

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: REVISIONS TO RULES PROHIBITING UNAUTHORIZED CHANGES IN TELECOMMUNICATIONS SERVICE [199 IAC 22]	DOCKET NO. RMU-06-8
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**ORDER ADOPTING AMENDMENT AND PROVIDING SPECIFIC STATEMENT
OF PRINCIPAL REASONS FOR AND AGAINST THE AMENDMENT**

(Issued May 14, 2007)

Pursuant to Iowa Code §§ 17A.4, 476.1, 476.2, and 476.103, the Utilities Board (Board) adopts an amendment to 199 IAC 22.23(2)"a"(5) identifying call records as examples of internal records a telecommunications carrier can submit to the Board in response to a consumer's complaint alleging an unauthorized change in service which resulted in additional charges on the consumer's telephone bill, as described in the "Adopted and Filed" notice attached hereto and incorporated herein by reference. A "Notice of Intended Action" with the proposed amendment was published in IAB Vol. XXIX, No. 8 (10/11/06) p. 506, ARC 5423B. This rule making has been identified as Docket No. RMU-06-8.

I. BACKGROUND

Unauthorized changes in a customer's telecommunications service are prohibited by statute and Board rule. See Iowa Code § 476.103 and 199 IAC 22.23(2). One type of unauthorized change in service is "cramming," defined at 199 IAC 22.23(1) as the "addition . . . of a product or service for which a separate charge is made to a . . . customer's account without the verified consent of

the affected customer." Under the existing rule, one way a telecommunications carrier can establish a valid customer request for a change in service is by maintaining sufficient internal records. Those records must include, at a minimum, the date and time of the customer's request and adequate verification of the identification of the person requesting the change in service. The burden of showing that the records are adequate to verify the customer's request for the change in service is on the carrier. See 199 IAC 22.23(2)"a"(5).

This proceeding was prompted by several informal complaint proceedings in which customers disputed charges on their local telephone bills for specific calls the customers denied making or accepting. In some of those cases, companies defended allegations of cramming by submitting call records as evidence that the customer made or accepted the disputed call, arguing that a record showing that a lengthy call took place indicates the customer intentionally made or accepted the call and therefore authorized any resulting charges.

The Board initiated this proceeding to help the Board and the public better understand the process by which call records are produced; the potential for error in that process; what information can be derived from call records; the extent to which call records can show that a disputed call actually took place, was authorized, or accepted; and what weight call records should be given in cramming cases.

The Board proposed to add a provision to 199 IAC 22.23(2)"a"(5) stating that where the additional charge at issue is for one or more specific telephone calls, a telecommunications carrier can shift the burden regarding the change in service by submitting internal records showing the origin, date, time, destination, and duration of the calls, and any other data the carrier relies on to show the calls were made or

accepted by the customer, along with an explanation of the records and data. As proposed, the amendment provided that if such records were submitted, the burden would then be on any party contesting the carrier's call records to establish that the calls were unauthorized.

Written comments addressing the proposed amendment were timely filed by the Consumer Advocate Division of the Department of Justice (Consumer Advocate); AT&T Communications of the Midwest, Inc., TCG Omaha, Inc., and SBC Long Distance, LLC, d/b/a AT&T Long Distance (collectively AT&T); Evercom Systems, Inc., and T-NETIX Telecommunications Services, Inc. (collectively E&T); MCImetro Access Transmission Services, LLC, d/b/a Verizon Access Transmission Services, and MCI Communications Services, Inc., d/b/a Verizon Business Services (collectively Verizon); and the Iowa Telecommunications Association (ITA).

On November 17, 2006, Consumer Advocate filed a counter-statement of position responding to the comments filed by other participants.

An oral comment hearing was held on November 21, 2006. All of the participants that filed written comments participated at the hearing.

In an order issued on November 21, 2006, the Board allowed any interested party to file an additional round of comments relating to the Board's proposed amendment. The Board also asked telecommunications carriers to submit examples of call records and an explanation of what information is contained in the records as part of their supplemental comments. Supplemental written comments were filed on December 1, 2006, by Alltel, U.S. Cellular Corp., and NPCR, Inc. (Nextel Partners) (collectively referred to as the Wireless Companies); E&T; and Verizon. Also on December 1, 2006, Consumer Advocate filed a supplemental statement of position

and, pursuant to Iowa Code § 17A.4(1)"b," a request that, if the Board decides to adopt the amendment, it provide a concise statement of the principal reasons for and against the rule, incorporating the reasons for overruling arguments against the rule.

