

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,</p> <p style="padding-left: 100px;">Complainant,</p> <p style="padding-left: 100px;">vs.</p> <p>VOICEMAIL SERVICES,</p> <p style="padding-left: 100px;">Respondent.</p>	<p style="text-align:right">DOCKET NO. FCU-07-1 (C-06-226)</p>
---	--

**ORDER DOCKETING FOR FORMAL PROCEEDING AND
SETTING DEADLINE FOR RESPONSE**

(Issued January 25, 2007)

On December 6, 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 Voicemail Services. Based upon the record assembled in the informal complaint proceeding, the events to date can be summarized as follows:

On October 11, 2006, the Board received a complaint from Richard Wilson of Davenport, Iowa, alleging that unauthorized charges from ESBI appeared on the bill from his local telephone service provider, Qwest Corporation (Qwest). Board staff

identified the matter as C-06-226 and, on October 13, 2006, forwarded the complaint to ESBI for response.

The Board received a response from ESBI on October 24, 2006, in which ESBI stated that the disputed charges were submitted on behalf of Voicemail Services. On October 25, 2006, the Board received a second response from ESBI which included what were described as "authorization materials" submitted by Voicemail Services. ESBI also stated that Voicemail Services had issued a full credit of \$29.90 plus tax and canceled its services. The "authorization materials" were printouts of Web site pages, including an on-line registration for \$1,000 in grocery coupons and toll-free voicemail service for a monthly fee of \$14.95 and personal identification information for Linda Wilson. Board staff forwarded ESBI's response to Mr. Wilson, asking Linda Wilson to review the response and authorization materials. Neither Mr. Wilson nor Linda Wilson responded to staff's inquiry.

On November 22, 2006, Board staff issued a proposed resolution concluding that Voicemail Services and ESBI violated the Board's rule that governs the form and content of a letter of agency (LOA),¹ explaining that the rule provides that a LOA used to obtain the consumer's authorization shall not be combined on the same document with inducements of any kind. Staff concluded that Voicemail Services improperly combined the LOA with an inducement and did not comply with requirements regarding type size and readability.

¹ 199 IAC 22.23(2)"b".

In its petition for proceeding to consider civil penalty, Consumer Advocate states that Linda Wilson denies having seen the Web page provided by Voicemail Services, denies ordering the service, and is willing to testify at hearing. Consumer Advocate argues a civil penalty should be assessed to secure future compliance with the statute. Voicemail Services did not respond to Consumer Advocate's petition.

The Board has reviewed the record to date and concludes there are reasonable grounds for further investigation of this matter. Even without the consumer's reply to the alleged authorization materials submitted by the company, those materials were inadequate to show the consumer authorized the charges in question because the form of the LOA did not comply with Board rules. The Board finds that further investigation of Voicemail Services' online marketing of its services and the means by which it secures consumer authorization of charges for its service is appropriate. The Board will grant Consumer Advocate's petition for proceeding to consider a civil penalty, but will delay establishing a procedural schedule to allow Voicemail Services an opportunity to respond to Consumer Advocate's petition.

IT IS THEREFORE ORDERED:

1. The "Petition for Proceeding to Consider Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on December 6, 2006, is granted. File C-06-226 is docketed for formal proceeding, identified as Docket No. FCU-07-1.

2. Voicemail Services is directed to file a response to Consumer Advocate's petition within 30 days of the date of this order.

UTILITIES BOARD

/s/ John R. Norris

/s/ Curtis W. Stamp

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 25th day of January, 2007.