

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: DIRECTORY BILLING, LLC, d/b/a USDIRECTORY.COM	DOCKET NO. C-07-35
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ORDER DENYING REQUEST FOR FORMAL PROCEEDING

(Issued May 9, 2007)

BACKGROUND

On March 26, 2007, Directory Billing, LLC (Directory Billing), filed with the Utilities Board (Board) a request for formal proceedings pursuant to Iowa Code §§ 476.3 and 476.103, and 199 IAC 6.8(5) and 6.5. Based upon the record assembled in the informal complaint proceeding, the events to date can be summarized as follows:

On January 16, 2007, Barry Dittmer, on behalf of Weinrich Truck Line, Inc. (Weinrich), filed a complaint against OAN Services, Inc. (OAN), stating that OAN, without his authorization or authorization of any employee of Weinrich, billed Weinrich for three months of "preferred listing" service at \$52 per month. On January 18, 2007, Board staff forwarded the complaint to OAN. On January 29, 2007, OAN responded to the complaint, stating "OAN is engaged in the business of aggregating records from various service providers and transmitting those records to the Local Exchange Carriers." OAN stated it is the billing agent for Directory Billing, the company that authorized OAN to bill Weinrich. OAN stated it had requested

authorization information from Directory Billing and would provide it to the Board "as quickly as possible."

On January 31, 2007, Directory Billing responded. Directory Billing provided a timeline of the events that led to Mr. Dittmer's complaint. Directory Billing stated that on July 19, 2006, a sales representative from Directory Billing called Weinrich and talked to an employee named "Pete." Directory Billing further stated that during that telephone conversation, the sales representative obtained "Pete's" permission to record the telephone call, verified information from the Directory Billing database, confirmed "Pete" was at least 18 years old, and confirmed that "Pete" was authorized to make changes to Weinrich's telephone account. Directory Billing also stated that "Pete" was informed that Weinrich would be receiving a one-month free trial and was also given Directory Billing's toll-free phone number, street address, and website address. Directory Billing further explained that after the free trial month, Weinrich would be charged \$49.95 per month. Directory Billing stated that on May 13, 2006, Directory Billing activated service for Weinrich and on July 20, 2006, Weinrich was sent a welcome kit. Last, Directory Billing stated that on January 8, 2007, after receiving a telephone call from Mr. Dittmer requesting cancellation, Directory Billing cancelled Weinrich's preferred listing service, placed Weinrich on its "do not call" list, and processed a full refund.

On February 1, 2007, staff forwarded Directory Billing's response and the recording of the conversation with the Weinrich employee named "Pete" to Mr. Dittmer. Mr. Dittmer stated that as of February 12, 2007, Weinrich had not received a refund and that he listened to the recording several times and did not hear where

permission was given to record the conversation. Further, Mr. Dittmer stated that during the conversation with the Weinrich employee, the conversation sounded like the Weinrich employee was just verifying information that the caller was providing to the employee. Last, Mr. Dittmer stated that Weinrich had yet to receive a welcome kit.

On March 7, 2007, Board Staff issued a proposed resolution referring to 199 IAC 22.23(2)"a"(5), which provides that when a complaint is filed alleging an unauthorized change in service, "[t]he burden will be on the telecommunications carrier to show that its internal records are adequate to verify the customer's request for the change in service." Board staff found that the information provided by Directory Billing was inadequate to verify a Weinrich employee authorized the services at issue in this order. After listening to the recording provided by Directory Billing, Board staff concluded that the speaker in the recording was difficult to understand and that the sales representative was misleading.¹ Based on these findings, staff found that Directory Billing had made an unauthorized change to Weinrich's telecommunications service. Accordingly, staff's proposed resolution required that Directory Billing issue a full refund to Weinrich.