The Board will adopt the amendment as proposed with one revision based upon the comments summarized below and a final review. The amendment will become effective on July 11, 2007.

II. COMMENTS

A. AT&T

In its comments, AT&T explains the process by which wholesale call records and customer bills based on those records are produced. AT&T discusses the roles of the wholesale carrier, the underlying carrier, and the local exchange carrier in making sure that a customer's bill is correct. AT&T also explains how errors can result in customers being billed at dial-around rates, which may prompt a slamming or cramming complaint. AT&T supports the proposed amendment and suggests that the Board adopt the following rule to allow for an explanation of errors in call records caused by problems in the wholesale provisioning process:

The billing carrier can shift the burden of proof by submitting evidence of error or failure to properly direct or identify traffic by the customer's prescribed carrier or the responsible LEC where the additional charge(s) is the result of a provisioning error that is not under the control of the billing carrier. The burden will then be on the customer's prescribed carrier or the responsible LEC to establish why the call was incorrectly routed.

B. E&T

E&T, inmate telephone service providers, state they offer automated operator assisted calling services and that inmate-initiated outgoing calls are placed on a

collect or called party accepted basis for safety and security reasons. E&T explain that a specialized inmate telephone system allows tracking of which inmate placed the call; the number called; assurance that the called party is willing to accept the call; and monitoring and recording of calls. E&T state that the majority of inmate-initiated calls are billed as collect calls through the called party's local exchange carrier (LEC). E&T state that because they handle mostly collect calls and because their systems are installed in correctional institutions, they face challenges to deter fraudulent activity.

E&T urge the Board to adopt a rule acknowledging that sporadic or inadvertent billing errors or infrequent instances of fraud against a telecommunications provider do not constitute cramming. Alternatively, E&T suggest that the Board should amend its rules to state that civil penalties are not appropriate for inadvertent errors or when unauthorized charges are the result of fraud by a third party. To that end, E&T ask the Board to provide that civil penalties will be assessed only where a party commits an intentional violation by amending 199 IAC 22.23(5)"a" as follows:

a. Civil penalties. In addition to any applicable civil penalty set out in Iowa Code section 476.51, a service provider who intentionally violates a provision of the anti-slamming statute, a rule adopted pursuant to the anti-slamming statute, or an order lawfully issued by the board pursuant to the anti-slamming statute is subject to a civil penalty, which, after notice and opportunity for hearing, may be levied by the board, of not more than \$10,000 per violation. Each violation is a separate offense.

E&T also suggest that the Board clarify its rules to explain what records or documents should be submitted by the service provider to show the disputed calls were accepted. E&T state that providers should have call records including the

telephone number originating the call, date, time, called party's telephone number, length of call, and number of collect calls during the billing period between the two telephone numbers. Further, E&T state that the provider should acknowledge there were no known malfunctions of its calling system affecting the calling and called party's locations and provide records such as printouts, system records, or recordings that show positive acceptance of a collect call, if such records are available.

E&T attached actual customer calling records (with certain information redacted to protect customer identifying information) to their supplemental written comments, along with an explanatory key. The key explains that the records show the number called; the inmate's personal identification number; the origination number; date of call; time of call; call type; whether the call was validated, recorded, and completed; and duration of the call in seconds.

C. ITA

ITA filed comments stating it supports the Board's effort to address claims of cramming for calls shown by carrier records to have been made. ITA's position is that a customer's mere denial of a call should not be sufficient to establish that the call was not authorized for purposes of determining whether cramming has occurred. ITA recommends that the last sentence of the proposed amendment be modified to read:

The burden will then be on any party contesting the carrier's call records to establish beyond a mere denial of the call that the calls were unauthorized.

Further, ITA contends that casual calling by a customer is not meant to be included within the definition of "cramming." If dialed calls are not to be excluded

from the definition of cramming, ITA suggests that the existence of a carrier record showing the call was made should be given a presumption that the charge for the call did not constitute cramming. To that end, ITA suggests that the following sentence be added to the amendment:

There is a rebuttable presumption that services are initiated or requested by the customer if internal carrier records show that the calls were made or accepted by the customer as provided in subparagraph 22.23(2)"a"(5).

