

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: 100px;">Complainant,</p> <p style="padding-left: 100px;">vs.</p> <p>MAIN STREET TELEPHONE COMPANY,</p> <p style="padding-left: 100px;">Respondent.</p>	<p style="text-align:right">DOCKET NO. FCU-08-1 (C-07-215)</p>
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**ORDER DOCKETING FOR FORMAL PROCEEDING TO CONSIDER CIVIL  
PENALTY AND SETTING DEADLINE FOR RESPONSE**

(Issued January 28, 2008)

**PROCEDURAL BACKGROUND**

On August 29, 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 Main Street Telephone Company (Main Street) for an alleged cramming in violation of Iowa Code § 476.103. Main Street has not filed a response to Consumer Advocate's petition.

**INFORMAL COMPLAINT PROCEEDING**

On June 11, 2007, Ms. Dorothy Strohbeen filed a complaint against USBI and Zero Plus Communications (Zero Plus) for adding charges to her local telephone bill without her authorization. Ms. Strohbeen stated that extra charges had been

appearing on her bill up to the date of her complaint. Furthermore, Ms. Strohbeen stated that she called Qwest Corporation (Qwest) and could not get the problem resolved.

On July 16, 2007, Board staff forwarded copies of the complaint to Zero Plus, USBI, and Qwest, Ms. Strohbeen's local telephone service provider. On July 24, 2007, Qwest responded stating that its records indicated that (a) USBI billed on behalf of Main Street; (b) Billing Resource billed Ms. Strohbeen on behalf of Agora Voice Message Service, and (c) the bill included two separate instances of collect calls, one from Evercom for charges relating to a collect call from a correctional facility and the other from Zero Plus on behalf of Value Added Communications (VAC) for a collect call from Oklahoma City. Ms. Strohbeen did not dispute the two collect calls. Qwest also stated that it is a billing agent for carriers that are unable to bill the charges on their own or have charges billing to a number for which they have no billing information set up in their systems and, in this case, Qwest was Ms. Strohbeen's local provider and the charges were sent to Qwest for billing.

On July 26, 2007, Zero Plus responded that it "is engaged in the business of aggregating records for various operator service providers and transmitting those records to the local exchange carriers." Zero Plus also stated that its records indicated that the charges billed to Ms. Strohbeen were submitted on behalf of VAC.

Also on July 26, 2007, USBI responded to Board staff's inquiry, saying "USBI is engaged in the business of aggregating records for various telecommunications

service providers and transmitting those records to the local exchange carriers."

USBI stated that its records indicated that the charges on Ms. Strohbeen's telephone bill were submitted on behalf of Main Street.

On July 31, 2007, Board staff forwarded copies of the complaints to VAC and Main Street. Board staff requested from both companies a business name, address, and telephone number of each company's independent third-party verification (TPV) service and a complete copy of the entire verification conversation, electronically recorded or by transcript. Furthermore, Board staff requested that if either company verified the consumer's change of service using electronic or independent verification, and is not able to provide this information, then each company needed to provide the reason for the unavailability. Last, Board staff requested that each company provide proof that a written notice of the service charge was provided within 30 days of the order, and informed the companies that copies of the letter and any information they would submit would be forwarded to the consumer and to Consumer Advocate.

On August 6, 2007, Main Street responded through "The Regulatory Compliance Group," and stated that "Main Street did not change complainants long distance service." Furthermore, Main Street stated that "[o]rders for its Save4Less product are marketed solely over the internet, and customers sign up for the Save4Less program through various channels including the company's website, e-mail advertising, pop-up offer windows, or as part of a registration process at a

website." Main Street stated that interested consumers are required to submit pertinent information to order services and that an order would not be processed without receiving a completed and verified order. Main Street stated that its records show that Ms. Strohbeen was enrolled in the Save4Less Platinum Calling Plan on March 4, 2007, and the order was placed from a specific IP address (which was provided in the response). Furthermore, Main Street stated that on May 10, 2007, the account was cancelled and a refund was issued in the form of a credit on her account. However, the credit was more than it should have been, so a bill was sent to Ms. Strohbeen in the amount of \$15.53 on June 2, 2007. Main Street also sent the verification information allegedly submitted by Ms. Strohbeen, which included her name, address, city, zip code, phone number, e-mail, and birth month and year.

On August 10, 2007, VAC responded stating that it is contracted to provide phone equipment and billing service for Federal correctional facilities. VAC sent Board staff a copy of the phone charges billed to Ms. Strohbeen's phone number and stated that Ms. Strohbeen had accepted three collect calls in June and July of 2007.

On August 15, 2007, Board staff received an e-mail from Qwest regarding Ms. Strohbeen's long distance plan. Qwest stated that with regard to the credits issued by USBI, Qwest issued recourse credits on May 10, 2007, for \$31.06 at the same time as Main Street issued its credit and the credits appeared on Ms. Strohbeen's May 25, 2007, bill totaling \$62.12. Qwest stated Ms. Strohbeen had received double

the appropriate credit and that on June 7 and June 25, 2007, reverse credit charges were issued to USBI for \$15.53.

