

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

| | |
|--|---|
| <p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE, Complainant,</p> <p style="text-align:center">vs.</p> <p>DIRECT BUSINESS SERVICES, Respondent.</p> | <p>DOCKET NO. FCU-08-12 (C-08-11)</p> |
|--|---|

**ORDER DOCKETING FOR FORMAL PROCEEDING
AND ASSIGNING TO ADMINISTRATIVE LAW JUDGE**

(Issued August 8, 2008)

On April 29, 2008, 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 Direct Business Services (DBS). Based upon the record assembled in the informal complaint proceeding, the events to date can be summarized as follows:

On January 30, 2008, Quentin Mayberry, an employee for the City of Reinbeck, Iowa (City), filed a complaint with the Board alleging unauthorized charges on the City 's telephone account. Mr. Mayberry stated that DBS through OAN,¹ billed the City \$34.95 without authorization and that he attempted to contact DBS; however,

¹ OAN Services, Inc., is a billing agent for telecommunications carriers.

he could not get through to DBS's customer service. Mr. Mayberry also stated that the City did not authorize the charges that were placed on the telephone bills.

Board staff identified the matter as C-08-11 and, pursuant to Board rules, on February 1, 2008, forwarded the complaint to OAN and DBS; however, the address listed in Mr. Mayberry's correspondence for OAN was incorrect. When the complaint was forwarded to the correct address, OAN responded on March 3, 2008. OAN submitted a third-party verification (TPV) along with its response and stated that it is "engaged in the business of aggregating records from various service providers ... " and that "the charges in question were submitted on behalf of Direct Business Services" OAN also stated that "a credit in the amount of \$69.90" was issued regarding the disputed charges and had "blocked Direct Business Services from submitting future charges" to the City. DBS did not respond to the complaint.

On March 7, 2008, Board staff forwarded OAN's response and the TPV to Mr. Mayberry for his review and response. On March 20, 2008, Mr. Mayberry responded stating that the voice on the TPV is Scott, the assistant communications supervisor for the City. He further stated that Scott told him that he did not recall ordering telephone service from DBS. Mr. Mayberry also questioned the authenticity of the recording, based on what he considered a delay in Scott's responses in the TPV and the service being sold by DBS.

On April 16, 2008, Board staff issued a proposed resolution finding DBS in default and in violation of the Board's rules for failure to respond to the complaint. Board staff's resolution also required DBS to close the account and prohibited DBS from pursuing any collection action on the City's account. Board staff also concluded

that the TPV provided by the billing company was insufficient and did not satisfy Board rules.

On April 29, 2008, Consumer Advocate filed a petition for proceeding to consider civil penalties. Consumer Advocate stated that Board staff's proposed resolution was correct as far as it went. Consumer Advocate further stated that, subject to hearing rights to which DBS is entitled under law, the proposed resolution should be expanded to clarify that companies cannot escape civil penalties by ignoring allegations of violation. Consumer Advocate also stated that civil penalties should be assessed against DBS in order to secure future compliance with the statute and that a formal proceeding is necessary to give DBS notice and opportunity for hearing, to affirm staff's determination that DBS committed a cramming violation, and to consider civil penalties in an amount sufficient to deter future violations.

On May 12, 2008, DBS responded to Board staff's earlier inquiry, stating that the account with the City was canceled and credited in full.

The Board finds reasonable grounds for further investigation in this matter because, the TPV, in this instance, is insufficient. Board rule 22.23(2)"a"(3) states "[t]he content of the verification must include clear and conspicuous confirmation that the customer has authorized a preferred carrier change...." At no point in time during the verification portion of the telephone call does the customer agree to change service. Furthermore, Board staff found the TPV difficult to hear, and the responses to the questions are delayed. Thus, there are reasonable grounds for further investigation in this matter.

The Board will assign this case to its administrative law judge (ALJ) for further proceedings pursuant to Iowa Code § 17A.11(1)"b" (2007) and 199 IAC 7.3. The ALJ may take all appropriate action, which may include setting a hearing date, presiding at the hearing, and issuing a proposed decision.

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 April 29, 2008, is granted as discussed in this order. File No. C-08-11 is docketed for formal proceeding identified as Docket No. FCU-08-12.

2. Pursuant to Iowa Code § 17A.11(1)"b" and 199 IAC 7.3, Docket No. FCU-08-12 is assigned to the Board's administrative law judge, Amy Christensen, for further proceedings. The administrative law judge shall have the authority provided under 199 IAC 7.3.

UTILITIES BOARD

/s/ John R. Norris

/s/ Krista K. Tanner

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 8th day of August, 2008.