STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, vs. CORDIA COMMUNICATIONS CORP., Respondent.	DOCKET NO. C-07-134

ORDER DENYING REQUEST FOR PROCEEDING TO CONSIDER CIVIL PENALTY

(Issued June 29, 2007)

PROCEDURAL BACKGROUND

On April 9, 2007, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) petitioned the Utilities Board (Board) to commence a formal proceeding to consider imposing a civil penalty on Cordia Communications Corp. (Cordia) for an alleged slam in violation of Iowa Code § 476.103. On April 17, 2007, Cordia filed with the Board a response to Consumer Advocate's petition.

INFORMAL COMPLAINT PROCEEDING

On March 1, 2007, Mr. Duane Richards filed a complaint against Cordia alleging an unauthorized change in his local and long distance telephone service. Mr. Richards stated that he received a call from a telemarketer claiming he was with Qwest Corporation (Qwest). Mr. Richards stated that the telemarketer told him four

times he was with Qwest and that Qwest could help him save money on his telephone bill. Mr. Richards stated that he agreed to change his service because he thought he was speaking to a Qwest representative. Mr. Richards stated that he did not realize until he received a bill from Cordia that he had changed his long distance service to Cordia.

On March 2, 2007, Board staff sent a copy of the complaint to Cordia and Qwest for a response. Qwest responded on March 9, 2007. Qwest stated that on December 11, 2006, it received an electronic order from Cordia to change the local and long distance service of Mr. Richards to Cordia effective December 15, 2006. Qwest stated that it made the change, however, on January 2, 2007, Mr. Richards called Qwest and placed an order to switch the service back to Qwest. Qwest stated that it issued the order and the lines were changed back to the Qwest network on January 11, 2007.

Cordia responded to staff on March 12, 2007. Cordia stated that on December 15, 2007, it established and activated an account for Mr. Richards. Cordia also stated that Mr. Richards authorized the change of service from Qwest. Cordia stated that during the third-party verification recording (TPV) Mr. Richards did not ask any questions regarding the service he was acquiring, and when asked if he had the authority to make decisions for this line and if he was authorizing a switch from his current carrier to Cordia, Mr. Richards answered in the affirmative.

On March 22, 2007, staff sent a copy of Cordia's letter and TPV to Mr. Richards for a response. On March 24, 2007, Mr. Richards responded, stating that

Cordia's TPV did not include his conversation with the customer service representative that gave the information to the third-party verifier and therefore did not include his questions about whether he was talking to Qwest. Also, Mr. Richards stated that he gave the customer service representative two telephone numbers and that the customer service representative never mentioned Cordia.

Staff issued a proposed resolution on March 27, 2007. Staff found that Cordia had switched Mr. Richards' local and long distance service without his authorization due to insufficient documentation of Mr. Richards' telephone numbers and Mr. Richards' claim of misrepresentation during the sales call. Staff concluded that if the TPV were valid, it would have included both of Mr. Richards' telephone numbers in the initial instance, without Mr. Richards having to volunteer that information. Therefore, staff concluded that Cordia violated the slamming rules for an unauthorized change in local and long distance telephone service due to insufficient proof that the change of service was authorized properly.

On April 9, 2007, Consumer Advocate filed a petition for proceeding to consider civil penalty. Consumer Advocate stated that staff's proposed resolution was correct. Consumer Advocate also stated that neither Cordia's verification portion of the telephone call to Mr. Richards, or anything else Cordia claims, overcomes Mr. Richards' allegations of misrepresentation by the Cordia customer service representative during the unrecorded portion of the telephone call. Consumer Advocate stated that the Cordia customer service representative's misrepresentation worked a fraud on Mr. Richards and that fraud vitiates any authorization Mr. Richards

might have given Cordia. Consumer Advocate also stated that, subject to hearing rights to which Cordia is entitled under law, a civil monetary penalty should be assessed in order to secure future compliance with Iowa Code § 476.103.