Also on August 15, 2007, Board staff issued a proposed resolution. Board staff concluded, based on communication with Ms. Strohbeen, that the collect calls billed by VAC were legitimate and authorized by Ms. Strohbeen. In regard to the charges billed by USBI on behalf of Main Street, Board staff concluded, based on the verification information provided by Main Street, that Ms. Strohbeen completed an order. Furthermore, Board staff noted that Main Street resolved the matter by issuing a full credit and canceling the account on May 10, 2007. Last, Board staff stated in the proposed resolution that if Ms. Strohbeen disagreed with the resolution, she could provide additional information or request a formal proceeding.

On August 29, 2007, Consumer Advocate filed a petition for proceeding to consider civil penalty. Consumer Advocate, in relevant part, stated that the proposed resolution was incorrect because Board staff accepted the company's statement that Ms. Strohbeen ordered the service and provided her e-mail address and birth month and year as part of the order. Furthermore, Consumer Advocate stated that the proposed resolution discredits Ms. Strohbeen's complaint to the contrary and that "such crediting of one side's version of the facts and discrediting the other's, without hearing the evidence, violates the due process clauses of the State and Federal Constitution and Iowa Code §§ 476.103(4), 17A.2(5) and 17A.16(1) (2007)."

Consumer Advocate further stated that Ms. Strohbeen would not have provided the verification information unless she was misled by an advertisement or inducement. Consumer Advocate stated that "the mere fact the company has information regarding the consumer in no way proves the information was supplied as part of a valid order" (Consumer Advocate's Petition for Proceeding to Consider Civil Penalty, p. 5) and that if authorization was missing, it is not supplied by an after-the-fact confirmatory e-mail.

Last, Consumer Advocate stated that subject to the hearing rights Main Street is entitled to under law, a civil monetary penalty should be assessed in order to secure future compliance with the statute and requests the Board commence a proceeding pursuant to Iowa Code §§ 476.103 and 476.3 for the purposes of (1) affording Main Street notice and an opportunity for hearing; (2) determining that Main Street committed a cramming violation; and (3) considering 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 § 476.103,<sup>1</sup> the statute prohibiting unauthorized changes in service.

The Board concludes that there are reasonable grounds to grant a formal proceeding and to consider a civil penalty in this matter.

Although the Board concludes there are reasonable grounds to grant formal proceedings in this matter, the Board disagrees with Consumer Advocate's assertion that Ms. Strohbeen's state and federal due process rights were violated. Consumer Advocate argues that Board staff inappropriately credits the company's statements that Ms. Strohbeen ordered the service from Main Street and discredits Ms. Strohbeen's complaint's to the contrary.

The Board points to its rationale in File No. C-07-132, Office of Consumer Advocate v. Agora Solution, "Order Denying Reconsideration" (August 6, 2007), stating, in relevant part, that each party in a slamming and cramming case is given the opportunity to appear and present its own case and to hear and dispute the other side's case, fully complying with the requirements of due process. Furthermore, as a procedural backstop the Board's procedures allow for a full trial-type hearing in every case in which a party is able to show any reasonable ground for holding such a hearing, pursuant to § 476.3. Thus, the Board's procedures are fully compliant with the requirements of due process and Consumer Advocate's assertions to the contrary are incorrect.

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<sup>1</sup> 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).

It is possible that Main Street's verification is insufficient in this instance and there are therefore reasonable grounds for further investigation. Subparagraph 22.23(2)"a"(5) states:

For other changes in service resulting in additional charges to existing accounts only, a service provider shall establish a valid customer request for the change in service through maintenance of sufficient internal records. **At a minimum, any such internal records must include the date and time of the person requesting the change in service.** Any of the three verification methods in 22.23(2)"a"(1) to (3) will also be acceptable. **The burden will be on the ... carrier to show that its internal records are adequate to verify the customer's request for the change in service.** (Emphasis added).

In an effort to carry its burden as described above, Main Street provided Board staff with the IP address from which the order had been made. Main Street also provided Ms. Strohbeen's name, address, phone number, e-mail, and her birth month and year. The Board finds that the information submitted by Main Street is not sufficient evidence that Ms. Strohbeen authorized the services provided by Main Street. While personal information such as a name, address, phone number, e-mail, or a birth date is useful in establishing the identity of the person requesting service, such information alone is insufficient to prove authorization. In addition to the identifying information, carriers must provide some evidence to prove that the customer actually authorized the service in question. Main Street failed to provide such information.

In short, Main Street has not yet met its burden as required by 199 IAC 22.23(2)"a"(5). Main Street's verification is insufficient and thus, the Board finds reasonable grounds for further investigation and to consider a civil penalty.

**ORDERING CLAUSES**

**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 as discussed in the body of this order. File No. C-07-215 is docketed for formal proceeding, identified as Docket No. FCU-08-1.

2. Main Street Telephone Company is directed to file a response to Consumer Advocate's petition within 30 days of the date of 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 28<sup>th</sup> day of January, 2008.