

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>MCI COMMUNICATIONS OF IOWA, INC., AND FRONTIER COMMUNICATIONS OF IOWA,</p> <p style="text-align:center">Respondents.</p>	<p style="text-align:center">DOCKET NO. C-06-281</p>
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**ORDER DENYING REQUEST FOR PROCEEDING
TO CONSIDER CIVIL PENALTY**

(Issued February 16, 2007)

On December 21, 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 a slamming or cramming violation alleged to have been committed by MCI Communications of Iowa, Inc. (MCI), and Frontier Communications of Iowa (Frontier).

I. Informal complaint proceedings

Based on the record assembled in the informal complaint proceeding, the events to date can be summarized as follows:

On November 16, 2006, the Board received a complaint from Katina Costerisan of Denison, Iowa, disputing charges totaling \$988.50 on the bill from her

local telephone service provider, Frontier, for long distance calls carried by MCI. The calls were charged at a calling rate higher than the rate for her long distance plan with Frontier. The telephone bill attached to the complaint showed that MCI charged varying rates for long distance calls, some as high as \$2.23 per minute.

Board staff identified the complaint as C-06-281 and, on November 21, 2006, forwarded the complaint to Frontier and MCI for response. MCI responded to the complaint with a letter dated December 4, 2006, explaining that Frontier is a reseller of services provided by MCI's Network Services (MNS), a division of MCI that provides services for other long distance companies to sell directly to end users. MCI explained that reseller companies use MCI's network but sell their own products and services, set their own rates, and handle their own marketing. MCI stated that MNS did not solicit the service for this customer's telephone number.

MCI stated that the customer's long distance service was connected to Frontier on August 29, 2006, and that resellers have up to 14 days to add telephone numbers to their resale accounts before the telephone number will bill what MCI identifies as "random" charges.¹ MCI explained that from August 29 to September 18, 2006, the customer was billed at these rates because MCI had not been notified that the customer's telephone number was to be added to a resale account. MCI stated that on September 27, 2006, MNS received confirmation from Frontier that Ms. Costerisan's telephone number was to be added to Frontier's resale account. MCI

¹ The Board assumes that MCI uses the term "random" to describe rates billed to unassigned or miscellaneous customers.

noted it issued a full credit of \$1,009.59, which was sent back to Frontier on November 28, 2006. MCI also stated that the customer's long distance carrier was changed to MNS because MCI provides the underlying network as a service to Frontier, but because MCI did not directly solicit the change in service, questions about the authorization for the change should be directed to Frontier.

The Board received a response from Frontier on December 6, 2006, in which Frontier explained that its investigation showed that the customer had been set up in Frontier's switch records incorrectly, causing her long distance calls to be billed incorrectly from August 29 to September 27, 2006. Frontier stated it removed \$988.55 in charges from the customer's bill and was attempting to contact the customer to explain its resolution of her complaint.

On December 7, 2006, staff issued a proposed resolution concluding that no slamming occurred in this matter. Staff found that the charges from MCI were the result of Frontier's incorrect processing of the customer's service order.

II. Consumer Advocate's petition for proceeding to consider civil penalty

In its December 21, 2006, petition, Consumer Advocate asserts the proposed resolution is incorrect. According to Consumer Advocate, the fact that Frontier incorrectly processed this customer's order does not justify MCI becoming her long distance carrier or billing her for calls. Consumer Advocate urges the Board to allow further investigation of this matter to determine whether there is some other legitimate and authorized basis for the disputed charges. Consumer Advocate notes, among several other issues needing further investigation, that the nature of Frontier's

error is not explained in the file, MCI does not identify any basis for its claim that reseller companies have 14 days in which to add telephone numbers to their resale accounts before MNS default charges will apply, and MCI does not explain how the reseller's failure to add a number to its resale account gives MCI any authority to bill the customer. Consumer Advocate argues further investigation is needed to allow the Board to determine more precisely whether either or both companies violated Iowa Code § 476.103 and, if so, whether a civil penalty should be assessed.

Consumer Advocate also notes that the customer stated that when she contacted MCI's billing agent identified on the bill to ask about the charges, she was told she had to pay the bill, putting her in the position of having to go before the Board to resolve the complaint, contrary to the purpose of the statute of securing resolution of disputes without the involvement of the Board and the prompt reversal of unauthorized charges.

III. MCI's motion to deny or dismiss

On January 11, 2007, MCI filed with the Board a motion to deny or dismiss the petition for proceeding to consider civil penalty. MCI argues that the petition should be denied because the facts alleged in the petition, even if true, do not constitute a slam or a cram and, because MCI had no relationship with this customer, MCI could not have slammed or crammed the customer. MCI states there is no dispute that the customer authorized Frontier to be her service provider, nor is there a dispute that the individual calls were authorized. MCI states the only dispute in this case relates to rates charged for certain calls and argues that the Board's slamming and

cramming rules do not cover billing or rate disputes where no new carrier, product, or service is added.

MCI argues there could be no slam in this case because its only customer was Frontier and MCI did not take any actions to change Ms. Costerisan's service to be an MCI customer. Likewise, because Ms. Costerisan was never MCI's customer, there could be no cram because MCI could not have added products or services to Ms. Costerisan's account. MCI states it has no way of knowing whether a call that appears on its network does so incorrectly and that it carried traffic for Frontier in the manner specified by Frontier's switch. MCI states further that, despite having carried the calls, it recouped \$988.50 in charges.

