



provide her with any type of telephone service and that she had been billed for three months by Main Street in the amount of \$15.25 each month for a total of \$45.75.

On July 16, 2007, Board staff forwarded copies of the complaint to Main Street and to Ms. Gardner's local telephone service provider, Qwest Corporation (Qwest). On June 26, 2007, Qwest responded stating that its records indicated that USBI billed on behalf of Main Street. Qwest stated that its records indicated that Ms. Gardner called Qwest on April 10, 2007, to dispute allegedly unauthorized charges on her telephone bill and the Qwest representative had the \$15.25 per month charges, for a total of \$45.75, recouped and credited to the account. Qwest also stated that on April 13, 2007, USBI or Main Street issued a credit to the account for the same amount, resulting in a double credit. Qwest further stated that USBI/Main Street then issued a debit back to the account for the full \$91.50 that appeared on Ms. Gardner's June 1, 2007, bill. Qwest stated that it was then contacted again by Ms. Gardner to dispute the recharge of \$91.50 and again Qwest recouped the charges for credit.

On July 10, 2007, Main Street, responding through "The Regulatory Compliance Group," stated that "Main Street did not change Complainant's 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. Gardner was enrolled in the Save4Less Platinum Calling Plan on January 25, 2007, and the order was placed from a specific IP address (which was provided in the response). Furthermore, Main Street stated that on April 11, 2007, the account was cancelled and a refund was issued. Main Street stated that due to the over-crediting of Ms. Gardner's account, a bill was sent to Ms. Gardner in the amount of \$91.50 on April 25, 2007. Main Street also sent the information allegedly submitted by Ms. Gardner, which included: her name, address, city, zip code, phone number, e-mail, and birth month and year.

Also on August 15, 2007, Board staff issued a proposed resolution. Board staff concluded that no further action was necessary. Board staff also concluded that no cramming had occurred and noted that in order to resolve the matter Main Street had provided a credit and cancelled the account. Last, Board staff stated that if she disagreed with the resolution, Ms. Gardner had the option of providing additional information or requesting a formal proceeding.

On July 30, 2007, Consumer Advocate filed a petition for proceeding to consider civil penalty. Consumer Advocate stated that the proposed resolution was

incorrect. The proposed resolution credited the company's statement that Ms. Gardner 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. Gardner's complaint to the contrary and that "staff does not know what happened, and it is not possible to reach a reliable factual conclusion without hearing the evidence." Consumer Advocate further 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 that Main Street is entitled to under law, a civil monetary penalty should be assessed in order to secure future compliance with the statute. Consumer Advocate requests the Board commence a proceeding pursuant to Iowa Code §§ 476.3 and 476.103 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 Iowa Code § 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 to further investigate this matter and to consider a civil penalty in this matter, if one is appropriate.

Based on the available evidence, it appears that Main Street's verification is insufficient in this instance and that there are reasonable grounds for further investigating Ms. Gardner's complaint and to consider civil penalties. 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 an IP address from which the order had allegedly been made. Main Street also provided Ms. Gardner's name, address, phone number, e-mail address, and the

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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).

month and year of her birth. The Board finds that the information submitted by Main Street is not sufficient evidence that Ms. Gardner 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 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. The Board will docket this matter for formal proceeding but will delay establishing a procedural schedule to allow Main Street an opportunity to respond to Consumer Advocate's petition.

#### **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 July 30, 2007, is granted as discussed in the body of this order. File No. C-07-202 is docketed for formal proceeding, identified as Docket No. FCU-08-2.

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.