

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,</p> <p style="padding-left: 100px;">Complainant,</p> <p style="padding-left: 100px;">vs.</p> <p>AGORA SOLUTION,</p> <p style="padding-left: 100px;">Respondent.</p>	<p style="text-align:right">DOCKET NO. FCU-07-19 (C-07-209)</p>
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**ORDER DOCKETING FOR FORMAL PROCEEDING AND
SETTING DEADLINE FOR RESPONSE**

(Issued December 6, 2007)

On August 29, 2007, pursuant to Iowa Code §§ 476.3 and 476.103, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition for a proceeding to consider a civil penalty for an alleged cramming violation committed by Agora Solution (Agora).

I. Informal complaint proceeding

Based upon the record assembled in the informal complaint proceeding, the events to date can be summarized as follows:

On June 27, 2007, the Board received a complaint from Barb Johnson of Vinton, Iowa, alleging that the bill from her local telephone service provider, Qwest Corporation (Qwest), included unauthorized charges submitted by The Billing

Resource (Billing Resource) on behalf of Agora. Ms. Johnson indicated she called Billing Resource and was told it submitted the charges on behalf of Agora. Ms. Johnson stated she contacted Agora and was told the charges were for voice messaging service and that the service had been cancelled on May 25, 2007.

Board staff identified the matter as C-07-209 and on July 2, 2007, forwarded the complaint to Billing Resource for response. Staff also forwarded the complaint to Qwest, asking whether Qwest, as Ms. Johnson's local service provider, had any information in its records relating to the alleged unauthorized change in service. The Board received a response from Billing Resource on July 9, 2007. Billing Resource stated it provides billing services for telecommunications service providers, including its client Agora. Billing Resource stated it issued a credit in the amount of \$8.43.

The Board received a response from Qwest on July 11, 2007. Qwest stated that because its records did not show that a credit had been issued, it established a credit for \$8.43.

On July 17, 2007, staff forwarded the complaint to Agora for response. The Board received Agora's response on July 30, 2007. Attached to the response was a copy of what Agora identified as "electronic information" submitted by Ms. Johnson. The attached page was titled "BTN LoA Data" and included information identified as billing telephone number; product identification of Agora VM; a registration date and time of April 22, 2007; last name Johnson; first name Mark; Ms. Johnson's address in Vinton, Iowa; "F" as the gender identification; an email address; an IP address; and a

birth date. Agora stated that the customer had received a credit from both Billing Resource and Qwest and that a block was placed to prevent future charges to the customer's account.

On August 23, 2007, staff issued a proposed resolution concluding that cramming did not occur in this matter. Staff noted that while Ms. Johnson might not have been aware of the service she was going to be billed for, she shared information giving authorization.

II. Consumer Advocate's petition

In its August 29, 2007, petition, Consumer Advocate asserts staff's proposed resolution is incorrect. Consumer Advocate states that the birth date shown in Agora's response is not correct for either Ms. Johnson or her husband Mark Johnson. Consumer Advocate asserts that Agora's response did not include a copy of an order for anything.

Consumer Advocate argues that staff's proposed resolution improperly credits the company's claim that Ms. Johnson placed an order for its services and discredits Ms. Johnson's assertion to the contrary. Consumer Advocate contends that crediting Agora's version of the facts without hearing the evidence violates the due process clauses of the state and federal constitutions and Iowa Code §§ 17A.2(5), 17A.16(1), and 476.103(4). According to Consumer Advocate, staff's conclusion that Ms. Johnson "shared information giving authorization" is unreliable and speculative.

Consumer Advocate argues that, at most, the information submitted by Agora shows that it had information about Ms. Johnson, not that she placed an order.

Consumer Advocate reports that Ms. Johnson recalls visiting a particular Web site related to tickets for a television show and that the site solicited her acceptance of certain offers. Consumer Advocate states that Ms. Johnson entered some information on the site in the course of responding to a survey, but did not complete the survey and left the site without accepting any offers or authorizing any charges. Consumer Advocate argues it is erroneous for staff to have credited Agora's version of events where Agora did not submit copies of the Web pages it claims Ms. Johnson saw and did not submit a copy of the order for its services.

Consumer Advocate argues further that if Ms. Johnson's allegations are true, the anti-cramming statute was violated and a hearing is necessary. Consumer Advocate asserts that a credit is an insufficient response to a violation and that a civil monetary penalty is necessary to secure future compliance with the statute.

III. Agora's response to Consumer Advocate's petition

On September 13, 2007, the Board received Agora's response to Consumer Advocate's petition. Agora states that the present complaint is similar to the complaint in another matter identified as C-07-132 in which the Board denied Consumer Advocate's request for a proceeding to consider a civil penalty. Agora asserts that because the issues in this matter and C-07-132 are "fundamentally identical," the arguments it raised in its response to Consumer Advocate's earlier

petition apply with equal force to this matter. Agora attached a copy of its response to Consumer Advocate's petition in C-07-132.

IV. Discussion

The Board notes that Agora intended that its response to Consumer Advocate's petition in C-07-132 would serve as a response to the petition for proceeding to consider civil penalty filed in this matter, and that its arguments in C-07-132 apply in this matter. The Board does not agree that Agora's arguments raised in C-07-132 necessarily respond to or dispose of the issues identified in Consumer Advocate's petition in this matter.

In C-07-132, Agora submitted more information in response to the customer's complaint than it did in this case. In C-07-132, Agora submitted copies of Web pages the customer would have visited in the course of authorizing charges for Agora's services. On the basis of the information Agora provided in C-07-132, the Board was able to conclude that Agora complied with the Board's rules requiring verification of a customer's authorization for a change in telecommunications service.

In the present case, Agora has not provided sufficient information to show it properly verified Ms. Johnson's authorization for Agora to bill her for voice messaging service. The Board concludes that the information Agora has provided to date does not establish that Ms. Johnson authorized the charges from Agora. Further, the Board observes that Agora has failed to respond to the particular allegations in Consumer Advocate's petition, including Consumer Advocate's assertion that the

birth date provided by Agora is not the birth date for either Ms. Johnson or her husband. Therefore, the Board finds there are reasonable grounds for further investigation of this matter. The Board will docket this matter for formal proceeding, but will delay establishing a procedural schedule to allow Agora an opportunity to respond to the specific allegations in Consumer Advocate's petition.

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 August 29, 2007, is granted. File No. C-07-209 is docketed for formal proceeding, identified as Docket No. FCU-07-19.

2. Agora Solution is directed to file a response to Consumer Advocate's petition on or before 30 days from the date of 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 6th day of December, 2007.