

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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<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>DIRECTORY BILLING, LLC, d/b/a USDIRECTORY.COM,</p> <p style="text-align:center">Respondent.</p>	<p style="text-align:right">DOCKET NO. FCU-07-7 (C-07-152)</p>
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**ORDER DOCKETING FOR FORMAL PROCEEDING TO CONSIDER CIVIL  
PENALTY AND ASSIGNING DOCKET TO PRESIDING OFFICER**

(Issued June 18, 2007)

**PROCEDURAL BACKGROUND**

On April 23, 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 Directory Billing, LLC, d/b/a USDirectory.com (Directory Billing), for an alleged cramming in violation of Iowa Code § 476.103. On May 7, 2007, Directory Billing filed a response to Consumer Advocate's petition.

### **INFORMAL COMPLAINT PROCEEDING**

On March 5, 2007, Mr. Jay Eickmeyer of the Shum Funeral Home filed a complaint with the Attorney General's office. On March 27, 2007, staff received the complaint from Attorney General. Mr. Eickmeyer alleges that Directory Billing placed unauthorized charges onto the local telephone bill of his family's funeral home where he works. Mr. Eickmeyer stated that on January 22, 2007, he received a bill from OAN, the billing agent for Directory Billing, with a \$49.95 charge. Mr. Eickmeyer stated that he cancelled the service on March 5, 2007.

On March 29, 2007, staff forwarded copies of the complaint to OAN and Directory Billing. On April 5, 2007, staff received a response from OAN stating that it "is in the business of aggregating records from various service providers and transmitting those records to the local exchange carriers."

Also on April 5, 2007, staff received a response from Directory Billing stating that on August 10, 2006, a Directory Billing sales representative called the Shum Funeral Home and talked with an employee named Trent. Directory Billing also stated that, in accordance with its verification procedures, the sales representative confirmed Trent was authorized to make changes to the telephone account on behalf of Shum Funeral Home and that Trent was at least 18 years old. Directory Billing also stated that its sales representative verified the listing information contained in its database and offered Trent an upgraded preferred listing, including a one-month free trial. Furthermore, Directory Billing stated it gave Trent its toll-free telephone number,

street address, and Website information and explained that after the 30-day free trial period, Shum Funeral Home would be charged \$49.95 per month. Directory Billing stated that Trent, the Shum Funeral Home employee, answered in the affirmative when asked if he was ordering the preferred listing.

Directory Billing stated that on August 14, 2006, it sent Shum Funeral Home a welcome kit, which included a confirmation of Shum Funeral Home's preferred listing, provided Directory Billing's contact information, further information describing Directory Billing's services, and information explaining its 90-day full refund policy. Directory Billing further stated that its records show no communication from Shum Funeral Home indicating questions or concerns regarding Directory Billing's services or a desire to cancel those services until it received a telephone call from Mr. Eickmeyer on March 5, 2007. Directory Billing stated that on March 5, 2007, it cancelled Shum Funeral Home's service.

On April 16, 2007, staff issued a proposed resolution stating that Directory Billing was in violation of the Board's cramming rules. Staff stated that it did not receive a copy of the third-party verification recording (TPV) pursuant to 199 IAC 6.8(2), which states that the response must include proof of verification of the customer's authorization for a change in service. Staff found that Directory Billing had failed to provide acceptable proof that the charges were authorized.

Also on April 16, 2007, Directory Billing e-mailed staff a copy of the TPV. Staff found the TPV insufficient based on the fact that the verification was not taken by a

third party as required by Board rules and the Directory Billing sales representative was misleading.

On April 23, 2007, Consumer Advocate filed a petition for proceeding to consider civil penalty. Consumer Advocate stated that the proposed resolution was correct as far as it went; however, Consumer Advocate stated that subject to the hearing rights to which Directory Billing is entitled under law, the proposed resolution should be expanded to include a civil monetary penalty.

