

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,</p> <p style="padding-left: 40px;">Complainant,</p> <p style="padding-left: 40px;">v.</p> <p>AT&amp;T COMMUNICATIONS OF THE MIDWEST, INC.,</p> <p style="padding-left: 40px;">Respondent.</p>	<p>DOCKET NO. FCU-02-10 (C-02-148)</p>
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE  
AND NOTICE OF HEARING**

(Issued September 3, 2002)

On April 12, 2002, Ms. Jo Ann Baker filed a written complaint with the Utilities Board (Board) regarding her long distance telephone service pursuant to Iowa Code § 476.103 (2001). In her complaint, Ms. Baker stated AT&T Communications of the Midwest, Inc. (AT&T) had changed her long distance provider from Verizon to AT&T without her knowledge or consent.

The details of the complaint are contained in informal complaint file number C-02-148, which is incorporated into the record in this case.

Upon receiving the complaint, Board staff attempted to informally resolve the dispute. Board staff forwarded the complaint letter to AT&T for response. On May 2, 2002, AT&T responded, stating it had not slammed the customer. AT&T provided a recording of a third-party verification it alleged showed the authorization for the

change in service. AT&T further stated that a telemarketer called the Baker residence on February 20, 2002, an order was processed, the transaction was verified, and AT&T service was subsequently terminated on March 23, 2002. AT&T stated that the contact person at the Baker home was SF<sup>1</sup>, who gave her birth date as October 19<sup>th</sup> for purposes of subsequent identification. On May 6, 2002, Board staff contacted Ms. Baker, who stated SF is her granddaughter and is not authorized to make changes in the service.

On May 9, 2002, Board staff issued a proposed resolution concluding that AT&T had not slammed the account, and informed the parties of their right to appeal.

On May 23, 2002, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a request for formal complaint proceedings, stating that the proposed resolution was legally incorrect, that contracts of minors are subject to disaffirmance, that there is reason to doubt the factual accuracy of the proposed resolution, and that AT&T's response to date is inadequate. The Consumer Advocate requested that the Board docket the case as a formal proceeding for the purpose of investigating whether the consumer's authorization for the change was obtained and for such other purposes as may be necessary to bring the matter to a proper resolution.

Board staff forwarded the Consumer Advocate's request to AT&T and Ms. Baker on May 24, 2002. Ms. Baker filed a letter stating the voice on the recording is not her granddaughter's. AT&T has not responded as of the date of this order.

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<sup>1</sup> Ms. Baker stated that SF is her minor granddaughter, so we will refer to SF by her initials.

The Board issued an order dated August 19, 2002, granting the Consumer Advocate's request, docketing the complaint, and assigning the case to the undersigned administrative law judge for such further proceedings as may be appropriate.

Pursuant to Iowa Code § 476.3(1) and 199 IAC 6.5, a procedural schedule will be established and a hearing regarding this complaint will be held if needed.

The statutes and rules involved in this case include Iowa Code §§ 476.3, 476.33, 476.103, and Board rules at 199 IAC 1.8, 22.23, and Chapters 6 and 7.

#### **The issues**

The issues in this case generally involve the change of Ms. Baker's long distance telephone carrier from Verizon to AT&T, whether AT&T complied with state and federal law when it changed Ms. Baker's long distance telephone service, and what should be done to resolve the case. Other issues may be raised by the parties prior to and during the hearing.

#### **Prepared testimony and exhibits**

All parties will have the opportunity to respond and present evidence and argument on all issues involved in this proceeding. Parties may choose to be represented by counsel at their own expense. Iowa Code § 17A.12(4). The proposed decision and order that the administrative law judge will issue in this case must be based on evidence contained in the record and on matters officially noticed. Iowa Code §§ 17A.12(6) and 17A.12(8).

The submission of prepared evidence prior to hearing helps identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all

statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined concerning the statements already made in writing. The use of prepared testimony and submission of documentary evidence ahead of the hearing prevents surprise at the hearing and helps each party to prepare adequately so that a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1), 17A.14(3). This procedure also tends to shorten the length of the hearing and spares the parties the expense and inconvenience of additional hearings.

**Party status**

The Consumer Advocate and AT&T are currently the parties to this proceeding. If Ms. Baker wishes to be a party in the case, she must notify the Board in writing in accordance with the procedural schedule established in this order.

Each party must file an appearance identifying one person upon whom the board may serve all orders, correspondence, or other documents. The written appearance should substantially conform to 199 IAC 2.2(15). It should include the docket number of this case as stated in the caption above. Appearances should be filed at the earliest practical time with the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319. The appearance should be accompanied by a certificate of service that conforms to 199 IAC 2.2(16) and verifies that a copy of the document was served upon the other parties.

