

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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<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>AT&amp;T COMMUNICATIONS OF THE MIDWEST, INC.,</p> <p style="text-align:center">Respondent.</p>	<p style="text-align:center">DOCKET NO. C-06-402</p>
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**ORDER DENYING PETITION FOR PROCEEDING TO CONSIDER CIVIL PENALTY**

(Issued December 21, 2007)

On February 6, 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 AT&T Communications of the Midwest, Inc., (AT&T). Based upon the record assembled in the informal complaint proceeding, the events to date can be summarized as follows:

On December 13, 2006, Maggie Bates, on behalf of her mother and father, Nancy and James Bates, filed a complaint with the Board regarding charges for long distance service on her parent's telephone bill by AT&T. Ms. Bates stated that nine months prior to filing a complaint with the Board, on March 13, 2006, her parents

contacted their local telephone service provider, Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom), and canceled their in-state and out-of-state long distance telephone services. Ms. Bates also stated that her parents had previously canceled their in-state and out-of-state long distance telephone services in December 2005. Ms. Bates stated that in December 2006 she contacted AT&T and had her parents' long distance telephone services canceled a second time. Moreover, Ms. Bates stated that AT&T credited her parents' bill for three of the nine months that the account had allegedly been closed.

Board staff identified the matter as C-06-402 and, pursuant to Board rules, on December 18, 2006, forwarded the complaint to AT&T and on December 20, 2006, forwarded the complaint to Iowa Telecom for further investigation.

On December 26, 2006, Iowa Telecom responded to Board staff stating that on December 29, 2005, pursuant to a request from Mr. and Mrs. Bates, Iowa Telecom processed a service order to change the Bates' in-state long distance carrier from AT&T to Iowa Telecom. Iowa Telecom further stated that AT&T remained the designated out-of-state long distance carrier for the Bates and a disconnection notice was sent to AT&T for the in-state long distance service. Moreover, Iowa Telecom stated that on March 10, 2006, pursuant to a carrier request, Iowa Telecom processed a service order to change Mr. and Mrs. Bates' in-state long distance carrier from Iowa Telecom to Qwest Corporation (Qwest), and their out-of-state long distance carrier from AT&T to Qwest, and a disconnection

notice was sent to AT&T for the out-of-state long distance service. Iowa Telecom also stated that on June 5, 2006, pursuant to Mr. and Mrs. Bates' request, Iowa Telecom processed a service order to change the in-state and out-of-state long distance services from Qwest to Iowa Telecom with a preferred interexchange carrier freeze (PIC). Iowa Telecom stated that it sent a disconnection notice to Qwest for the in-state and out-of-state long distance services.

Iowa Telecom stated that Mrs. Bates called Iowa Telecom on December 12, 2006, and ordered changes to several of her calling features and removed the PIC freeze for her in-state and out-of-state long distance services. Iowa Telecom also stated that it re-sent AT&T a disconnection notice for the out-of-state long distance service with an activation date of March 10, 2006, and a disconnection notice for the in-state long distance service with an activation date of December 29, 2005.

On January 8, 2007, AT&T responded stating that its records indicate all the information received regarding changes on the Bates' account had not been initiated by AT&T, but came from the Bates' local telephone provider. AT&T stated its records confirmed that the Bates' in-state long distance service with AT&T had previously been canceled in December 2005 and the Bates were then being billed by AT&T for out-of-state long distance services only. AT&T further stated that on December 12, 2006, Maggie Bates called on behalf of her parents and at that time AT&T credited \$53.93 to the Bates' account, which left a remaining balance of \$98.96. AT&T also stated that as a courtesy, the remaining balance of \$98.96 was being credited to the

Bates' account leaving a credit balance of \$125.67, which AT&T stated would be refunded to the Bates.

On January 24, 2007, Board staff issued a proposed resolution. Board staff concluded that due to clerical errors, AT&T did not get the account canceled when it was originally requested and that no cramming violation had taken place. Board staff found no record of the Bates being solicited from the information forwarded by AT&T, and that once AT&T was made aware that the Bates were still being billed, AT&T corrected the mistake and fully credited the Bates' account.

On February 6, 2007, Consumer Advocate filed a petition for proceeding to consider civil penalties. Consumer Advocate stated that Board staff's proposed resolution was incorrect and that AT&T did not deny the receipt of any of the termination information from Iowa Telecom. Consumer Advocate further stated that the information provided by AT&T in its response to the Bates' complaint was irrelevant and a cramming violation occurred because AT&T continued to bill the Bates after the Bates had called to cancel their service. Consumer Advocate also stated that subject to hearing rights to which AT&T is entitled under law, a civil monetary penalty should be assessed in order to secure future compliance with the statute. Last, Consumer Advocate requests that the Board commence a proceeding pursuant to Iowa Code §§ 476.3 and 476.103 for the purposes of affording AT&T notice and opportunity for hearing, determining that AT&T committed a cramming

violation, and considering a civil penalty in an amount designed to deter future violations.

On March 23, 2007, AT&T responded to Consumer Advocate's petition for proceeding to consider civil penalties. AT&T agreed with Board staff's proposed resolution and stated that its records establish that billing continued on the Bates' account due to an error in processing. AT&T further stated that it was clear that the Bates' telephone service with AT&T started in 2003 and there was no record of any contact to establish new service with AT&T after the in-state long distance service was canceled.

### **DISCUSSION**

Iowa Code § 476.3(1) states "[t]he consumer advocate . . . 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 investigation 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

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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).

reasonable grounds for further investigation. The Board has reviewed the record and concludes there are no reasonable grounds for further investigation of this matter.

Board rule 22.23(1) 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." The Board concludes that there are no reasonable grounds to grant a formal proceeding to further investigate this matter, because, as it appears in the informal record, AT&T failed to disconnect the long distance telephone service authorized by the Bates, not charge the Bates' for an added or deleted product or service as stated in the definition of cramming in Board rule 22.23(1). Furthermore, the consumer has been credited for the charges accrued during the time period that AT&T failed to disconnect the telephone service.

In a footnote in its petition for proceeding to consider civil penalty, Consumer Advocate stated that the Bates complaint is similar to *Office of Consumer Advocate v. AT&T Communications of the Midwest, Inc.*, Docket No. FCU-06-27 (C-06-16). The Board disagrees with Consumer Advocate. In Docket No. FCU-06-27, Board staff issued a default resolution because of the untimely response of AT&T, after which AT&T settled with Consumer Advocate. The Board cannot speculate what would have happened in Docket No. FCU-06-27 if AT&T had responded in a timely manner; however, in this case, AT&T's response was filed within the required ten-day timeframe. Based on the information in the existing record, AT&T's failure to

disconnect the Bate's long distance telephone service does not rise to the level of cramming in this complaint; therefore, there are no reasonable grounds for further investigation.

**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 6, 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

/s/ Darrell Hanson

Dated at Des Moines, Iowa, this 21<sup>st</sup> day of December, 2007.