On April 17, 2007, Cordia responded to staff's proposed resolution and stated it had issued Mr. Richards a full credit of $71 and closed his account.

On April 23, 2007, Cordia responded to Consumer Advocate's petition. Cordia stated that it has a zero tolerance policy with telemarketers if it is shown that they have engaged in any tactics which may be considered deceptive or deceitful, and that if Cordia's guidelines are violated, the violating telemarketer is subject to immediate termination. Furthermore, Cordia stated that the telemarketing company it hires is also held responsible, and if the telemarketing company repeatedly violates Cordia's guidelines, Cordia discontinues working with the company. Cordia also stated that there was no way to confirm or disprove Mr. Richards' allegations, and without a recording of the sales call, Cordia is only left with the TPV to determine whether Mr. Richards authorized the change of service. Finally, Cordia stated that in light of the lack of evidence of misrepresentation and Mr. Richards's clear acquiescence in the TPV, Cordia does not believe formal proceedings or a civil penalty is to be justified.

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. 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 no reasonable grounds to grant a formal proceeding to consider a civil penalty in this matter because there is no reasonable basis for assessing a civil penalty.

The requirement that there be a showing of reasonable grounds for further investigation before an informal customer complaint is set for formal proceedings is appropriate for at least two reasons. First, the Board has before it an informal record consisting of a written complaint from the customer, a written response from the company, a TPV recording, and a written reply from the customer. Further, Board staff has had the opportunity to ask follow-up questions of either side, if appropriate. Thus, this is not a situation where notice pleading is appropriate; the facts the parties believe to be significant are available to the Board and the positions of the parties are reasonably well developed.

Second, the amounts at issue in these cases are typically small. In this case, for example, the customer's complaint involves only $71. While the potential for civil penalties may arguably increase the dollars at stake, the fact remains that it would be

[1] 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).

woefully inefficient to expend significant resources on every $71 case if civil penalties are not a reasonable possibility.

Thus, it is appropriate in these cases to make an initial evaluation, based on the record assembled to date, to determine whether there are reasonable grounds for further investigation. In this case, the Board has determined that there are no such grounds.

Board rule 22.23(2)"a"(5) requires service providers to provide Board staff with verification establishing a valid customer request for change in service through "maintenance of sufficient internal records." One such method is a TPV. In the informal proceedings in this matter, Cordia has submitted a TPV that leaves no room for further investigation.

Despite the complainant's indication that the Cordia sales representative said he was from Qwest, it is clear that a reasonable customer should have understood from the TPV that Cordia was the carrier involved in the sales pitch. The TPV provided by Cordia makes it clear on at least six occasions that the service is to be transferred to Cordia and that Mr. Richards is switching his service from Qwest to Cordia. Furthermore, in response to the specific question asked by the Cordia representative of "do you authorize the change in service from Qwest to Cordia," Mr. Richards answered "yes." The clarity of the TPV is beyond reasonable question.

Moreover, Cordia states that each telemarketer it uses is required to sign a document stating that he will adhere to the requirements contained in Cordia's telemarketing guidelines and Cordia provided Board staff with copies of both of the

scripts used by its agents. Cordia's scripts contained no references to Qwest and Cordia stated that if the telemarketer violates Cordia guidelines, that telemarketer is immediately terminated. Also, the telemarketing company that Cordia hires is also held responsible. For these reasons, the Board finds there are no reasonable grounds for further investigation.

ORDERING CLAUSE

IT IS THEREFORE ORDERED:

The "Petition for Formal Proceeding to Consider Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on April 9, 2007, is denied as discussed in this order.

UTILITIES BOARD

/s/ John R. Norris

/s/ Curtis W. Stamp

/s/ Krista K. Tanner

ATTEST:

/s/ Sharon Mayer
Executive Secretary, Assistant to

Dated at Des Moines, Iowa, this 29th day of June, 2007.