



he said that on January 31, 2007, his long distance service was switched back to TCI without his consent. Mr. Sharon stated that he was billed for toll calls between February 15 and February 24, 2007, by TCI. Furthermore, Mr. Sharon stated that on February 28, 2007, he contacted Qwest and had his service switched back to Qwest. Mr. Sharon also stated that on April 14, 2007, he received a demand letter from the Credit Bureau of Rochester for \$55.56. He stated that he disputed the charges.

On April 18, 2007, Board staff sent the complaint to TCI at the address contained in Board records for a response. TCI did not respond and staff issued a proposed resolution finding a slam based on TCI's failure to respond. On May 11, 2007, Consumer Advocate filed a petition for proceeding to consider civil penalty; however, on that same day, the original complaint letter sent to TCI was returned undeliverable. Consumer Advocate was notified and on May 15, 2007, withdrew its petition.

On May 15, 2007, Board staff forwarded the complaint for response to TCI at the address listed on Mr. Sharon's invoice. TCI did not respond.

On June 8, 2007, Board staff issued a proposed resolution finding TCI in violation of Board rules for failure to respond to Mr. Sharon's complaint. The proposed resolution also required TCI to fully credit Mr. Sharon's account and prohibited TCI from pursuing a collection action for the charges.

On June 19, 2007, Consumer Advocate filed a petition for proceeding to consider civil penalty. Consumer Advocate stated that the proposed resolution was

correct; however, the proposed resolution should be expanded to clarify that companies cannot escape civil penalties by ignoring allegations of a violation. Furthermore, Consumer Advocate stated that civil penalties should be assessed in order to secure future compliance with the statute and that a formal proceeding is necessary to give TCI notice and opportunity for hearing, to affirm staff's determination that TCI committed a slamming violation, and to consider civil penalties in an amount to deter future violations.

### **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 because of the failure of TCI to

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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).

provide proof of authorization regarding Mr. Sharon's complaint as required by 199 IAC 22.23(2)"a"(3). The issues in this docket will include that failure and such other issues as may be developed during the course of this proceeding.

**ORDERING CLAUSES**

**IT IS THEREFORE ORDERED:**

1. The "Petition for Formal Proceeding to Consider Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on June 19, 2007, is granted as discussed in this order. File No. C-07-167 is docketed for formal proceeding, identified as Docket No. FCU-07-10.

2. Total Call International, Inc., is directed to file a response to Consumer Advocate's petition within 30 days of the date of this order.

**UTILITIES BOARD**

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/s/ Curtis W. Stamp

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Krista K. Tanner

Dated at Des Moines, Iowa, this 20<sup>th</sup> day of July, 2007.