

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<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:center">DOCKET NO. C-07-183</p>
---	--

**ORDER DENYING PETITION FOR PROCEEDING TO CONSIDER CIVIL PENALTY
AND DENYING MOTION FOR RECONSIDERATION FILED BY RESPONDENT**

(Issued August 15, 2007)

PROCEDURAL BACKGROUND

On June 21, 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 July 25, 2007, Directory Billing filed a response to Consumer Advocate's petition.

INFORMAL COMPLAINT PROCEEDING

On May 23, 2007, Mr. Marvin Stupka filed a complaint alleging that Directory Billing placed an unauthorized charge of \$49.95 onto his local telephone bill. Mr. Stupka stated that Directory Billing did not contact him and he did not authorize the charges. Furthermore, Mr. Stupka stated that he called his local phone company and they gave him a toll-free number to call. He said when he called the toll-free number, he talked to a customer service representative from Directory Billing, and he was told that someone in his business had authorized the charge and that it was for a Web site listing. Mr. Stupka stated that he then informed the customer service representative that he wanted the billing reversed.

On May 24, 2007, staff forwarded copies of the complaint to OAN Services, Inc. (OAN), and Directory Billing. On June 5, 2007, staff received a response from Directory Billing. Directory Billing stated that after reviewing Mr. Stupka's complaint and his account, Mr. Stupka's business' telephone number was matched with another customer. Directory Billing also stated that as a result of finding Mr. Stupka's name and telephone number matched with the incorrect customer, it has conducted a systemwide audit of customer's telephone numbers to make sure that the correct numbers are matched with the correct customers. Furthermore, Directory Billing stated that it canceled Mr. Stupka's account listing and issued a full credit to Mr. Stupka.

On June 6, 2007, OAN responded and stated that OAN is engaged in the business of aggregating records from various service providers and transmitting those records to the local exchange carriers. Also, OAN stated that it had forwarded the complaint directly to Directory Billing and a credit of \$99.90 plus tax was issued to Mr. Stupka's telephone company for his account.

On June 7, 2007, Board staff received an e-mail from Directory Billing regarding the incorrect matching of Mr. Stupka's information. Directory Billing stated that one of its sales people improperly linked Mr. Stupka's information in the sales process, replacing Mr. Stupka's information on one of their screens with the information of another company. Directory Billing stated that the sales person did not know that the record would maintain a permanent link with Mr. Stupka's business and that Directory Billing has now corrected the error.

On June 8, 2007, Board staff issued a proposed resolution finding that Directory Billing was in violation of the Iowa Code and Board rules regarding cramming. Staff found that Mr. Stupka did not authorize the charges. Staff stated that Directory Billing's error appeared to be an isolated incident and warned Directory Billing that future complaints would be reviewed with an eye toward similar occurrences. Furthermore, staff informed Directory Billing that this violation could be considered by the Board, along with any other violations, to determine whether civil penalties should be levied against Directory Billing. Staff determined that at this time, no additional action was required because Mr. Stupka's account was canceled and

he was fully credited. Staff gave Directory Billing 14 days to respond and provide additional information or request a formal proceeding if it disagreed with the proposed resolution.

On June 21, 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, it should be expanded to include a civil monetary penalty. Furthermore, Consumer Advocate stated that a civil monetary penalty should be assessed in order to secure future compliance with Iowa Code § 476.103. Consumer Advocate requested a hearing for the purposes of giving Directory Billing notice and opportunity for hearing; affirming staff's determination that Directory Billing committed a cramming violation; and considering a penalty in an amount designed to deter future violations.

On June 28, 2007, staff received a response from Directory Billing regarding staff's proposed resolution. Directory Billing stated that it did not believe that the circumstances warranted a finding that Directory Billing committed a cramming violation. Directory Billing stated that although there was a mistake regarding which customer was billed, Directory Billing was authorized by a customer to add its services to that customer's bill. Furthermore, Directory Billing stated that due to an internal error, the wrong business was charged and, accordingly, Directory Billing did not have the requisite mens rea necessary to justify a finding of guilt. Last, Directory

Billing stated that it has in no way violated the Board's cramming rules and requests reconsideration.

On June 29, 2007, staff forwarded a copy of Directory Billing's request for reconsideration to Consumer Advocate, giving Consumer Advocate ten days to respond. On July 10, 2007, Consumer Advocate responded stating that the proposed resolution was correct in finding the Iowa Code and Board rule were violated. Furthermore, Consumer Advocate stated, referencing case law, that there is no requirement of intent to violate, nor is it necessary that a party have a guilty mens rea to be in violation of Iowa Code § 476.103 and Board rule 22.23.

On July 25, 2007, Directory Billing responded to Consumer Advocate's petition for proceeding to consider civil penalty. Directory Billing argued that an inadvertent error should not result in a civil penalty. Directory Billing stated that prior to any Board involvement, Mr. Stupka contacted OAN¹ regarding the unauthorized charges and OAN reversed the charges on his bill and canceled his account. Further, Directory Billing reiterated its explanation that it had investigated the incident and determined that Mr. Stupka's telephone number was matched with that of another customer and that an inadvertent mistake had occurred. Directory Billing stated that as a result of this mistake occurring, it conducted a systemwide audit of its customers' telephone numbers to verify that no mismatches would occur in the future.

