

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>ULTIMATE MEDIUM COMMUNICATIONS CORPORATION,</p> <p style="text-align:center">Respondent.</p>	<p>DOCKET NO. FCU-07-5 (C-07-135) (C-07-137) (C-07-145)</p>
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ORDER DOCKETING FOR FORMAL PROCEEDING, CONSOLIDATING PROCEEDINGS, AND SETTING DEADLINE FOR RESPONSE

(Issued May 3, 2007)

On April 9, 2007, 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 formal proceeding to consider civil penalties for alleged slamming or cramming violations committed by Ultimate Medium Communications Corporation (UMCC) and a motion to consolidate these proceedings. Based upon the record assembled in the informal complaint proceedings, the events to date can be summarized as follows:

UMCC recently acquired all or part of the customer service list of Buzz Telecom, Corp. (Buzz), which has been the subject of prior Board action.¹ On

¹UMCC sent bills to customers that said: "On December 1, 2006, UMCC Holdings, Inc., acquired the active and valid customers of Buzz Telecom and Business Options."

February 2, 2007, Board staff sent a letter to UMCC notifying it of the Board's January 30, 2007, order granting default judgment, imposing a civil penalty against Buzz, and prohibiting other carriers from serving or billing for Buzz. The letter also outlined Iowa law regarding carrier registration requirements, carrier obligations when acquiring assets and customers from other providers, and included a copy of a carrier registration form and applicable regulations. Board staff asked UMCC to complete and return the carrier registration form within seven days of the date of the letter. UMCC did not respond to staff's letter.

Subsequent to staff's letter, but also in February of 2007, the Board began receiving complaints from Iowa consumers stating that UMCC had changed their long distance carrier without their consent and billed them through their local telephone provider. As of the date this order was prepared, the Board has received a total of 73 complaints, three of which are the subject of this order.

Staff forwarded each of the three complaints to UMCC for response. UMCC did not respond to any of the three complaints that are the subject of this order. Staff's proposed resolutions found that UMCC violated the Board's rules by failing to respond to the complaints. Staff directed UMCC to immediately credit all charges to each customer's account and to immediately close the accounts. Also, the proposed resolutions prohibited UMCC from pursuing collection actions in relation to these charges.

In its petition for proceeding to consider civil penalties and other remedies, Consumer Advocate stated that the consumer complaints against UMCC allege that

customers were billed for long distance telephone service without the customer's authorization, in violation of Iowa Code § 476.103 (2007). In some instances, the complaints alleged that UMCC billed consumers for long distance service when in fact no long distance service was provided, billed consumers for long distance service after service was terminated, billed consumers for long distance calls they did not place, and billed consumers for calls that were previously billed and paid, again in violation of § 476.103. Consumer Advocate also alleged that UMCC appears to have violated the regulations implementing § 476.103, specifically 199 IAC 22.23(2)"e." Consumer Advocate argued civil monetary penalties should be assessed in order to secure future compliance with the statute. Consumer Advocate suggested that UMCC may have engaged in a pattern of violations in these and other cases and suggested that the Board consider implementing the remedies provided for in § 476.103(5).²

Consumer Advocate argued a formal proceeding is necessary to give UMCC notice and opportunity for hearing, affirm staff's determinations that UMCC committed a slamming or cramming violation in these dockets, consider civil penalties in an amount sufficient to deter future violations, and to consider the penalties for a pattern of violations.

²If the Board determines, after notice and opportunity for hearing, that a service provider has shown a pattern of violations of the rules adopted, pursuant to § 476.103; Iowa Code § 476.103(5) allows the Board to prohibit other service providers from billing charges on behalf of the violating provider and prohibit local exchange service providers from providing exchange access services to the violating provider, among other remedies.

In light of UMCC's failure to respond to any of the three complaints that are the subject of this order, the Board concludes there are reasonable grounds for further investigation of how UMCC acquired the accounts from Buzz, UMCC's failure to comply with the Board's carrier registration process, and whether UMCC continued to bill for these accounts after the Board's January 30, 2007, order prohibiting collection on former Buzz accounts. These are the minimum issues to be investigated; additional issues may develop as the case progresses.

Also, the Board concludes that further investigation is appropriate to determine whether the Board should assess civil penalties to UMCC. The Board will grant Consumer Advocate's requests for proceedings to consider civil penalties. Also, because these complaints involve similar allegations, the Board will consolidate these complaints and identify them as Docket No. FCU-07-5.

Finally, the Board will delay establishing a procedural schedule to allow UMCC an opportunity to provide a complete response to the allegations Consumer Advocate raises in its petition. Given UMCC's failure to respond to earlier Board or staff communications and the number of complaints alleging similar misconduct by UMCC, the Board believes it is appropriate to accelerate the next step in this proceeding. Therefore, the Board will require UMCC to provide a complete response to the allegations raised in Consumer Advocate's petition within seven days of the date of this order. UMCC's response must identify and specifically address the allegations made in each of the three complaints addressed in this order. UMCC is cautioned that no extensions of this deadline will be granted.

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 April 9, 2007, is granted. File Nos. C-07-135, C-07-137, and C-07-145 are docketed for formal proceeding.

2. The motion to consolidate filed by Consumer Advocate on April 9, 2007, is granted. File Nos. C-07-135, C-07-137, and C-07-145 are consolidated and identified as Docket No. FCU-07-5

3. Ultimate Medium Communications Corporation is directed to file a response to Consumer Advocate's petition within seven days of the date of this order.

UTILITIES BOARD

/s/ John R. Norris

/s/ Curtis W. Stamp

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Krista K. Tanner

Dated at Des Moines, Iowa, this 3rd day of May, 2007.