

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: REQUESTED AMENDMENTS TO UNAUTHORIZED CHANGES IN TELECOMMUNICATIONS SERVICE RULES [199 IAC 22]	DOCKET NO. RMU-08-3
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**ORDER TERMINATING RULE MAKING
WITHOUT ADOPTION OF PROPOSED RULES**

(Issued October 31, 2008)

On March 6, 2008, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition for amendment of the rules prohibiting unauthorized changes in telecommunications service. On April 10, 2008, the Board issued an "Order Commencing Rule Making."

The amendments proposed by Consumer Advocate sought to amend the definition of "cramming" in 199 IAC 22.23(1); change the words "verified consent" to "authorization" and "initiated or requested" to "authorized," and define "authorization" in 199 IAC 22.23(2)"e" as "approval or permission for a change in service given by or on behalf of a customer. Authorization does not include 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."

Consumer Advocate stated that its petition "follows the decision of the Iowa Supreme Court in Office of Consumer Advocate v. Iowa Utilities Board, 744 N.W.2d 640 (Iowa 2008)" (*Kilaru*). Consumer Advocate also stated that the concern following

the Court's decision is the frequent consumer complaint that "material misstatements of fact have been made during the unrecorded solicitation portion of a telemarketing call and the recorded TPV does not include the solicitation portion of the call, but only seeks to verify the consumer is consenting to the change in service."

The rule making was identified as Docket No. RMU-08-3. Notice was published in the Iowa Administrative Bulletin at IAB Vol. XXX, No. 23, (5/7/08) p. 1654, as ARC 6763B. On May 27, 2008, written comments were received from Sprint Nextel, Verizon Communications, Level 3 Communications, LLC, Evercom Systems, Inc., Qwest Corporation, and Consumer Advocate. There was no oral presentation in this matter.

There were five primary issues in the written comments: (1) whether the proposed amendments exceeded the authority granted to the Board under Iowa Code § 476.103; (2) whether the proposed amendments are consistent with the FCC's verification procedures; (3) whether the proposed rules injected an unreasonable level of subjectivity into the process of determining whether an unauthorized change in service occurred; (4) the relationship of Iowa Code chapters 714D and § 476.103; and (5) the potential cost of the proposed rule change to the telecommunications carriers.

The Board will not adopt Consumer Advocate's requested amendments to the rules prohibiting unauthorized changes in telecommunications at this time and will terminate this rule making docket.

The issues presented in this rule making are relevant and important in further protecting consumers from slamming and cramming; however, the Board will be

conducting a broader review of its slamming and cramming rules and consider many, if not all, of the issues presented in this rule making at that time, in the context of a full review and update. Thus, the Board declines to adopt Consumer Advocate's amendments and terminates this rule making.

IT IS THEREFORE ORDERED:

1. The proposed amendments to rules prohibiting unauthorized changes in service, as expressed in 199 IAC 22, filed by the Consumer Advocate Division of the Department of Justice, on March 6, 2008, in Docket No. RMU-08-3 are declined at this time.
2. The rule making proceeding, identified as Docket No. RMU-08-3 is terminated.
3. The Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin a "Notice of Termination" 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 31st day of October, 2008.

UTILITIES DIVISION [199]

Notice of Termination

Pursuant to Iowa Code sections 17A.4(1) 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." Notice was published in the Iowa Administrative Bulletin at IAB Vol. XXX, No. 23, (5/7/08) p. 1654, as **ARC 6763B**.

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 in response to the decision of the Iowa Supreme Court in Office of Consumer Advocate v. Iowa Utilities Board, 744 N.W.2d 640 (Iowa 2008), which held in part that rules set forth in 199 IAC 22.23(476) regarding verification of carrier changes in service do not require verification of the terms of that authorization. The Board is now terminating that rule making proceeding effective October 31, 2008.

October 31, 2008

/s/ John R. Norris

John R. Norris
Chairman