

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,</p> <p style="padding-left: 40px;">Complainant,</p> <p style="padding-left: 40px;">vs.</p> <p>EVERCOM SYSTEMS, INC.,</p> <p style="padding-left: 40px;">Respondent.</p>	<p style="text-align:center">DOCKET NO. FCU-06-40</p>
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ORDER DOCKETING FOR FORMAL PROCEEDING, DENYING MOTION TO DISMISS, AND ASSIGNING TO ADMINISTRATIVE LAW JUDGE

(Issued July 13, 2006)

On May 2, 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 Evercom Systems, Inc. (Evercom).

I. Informal complaint proceeding

On March 30, 2006, Mr. Ken Silver of Des Moines, Iowa, submitted a complaint to the Board regarding unauthorized charges totaling \$75 on his local telephone bill for collect calls. Mr. Silver stated the charges were from a company identified as Correctional Billing Services. Mr. Silver stated he sent Correctional Billing Services a fax explaining that all incoming calls to the telephone number in

question come in through a central operator and the operator did not accept the collect calls. Mr. Silver stated the fax was never answered and that when he called the company he was put on hold and cut off.

Board staff identified the matter as C-06-84 and, on March 31, 2006, forwarded the complaint to Correctional Billing Services, a division of Evercom, for response. The Board received Evercom's response on April 17, 2006. Evercom stated Mr. Silver's complaint concerned calls made from a detention center in Bethany, Missouri, and explained that Evercom is the telephone service provider that handles inmate calls for the detention center. Evercom stated that it uses an automated operator system which requires a positive action, such as pressing a designated number on the telephone keypad, in order for the collect call to be accepted. Evercom stated in this case, however, it determined that the charges to Mr. Silver resulted from fraudulent activity by a third party. Evercom credited the collect call charges and placed a block on Mr. Silver's home telephone number to prevent future calls from any confinement facilities served by Evercom.

On April 19, 2006, staff issued a proposed resolution noting the credit issued by Evercom and the block placed on Mr. Silver's telephone number. Staff referred to an explanation provided by Evercom of how an inmate can make a collect call without having the charges being billed to the appropriate party. Staff made no finding about whether Evercom violated a Board rule.

II. Consumer Advocate's petition

In its May 2, 2006, petition for proceeding to consider a civil penalty, Consumer Advocate argues the proposed resolution erroneously fails to conclude that the unauthorized charges are in violation of Iowa law and Board rule. Consumer Advocate contends investigation is needed because Evercom has not identified the third party that engaged in the fraudulent activity, has not explained what, if anything, Evercom has done to prevent these kind of charges from recurring, and because it is not clear whether Evercom has played a role in or profited from the alleged scam.

Consumer Advocate argues a civil penalty is necessary because a credit alone will not stop the unlawful practice of cramming. Consumer Advocate states it appears that Evercom's customer services in this case were unresponsive and suggests that should be considered in determining the amount of a penalty.

III. Evercom's response

On June 12, 2006, the Board received Evercom's response to Consumer Advocate's petition for proceeding to consider civil penalty. Evercom explains it provides inmate calling services to confinement facilities, including some in Iowa and neighboring states. Evercom states that collect calls from inmates must be affirmatively accepted by the called party before being completed and billed. Evercom states that despite the system design and monitoring of inmate calling, fraud can occur. As examples of fraudulently placed and billed inmate calls,

Evercom describes impermissible remote call forwarding, subscriber fraud through identity theft, and secondary dial tone.

Evercom states that in response to Mr. Silver's complaint, it investigated the calls and sought to obtain the recordings of the calls but found they had been purged. Evercom states it checked the equipment at the facility in question to confirm it was operating properly and found no defect. Evercom states it was unable to determine who accepted the collect calls billed to Mr. Silver and concluded that the calls were likely the result of fraud by an inmate. Evercom states it fully credited the charges and placed a block on Mr. Silver's number to prevent future calling by inmates.

Evercom concedes its initial response to Mr. Silver's complaint may have been slow and inefficient, but argues it did not engage in cramming when it billed Mr. Silver for the interstate collect calls fraudulently made by an inmate. Evercom asserts that Consumer Advocate's application of Iowa Code § 476.103 to the unique context of inmate calling is overreaching. Evercom suggests that the primary purpose of Iowa Code § 476.103 is to ensure that local and intrastate telecommunications service providers do not engage in schemes to make unauthorized changes to a customer's selected carrier or to add charges to the customer's bill for a service the customer did not order. Evercom argues the facts of this case do not reflect any such scheme on its part. Evercom asks the Board to deny Consumer Advocate's petition.

IV. Consumer Advocate's reply

On June 28, 2006, the Board received Consumer Advocate's reply to Evercom's response. Consumer Advocate argues nothing in the Board's rule exempts collect calls from the prohibition on cramming and that charges for collect calls are legitimate only when the services are initiated or requested by the customer. Consumer Advocate argues that the reach of Iowa Code § 476.103 is not limited to local or intrastate calls, nor is there an exemption for calls allegedly originating from a confinement facility.

Consumer Advocate argues that Evercom's speculation about the cause of the billing heightens the need for further investigation. Consumer Advocate states it will withdraw its petition if and when investigation shows the violations were innocent on Evercom's part and beyond its control.

Consumer Advocate observes that Evercom failed to resolve this customer complaint without involvement of the Board, contrary to Iowa Code § 476.103(3)(e), and that Evercom's slow response to the initial complaint may have impaired its ability to determine the cause of the fraud. Consumer Advocate argues that a civil penalty would serve the remedial purpose of the statute by encouraging Evercom to investigate complaints more promptly and to work with facilities to retain call recordings long enough to assist in policing inmate fraud.

V. Discussion

The Board has reviewed the record to date and finds there are reasonable grounds to warrant further investigation into this case. The Board agrees with Consumer Advocate that further investigation may clarify Evercom's role in billing for fraudulent calls made by inmates, the details of the scheme inmates may be using to make collect calls that are billed to someone other than the person actually receiving the call, and the extent to which Evercom may be able to prevent this kind of fraudulent billing in the future. The Board will docket Consumer Advocate's petition for proceeding to consider a civil penalty, identified as Docket No. FCU-06-40.

The Board reads Evercom's request to deny Consumer Advocate's petition as a motion to dismiss and for that purpose 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 Evercom that the statutory prohibition of unauthorized changes in services does not reach collect calls or calls made by inmates from confinement facilities. The Board will therefore deny Evercom's request to deny 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.

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 May 2, 2006, is granted. File C-06-84 is docketed for formal proceeding, identified as Docket No. FCU-06-40.
2. The motion to dismiss filed in Docket No. FCU-06-40 by Evercom Systems, Inc., on June 12, 2006, is denied.
3. Pursuant to Iowa Code § 17A.11(1)(b) and 199 IAC 7.3, Docket No. FCU-06-40 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 13th day of July, 2006.