

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,</p> <p style="text-align:center">Complainant,</p> <p style="text-align:center">vs.</p> <p>CHEAP2DIAL TELEPHONE, LLC,</p> <p style="text-align:center">Respondent.</p>	<p style="text-align:center">DOCKET NO. C-08-53</p>
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**ORDER DENYING PETITION FOR PROCEEDING  
TO CONSIDER CIVIL PENALTY**

(Issued October 14, 2008)

On June 25, 2008, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) petitioned the Utilities Board (Board) to commence a formal proceeding to impose a civil penalty on Cheap2Dial Telephone, LLC (Cheap2Dial), for an alleged cramming in violation of Iowa Code § 476.103. Based upon the record assembled in the informal complaint proceeding, the events to date can be summarized as follows:

On May 13, 2008, Ms. Lisa Arechavaleta filed a complaint with Board staff alleging that Cheap2Dial placed an unauthorized charge onto her local telephone bill. She stated that she contacted Cheap2Dial and was advised that the registration for this service was done on the Internet. Ms. Arechavaleta said that it was possible that

her teenage children may have been browsing the Internet and unknowingly signed up for the service.

Board staff identified the matter as C-08-53 and, pursuant to Board rules, on May 20, 2008, forwarded the complaint to Cheap2Dial and Qwest Communications (Qwest), Ms. Arechavaleta's local telephone provider. Both Cheap2Dial and Qwest responded on May 30, 2008. Qwest stated that USBI, on behalf of Cheap2Dial, billed Ms. Arechavaleta for the months of March, April, and May. Qwest stated that the total amount for all services billed was \$47.17. In Cheap2Dial's response, it stated that its records indicated that on or around February 18, 2008, Ms. Arechavaleta subscribed to Cheap2Dial's telephone services. Shortly thereafter, Cheap2Dial stated that a welcome e-mail was forwarded to Ms. Arechavaleta's e-mail address. Cheap2Dial also said that on May 10, 2008, Ms. Arechavaleta, after being a customer for three months, canceled her service. Cheap2Dial stated that it deactivated the service and placed a block on the account. Cheap2Dial also said that Ms. Arechavaleta was credited \$47.17 to zero out the balance on the account.

On June 19, 2008, Board staff issued a proposed resolution concluding that no cramming had occurred. Board staff noted that it was possible that one of Ms. Arechavaleta's teenage children signed up for a free gift, unknowingly creating an account for a service that would include a monthly charge.

On June 25, 2008, Consumer Advocate filed a petition for a formal proceeding to consider civil penalty. Consumer Advocate stated that Board staff's proposed resolution was incorrect. Consumer Advocate said that Board staff's proposed

resolution "simply credits Cheap2Dial's allegation that Ms. Arechavaleta ordered the service and discredits her allegation to the contrary."

Consumer Advocate further stated that the proposed resolution does not "consider the fact [that] there was no reason for Ms. Arechavaleta to order and never use a telephone service with Cheap2Dial" and the fact that "Ms. Arechavaleta has a preteen who could 'possibly' have provided information on a website proves only a bare possibility and not the actual facts." Consumer Advocate said that Ms. Arechavaleta advised Consumer Advocate that she would not have been able to sign up for phone service on February 18, 2008, at 4:14 p.m. EST, because she would have been picking up her children from school after being at a conference all day for her job.

Consumer Advocate also stated that the proposed resolution overlooks the requirement that a company provide appropriate verification of an alleged order. Consumer Advocate stated that Cheap2Dial did not provide a copy of an alleged order or even a blank order form and the fact that a company has identifying information regarding a consumer does not prove or verify the information was supplied as part of a valid order nor does it exclude the possibility the information was supplied or obtained by some other means.

Consumer Advocate also noted that the birth date provided by Cheap2Dial is incorrect, and the company's Web site suggests that the company uses a form that combines an alleged authorization with inducements, which violates Board rules. Consumer Advocate notes that an authorization, if missing in the first place, is not

supplied by an after-the-fact welcome e-mail, and that subject to the hearing rights to which Cheap2Dial is entitled under law, a civil monetary penalty should be assessed in order to secure future compliance. Consumer Advocate requests that that Board commence a proceeding pursuant to Iowa Code §§ 476.3 and 476.103 for the purpose of affording Cheap2Dial notice and an opportunity for hearing, determining that Cheap2Dial committed a cramming violation, and to consider a civil penalty in 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 no reasonable grounds to grant a formal proceeding to consider a civil penalty in this matter.

This case involves an allegation of cramming, that is, the placement of an unauthorized charge on a customer's telephone bill without changing the customer's presubscribed long distance service provider. Subparagraph 22.23(2)"a"(5) provides

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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).

the verification requirements for such cases. The rule states that "[f]or 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." In this context, the phrase "existing account" means the consumer's local telephone service. The concern is about new charges appearing on a lengthy bill for local service, where it may be overlooked.

Based on the informal record, Cheap2Dial's verification is sufficient and does not require further investigation. First, Cheap2Dial is not in violation of Board rules for combining alleged authorization with inducements. Cheap2Dial's Web site has customary inducements that are all related to the purchase of telephone or long distance service from Cheap2Dial. They are in no way similar to advertisements that mislead consumers into believing they are signing up for one thing and then receiving another, thus, Cheap2Dial's Web site and sign up page do not violate Board rules.

Moreover, the data provided by the form and sign up sheet submitted by Cheap2Dial's show that on February 18, 2008, Cheap2Dial received an order from Lisa Arechavaleta. Cheap2Dial retained Ms. Arechavaleta's address, e-mail address, date of birth, billing telephone number, and IP address. In addition to the identifying information described above, the informal record contains an order form showing the terms of the offer. There is a discrepancy regarding Ms. Arechavaleta's date of birth, but that single discrepancy, without more, does not require further

investigation when the rest of the identifying information is correct. Cheap2Dial would not have had any reason to question the date of birth information provided on the sign-up form. The Board finds that in the absence of contrary evidence, this information is sufficient to meet the requirements of 199 IAC 22.23(2)"b"(5) and, therefore, creates no reasonable grounds for further investigation.

**ORDERING CLAUSE**

**IT IS THEREFORE ORDERED:**

The "Petition for Proceeding to Consider Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on June 25, 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 14<sup>th</sup> day of October, 2008.