramming violation committed by ILD Telecommunications, Inc. (ILD).

I. Informal complaint proceeding

In the informal proceeding, Board staff considered the complaint of Judy Monson, submitted on February 9, 2006, on behalf of her parents, Mr. and Mrs. Wayne Reetz of Rockford, Iowa, disputing charges from ILD on her parents' local telephone bill for a collect call her parents deny receiving or accepting. Ms. Monson

explained that ILD offered to credit the disputed charges in full only after several contacts with the company.

Staff notes indicate that staff called the number identified on the telephone bill as the number from which the collect call was made and learned the number was for a telephone for patient use at the Floyd County Hospital. Board staff relayed this information to Mr. Reetz who replied he did not know who would have called, he did not receive a call identified as a collect call, and that neither he nor his wife would have accepted a collect call.

Board staff identified the matter as C-06-33 and, on February 10, 2006, forwarded the complaint to ILD for response. In its response dated February 27, 2006, ILD stated the disputed charges were for a collect call that originated from a pay telephone at Floyd County Memorial Hospital in Charles City, Iowa, and that in order for collect calls to be billed to a consumer's telephone number, someone at that number has to accept the charges by saying "yes" or by pressing the designated button on the telephone. ILD stated it had credited the disputed charges. In a subsequent response to questions from Board staff, ILD submitted copies of internal records relating to the disputed call and stated it does not keep recordings of calls.

On March 20, 2006, staff issued a proposed resolution concluding ILD provided sufficient documentation to show that cramming did not occur in this case.

II. Consumer Advocate's petition

In its March 31, 2006, petition for proceeding to consider civil penalty, Consumer Advocate asserts the proposed resolution is incorrect as there is nothing in the record to justify crediting ILD's response rather than the consumer's complaint, noting that a company's assertion that a call cannot be billed unless a consumer accepts by pressing a designated button or saying "yes" does not make the assertion true. Consumer Advocate argues a civil penalty is necessary to ensure compliance and deter future violations.

III. ILD's motion to dismiss

In its May 5, 2006, motion to dismiss for lack of subject matter jurisdiction, ILD asserts Iowa's law against cramming does not apply to disputes over whether a collect call was accepted; there is no reason to overturn the proposed resolution of Board staff finding cramming did not occur; a collect call is not the "addition or deletion of a telecommunications service" under Iowa law and thus is not cramming; and it is bad public policy for Consumer Advocate to pursue costly administrative proceedings for a dispute over a collect call. ILD argues the call records it submitted to the Board verify the collect call was accepted; the verification procedures in Iowa law do not apply to collect calls; and that by approving ILD's tariff, the Board approved the verification procedures contained therein.

IV. Consumer Advocate's reply

On May 16, 2006, Consumer Advocate filed a reply to ILD's motion to dismiss. Consumer Advocate asserts collect calls, if not authorized by the consumer, for which separate charges are made to a consumer's account are within the prohibition of cramming. Consumer Advocate argues that for purposes of a motion to dismiss, the allegations of its petition are assumed to be true, and the petition alleges the consumer did not accept the collect call.

In response to ILD's argument that the Board's cramming rules do not apply to collect calls, Consumer Advocate argues the Board rejected the notion of authorization by use when it adopted the rules against cramming. Consumer Advocate asserts ILD's call records do not verify the disputed call was accepted. Consumer Advocate argues the filed rate or tariff doctrine does not legitimize unauthorized charges, does not prohibit a challenge to the alleged facts upon which application of the doctrine depends, and does not immunize regulated entities from laws governing business. Finally, Consumer Advocate argues that ILD's public policy argument regarding Consumer Advocate's prosecution of cases alleging slamming and cramming is for the Legislature, not the Board or the courts.

V. ILD's reply

On May 23, 2006, ILD filed a reply to Consumer Advocate's objection to the motion to dismiss. ILD restates its argument that disputes over acceptance of collect calls are not covered by the statute because collect calls are not the "addition of a

new service" under the statute since local telephone service already includes the opportunity to receive collect calls. ILD characterizes disputes over collect calls as "mundane" and suggests Consumer Advocate seeks to rewrite the law against cramming to have it apply to any disputed charge on a phone bill.

ILD restates its argument that the verification procedures do not make sense when applied to disputes over acceptance of collect calls. ILD argues Consumer Advocate ignores the purpose of the verification requirements and ignores the Board's discretionary power to refrain from granting the petition for proceeding to consider civil penalty. ILD restates its argument that having followed the verification procedures in its Board-approved tariff, ILD cannot now be found to have committed a cramming violation.

VI. Discussion

The Board has reviewed the record to date and finds there are reasonable grounds to warrant further investigation into this case. The Board will docket Consumer Advocate's petition for proceeding to consider a civil penalty, identified as Docket No. FCU-06-34. For purposes of ruling on ILD's motion to dismiss the petition, the Board takes the allegations of the petition as true under those limited circumstances. The petition states a claim that the charges for the disputed collect call were unauthorized and, if proven, that claim may justify the relief requested. The Board does not agree with ILD that a collect call cannot be considered the addition of a telecommunications service and thus not covered by the prohibition of

unauthorized changes in service. The Board agrees with Consumer Advocate that the filed tariff doctrine does not automatically preclude further investigation of this matter. The Board will therefore deny ILD's motion to dismiss Consumer Advocate's petition.

The Board will assign this case to its administrative law judge (ALJ) for further proceedings pursuant to Iowa Code § 17A.11(1)(b) and 199 IAC 7.3. The ALJ may take all appropriate action, which may include setting a hearing date, presiding at the hearing, and issuing a proposed decision.

The Board takes this opportunity to note that many cases involving similar fact patterns are filed with the Board and concluded with a settlement agreement. The Board encourages settlement of these disputes and has approved the settlement agreements. However, settlement of these disputes has prevented the Board from considering issues relating to the records submitted by companies, such as their sufficiency as proof that a disputed call or service actually took place, was authorized, or accepted. The Board believes it is appropriate to formally consider what these records actually prove and to determine the appropriate weight they should be given in cramming cases. Therefore, the Board is considering initiating a rule making proceeding for this purpose.

IT IS THEREFORE ORDERED:

1. The petition for proceeding to consider civil penalty filed by the Consumer Advocate Division of the Department of Justice in this docket on

March 31, 2006, is granted. File C-06-33 is docketed for formal proceeding, identified as Docket No. FCU-06-34.

2. The motion to dismiss filed in Docket No. FCU-06-34 by ILD Telecommunications, Inc., on May 5, 2006, is denied.

3. Pursuant to Iowa Code § 17A.11(1)(b) and 199 IAC 7.3, Docket No. FCU-06-34 is assigned to the Board's administrative law judge, Amy Christensen, for further proceedings. The administrative law judge shall have the authority provided under 199 IAC 7.3.

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 7th day of July, 2006.