DIRECTORY BILLING'S REQUEST FOR FORMAL PROCEEDING

On March 26, 2007, Directory Billing filed with the Board a request for formal proceeding. Directory Billing stated the recorded phone conversation between

¹Directory Billing's sales representative began the call by stating he wanted to update the records of Weinrich Trucking. Board staff stated that during the telephone call the sales representative did not mention a welcome kit, the cost of the service, or give the Weinrich employee information on accessing the account or canceling the service.

Directory Billing's sales representative and the Weinrich employee was clearly understood by the employee; the employee only asked the representative to repeat himself once. Furthermore, Directory Billing stated that the call by its sales representative began by verifying the information in its directory,² that the sales representative asked the Weinrich employee whether the company wanted a preferred listing, and that the Weinrich employee answered in the affirmative. Last, Directory Billing stated that a welcome kit was dispatched; its systems would not permit it to activate an account unless a welcome kit was dispatched; and that Directory Billing had no record of a returned welcome kit.

ANALYSIS

1. Standards Applicable To This Request For Formal Proceeding

The Board's primary focus in deciding whether to grant formal review of a proposed resolution is whether there are any reasonable grounds for further investigation. In order to make that determination, the Board must analyze the facts in the informal record and consider the reasons underlying the staff's proposed finding of a cramming violation. The controlling statute in a slamming or cramming case is Iowa Code § 476.103 (2007), which prohibits unauthorized changes in service. Specifically applicable in this case is subsection (2)(a) of Iowa Code § 476.103, which provides that a "change in service" includes the addition or deletion of a telecommunications service for which a separate charge is made to a consumer.

²Directory Billing stated that business listings are displayed online for free to consumers searching for businesses in their area and that the phone calls by its sales rep begin by verifying information in order to make sure that accurate information was listed online.

Also, rule 22.23(1) provides that "cramming" is the addition or deletion of a product or service for which a separate charge is made to a telecommunication customer's account without the verified consent of the affected customer while rule 22.23(2) provides that unauthorized changes in telecommunications service are prohibited and include, but are not limited to, cramming and slamming. Furthermore, rule 22.23(2)"a"(5), which is applicable to this case, provides that for other changes in service resulting in additional charges to existing accounts, a service provider shall establish a valid customer request for the change in service through maintenance of sufficient internal records. At a minimum, any such internal records must include the date and time of the customer's request and adequate verification under the circumstances of the identification of the person requesting the change in service. Any of the three verification methods in 22.23(2)"a"(1) to (3) will also be acceptable. The burden is on the telecommunications carrier to show that its internal records are adequate to verify the customer's request for the change in service. Last, Iowa Code § 476.3 provides, in relevant part, that the Board shall grant a request for formal complaint proceedings whenever the Board determines there is "any reasonable ground for investigating the complaint... "

The Board will apply these standards to the proposed resolution and to the records to determine whether to grant formal proceedings.

2. Staff's Finding That Directory Billing Committed a Cramming Violation by Charging Weinrich Trucking for Services Not Authorized by Weinrich Trucking

In the proposed resolution, staff concluded that Directory Billing committed a cramming violation by charging Weinrich for three months of service that Weinrich did

not authorize. Directory Billing attempts to address the alleged cramming violation in its correspondence to Board staff dated January 31, 2007. Directory Billing provided Board staff with a timeline and verification of its sales representative's phone call to the Weinrich employee.

A. *Directory Billing's timeline*

In Directory Billing's correspondence dated January 31, 2007, it states that Directory Billing's sales representative called Weinrich on July 19, 2006, obtained proper verification and mailed a welcome kit on July 20, 2006. However, Directory Billing's missive states that service was activated on May 13, 2006. The May 13, 2006, date is not consistent with the July verification date. The Board has attempted to give meaning, in context, to the May 13, 2006, date based on all of the other dates given. However, attempting to make the date more reasonable or attempting to reconcile the May 13, 2006, date does not assist Directory Billing.³ Therefore, if Directory Billing activated service for Weinrich on May 13, 2006, the Board finds that, based on Directory Billing's own statements, Weinrich could not have authorized the service that Directory Billing alleges. The timeline does not provide reasonable grounds for further investigation of this matter through formal proceedings.