MCI states that Consumer Advocate had no justification for naming MCI in the petition for proceeding to consider civil penalty. MCI asserts the claims brought by Consumer Advocate against MCI appear to be frivolous and asks the Board to consider sanctions against Consumer Advocate or to allow MCI to recover the costs of its motion to deny or dismiss.

IV. Frontier's response

On January 12, 2007, the Board received a response from Frontier in which Frontier acknowledges that the customer was inconvenienced by its unintended error associated with processing the customer's service order. Frontier states it credited Ms. Costerisan's long distance charges from August 29 to September 27, 2006, shortly after it learned of the error.

Frontier explains its records show that Ms. Costerisan ordered local service with Frontier, requested an installation date of August 29, 2006, and also selected Frontier as her long distance carrier. Frontier explained that it is a reseller of long distance services and uses MCI as its underlying wholesale long distance carrier. Frontier explained that when a customer orders its long distance service, the order is typically entered into Frontier's service order and billing system. According to Frontier, that system sends a message to Frontier's end office switch to add a long distance carrier code to the customer's line that directs the calls to Frontier's long distance carrier. The system also sends data to an MCI data base telling MCI that calls placed by the customer's phone number are for Frontier, so that MCI knows to send the long distance records to Frontier for rating and billing.

Frontier states that in this case, an issue arose as to the customer's real estate lease and access to the property after the service order was placed and before the date on which service was to be activated, and it appears that the service activation date was changed. Frontier explains that the issue about the lease was resolved and the original activation date was restored, but the service order only made it halfway through the system, so that the customer's order was not properly submitted to MCI's data base to indicate long distance calls were to be billed by Frontier. Thus, because the customer's telephone number was not in MCI's data base, MCI billed for the calls at its casual caller rates.

Frontier states it has reviewed the system and processing error that resulted in Ms. Costerisan being billed by the wrong carrier at the wrong rates and believes the

error is anomalous. Frontier states it cannot replicate the error and cannot identify any system changes that should be made. Frontier asks the Board to deny Consumer Advocate's petition.

V. Consumer Advocate's reply

On February 12, 2007, Consumer Advocate filed a reply memorandum responding to MCI's motion to dismiss and Frontier's response. Consumer Advocate states that its position that civil penalties will deter inadvertent violations is well supported by case law and asks the Board to take official notice of the position Consumer Advocate has taken on this issue in its district court briefs in *Office of Consumer Advocate v. Iowa Utilities Board*, Polk County District Court No. CV-5605, *appeal pending on other issues*, Iowa Supreme Court No. 06-0541.

Consumer Advocate disputes Frontier's statement that it cannot identify any system modifications to be made and suggests that the system should require an order to be processed fully to avoid the mistake that was made in this case. Further, contrary to Frontier's statement that it issued credits immediately, Consumer Advocate states the credit was not immediate and came only after the customer contacted the Board.

In response to MCI's motion to dismiss, Consumer Advocate notes that, contrary to MCI's statements that Ms. Costerisan was not a customer of MCI and that MCI was a wholesale provider only, MCI was named on the bill as the retail provider. Consumer Advocate states that the issue in this case is whether the charges billed by MCI to Ms. Costerisan were authorized. Consumer Advocate contends that because

MCI has offered no basis for claiming the charges were authorized, further investigation is necessary.

VI. Discussion

Iowa Code § 476.3 provides, in relevant part, that the Board shall grant a request for formal complaint proceeding whenever the Board determines there are reasonable grounds for investigating a complaint. Here, the customer has been credited in full for charges resulting from an inadvertent error in processing the customer's service order and Frontier has acknowledged its error and offered a plausible explanation of how the error resulted in the customer being charged by the wrong carrier at the wrong rates. Further, Frontier has reviewed its system and cannot replicate the error, so no system changes can be made that will clearly prevent a recurrence. In these specific circumstances, the Board does not find reasonable grounds for further investigation. The Board finds that any change in service providers made in this case was unsolicited, unintentional, temporary, and unlikely to recur.

The Board is familiar with Consumer Advocate's position regarding the assessment of civil penalties for inadvertent violations. In this case, however, because the Board does not believe further investigation would produce information that would support a finding of a slamming or cramming violation on the part of either MCI or Frontier, thus leading to possible civil penalties, the Board will deny Consumer Advocate's petition for proceeding to consider civil penalty.

Although the Board concludes there are no reasonable grounds for further investigation, the Board does not agree with MCI's suggestion that Consumer Advocate's petition was frivolous. The Board notes that in responding to Consumer Advocate's petition, both Frontier and MCI provided the Board with useful information about the relationship between MCI and Frontier and how the error occurred, information that previously had not been in the record. The Board will decline MCI's invitation to consider sanctions against Consumer Advocate or to allow MCI to recover its costs of responding to Consumer Advocate's petition.

IT IS THEREFORE ORDERED:

1. The "Petition for Proceeding to Consider Civil Penalty" filed on December 21, 2006, by the Consumer Advocate Division of the Department of Justice is denied.

2. The motion to dismiss or deny filed by MCI Communications of Iowa, Inc., on January 11, 2007, is denied for being moot.

UTILITIES BOARD

/s/ John R. Norris

/s/ Curtis W. Stamp

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 16th day of February, 2007.