

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>THE OYP GROUP, Respondent.</p>	<p>DOCKET NO. C-08-58</p>
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ORDER DENYING REQUEST FOR RECONSIDERATION

(Issued September 26, 2008)

INTRODUCTION

On September 4, 2008, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a motion for reconsideration of the Board's order denying its petition for proceeding to consider civil penalty petition for an alleged cramming violation committed by The OYP Group (OYP).

In Consumer Advocate's motion for reconsideration, its primary argument was that the definition of "change in service" is not limited to charges appearing on a bill issued by a local exchange carrier. Specifically, in this case Consumer Advocate argued the Board had jurisdiction over a charge for advertising that was billed directly to Kings Gate Insurance.

Consumer Advocate further argued that the statute prohibiting unauthorized changes in telecommunications services does not limit the Board's jurisdiction to billings on local telephone bills. Consumer Advocate pointed to two previous cases. First, Consumer Advocate cited Office of Consumer Advocate v. 00 Operator Services, Docket No. FCU-03-38 (October 22, 2003). In 00 Operator, the Board received 24 complaints alleging that 00 Operator Services had billed consumers for collect calls without authorization. Consumer Advocate stated that all of the bills complained of were bills sent directly to the complainant by an 00 Operator, as opposed to bills sent by local exchange carriers.

Next, Consumer Advocate cited Office of Consumer Advocate v. Buzz Telecom, Corp., Docket No. FCU-06-55 (January 30, March 13, and April 20, 2007). Consumer Advocate stated that in Buzz, the Board received nearly 300 complaints alleging various fraudulent and abusive practices, and a majority of the bills complained of were bills sent directly to the complainant by Buzz Telecom, as opposed to bills sent by local exchange carriers carrying Buzz Telecom charges.

Consumer Advocate sums up its motion by stating that the Board's August 15, 2008 Order deprives the Board of jurisdiction in future cases similar to those described above, and it therefore fails to protect consumers in accordance with Iowa Code § 476.103.

DISCUSSION

The primary issue in Consumer Advocate's motion for reconsideration is whether the Board has jurisdiction under § 476.103 over bills for telecommunications services sent as separate bills. The Board has jurisdiction over allegations of an unauthorized change in service based upon bills for telecommunications services sent as separate bills; however, the Board will not grant Consumer Advocate's motion for reconsideration because in this matter, there are no reasonable grounds for further investigation.

Iowa Code § 476.103(2)"a" states:

"Change in service" means the designation of a new provider of a telecommunications service to a consumer, including the initial selection of a service provider, and includes the addition or deletion of a telecommunications service for which a separate charge is made to a consumer account.

Based on this language, the Board has jurisdiction to investigate allegations of an unauthorized change in telecommunications service involving (1) any charges on a customer's local telephone bill, because it results in a separate charge to a consumer account, and (2) any charges for a telecommunication service, even if billed separately. To the extent that the Board's August 15, 2008, order in this matter was unclear on that point, the Board's order is hereby clarified.

Taking into consideration that the Board potentially has jurisdiction over this matter, the Board concludes there has not been any showing of reasonable grounds for further investigation in this matter. Based on the facts in the informal record, Ms.

Denise Smith of Kings Gate Insurance received a bill from OYP for the amount of \$454.40 for alleged advertising services, which she did not pay. Since OYP directly billed Ms. Smith, sending an individual bill as opposed to the charges being placed on her local telephone bill, Ms. Smith had the opportunity to investigate and protest the service and accompanying charges without potentially involving the rest of her local telephone service. Moreover, because the account was billed directly, the charge was not subject to being overlooked as a small part of a multi-page bill for telecommunications service. Furthermore, the company credited the charges shortly after being contacted by Board staff. Considering these factors, and in the absence of any other relevant circumstances, the Board finds there are no reasonable grounds for further investigation of this matter.

Finally, it is not clear that the advertising services at issue in this matter are telecommunications services. OYP has described the service as being in the nature of Yellow Pages advertising. There was a time when that type of advertising was generally available only from the telephone company and a strong argument could be made that it was, at that time, a telecommunications service. However, that form of advertising is now offered by other publishers that are not telephone companies, and some traditional telephone companies are no longer publishing their own Yellow Page directories. The Board is not convinced, on this record, that its slamming and cramming jurisdiction extends to all advertising that alludes to being similar to the Yellow Pages. The Board could set this matter for formal proceedings to investigate

this issue, but the result is almost certain to be a fact-specific determination that provides little guidance in future cases and would make little or no difference to the customer in this case, who has been fully credited.

Based upon all of the factors mentioned, the Board finds that there are not any reasonable grounds for further investigation of this matter. The request for reconsideration is denied.

ORDERING CLAUSE

IT IS THEREFORE ORDERED:

The "Motion for Reconsideration" filed by the Consumer Advocate Division of the Department of Justice on September 4, 2008, is denied as discussed 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 26th day of September, 2008.