¹ OAN is the billing agent for Directory Billing.

DISCUSSION

Iowa Code § 476.3(1) states that when a customer complaint is filed and a utility has responded, "[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." Iowa Code § 476.3 also states "[t]he complainant or public utility also may petition the board to initiate a formal proceeding which petition shall be granted 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;² the statute prohibiting unauthorized changes in service.

In this matter, Consumer Advocate requests a formal proceeding to consider civil penalties and Directory Billing requests a "reconsideration" of Board staff's proposed resolution finding that it was in violation of the Iowa Code and the Board's rules prohibiting cramming. Since a request for formal proceeding must normally precede a request for reconsideration, the Board will consolidate Directory Billing's June 28, 2007, response to Board staff's proposed resolution and its July 25, 2007, response to Consumer Advocate's petition and review these responses together, where appropriate.

² 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).

DIRECTORY BILLING'S REQUEST FOR RECONSIDERATION

Directory Billing, in its June 28, 2007, response, argued, "USdirectory.com does not believe that the circumstances warrant the finding that USdirectory.com has committed a cramming violation as defined in Iowa Administrative Code § 199-22.23." In support of its argument, Directory Billing stated that even though there was a mistake as to which customer authorized its services, a customer did authorize Directory Billing to add its service, but the wrong customer was charged. Directory Billing further stated that it did not have the mens rea necessary to justify the finding of guilt in Board staff's proposed resolution.

Iowa Code § 476.103(3) states "[t]he board shall adopt rules prohibiting an unauthorized change in telecommunications service" A "change in service" is defined in Iowa Code § 476.103(2)(a) and includes "the addition of a telecommunications service for which a separate charge is made to a consumer account." Board rule 22.23 defines "cramming" as "the addition or deletion of a product or service for which a separate charge is made to a telecommunication customer's account without the verified consent of the affected customer."

Directory Billing, in its June 5, 2007, letter, admitted that it had inadvertently matched Mr. Stupka's telephone number with another customer. Also, in its June 22, 2007, letter, Directory Billing stated, "due to an internal error which was subsequently rectified, the wrong business was charged"

There is no question that a cramming violation occurred. Directory Billing claims that it did not have the requisite intent. The fact that Directory Billing did not benefit financially from the cram tends to support staff's proposed conclusion that this was unintentional, but it does not change the fact that Directory Billing charged Mr. Stupka for a telecommunications service without his verified consent. The company's intent, or lack thereof, is more relevant to the issue of civil penalties than the violation itself. Therefore, the Board agrees with staff's conclusion in its proposed resolution that Directory Billing violated Iowa Code § 476.103 and Board rule chapter 22. Directory Billing's request for reconsideration is denied.

CONSUMER ADVOCATE'S PETITION

On June 21, 2007, Consumer Advocate filed a petition for proceeding to consider civil penalty. Consumer Advocate argued that a civil monetary penalty should be assessed in order to secure future compliance with Iowa Code § 476.103. Consumer Advocate requested a hearing for the purposes of giving Directory Billing notice and opportunity for hearing; affirming staff's determination that Directory Billing committed a cramming violation; and considering a civil penalty in an amount designed to deter future violations.

The Board agrees with staff that Directory Billing violated the Iowa cramming statute; however, Directory Billing's inadvertent violation does not rise to the level warranting a civil penalty. Therefore, the Board finds no reasonable grounds for

further investigation or, alternatively, no reasonable grounds to grant formal proceeding to consider civil penalties.

This cramming case is the result of an inadvertent error by Directory Billing that will not be significantly deterred by a civil penalty. In this case, the Board believes that the appropriate remedy was to fix the error by canceling Mr. Stupka's service and issuing a credit. In its June 6, 2007, letter, OAN, the billing agent for Directory Billing, stated that it had canceled Mr. Stupka's service and issued Mr. Stupka a credit. All of this was done prior to Mr. Stupka filing his complaint with the Board. The Board is not saying that by issuing a credit prior to Board involvement a company may insulate itself from civil penalties; however, in this case, the credit satisfied and made whole the customer, and it is an efficient use of Board resources to allow the company and the customer to resolve the complaint without involvement of the Board. See Iowa Code § 476.103(e). Furthermore, although each circumstance requires individual consideration, the Board is now aware of this particular type of error resulting from Directory Billing's prior system, and any future complaints against Directory Billing will be more intensely scrutinized.

No reasonable grounds for further investigation or for civil penalty proceeding has been shown. Consumer Advocate's request for a proceeding to consider civil penalty will be denied.

ORDERING CLAUSE

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 June 21, 2007, is denied as discussed in the order.

2. The "Motion for Reconsideration" and "Petition for Formal Review" filed by Directory Billing, LLC, d/b/a USdirectory.com, on June 28, 2007, are denied as discussed in the 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 15th day of August, 2007.