

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>MCLEODUSA TELECOMMUNICATIONS<br/>SERVICES, INC.,</p> <p style="text-align:center">Respondent.</p> | <p style="text-align:center">DOCKET NO. C-06-393</p> |
|---|--|

---

**ORDER DENYING PETITION FOR PROCEEDING TO CONSIDER CIVIL PENALTY**

(Issued December 6, 2007)

**PROCEDURAL BACKGROUND**

On February 9, 2007, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) petitioned the Utilities Board (Board) to commence a formal proceeding to impose a civil penalty on McLeodUSA Telecommunications Services, Inc. (McLeodUSA), for an alleged cramming in violation of Iowa Code § 476.103. McLeodUSA has not filed a response.

**INFORMAL COMPLAINT PROCEEDING**

On December 12, 2006, Joe and Carol Hartman filed a complaint with Board staff regarding a trouble isolation charge that their local telephone provider, McLeodUSA, had billed their business. The Hartmans stated that on November 21,

2006, they were without a dial tone and that they called the McLeodUSA customer service center. The Hartman's stated that they talked to a McLeodUSA customer service representative and were told that someone would be sent out to their residence, where they maintain their business. The Hartmans also stated that they were told that there would be a \$95 charge if no problem was found on McLeodUSA's network and that if there was no problem on McLeodUSA's network, the problem would have to be inside the Hartman's residence. The Hartman's stated that they agreed to pay the \$95 charge if the problem ended up being inside their home and not on McLeodUSA's network. They stated that they were given a trouble ticket number.

Shortly after being assigned a trouble ticket number, the Hartman's stated that they called the McLeodUSA customer service center again because they still had no dial tone. The Hartman's stated that the McLeodUSA representative told them that a technician had been to their home and checked their line and that the trouble appeared to be inside of the home. The Hartman's also stated that the McLeodUSA representative told them they needed to contact a local telephone service vendor in order to repair their telephone service. Mr. Hartman stated that he contacted Midwest Telecom, Inc. (Midwest Telecom), which sent a technician to check the line. Mr. Hartman stated that the Midwest Telecom technician checked the line and determined that the problem was not inside the Hartman's residence, but on the network side, specifically the telephone pole. Mr. Hartman stated that he contacted

the McLeodUSA customer service representative and convinced them to send another technician to check the line a second time. Mr. Hartman stated that when the second McLeodUSA technician checked the line, he agreed with the Midwest Telecom technician that the problem was on the telephone pole in McLeodUSA's network and not inside the Hartman's residence. Mr. Hartman also stated that the technician could not find a record for the previous trouble isolation charge ticket.

On December 15, 2006, Board staff sent a copy of the complaint to McLeodUSA, which responded on December 21, 2006. McLeodUSA stated that it had researched the issue and its records concurred with the Hartman's account of what transpired. McLeodUSA also stated that a credit was being processed in the amount of \$95. McLeodUSA, responding to a request from the Hartmans, also stated that it was processing a credit for the charges billed to the Hartmans by Midwest Telecom.

On January 26, 2007, Board staff issued a proposed resolution. Board staff concluded that there was a breakdown in communication between McLeodUSA dispatch and the McLeodUSA technician that was initially sent to check the Hartman's telephone line and that no further action was necessary because the consumer was credited for the trouble isolation amount, an additional amount for the local vendor, and a credit for time without service. Board staff noted that McLeodUSA needed to review and possibly revise their current system for checking

the status of repairs so that customers are not accidentally billed for trouble isolation charges.

On February 9, 2007, Consumer Advocate filed a petition for proceeding to consider civil penalties. Consumer Advocate stated that the proposed resolution was incomplete; that the Hartmans only authorized the trouble isolation charge if the problem with the telephone line was inside their home. Consumer Advocate further stated that the Hartmans alleged that McLeodUSA, in an effort to justify the charge, falsely told them a technician had come to their residence and determined that the problem was in their residence. Furthermore, Consumer Advocate stated that even though the Hartmans contacted McLeodUSA a second time and told the customer service representative that the problem was on McLeodUSA's network, the Hartmans were billed without authorization. Consumer Advocate stated that McLeodUSA does not deny these allegations, therefore they are undisputed, and McLeodUSA is in violation of Iowa Code § 476.103 (2007). Last, Consumer Advocate stated that the Board should commence a proceeding pursuant to Iowa Code §§ 476.3 and 476.103 (2007) for the purpose of affording McLeodUSA notice and an opportunity for hearing to determine whether McLeodUSA committed a cramming violation, and to consider a penalty amount designed to deter future violations.

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 Board concludes that there are no reasonable grounds to grant a formal proceeding to consider a civil penalty in this matter, because as a billing dispute, this matter is outside of the scope of Iowa Code § 476.103 and its prohibition on unauthorized changes of service.

Board rules state that "[c]ramming does not include telecommunications services that are initiated or requested by the customer." 199 IAC 22.23(1). Based on the informal record, it is clear and undisputed that the Hartmans initiated the service call to McLeodUSA in order to repair their company's telephone service. According to the Hartmans, the McLeodUSA representative advised them that if there was no problem found on McLeodUSA's network they would be charged \$95, to which Mr. Hartman agreed. Therefore, the issue is not whether the Hartman's authorized the \$95 trouble isolation charge, because they did when they agreed to pay the trouble isolation charge in their initial telephone call to McLeodUSA. The

---

<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).

issue is whether the Hartman's should have been billed \$95 for services performed by McLeodUSA and, thus, whether the Hartmans should have been billed the \$95 falls in the realm of billing disputes, not a cramming violation as defined by Iowa Code § 476.103.

Consumer Advocate argues that once the Hartmans called a local vendor and the local vendor informed the Hartmans that the problem was on McLeodUSA's network and the Hartmans informed McLeodUSA and McLeodUSA still billed the Hartmans \$95 for the trouble isolation charge, a cram occurred. The Board disagrees. The Board believes that the Hartmans authorized McLeodUSA to check their company's phone line and authorized McLeod to charge a trouble isolation charge; thus, any resulting charges to the Hartmans is a billing dispute between McLeodUSA and the Hartmans and that dispute has been resolved. There are no reasonable grounds for further investigation or to consider civil penalties pursuant to § 476.103.

If the Board were to adopt Consumer Advocate's approach, then any time a company accidentally overbilled a consumer for services that the consumer ordered, mistakenly billed a consumer, or a consumer disputed a charge, it would be a cram and civil penalties could possibly be assessed. This is not what the Iowa Legislature intended when it prohibited unauthorized changes of service; there is no indication in the statutes that all billing disputes are now slams and crams.

**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 February 9, 2007, is denied as discussed in this order.

**UTILITIES BOARD**

/s/ John R. Norris

/s/ Krista K. Tanner

ATTEST:

/s/ Margaret Munson  
Executive Secretary, Deputy

/s/ Darrell Hanson

Dated at Des Moines, Iowa, this 6<sup>th</sup> day of December, 2007.