

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,</p> <p style="padding-left: 40px;">Complainant,</p> <p style="text-align:center">vs.</p> <p>USB ORGANIZATION, INC.,</p> <p style="padding-left: 40px;">Respondent.</p>	<p style="text-align:center">DOCKET NO. C-07-227</p>
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**ORDER DENYING PETITION FOR PROCEEDING TO CONSIDER CIVIL PENALTY**

(Issued November 19, 2007)

**PROCEDURAL BACKGROUND**

On September 24, 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 USB Organization, Inc. (USB), for an alleged cramming in violation of Iowa Code § 476.103. USB has not responded to Consumer Advocate's petition.

**INFORMAL COMPLAINT PROCEEDING**

On August 14, 2007, Erik Charter filed a complaint with Board staff that USB placed unauthorized charges on his local telephone bill. Mr. Charter stated that on his August 1, 2007, telephone bill there was a charge from USB for \$59.90 for unidentified services. Mr. Charter further stated that on August 1, 2007, he called

USB to file a complaint and request a refund and that USB played for him a "clearly fraudulent 'third-party verification' phone call." Mr. Charter alleged that the third-party verification (TPV) call was someone impersonating his employee, Clint Varley. Furthermore, Mr. Charter stated that USB agreed to refund the \$59.90 and add him and his company to USB's do-not-call list. Mr. Charter stated that he was not sure what his company was being charged for; at one point he was told by a USB representative it was for yellow pages ads and at another point he was told it was for gift cards. Mr. Charter filed the complaint because he was skeptical about whether he would actually receive the refund and he thought the state should investigate.

On August 16, 2007, Board staff sent a copy of the complaint to USB. Board staff requested a business name, address, and telephone number of USB's independent TPV service and a complete copy of the entire verification conversation, either electronically recorded or by transcript. Board staff also requested that USB provide, within 30 days, proof of written notice of the service charge and informed USB that copies of its response and any information it submitted would be forwarded to the consumer and to Consumer Advocate.

On August 30, 2007, USB sent Board staff a recording of a TPV. USB stated that on May 1, 2007, a USB representative talked to Clint Varley, who stated he was a property manager for Jensen Property Management. During the independent TPV process, Mr. Varley stated he was authorized by the telephone account owner to make changes to the telephone service. Furthermore, USB stated that Mr. Varley also verified the name, spelling, and the physical mailing address for Jensen Property

Management and gave his birth date as a security code. USB stated that Mr. Varley authorized a 30-day preview to look at the rest of the services USB offers and on May 3, 2007, USB sent a welcome letter to the address given by Mr. Varley.

USB stated that on August 9, 2007, Mr. Charter called USB and inquired about \$29.95 charged by USB on his telephone bill. USB further stated that it reviewed the information about its services with Mr. Charter, and informed him of Mr. Varley's approval of the services. When Mr. Charter objected to the approval, USB played for Mr. Charter the TPV recording of Mr. Varley approving the services. USB stated that that it credited and canceled Mr. Charter's account.

On August 31, 2007, Board staff sent a copy of the TPV to Mr. Charter. On September 13, 2007, Mr. Charter responded by printing the staff e-mail and adding a handwritten note saying, "This is not Chris Varley on the tape," apparently signed by Mr. Varley on September 10, 2007.

On September 14, 2007, Board staff issued a proposed resolution concluding that because the identity of the person in the TPV was disputed, a cramming violation had occurred. Board staff informed USB that the violation might be considered by the Board, along with any other violations, in any future proceeding to determine whether to assess civil penalties. Board staff also noted that Mr. Charter's account was canceled and he was credited \$59.90 on August 8, 2007, before the complaint was filed with the Board. Last, Board staff informed USB and Mr. Charter that if they disagreed with the proposed resolution, they could provide additional information or request a formal proceeding.

On September 24, 2007, Consumer Advocate filed a petition for proceeding to consider civil penalty. Consumer Advocate stated that subject to the hearing rights to which USB is entitled as a matter of law, Board staff's proposed resolution was correct. Consumer Advocate further stated that a civil monetary penalty should be assessed in order to secure future compliance with the statute. Consumer Advocate requested that the Board commence a proceeding pursuant to Iowa Code §§ 476.3 and 476.103 (2007) for the purposes of affording USB notice and an opportunity for hearing; affirming staff's determination that USB committed a cramming violation; and to consider a civil penalty in an amount designed 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. Thus, the Board only denies petitions for formal proceedings when there are no reasonable grounds for further investigation. The

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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).

Board concludes that there are no reasonable grounds to grant a formal proceeding to consider a civil penalty in this matter, because further investigation cannot reasonably be expected to result in any Board action.

Although Board staff found a cramming violation, the finding of a violation does not necessarily mean that a civil penalty will or should be assessed. In the present case, the consumer's account was canceled and the consumer was fully credited, before any complaint was filed with the Board. Iowa Code § 476.103, the statute that authorizes the Board to adopt rules prohibiting unauthorized changes in telecommunications service, also requires that the Board's rules encourage company resolutions without Board involvement. The statute says the rules must include "a provision encouraging service providers to resolve customer complaints without the involvement of the board." See § 476.103(3)"e." If the Board were to docket this matter to consider civil penalties under these circumstances, then service providers would not be encouraged to resolve complaints without Board involvement; because they could not expect to avoid a proceeding before the Board by doing so.

This does not mean that the Board can never hear a case alleging an unauthorized change of service and a full customer credit prior to the time the complaint was filed. If, for example, there were a number of cases involving the same service provider and similar allegations, the Board could docket the matter to consider whether a pattern of violations was shown, justifying additional measures pursuant to § 476.103(5). In this case, however, no facts have been alleged that would justify further investigation and formal proceedings that would tend to

discourage service providers from rapid resolution of customer complaints without Board involvement.

**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 September 24, 2007, is denied as discussed in this order.

**UTILITIES BOARD**

/s/ John R. Norris

/s/ Krista K. Tanner

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

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Dated at Des Moines, Iowa, this 19<sup>th</sup> day of November, 2007.