

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="text-align:center">v.</p> <p>ILD TELECOMMUNICATIONS, INC.,</p> <p style="padding-left: 40px;">Respondent.</p>	<p style="text-align:center">DOCKET NO. FCU-06-39</p>
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**ORDER DOCKETING FOR FORMAL PROCEEDING, DENYING MOTION TO  
DISMISS, AND ASSIGNING TO ADMINISTRATIVE LAW JUDGE**

(Issued July 17, 2006)

On April 25, 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 Teleservices, Inc., a/k/a ILD Telecommunications, Inc. (ILD).

**I. Informal complaint proceeding**

In the informal proceeding, Board staff considered the complaint of Mr. Leo Cleeton of Des Moines, Iowa, disputing a charge of \$13.05 from ILD on his local telephone bill for a collect long distance call. Mr. Cleeton stated he could not identify the call and that it was not approved or received by any member of his household.

Board staff identified the matter as C-06-85 and, on April 4, 2006, forwarded the complaint to ILD for response. In its response dated April 11, 2006, ILD stated the disputed charge was for a collect call originating from Mexico and that in order for collect calls to be billed to a consumer's telephone number, someone at that number has to accept the charge by saying "yes" or by pressing the designated button on the telephone. ILD stated it had credited the disputed charge and placed a block on the number to prevent future charges.

On April 14, 2006, staff issued a proposed resolution concluding that ILD did not provide proof that Mr. Cleeton authorized ILD to bill the charge on his local telephone bill. Staff found ILD violated the Board's rule against cramming.

## **II. Consumer Advocate's petition**

In its April 25, 2006, petition for proceeding to consider civil penalty, Consumer Advocate asserts the proposed resolution should be augmented with a civil penalty because a credit alone will not stop the unlawful practice of cramming. Consumer Advocate argues a civil penalty is necessary to ensure compliance and deter future violations.

## **III. ILD's motion to dismiss**

In its June 8, 2006, motion to dismiss for lack of subject matter jurisdiction, ILD asks the Board to determine its jurisdiction over Consumer Advocate's petition as a threshold matter before docketing the petition for formal proceeding. ILD asserts the Board does not have jurisdiction over disputes involving interstate or international

calls. ILD contends that questions concerning duties and liabilities of telephone companies regarding interstate and international calls and related charges are governed solely by federal law. In support of its assertion that the proper forum for disputes over charges for interstate or international calls is the Federal Communications Commission (FCC), ILD attaches a consumer fact sheet prepared by the FCC.

ILD argues Consumer Advocate's petition should be dismissed because Iowa's anti-cramming statute does not apply to disputes over acceptance of collect calls, and such disputes are not "cramming" as defined in 199 IAC 22.23(1). ILD states the verification procedures in the Board's rules do not make sense in the context of collect calls. Further, ILD argues that billing for a single collect call cannot be a cram because it is not the addition of a new service under the statute since local telephone service already includes the opportunity to receive collect calls.

#### **IV. Consumer Advocate's reply**

On July 6, 2006, Consumer Advocate filed a reply to ILD's motion to dismiss. Consumer Advocate disputes ILD's assertion that issues relating to interstate and international calls are governed solely by federal law and argues that Iowa Code § 476.103 extends to slamming and cramming complaints without limitation. Consumer Advocate states that ILD's argument is one of federal preemption and asserts there is no basis to conclude that federal law preempts state law in this context. Consumer Advocate cites numerous authorities for its position that there is

no provision in federal law that expressly preempts state law against slamming and cramming, Congress has not chosen to occupy this particular field, and there is no actual conflict between state and federal law.

**V. Discussion**

ILD asks the Board to determine its jurisdiction over Consumer Advocate's petition as a threshold matter before docketing the petition for formal proceeding. The Board's initial determination is that it has jurisdiction over Consumer Advocate's petition for a proceeding to consider a civil penalty for the cramming violation alleged therein. As the federal district court for the Southern District of Iowa recently concluded, "[W]hile it is certainly true that the FCC has jurisdiction to take consumer complaints about cramming, . . . it does not necessarily follow that the states may not also investigate such complaints." OCMC v. Norris, 428 F.Supp.2d 930, 938 (S.D. Iowa 2006).

Consumer Advocate alleges that ILD placed an unauthorized charge on a customer's local telephone bill for a collect call from Mexico the customer denies accepting. The Board does not agree with ILD that Iowa's anti-cramming statute does not apply to disputes over acceptance of collect calls. The disputed charge at issue in this case, if unauthorized, falls squarely within Iowa Code § 476.103's prohibition of unauthorized changes in telecommunications service and the Board may properly docket the matter to allow further investigation and hearing. The Board

finds reasonable grounds for further investigation and will docket Consumer Advocate's petition for formal proceeding, identified as Docket No. FCU-06-39.

The Board's initial determination that it has jurisdiction is based on the limited record and argument presented this far and does not foreclose additional argument on the issue of federal preemption or any other issue a party wishes to submit for the Board's consideration. As the court observed in OCMC v. Norris, "[T]here is no reason to think that the Iowa Utilities Board is not equipped to consider . . . [a party's] federal preemption claims." Id. at 941. If ILD has additional argument to present, the Board will consider it.

For purposes of ruling on ILD's motion to dismiss Consumer Advocate's petition, the Board takes the allegations of the petition as true under these limited circumstances. The petition states a claim that the disputed charge is on a bill for local service and was unauthorized. If proven, that claim may justify the relief requested. 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) (2005) 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 April 25, 2006, is granted. File C-06-85 is docketed for formal proceeding, identified as Docket No. FCU-06-39.

2. The motion to dismiss filed in Docket No. FCU-06-39 by ILD Telecommunications, Inc., on June 8, 2006, is denied.

3. Pursuant to Iowa Code § 17A.11(1)(b) and 199 IAC 7.3, Docket No. FCU-06-39 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 17th day of July, 2006.