

did not know who Agora was or what the company sold and that no one at his home authorized the charge.

On March 5, 2007, Board staff forwarded the complaint to Agora for response. On March 14, 2007, Agora responded stating that its services are promoted on the Internet and that authorization to provide and bill its services is obtained by way of the customer's electronic signature through an electronic letter of agency (eLOA). Agora further stated that its reliance on an eLOA is specifically sanctioned by the Uniform Electronics Transactions Act (UETA) and the Electronic Signatures in Global and National Transactions Act (E-Sign), which were enacted in 1999 and 2000, respectively. In regard to Mr. Rupp's complaint, Agora stated that on January 7, 2007, Mrs. Mickey Rupp, Mr. Rupp's wife, was online and was presented with an Agora ad. Agora said the ad describes the service as offering a personal toll-free number for use of retrieving voice mail messages. According to Agora, Mrs. Rupp completed the information requested on the eLOA form by entering personal information in the blank spaces provided on the ad, electronically submitted the order for Agora's services, and was sent an e-mail confirmation of the services ordered.

Agora further stated that subsequent to Mrs. Rupp's order, Mr. Rupp contacted Agora and requested cancellation and credit of charges billed. Agora stated that it initiated a credit of \$16.66 plus tax and cancelled the account.

On March 29, 2007, Board staff forwarded Agora's response to Mr. and Mrs. Rupp. On April 9, 2007, Mr. and Mrs. Rupp responded. Mrs. Rupp stated that she

had no idea how Agora obtained information about her and that she was not sure what an electronic signature was. Further, Mrs. Rupp stated that the e-mail address used is an address used by family and friends and is different from her personal e-mail address. Mrs. Rupp further stated that she had never received a confirmation e-mail, and that if Agora did send an e-mail confirmation, it probably went to her junk mail folder. Mr. Rupp stated that he was billed again by Agora and that he contacted Qwest and Qwest put a block on Agora.

On April 16, 2007, Board staff issued a proposed resolution stating that Agora's response to the Rupp's complaint included a list of data submitted when someone signs up for the company's voice messaging service. Further, the proposed resolution stated that the Web page form and the data requested are in accordance with Board rule requirements for letters of agency for the purpose of authorizing charges, and Agora issued a full credit as a courtesy and closed the account. The proposed resolution concluded that Agora processed an order using the data submitted and that there was no indication of wrong behavior on Agora's part. Furthermore, the proposed resolution concluded that cramming did not occur because Agora received authorization for the changes in the sense that the data it received show what appeared to be a valid order for service.

On April 30, 2007, Consumer Advocate filed a petition for proceeding to consider civil penalty. Consumer Advocate stated that the proposed resolution is incorrect in that it does not properly address the central issue under the statute,

which is, whether the Rupp's authorized the service. Consumer Advocate also stated that the proposed resolution fails to give the statutory word "unauthorized" its ordinary meaning and thereby reads the authorization requirement out of the statute, surrendering the protection the legislation seeks to provide. Consumer Advocate also stated that if the Rupp's denials are true, the charges were billed without authorization and in violation of the law.

Consumer Advocate argued that Agora failed to comply with Board rule 199 IAC 22.23(2)"b" requiring verification because the copies of its eLOA forms, allegedly used by Mrs. Rupp and sent to Board staff, were blank. Consumer Advocate maintained that if the proposed resolution were correct, there would be no need for a company to do anything to secure *bona fide* orders and that it is not beyond imagination for a company (or one of its employees or agents) to entice a consumer into supplying information using one Web page and then claim the information was provided on another.

Consumer Advocate also argued that the UETA, cited by Agora, does not support Agora's position. Consumer Advocate stated that UETA provides "[a]n electronic record or electronic signature is attributable to a person if it was the act of the person" and if the Rupp's allegations are true, there is no electronic record or electronic signature attributable to them. Finally, Consumer Advocate argued that if an authorization was missing in the first place, as the Rupp's allege, it cannot be supplied by an after-the-fact "order confirmation" e-mail, and if authorization was

missing in the first place, the e-mail does nothing more than tell the consumer she ordered a service she did not order. Consumer Advocate stated that if the allegations are true, the statute was violated, and, subject to Agora's legally entitled hearing rights, a civil monetary penalty should be assessed in order to secure future compliance.

On May 1, 2007, Board staff forwarded Consumer Advocate's petition to Agora for response. On May 14, 2007, Agora responded stating Consumer Advocate does not provide any information or allegations that would, if proven, support a finding that Agora acted wrongfully. Agora stated that Consumer Advocate essentially argues that Iowa Code § 476.103 creates no fault liability, such that a slamming and/or cramming violation will exist any time Agora provides a service which is alleged to be unauthorized, irrespective of whether Agora acted in good faith, acted responsibly based on the best information available to it, and acted in accordance with standard, accepted, and customary practices for soliciting sales over the Internet. Agora further stated that as soon as it was notified about the Rupp's complaint, it immediately issued a courtesy credit and that the statute does not require that Agora's verification be absolutely foolproof. Agora also stated that Consumer Advocate does not explain why Agora's level of verification is not reasonable.

Agora noted that Consumer Advocate makes no reference to the Internet Protocol Address (IP address) owned by Qwest from which the order originated.

Agora also stated that Consumer Advocate has not sought information or a release from the Rupp's that would give permission for Qwest, or the Rupp's internet service provider, to identify whether or not the IP address listed with Agora is linked to the Rupp's computer and that Consumer Advocate and the Rupp's have the ability to confirm or deny whether the order Agora received came from the Rupp household.

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 § 476.103,¹ the statute prohibiting unauthorized changes in service. The Board concludes that there are no reasonable grounds to grant a formal proceeding to consider a civil penalty in this matter.

Subparagraph 199 IAC 22.23(2)"a"(5) states "[f]or 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 person requesting the change in service"

¹ Office of Consumer Advocate v. MCI Communications of Iowa, Inc., and Frontier Communications of Iowa, "Order Denying Reconsideration," Docket No. C-06-281 (April 2, 2007).

Based on the informal record, the Board believes that Agora's verification is sufficient and does not lend itself to further investigation. The data provided by Agora's eLOA form show that on January 7, 2007, Agora received an order from Mickey Rupp. Agora also retained Mrs. Rupp's address, gender, e-mail address, date of birth, billing telephone number, and IP address. The Board finds this information is valid and in accordance with 199 IAC 22.23(2)"b"(5) and, therefore, creates no reasonable grounds for further investigation.

Consumer Advocate also argues that the proposed resolution is incorrect in that it does not properly address the central issue under the statute, namely, whether the Rupp's authorized the service, and if the Rupp's denials are true, the charges were billed without authorization and in violation of the law.

The Board cannot speculate as to what the facts may be; the Board can only determine the reasonableness of the facts presented in the informal record and determine whether those facts fit within or are outside of Board rules. The facts as expressed in the informal record show that Agora received an order on January 7, 2007, that contained personal information of Mrs. Mickey Rupp. Mrs. Rupp did state in a letter to Board staff that the e-mail address used in the eLOA was an address only used for family members and was not her personal e-mail address; however, based upon all the other information contained in the eLOA and the fact that the e-mail address was a valid e-mail address for the Rupps, that fact does not create a reasonable ground for further investigation.

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 April 30, 2007, is denied as discussed in the body 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 27th day of June, 2007.