On May 7, 2007, Directory Billing filed a response to Consumer Advocate's petition for proceeding to consider civil penalty. Directory Billing stated that on April 11, 2007, it received a telephone call from Board staff requesting, in addition to the information originally provided, the telephone recording of the authorization call between the Shum Funeral Home employee and the Directory Billing sales representative. Directory Billing further stated that on April 16, 2007, the third business day following the request from Board staff, it provided staff with the TPV via electronic transmission. Directory Billing stated that Consumer Advocate filed the petition based upon the factual predicate that the recordings were never provided and, since Directory Billing provided the TPV, Consumer Advocate's petition was invalid.

On May 3, 2007, Consumer Advocate filed an amendment to its petition for proceeding to consider civil penalty. In its amendment, Consumer Advocate states that Directory Billing's TPV contains no authorization of any changes and that the

script is defective. Consumer Advocate stated that in the script, and on the TPV, there is a question of whether the Shum Funeral Home employee is authorized to make changes or incur charges on the account and whether he is 18 years of age or older, and although the Shum Funeral Home employee answers "yes," this response is neither an agreement to purchase anything nor an authorization of any charges; nor is there any indication that Shum Funeral Home later received and read any materials and then ordered the service.

On May 14, 2007, Directory Billing filed a response to Consumer Advocate's amended petition for proceeding to consider civil penalty. Directory Billing stated that based upon the clear interpretations of 199 IAC 22 and 199 IAC 6.8(2), it is not mandatory to provide a recording as proof of authorization under the Code. Further, Directory Billing stated that it disagrees with the scope and nature of the legal and factual basis Consumer Advocate relied on in filing its amended petition. Directory Billing also stated that the Shum Funeral Home employee confirmed twice that he was authorized to make changes in the account, that he was of legal age, and that the funeral home wanted to try the service on a risk-free basis.

## **DISCUSSION**

Iowa Code § 476.3(1) states that "[i]f the consumer advocate determines the public utility's response to the complaint is inadequate, the consumer advocate may file a petition with the board which shall promptly initiate a formal proceeding if the board determines that there is any reasonable ground for investigating the

complaint." The Board has previously determined that § 476.3 should be read together with Iowa Code § 476.103;<sup>1</sup> the statute prohibiting unauthorized changes in service. As the Board has said before, § 476.3 requires that the Board grant a petition for a formal proceeding any time the Board determines there is any reasonable ground for doing so. The Board concludes that there are reasonable grounds to grant a formal proceeding to consider a civil penalty in this matter.

Board rule 22.23(2)"a"(5) provides that for changes in service resulting in additional charges to existing accounts (other than changes to the service provider):

[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.

Thus, Directory Billing was not required to obtain or provide a TPV of the alleged authorization, although that would be acceptable evidence of verification. Still, to the extent that the proposed resolution found Directory Billing's verification insufficient because it was not taken by a third party, that finding was in error. Still, the burden was (and is) on Directory Billing to show that the records it has are adequate to verify the customer's authorization.

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<sup>1</sup> Office of Consumer Advocate v. MCI Communications of Iowa, Inc., and Frontier Communications of Iowa, "Motion for Reconsideration," Docket No. C-06-281 (March 8, 2007).

After reviewing the findings of staff, the Board agrees with staff that the TPV provided by Directory Billing was inadequate. Furthermore, this complaint is the second complaint in as many months against Directory Billing.

Directory Billing's TPV verifies that a sales representative from Directory Billing had a conversation with a Shum Funeral Home 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 Shum Funeral Home, implying the existence of a commercial relationship or account. The call ended by asking the Shum Funeral Home employee to verify that "you're duly authorized by the telephone 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 or vice versa, making the affirmation ambiguous, at best. 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 a \$50 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 and

based on the evidence available at this time, it appears staff's proposed resolution is reasonable, supported by the record, and leads to the conclusion that there are reasonable grounds for further investigation of this matter.

**ORDERING CLAUSES**

**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 23, 2007, as amended on May 3, 2007, is granted. File No. C-07-152 is docketed for formal proceeding, identified as Docket No. FCU-07-7.

2. Docket No. FCU-07-7 is assigned to Amy Christensen as the presiding officer to establish a procedural schedule and exercise the authority provided in 199 IAC 7.3.

**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 18<sup>th</sup> day of June, 2007.