

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>REQUESTED AMENDMENTS TO UNAUTHORIZED CHANGES IN TELECOMMUNICATIONS SERVICE RULES [199 IAC 22]</p>	<p>DOCKET NO. RMU-08-3</p>
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ORDER COMMENCING RULE MAKING

(Issued April 10, 2008)

Pursuant to the authority of Iowa Code §§ 17A.4 and 476.103, the Utilities Board (Board) proposes to adopt amendments to 199 IAC 22.23. Iowa Code § 476.103(1) authorizes the Board to adopt rules to protect consumers from unauthorized changes in telecommunications services. The rule making proceeding is identified as Docket No. RMU-08-3.

On March 6, 2008, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) petitioned the Board to amend 199 IAC 22.23, pursuant to Iowa Code § 17A.7 and 199 IAC 3.2.

Consumer Advocate stated that its petition for this rule making change follows the decision of the Iowa Supreme Court in Office of Consumer Advocate v. Iowa Utilities Board, ___ N.W.2d ___, No. 06-0541 (Iowa 2008), which held, in part, that the rules regarding verification in 199 IAC 22.23 do not require verification of the terms of the authorization given by a consumer during a telemarketing call changing the

consumer's telecommunications service. In its petition, Consumer Advocate offers arguments in support of the proposed rule amendments.

Consumer Advocate stated that these proposed rule making changes address a frequent consumer complaint that material misstatements of fact are made during the unrecorded solicitation portion of the telemarketing call, and after the telemarketer's representations are made and the consumer states he or she wishes to switch companies based on those representations, the consumer is typically transferred to a third-party for recorded verification (TPV). Consumer Advocate stated that the recorded TPV does not include the solicitation portion of the call and only seeks to verify the consumer is consenting to the change in service. Consumer Advocate also stated that for this reason, although material misstatements of fact may have been made to induce the consumer to switch, the TPV contains no evidence of the misstatement.

Iowa Code § 476.103(3) states in relevant part that Board rules "shall be consistent with federal communications commission regulations regarding procedures for verification of customer authorization of a change in service." The Board realizes that some of the changes proposed by Consumer Advocate may not be consistent with the Federal Communications Commission's rules regarding slamming; however, the Board is nonetheless interested in receiving public comment on Consumer Advocate's proposed amendments. The Board will therefore grant the petition for rule making to consider the possible adoption of the proposed rules.

IT IS THEREFORE ORDERED:

1. The petition for rule making filed on March 6, 2008, by the Consumer Advocate Division of the Department of Justice is granted for the purpose of receiving public comment on the proposed amendments.

2. A rule making proceeding, identified as Docket No. RMU-08-3 is commenced for purposes of receiving comments upon the proposed rules attached to this order.

3. The Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin a notice in the form attached to and incorporated by reference 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 10th day of April, 2008.

UTILITIES DIVISION [199]

Notice of Intended Action

Pursuant to Iowa Code sections 17A.4 and 476.103, the Utilities Board (Board) gives notice that on April 10, 2008, the Board issued an order in Docket No. RMU-08-3, In re: Requested Amendments to Unauthorized Changes in Telecommunications Service Rules [199 IAC 22], "Order Commencing Rule Making." The Board is noticing for public comment proposed amendments to 199 IAC 22.23(476).

Iowa Code section 476.103(1) authorizes the Board to adopt rules to protect consumers from unauthorized changes in telecommunications service.

The proposed amendments to 199 IAC 22.23(476) were submitted by the Consumer Advocate Division of the Department of Justice (Consumer Advocate) in response to the decision of the Iowa Supreme Court in Office of Consumer Advocate v. Iowa Utilities Board, ___ N.W.2d ___, No. 06-0541 (Iowa 2008), which held in part that rules regarding verification in 199 IAC 22.23 in carrier changes in service do not require verification of the terms of that authorization.

The Board does not find it necessary to propose a separate waiver provision in this rule making. The Board's general waiver provision in 199 IAC 1.3 is applicable to these amendments.

Pursuant to Iowa Code section 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments.

The statement must be filed on or before May 13, 2008, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

The amendments are intended to implement Iowa Code section 476.103.

The following amendments are proposed.

Item 1. Amend subrule **22.23(1)** as follows:

Amend the definitions of "cramming" and "slamming" as follows:

"Cramming" means 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~~ authorization of the affected customer. Cramming does not include the addition of extended area service to a customer account pursuant to board rules, even if an additional charge is made. Cramming does not include telecommunications services that are ~~initiated or requested~~ authorized by the customer, including dial-around services such as "10-10-XXX," directory assistance, operator-assisted calls, acceptance of collect calls, and other casual calling by the customer.

"Slamming" means the designation of a new provider of a telecommunications service to a customer, including the initial selection of a service provider, without the ~~verified consent~~ authorization of the customer.

"Slamming" does not include the designation of a new provider of a

telecommunications service to a customer made pursuant to the sale or transfer of another carrier's customer base, provided that the designation meets the requirements of 199 IAC 22.23(2)"e."

Adopt the following **new** definition in alphabetical order:

"Authorization" means words of assent given by or on behalf of a customer in reasonable reliance on material misstatements of fact made by or on behalf of a carrier.

Rescind the term and definition: "Verified consent."

Item 2. Amend subrule 22.23(2) by inserting **new** paragraph "a" as follows and renumbering as appropriate.

22.23(2) Prohibition of unauthorized changes in telecommunications service. Unauthorized changes in telecommunications service, including but not limited to cramming and slamming, are prohibited.

a. Authorization required. Unauthorized changes in telecommunications service, including but not limited to cramming and slamming, are prohibited.

April 10, 2008

/s/ John R. Norris

John R. Norris
Chairman