B. *Directory Billing's telephone verification*

Even if Directory Billing made a mistake regarding the dates in its January 31, 2007, letter, the Board still concludes that there are no reasonable grounds for further investigation of this matter. The telephone verification provided by Directory Billing

³The Board believes the most logical correction of this date would be July 13, 2006, considering all of the other dates of contact between Directory Billing and Weinrich are in July. Even with this correction, Directory Billing's timeline would not support its claims.

was a recorded conversation between Directory Billing's sales representative and a Weinrich employee named "Pete." Directory Billing sent the recorded telephone verification to Board staff as a response to Weinrich's claim that it did not authorize the services Directory Billing charged during the three months prior to the complaint filed by Weinrich. Rule 22.23(2)(a)(5) provides that for other changes in service resulting in additional charges to existing accounts:

A service provider shall establish a valid customer request for the change in service through maintenance of sufficient internal records. At a minimum, any such internal records must include the date and time of the customer's request and adequate verification under the circumstances of the identification of the person requesting the change in service. Any of the three verification methods in 22.23(2)"a"(1) to (3) will also be acceptable. The burden will be on the telecommunications carrier to show that its internal records are adequate to verify the customer's request for the change in service. IAC 199 22.23(2)"a"(5).

After reviewing the findings of staff, the Board agrees with staff that the verification provided by Directory Billing was inadequate and Directory Billing has not offered any grounds for further proceedings. The burden was on Directory Billing to show "that its internal records [were] adequate to verify the customer's request for the change in service."⁴ Directory Billing's recording verifies that a sales representative from Directory Billing had a conversation with a Weinrich employee, but it does no more than that. The sales pitch used in the telephone call was difficult to understand and misleading. For example, the sales representative began the call by saying the purpose of the call was to verify information regarding Weinrich Trucking; implying the existence of a commercial relationship or account. The call ended by asking the Weinrich representative to verify that "you're duly authorized by the telephone

⁴IAC 199 22.23(2)"a"(5).

account holder to incur charges on this account provided and you're more than 18 years of age?" This question is a compound question, meaning that if the listener answers yes to being over 18, the listener answers yes to his authorization status. Moreover, the question asks whether the listener is authorized to incur charges on the account, which, with respect to a telephone account, a reasonable person may take to mean only that the listener is authorized to place long-distance calls that incur separate charges. It is not at all clear, from this question, that the listener would understand that he was authorizing \$52 per month charge for "preferred Listing service" on a website.

This is not to say that all compound questions are misleading or that the listener's age and authorization are not relevant. However, in the overall circumstances of this call, staff's proposed resolution is reasonable and supported by the record, and Directory Billing's request for formal proceedings does not present any reasonable grounds for further investigation.

3. There are No Reasonable Grounds for Further Investigation of This Complaint and No Reasonable Grounds to Grant a Formal Proceeding.

Based on the analysis in the previous sections, the Board does not believe that there are any reasonable grounds for further investigating this complaint or granting Directory Billing's request for formal proceeding. Iowa Code §§ 476.3 provides, in relevant part, that the Board shall grant a request for formal complaint proceedings whenever the Board determines there is "any reasonable ground for investigating the complaint... ." After reviewing the findings of staff and the

inconsistencies in the information Directory Billing provided to staff,⁵ the Board does not believe further investigation could produce information that would change the outcome of this case. The Board believes the informal record supports the proposed finding that Directory Billing committed a cramming violation and Direct Billing has not offered reasonable rounds for further investigation. Granting a formal proceeding without any basis would be an inefficient use of the Board's limited resources.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

The request for formal proceeding filed by Directory Billing, LLC, on March 14, 2007, is denied.

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 9th day of May, 2007.

⁵ See analysis in previous sections.