D. Verizon

Verizon's position is that Iowa law precludes claims disputing charges for a single call using an existing service. Verizon asserts that applying Iowa's verification regime to individual calls is impractical and that services based on individually charged calls are expressly exempted from the definition of cramming. Verizon also contends that Iowa law contemplates verification at the service level and that there is no reasonable way to verify each call that may result in a separate charge on a customer's bill. Verizon argues that the Board should give effect to the exclusion in the rule for services initiated by the customer, including 10-10, dial-around, operator-assisted, or collect calls. Verizon states that if the Board continues to apply the cramming rules to individual calls, call records should be considered presumptively valid as proof that an individual call was initiated, completed, and maintained for a certain duration, and thus was authorized by the customer.

Verizon's view is that the goal of this proceeding is to provide a mechanism to reduce the number of fully litigated matters and to streamline resolution of complaints without requiring a carrier to become a general insurer, paying on all claims without regard to their legitimacy. Verizon suggests that instead of using the phrase "burden

of proof" in the amendment, the Board should use "prima facie case," providing that once a carrier provides the required records, the consumer or Consumer Advocate would be required to present some objective evidence to rebut the presumption created by the carrier's internal records.

Verizon explains that call records are produced automatically as traffic flows through a switch and contain the same data the telecommunications industry uses for intercarrier purposes. Verizon attached a sample of a call record to its supplemental comments, noting that the record shows a direct-dialed call originating from a particular number, delivered to MCI's switch in Omaha from Qwest on a particular date and time, and completed to an international terminating telephone number. Verizon states the call record also includes information about the length of time it took for the calls to be answered, the length of the calls, and whether the initiating or terminating end of the connection hung up to conclude the calls. Verizon asserts this level of detail supports the validity of the record. Verizon also submitted a summary table showing data for a different set of calls from six different accounts.

E. The Wireless Companies

The Wireless Companies did not file initial written comments in this proceeding, but explain in comments filed on December 1, 2006, that they now have a stake in this matter because the Board denied a request for reconsideration filed by four wireless carriers of the Board's order adopting rules in Docket No. RMU-06-1. In that proceeding, the Board decided, in part, to apply its complaint jurisdiction to

wireless eligible telecommunications carriers (ETCs).¹ Now, the Wireless Companies urge the Board to revisit its decision to assert jurisdiction over wireless ETCs with respect to cramming complaints, arguing that the provisions at issue in this proceeding should not apply to wireless providers. Specifically, the Wireless Companies argue that given the way cramming is defined in Iowa, claims brought pursuant to 199 IAC 22.23 involve charges for services and claims for retrospective adjustment of payments made by a customer to a carrier. The Wireless Companies assert that, even though the Board concluded in its order denying reconsideration in Docket No. RMU-06-1 that protection against fraud was not preempted, charges for services and payments made from the customer to the carrier are "rates" and thus fall within the preemptive effect of 47 U.S.C. § 332(c)(3). The Wireless Companies argue the Board's decision to apply its cramming rules to wireless ETCs ignores the conclusion of a federal district court that a wireless carrier's status as a federal ETC did not authorize a state commission to regulate the carrier's rates, even though the designation is voluntary.² Finally, the Wireless Companies argue that the Board lacks jurisdiction under Iowa Code § 476.103 to apply its rule against cramming to wireless providers.³

¹In an order issued on October 6, 2006, the Board adopted the ETC rules, which, in part, apply the Board's complaint jurisdiction to wireless ETCs. On November 20, 2006, the Board denied a request for reconsideration of the order adopting the rules filed by four wireless carriers. The rules went into effect on November 29, 2006.

²Citing WWC Holding Co., Inc. v. Sopkin, 420 F.Supp.2d 1186, 1193-96 (D. Colo. 2006).

³The Wireless Companies observe that the state law that authorizes the Board to adopt rules regarding unauthorized changes in service defines "telecommunications service" to exclude commercial mobile radio service (wireless telecommunications service) and argue that the Board cannot, by rule, exceed the authority provided in the enabling statute, Iowa Code § 476.103.

