



appropriate, up to and including the maximum amount authorized by Iowa Code § 476.103(4) (2007), which the Consumer Advocate states is \$10,000.

Board rule 199 IAC 7.12 provides that opposing parties have 14 days from the date a motion is filed with the Board to file a response, unless otherwise ordered. DBS did not file a response to the Consumer Advocate's motion within the 14-day period.

This case arose out of an informal complaint, in which Mr. Quentin Mayberry, an employee of the City of Reinbeck, Iowa (City), complained that DBS, through OAN Services, Inc. (OAN),<sup>1</sup> placed a charge of \$34.95 on the City's telephone bill without authorization. Board staff forwarded the complaint to OAN and DBS for response. OAN responded that the charges in question were submitted on behalf of DBS, that it had issued a credit of \$69.90 plus tax on the charges in dispute, and that it had blocked DBS from billing the City's account in the future. OAN also enclosed a copy of the third party verification (TPV) recording it stated DBS had provided to OAN. DBS did not file any response with the Board.

Board staff provided the TPV recording to the City for response. The City questioned the authenticity of the TPV recording and stated it had not ordered the service for which it was billed. 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. Staff agreed the TPV recording was difficult to hear and the responses to the questions were delayed. Staff found the recording did not

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<sup>1</sup> OAN Services, Inc., is a billing agent for telecommunications carriers, including DBS.

satisfy the Board's requirements and directed DBS to close the account immediately. Staff found DBS to be in violation of the Board's cramming rules and directed DBS to credit all charges billed to the City.

On April 29, 2008, the Consumer Advocate filed with the Board a petition for a proceeding to consider a civil penalty for an alleged cramming violation committed by DBS. On May 12, 2008, DBS filed a letter with the Board that responded to the staff's proposed resolution. DBS stated that the account for the City had been closed and credited. DBS's letter did not respond to the Consumer Advocate's petition for formal proceeding.

On August 8, 2008, the Board issued an order granting the Consumer Advocate's petition, docketing the case for a formal proceeding, and assigning it to the undersigned administrative law judge. The Board found reasonable grounds for further investigation because the TPV was insufficient. The Board found that the customer did not agree to change service during the TPV, the recording is difficult to hear, and the responses to the questions are delayed.

On August 11, 2008, the Consumer Advocate sent discovery request numbers 1-18 to DBS. On August 19, 2008, the undersigned issued an order setting a prehearing conference for September 10, 2008, which allowed the parties to participate by telephone conference call. The parties were properly served with the order. The prehearing conference was held on September 10, 2008. DBS did not appear at the prehearing conference.

On September 24, 2008, the Consumer Advocate filed a motion to compel discovery with the Board, stating that DBS had not provided responses to discovery request numbers 1-18. On October 8, 2008, the undersigned issued an order granting the motion to compel and ordering DBS to provide the answers to the discovery requests to the Consumer Advocate by October 15.

As stated above, the Consumer Advocate filed an application for a default judgment on November 4, 2008, stating that DBS had not provided the required answers to discovery request numbers 1-18.

Iowa Code § 17A.12(3) provides that if a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may enter a default decision or proceed with the hearing and make a decision in the absence of the party. Board rule 199 IAC 7.23(11) provides that if a party fails to appear at a hearing after proper service of notice, or fails to answer or otherwise respond to an appropriate pleading directed to and properly served on the party, the Board or presiding officer may enter a default judgment or proceed with the hearing and render a decision in the absence of the party.

Iowa Code § 476.103 sets forth requirements regarding unauthorized changes in telecommunications services, including cramming. The Board's rule prohibiting cramming is at 199 IAC 22.23. Iowa Code § 476.103(4)(a) provides that a service provider who violates the section, a rule adopted pursuant to the section, or an order issued pursuant to the section, is subject to a civil penalty of not more than \$10,000 per violation, which, after notice and hearing, may be levied by the Board. Each violation is a separate offense.

The undersigned administrative law judge finds that DBS has failed to respond to inquiries from Board staff in the informal proceeding, and only provided a brief response after the proposed resolution had already been issued. DBS failed to respond to discovery request numbers 1-18 sent to it by the Consumer Advocate. DBS failed to appear at the prehearing conference held on September 10, 2008, after notice was properly served and even though participation by telephone conference call was an option. DBS failed to comply with the "Order Granting Motion to Compel and Setting Deadline for Compliance" issued on October 8, 2008.

The undersigned agrees with the Consumer Advocate that DBS is in default in this docket. DBS's failure to timely respond to Board inquiries, failure to respond to Consumer Advocate discovery requests, failure to participate in the prehearing conference, and failure to comply with Board orders is a serious violation. Iowa Code § 476.103(4); In re: Office of Consumer Advocate v. ZWW-ISP, Docket No. FCU-05-59, "Order Granting Motion for Default Judgment and Ordering Payment of Default Judgment" (December 22, 2005) (ZWW-ISP). "The degree to which a party participates in the Board's investigation of informal complaints and responds to Board orders is an important factor in determining the size of the penalty for such violation." ZWW-ISP. By its failure to participate, DBS has shown a disregard for the Board's process.

Board rule 199 IAC 7.23(11)"g" provides that a default decision may award any relief consistent with the record in the case. Pursuant to Iowa Code §§ 17A.12(3) and 476.103(4), and 199 IAC 7.23(11) and 22.23, the undersigned will

grant the Consumer Advocate's application for default judgment against DBS in the amount of \$10,000.

**IT IS THEREFORE ORDERED:**

1. The "Application for Entry of Judgment by Default" filed by the Consumer Advocate on November 4, 2008, is hereby granted.
2. Judgment by default is hereby granted against Direct Business Services in Docket No. FCU-08-12 in the amount of \$10,000.
3. Direct Business Services must send payment in the form of a check made payable to the Iowa Utilities Board to the Executive Secretary of the Iowa Utilities Board at 350 Maple Street, Des Moines, Iowa 50319-0069. Payment is due on or before December 22, 2008. The docket number of this case shall be listed on the check or in the accompanying correspondence.
4. This default decision is to take effect immediately, subject to a timely motion to vacate pursuant to 199 IAC 7.23(11), a timely appeal pursuant to 199 IAC 7.26, or a timely request for a stay pursuant to 199 IAC 7.28. 199 IAC 7.23(11)"g."

**UTILITIES BOARD**

/s/ Amy L. Christensen  
Amy L. Christensen  
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

Dated at Des Moines, Iowa, this 19<sup>th</sup> day of November, 2008.