

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>MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.,</p> <p style="padding-left: 100px;">Respondent.</p>	<p style="text-align:center">DOCKET NO. C-06-277</p>
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**ORDER DENYING REQUEST FOR PROCEEDING
TO CONSIDER CIVIL PENALTY**

(Issued April 6, 2007)

PROCEDURAL BACKGROUND

On January 3, 2007, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) petitioned the Utilities Board (Board) to commence an administrative proceeding to impose a civil penalty on McLeodUSA Telecommunications Services, Inc. (McLeodUSA), for an alleged cramming in violation of Iowa Code § 476.103. On January 26, 2007, McLeodUSA filed a response to Consumer Advocate's petition. On February 13, 2007, Consumer Advocate filed a reply memorandum.

INFORMAL COMPLAINT PROCEEDING

On November 16, 2006, Eddie Atkinson filed a billing complaint with the Board regarding a \$95 “trouble charge” that his telephone provider, McLeod, had billed him. Mr. Atkinson stated he had contacted McLeod in September of 2006, when he began to experience problems receiving telephone calls. Mr. Atkinson explained that he understood the customer service representative to state his lines would be checked and if the problem was found inside his home, then he could be charged up to \$95.

On November 20, 2006, Board staff forwarded the complaint to McLeod for further investigation. McLeod stated in its response to staff that Mr. Atkinson’s service had been tested and no problem was found with the equipment on the network side; therefore, it was surmised the problem was inside Mr. Atkinson’s home.

Mr. Atkinson stated in his complaint that after checking his home, he found that he had a bad surge protector and corrected the problem. McLeod went on to state in this case the \$95 “trouble charge” would have been valid, as the customer found the problem to be inside his home and no trouble had been found on the network side of the service.

On December 20, 2006, Board staff issued a proposed resolution stating there had been a miscommunication or misunderstanding between Mr. Atkinson and McLeod in understanding when the “trouble charge” would be applied and noting that a credit for the full amount was applied to Mr. Atkinson’s account to bring this matter to resolution. Staff’s proposed resolution found that a credit was a reasonable

solution. The letter informed Mr. Atkinson of the procedure if he disagreed with the proposed resolution. Mr. Atkinson did not challenge the proposed resolution.

In its January 3, 2007, petition, Consumer Advocate argues that McLeod's placing of the \$95 "trouble charge" on Mr. Atkinson's telephone bill was unauthorized and therefore a violation of Iowa's anti-cramming law, Iowa Code § 476.103.

Consumer Advocate further argues that issuing a credit is not a defense and that a civil monetary penalty should be imposed in order to secure future compliance with the statute.

On January 26, 2007, McLeod filed a response to Consumer Advocate's petition. McLeod argues that the facts of this complaint show that the charge in question does not meet the Board's definition of "cramming" as set forth in 199 IAC 22.23(1), which provides that "[c]ramming does not include telecommunications services that are initiated or requested by the customer..." McLeod argues that the customer acknowledged that after a week of service problems, he called McLeod to get his phone service fixed. Thus, the customer initiated the service and requested the visit by the technician to fix his phones. McLeod asserts that this is not an instance of cramming, but of a service provider's attempt to serve a customer requesting assistance in fixing his phone service.

On February 13, 2007, Consumer Advocate filed a reply memorandum. Consumer Advocate argues that McLeod mischaracterizes the law in its response. Consumer Advocate argues that Mr. Atkinson did not initiate or authorize a trouble isolation service at his expense, nor did he have the opportunity to make an informed

choice concerning the authorization of such a service at his expense; the only service he authorized at his expense was a service in which the technician entered his home.

DISCUSSION

The Board agrees with McLeod that this is not a case for formal complaint proceedings. The primary argument of Consumer Advocate is that this is an unauthorized charge, which the consumer did not initiate or have a choice concerning the authorization of the services. McLeod argues that Mr. Atkinson initiated the service when he realized that he was having service problems with his home telephone. McLeod also states that Mr. Atkinson was informed that if a service technician was sent to his home, he could possibly be charged up to \$95. Mr. Atkinson states that he did not understand from the customer service representative that he could be charged up to \$95 for the service technician just to come to his house; he thought the charge would only apply if the technician had to come inside his house.

The key issue in this case is that there was a miscommunication or a misunderstanding between the parties. McLeod acknowledges that there might have been a miscommunication or a misunderstanding, although the customer service representative was trained to read from a script. Whether there was a miscommunication or a misunderstanding, Mr. Atkinson did initiate the service and at some point in time, prior to the service technician arriving at his home, he understood that he could possibly be charged \$95. Mr. Atkinson states that he understood the

charge only to be applicable if the service technician entered his home, and McLeod states that its customer service representatives read off of scripts that are filed in the tariffs filed with the Iowa Utilities Board. McLeod states that in the script their customer service representatives are required to follow, the customer service representative states, in short, that an isolation fee of up to \$95 may apply when McLeod dispatches either its own or a third-party technician to a customer premise to test the line from the central office, up to the demarcation point, and the line tests clear (no trouble found in the company facilities).

This is not a situation in which further investigation is appropriate or in which civil penalties may be appropriate. There apparently was a miscommunication or a misunderstanding about the \$95 charge and when that charge would apply, perhaps because of the language of the script, but that does not take away from the fact that Mr. Atkinson called McLeod and requested the company's assistance to fix his phone lines, he understood that he could possibly be charged \$95, and he still requested the service call.

Granting a petition for a proceeding to consider civil penalties in this instance would be an inefficient use of the Board's limited resources and would not work to deter future violations of Iowa Code § 476.103. McLeod has acknowledged that there was a miscommunication or a misunderstanding which led to Mr. Atkinson's misunderstanding of the \$95 charge and McLeod corrected that misunderstanding by waiving the \$95 "trouble charge." McLeod states that it has also taken steps to address future communication issues by changing the script given to its customer

service representatives in order to clarify when the \$95 “trouble charge” will be applied.

ORDERING CLAUSE

IT IS THEREFORE ORDERED:

The “Petition for Proceeding to Consider Civil Penalty” filed by the Consumer Advocate Division of the Department of Justice on January 3, 2007, is denied as discussed in 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 6th day of April, 2007.