F. Consumer Advocate

Consumer Advocate states that the issue in this proceeding is whether an internal call record showing a call was completed is sufficient to establish presumptively that (a) the call was completed and (b) the charges were authorized. According to Consumer Advocate, the answer to both questions is no. Consumer Advocate's position is that the proposed amendment should not be adopted because it is unsound as a matter of policy and erroneous as a matter of law. Consumer Advocate asserts that, in the context of cramming cases where facts are disputed, to say that a company's records are presumptively truthful is to say that the consumer's testimony is presumptively untruthful. Consumer Advocate contends there is no basis in law or fact for this presumption.

Consumer Advocate states that authorization is a broader concept than completion or connection of a call and that a call record does not show what was said or by whom once the call was completed. According to Consumer Advocate, the proposed rule erroneously jumps from the fact that a connection was made or a call was completed, as shown by the call record, to the conclusion that the consumer accepted the call or authorized the charges. Consumer Advocate argues that call records have limited evidentiary value; authorization means more than connection; and pressing a particular digit on a telephone keypad is not necessarily the same as accepting a call or authorizing charges.

Further, Consumer Advocate asserts there is no law authorizing the Board to establish evidentiary presumptions for hearings pursuant to Iowa Code § 476.103. According to Consumer Advocate, only the courts and the legislature have the power

to establish evidentiary presumptions. Consumer Advocate argues that the proposed amendment exceeds the Board's authority.

Consumer Advocate cites several cases from other jurisdictions in support of its position that the Board cannot adopt an evidentiary presumption⁴ and argues further that, even if the Board did have the authority to establish evidentiary presumptions, such presumptions must be based on a rational connection between facts proved and facts presumed. Consumer Advocate asserts that an evidentiary presumption is permissible only when proof of one fact renders the existence of another fact so probable that it would be sensible to assume the truth of the inferred fact, and that if there is an alternate explanation for the evidence that is reasonably likely, the presumption is irrational.⁵ Consumer Advocate argues the presumption in the proposed amendment does not meet these requirements. Consumer Advocate argues that giving call records presumptive validity is irrational, arbitrary, capricious, and overbroad.

In response to the comments and revisions suggested by the other participants, Consumer Advocate states that Verizon's position that cramming does not include unauthorized billings for individual calls has been rejected by the Board in previous contested cases.⁶ In response to E&T's request that the Board limit the assessment of civil penalties to cases of intentional violation, Consumer Advocate

⁴Borbon v. Motor Vehicle Administration, 691 A.2d 1328 (Md. App. 1997); McDonald v. Department of Professional Regulation, 582 So.2d 660 (Fla. App. 1991); and National Mining Association v. Babbitt, 172 F.3d 906 (D.C. Cir. 1999).

⁵Citing National Mining Association v. Babbitt, 172 F.3d 906, 912 (D.C. Cir. 1999).

⁶Citing In Re: MCI WorldCom Communications, Inc., "Order Denying Request for Formal Proceeding and Clarifying Proposed Resolutions," Docket No. C-04-273 (April 28, 2005).

notes that the Board has held that violations require no particular intent.⁷ Consumer Advocate disputes ITA's assertion that casual calling by a customer is not included in the definition of cramming and argues that the Board's rule excludes certain types of calls from the definition only where the calling is initiated or requested by the customer. Consumer Advocate argues against ITA's proposal to provide that a customer's mere denial of a call is not sufficient to establish that the call was not authorized, suggesting that the proposal would turn a rebuttable presumption into an irrefutable presumption. Consumer Advocate credits AT&T for its efforts to prevent unauthorized billings, but argues that AT&T's proposal is beyond the scope of this rule making and would impose the costs of unauthorized casual billing on consumers, contrary to Iowa Code § 476.103.

III. DISCUSSION

The Board begins its discussion by noting that Consumer Advocate has asked the Board to provide a concise statement of the principal reasons for and against the rule, incorporating the reasons for overruling arguments against the rule. The Board intends the following discussion, along with the preceding summary of the comments, to serve as a concise statement of the principal reasons for and against adopting the proposed amendment, with revisions, and the reasons for overruling arguments against the amendment.

