

and has never had a preferred long distance service on his account. He stated that on September 10, 2007, he received a phone bill from Qwest with a charge for \$15.47 by "Main Street Platinum." He stated that the charges were added to his phone bill without his knowledge or approval. Mr. Banowetz stated that on September 18, 2007, he spoke with a representative at Main Street and was informed that the charges for the service from Main Street would be refunded.

On September 19, 2007, Board staff sent a copy of the complaint to Main Street for a response. On September 24, 2007, Main Street responded stating that on August 4, 2007, Ron Ballinger placed an on-line order for Main Street's "Platinum" calling plan. Main Street included with its correspondence Mr. Ballinger's address, city, state, zip code, phone number, e-mail address, and birth month. Main Street stated that on September 18, 2007, the account was canceled and a refund was issued in the amount of \$30.94.

On October 2, 2007, staff sent a copy of Main Street's response to Mr. Banowetz so that he could respond to Main Street's letter and, if possible, identify Mr. Ballinger. Mr. Banowetz did not respond.

Staff issued a proposed resolution on October 16, 2007. Staff found that since Mr. Banowetz did not respond, it could only conclude that Mr. Ballinger completed an online order for service for Mr. Banowetz's account, and since Main Street has resolved the matter by canceling the account and fully crediting the charges, no further action was required.

On October 22, 2007, Consumer Advocate filed a petition for proceeding to consider civil penalty. Consumer Advocate stated that staff's proposed resolution was incorrect. Consumer Advocate stated that the proposed resolution credits the company's statement and discredits Mr. Banowetz's complaint without hearing evidence in violation of the State and Federal due process clause. Consumer Advocate also stated that the proposed resolution overlooked the requirement that a company provide appropriate verification of an alleged order for telephone service and stated that Main Street did not provide a copy of the alleged on-line order. Furthermore, Consumer Advocate stated that Main Street's Web site uses a form that combines an alleged authorization with inducements and thus violates paragraph 22.23(2)"b" of the Board's rules.

Consumer Advocate also argued that Main Street's alleged after-the-fact confirmatory e-mail to Mr. Banowetz does not authorize a change of service if the change of service was not initially authorized and, furthermore, authorization is not supplied by an after-the-fact confirmatory e-mail, and last, if Mr. Banowetz did not initially authorize a change, his failure to cancel the service does not provide the required authorization.

Consumer Advocate further argued that the statement in the proposed resolution that "without a reply from Banowetz, staff could only conclude that Mr. Ballinger did complete an on-line order" is erroneous as a matter of fact and that subject to hearing rights to which Main Street is entitled under law, a civil monetary penalty should be assessed in order to secure future compliance with Iowa Code

§ 476.103 and that a credit alone is insufficient. Finally, Consumer Advocate stated that a proceeding pursuant to Iowa Code §§ 476.103 and 476.3 should be commenced for the purposes of affording Main Street notice and an opportunity for hearing; determining that Main Street committed a cramming violation; and considering a civil penalty in an amount designed to deter future violations.

On November 30, 2007, staff e-mailed Mr. Banowetz with questions regarding the identity of Mr. Ballinger, a response to Main Street's letter, and a response to Consumer Advocate's petition for proceeding to consider civil penalty. Mr. Banowetz responded on November 30, 2007, stating that Ron Ballinger is his father-in-law and that he had forwarded Board staff's e-mail to Mr. Ballinger for response to staff's questions.

On December 1, 2007, Mr. Banowetz forwarded to staff the response sent to him by Mr. Ballinger. In his response, Mr. Ballinger stated that in regard to Main Street telephone service, he remembered responding to an ad for an offer of free airline travel and money, which had attached to it page after page of "yes" and "no" questions on many subjects. Mr. Ballinger further stated that he did not remember signing up for Main Street's telephone service and he did not receive an e-mail confirming telephone service.

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 § 476.103,¹ 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. 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.

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 Mr. Banowetz's complaint and to consider civil penalties.

Paragraph 22.23(2)"a" states:

No service provider shall submit a preferred carrier change order or other change in service order to another service provider unless and until the change has first been confirmed in accordance with one of the following procedures:

(1) The service provider has obtained the customer's written authorization in a form that meets the requirements of 199 IAC 22.23(2) "b"; or

(2) ... Service providers electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice

¹ 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).

response unit, or similar mechanism that records the required information regarding the preferred carrier change, including automatically recording the originating automatic numbering identification; or

...

(5) 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 customer's request and adequate verification under the circumstances of the identification 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 telecommunications 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 Mr. Ballinger's name, address, phone number, e-mail address, and the month and year of his birth. The Board finds that the information submitted by Main Street is not sufficient to establish that Mr. Ballinger authorized the services provided by Main Street. While personal information such as a name, address, phone number, e-mail address, 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." 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 CLAUSE

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 October 22, 2007, is granted as discussed in the body of this order. File No. C-07-237 is docketed for formal proceeding, identified as Docket No. FCU-08-4.

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 1st day of February, 2008.