The Board initiated this rule making to provide companies with direction on what kinds of records they can submit in defending allegations of cramming,

⁷ Citing In Re: Office of Consumer Advocate v. Qwest Corporation and MCI WorldCom Communications, "Order Docketing Complaint, Requiring Additional Information, and Assigning to Administrative Law Judge," Docket No. FCU-02-5 (May 14, 2002).

specifically in complaints involving disputed charges for individual calls on a customer's bill, and to give Board staff guidance on what kinds of records and what level of detail in those records they should look for when evaluating call records in the course of investigating and resolving cramming complaints. The Board observes that in the course of this proceeding, however, some of the parties went beyond the scope of the proposed amendment in some of their comments, focusing on the larger issue of the Board's enforcement of Iowa Code § 476.103, arguing about the definition of "cramming" and making arguments already made and rejected in Docket No. RMU-06-1 (the Board's ETC rule making proceeding) about the Board's jurisdiction over complaints against wireless service providers.

As proposed, the amendment would have added a burden shifting provision to 199 IAC 22.23(2)"a"(5), providing that where the additional charge is for one or more specific telephone calls, a carrier can shift its burden (which is already established in the existing rule) of showing that its internal records are adequate to verify that a customer requested the disputed change in service. For reasons discussed below, the Board will not adopt the burden shifting language. Instead, the Board will adopt a revised amendment that identifies call records as examples of internal records a carrier may submit to the Board in response to a complaint alleging an unauthorized change in service to support the carrier's claim that the customer authorized the disputed call and resulting charge. The amendment also specifies what information should accompany the call records. Implicit in this rule is an expectation that once a carrier provides a record and adequate explanation of it, the customer or Consumer Advocate will respond to the record.

The Board has considered Consumer Advocate's argument that the Board cannot establish an evidentiary presumption and believes there are differences between the presumptions in the cases cited by Consumer Advocate and the burden shifting language proposed in this case. In the McDonald case, for example, the presumption applied by the Florida agency was for the benefit of the agency as a party to cases and was "borrowed" from a federal maritime case. The presumption was not found in a state statute or rule. The court in McDonald concluded that the agency lacked statutory authority to adopt a legal presumption that effectively relieved it from having to prove specific acts of misconduct. McDonald v. Department of Professional Regulation, 582 So.2d 660, 664 (Fla. App. 1991). In other words, a prosecuting agency created a presumption for its own benefit. That is not the case in this docket. Further, the Board believes Iowa law authorizes the Board to create reasonable evidentiary presumptions for use in its informal and formal complaint proceedings.⁸

The Board does not agree with Consumer Advocate that the burden shifting language would favor companies over consumers. The Board did not propose to adopt a conclusive presumption that would have precluded consideration of a consumer's response to call records submitted by a company. Nor does the Board agree with ITA that the rule should be changed to provide that a consumer's mere

⁸Iowa Code § 476.2(1) gives the Board "broad general powers to effect the purposes of" Iowa Code chapter 476 and the authority to "establish all needful, just and reasonable rules ... to govern ... the practice and procedure before it" Further, Iowa Code § 476.103(1) authorizes the Board to adopt rules to protect consumers from unauthorized changes in service and provides that such rules "shall not impose undue restrictions upon competition in telecommunications markets" and Iowa Code § 476.103(3) requires the Board to adopt rules prohibiting an unauthorized change in telecommunications services and spells out minimum requirements for the Board's rules regarding verification of customer authorization of changes in service. Reading these statutes together, the Board concludes it has statutory authority to adopt the burden shifting language.

denial of a call is not sufficient to show that the charge was unauthorized. The process the Board uses to resolve complaints and to determine whether formal proceedings are necessary already involves a weighing of all of the evidence submitted by both the consumer and company and consideration of the interests of both and that process will continue with or without the proposed presumption. Here, the Board is attempting to create a balance to protect consumers without creating an undue burden on either party by requiring, for example, third-party verification for every long distance call.

Further, while the Board agrees with Consumer Advocate that it is not the Board's responsibility to find a way for a company to defend itself, the Board has an interest in efficient processing of these cases. The Board recognizes that the particular types of services at issue in this proceeding – individual calls for which charges are added to a consumer's bill – do not necessarily lend themselves to standard verification methods.⁹ In some cases, a company's only evidence that a call took place as shown on the bill and was authorized by the consumer might be a call record showing the origin, destination, and duration of the call, among other details. The Board must give fair consideration to internal records a company may submit to show that a particular call was made and authorized.

⁹Existing Board rule 22.23(2)"a"(1)-(5) contains the five methods of verifying a customer's authorization for a change in telecommunications service. The first four methods apply to changes in a customer's preferred service provider and allow changes to be verified using a letter of agency, electronic authorization, oral authorization using a third-party verifier, and, for customer-originated changes to existing accounts, internal records. The fifth method describes the verification method for changes in service resulting in additional charges to existing accounts and is the subject of this rule making. The fourth and fifth methods are the only ones to state that the burden is on the carrier to show its internal records are adequate to verify the customer's request for the change in service, and none of the five methods presently includes any burden shifting language. The proposed amendment would be the only method with a formal burden shifting provision.

While the Board believes it could adopt the burden shifting language, and that the proposed amendment would properly reflect a balance between interests of consumers and the industry, the Board decides against that course at this time. The Board is reluctant to adopt a rule giving call records presumptive validity on the basis of the limited record developed in this proceeding. The Board finds that this record, in which only two companies submitted actual call records for the Board's consideration, does not provide sufficient support for the conclusion that internal call records warrant presumptive validity. It was only after the oral comment presentation, when the Board specifically asked companies to include call records in their supplemental comments, that two companies provided the Board with examples. While the companies that gave examples explained what their call records show, the Board is reluctant to adopt a rule giving such records presumptive validity without more information from a wider range of sources.

Given this record, the Board believes the better course is to preserve the flexibility that exists in the current rules by allowing its staff (and later the Board, if formal proceedings are requested) to evaluate the records submitted by companies in response to complaints and to weigh that evidence against any response the customer, Consumer Advocate, or any other party may have.

As revised and adopted, the amendment will not make any conclusions about the presumptive validity of carrier call records. The Board will continue to evaluate the facts of each case and determine the extent to which evidence submitted by a carrier supports an assertion that a customer authorized the disputed charges. For example, in a case where a carrier submits a call record showing that a collect call was accepted by a business customer during regular business hours and lasted for

over an hour, the call record would ordinarily tend to support a finding that the customer accepted the call and authorized the charges. Conversely, in a case where a carrier submits a call record to show that a collect call was accepted and lasted for a certain length of time, but the customer responds by explaining that the call was received in an improbable manner, such as by a fax machine and at a time when no one would have been on the premises, the call record would tend not to support a finding that the charge for the call was authorized.

The focus of the amendment, then, will be to identify what information a call record should include where a company relies on such a record to show that the customer authorized the additional charge. This outcome is consistent with one of the primary purposes of this proceeding, which was to provide additional detail on what call records should include. The revised, adopted amendment will read as follows:

(5) For other changes in service resulting in additional charges to existing accounts only, 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. Where the additional charge is for one or more specific telephone calls, examples of internal records a carrier may submit include call records showing the origin, date, time, destination, and duration of the calls, and any other data the carrier relies on to show the calls were made or accepted by the customer, along with an explanation of the records and data.

The Board has considered the arguments presented by the Wireless Companies regarding the application of the Board's cramming rules to wireless ETCs and concludes this issue is beyond the scope of this proceeding. The Board does not believe the record in this proceeding has been sufficiently developed with respect to the issue of the application of the Board's cramming rules to wireless ETCs to warrant reconsideration of action taken by the Board in the previous rule-making docket.

Finally, the Board will not adopt any of the other changes to the amendment proposed by participants as they are either beyond the scope of this proceeding or contrary to previous Board rulings. Specifically, the Board concludes that E&T's suggestion that the Board amend 199 IAC 22.23(5)"a" to provide that civil penalties will be assessed only in cases where a party commits an intentional violation is both beyond the scope of this proceeding and contrary to previous Board decisions. Likewise, the Board will decline Verizon and ITA's invitation to alter its conclusion that the rule against cramming is properly applied in disputes involving individual calls.¹⁰

Also, while the Board appreciates the level of detail E&T offer in their proposal to revise the amendment to require service providers to submit information about the number of collect calls between the called and calling party during a specific time or any possible malfunctions of the provider's system, the Board will not revise the amendment to list or require that particular information. The Board would welcome

¹⁰The Board notes that the assertion that individual calls are exempt from the Board's cramming rule is contrary to the Board's conclusion in previous cases. For example, in Docket No. FCU-06-34, In Re: Office of Consumer Advocate v. ILD Telecommunications, Inc., "Order Docketing for Formal Proceeding, Denying Motion to Dismiss, and Assigning to ALJ," (July 7, 2006), the Board stated it "does not agree with ILD that a collect call cannot be considered the addition of a telecommunications service and thus [is] not covered by the prohibition of unauthorized changes in service."

that kind of information in a company's response to a complaint as "any other data the carrier relies on to show the calls were made or accepted by the customer," but is not certain whether the information would be readily available to all service providers. Also, while the Board found AT&T's comments regarding the potential for error in creating call records useful, it believes AT&T's proposal to amend the rule to provide specific language regarding provisioning errors is beyond the scope of this proceeding. The Board will not adopt ITA's suggestion that the Board adopt a statement that a customer's mere denial would not be sufficient to show a charge was unauthorized or Verizon's suggestion that the amendment use the phrase "prima facie case" instead of "burden of proof." The Board concludes these suggestions are no longer pertinent because the Board is not adopting the burden shifting language.

IV. ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. A rule making proceeding identified as Docket No. RMU-06-8 is adopted.
2. The Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin an "Adopted and Filed" notice in the form attached to and incorporated by reference in this order.

3. The request for a concise statement of principle reasons for and against the rule filed by Consumer Advocate on December 1, 2006, is granted as described 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 14th day of May, 2007.

UTILITIES DIVISION [199]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.4, 476.1, 476.2, and 476.103 (2007), the Utilities Board (Board) gives notice that on May 14, 2007, the Board issued an order in Docket No. RMU-06-8, In re: Revisions to Rules Prohibiting Unauthorized Changes in Telecommunications Service [199 IAC 22], "Order Adopting Amendment and Providing Specific Statement of Principal Reasons For and Against the Amendment." The order adopted an amendment which was published under Notice of Intended Action in IAB Vol. XXIX, No. 8 (10/11/06) p. 506, ARC 5423B, with revisions described in the order.

The amendment is made to 199 IAC 22, which contains the Board's prohibition of unauthorized changes in telecommunications service and which specifies methods for verifying a consumer's authorization for a change in service. One way a telecommunications carrier can establish a valid consumer request for a change in service is by maintaining sufficient internal records. The purpose of the amendment is to identify call records as examples of the kinds of internal records a telecommunications service provider can submit to the Board when responding to a consumer's complaint filed with the Board alleging an unauthorized change in service that results in an additional charge on the consumer's telephone bill, and to specify what those records should contain.

Written comments were filed by the Consumer Advocate Division of the Department of Justice (Consumer Advocate); AT&T Communications of the

Midwest, Inc., TCG Omaha, Inc., and SBC Long Distance, LLC, d/b/a AT&T Long Distance (collectively AT&T); Evercom Systems, Inc., and T-NETIX Telecommunications Services, Inc. (collectively E&T); MCImetro Access Transmission Services, LLC, d/b/a Verizon Access Transmission Services, and MCI Communications Services, Inc., d/b/a Verizon Business Services (collectively Verizon); and the Iowa Telecommunications Association (ITA).

An oral comment hearing was held on November 21, 2006. In an order issued in this docket on November 21, 2006, the Board allowed any interested party to file supplemental comments.

Supplemental written comments were filed on December 1, 2006, by Alltel, U.S. Cellular Corp., and NPCR, Inc. (Nextel Partners) (collectively referred to as the Wireless Companies); E&T; and Verizon. Also on December 1, 2006, Consumer Advocate filed a supplemental statement of position and, pursuant to Iowa Code § 17A.4(1)"b," a request that, if the Board decides to adopt the amendment, it provide a concise statement of the principal reasons for and against the rule, incorporating the reasons for overruling arguments against the rule. The Board granted the request; the concise statement is contained in the Board's order.

The Board made one revision to the amendment based on its final review of the comments. The Board's order adopting the revised amendment can be found on the Board's Web site, www.state.ia.us/iub.

The amendment will become effective July 11, 2007.

This amendment is intended to implement Iowa Code sections 17A.4, 476.1, 476.2, and 476.103.

The following amendment is adopted.

Amend subparagraph 22.23(2)"a"(5) as follows:

(5) For other changes in service resulting in additional charges to existing accounts only, 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. Where the additional charge is for one or more specific telephone calls, examples of internal records a carrier may submit include call records showing the origin, date, time, destination, and duration of the calls, and any other data the carrier relies on to show the calls were made or accepted by the customer, along with an explanation of the records and data.

May 14, 2007

/s/ John R. Norris

John R. Norris
Chairman