Any party who communicates with the Board should send an original and ten copies of the communication to the Executive Secretary at the address above, accompanied by a certificate of service. One copy of that communication should also be sent at the same time to each of the other parties to this proceeding. These requirements apply, for example, to the filing of an appearance or to the filing of prepared testimony and exhibits with the Board.

Pursuant to 199 IAC 6.7 and the Board Order issued August 19, 2002, the written complaint and all supplemental information from the informal complaint proceedings, identified as Docket No. C-02-148, are part of the record of this formal complaint proceeding.

The materials that have been filed in this docket are available for inspection at the Board Records Center, 350 Maple Street, Des Moines, Iowa 50319. Copies may be obtained by calling the Records Center at (515) 281-5563. There will be a charge to cover the cost of the copying.

All parties should examine Iowa Code §§ 476.3, 476.33, 476.51, 476.103, and Board rules at 199 IAC 1.8 and 22.23, and Chapters 6 and 7, for substantive and procedural rules that apply to this case.

### **Stipulation of Facts and Prehearing Brief**

The facts underlying this case have already been the subject of an informal complaint proceeding. Therefore, it is appropriate that the parties file a stipulation of facts, so that only facts in dispute need be resolved in this formal complaint proceeding. In addition, it is appropriate that the parties file prehearing briefs that

identify and discuss their respective positions. Finally, the parties must discuss whether it is possible to settle this case without further formal proceedings and the involvement of the undersigned administrative law judge.

**IT IS THEREFORE ORDERED:**

1. If the parties are unable to settle this case, on or before September 24, 2002, the parties must file a document stipulating to as many of the facts in this case as possible. The stipulation must also identify which facts remain in dispute and need to be resolved. The parties must also state whether they believe a hearing is necessary in this case, or whether the case could be submitted on the stipulated facts, prefiled testimony and evidence, and the prehearing briefs. If Ms. Baker wishes to become a party in this case, she must file written notice with the Board no later than September 12, 2002, and must join in the stipulation of the parties.

2. If the parties are unable to stipulate to all of the facts in this case, prefiled testimony and exhibits must be filed only with respect to the facts which remain in dispute and need to be resolved in this proceeding.

3. If needed pursuant to paragraph two, on or before October 8, 2002, the Consumer Advocate and any intervenors must file prepared direct testimony and exhibits, and a prehearing brief. The prepared direct testimony may refer to any document already in the record, and parties do not need to refile exhibits already submitted in the informal complaint process and made a part of the record. In prepared testimony and exhibits, the Consumer Advocate and any intervenors must address the issues discussed above, and file any other evidence not previously filed. In its prehearing brief, the Consumer Advocate must state what actions it believes

would be necessary to bring this matter to a proper resolution, and why such actions would be appropriate and in accordance with applicable statutes and rules.

4. If needed pursuant to paragraph two, on or before October 22, 2002, AT&T must file prepared rebuttal testimony and exhibits, and a prehearing brief responding to the Consumer Advocate's brief. AT&T may refer to any document already in the record, and does not need to refile exhibits already submitted in the informal complaint process and made a part of the record. In its prepared testimony and exhibits, AT&T must address the issues discussed above, the facts and argument raised by the Consumer Advocate in its request for a formal complaint proceeding, and file any other evidence not previously filed.

On the third-party verification recording provided by AT&T, SF identifies her telephone number. This telephone number does not appear to have the same prefix as Ms. Baker's. In its prepared testimony, AT&T should address this discrepancy, as well as the other discrepancies identified in the Consumer Advocate's request for a formal proceeding.

In its prehearing brief, AT&T must state what actions it believes would be necessary to bring this matter to a proper resolution, and why such actions would be appropriate and in accordance with applicable statutes and rules.

5. If the Consumer Advocate or any intervenor is going to file prepared rebuttal testimony and exhibits, it must do so by November 5, 2002.

6. If a hearing is necessary pursuant to paragraph one, a hearing for the presentation of evidence and the cross-examination of witnesses will be held in the Board Hearing Room, 350 Maple Street, Des Moines, Iowa, on November 12, 2002,

commencing at 10 a.m. The parties should plan to come to the hearing room at 9:45 a.m. to mark exhibits. Each party must provide a copy of its prepared testimony to the court reporter. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515) 281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

7. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination will become part of the evidentiary record of these proceedings. Pursuant to 199 IAC 7.2(6), the party making reference to the data request must file one original and three copies of the data request and response with the Executive Secretary of the Utilities Board at the earliest possible time.

8. Any person not currently a party who wishes to intervene in this case must meet the requirements for intervention in 199 IAC 7.2(7). The person must file a petition to intervene on or before 20 days following the date of issuance of this order, unless the petitioner has good cause for the late intervention. 199 IAC 7.2(8).

**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 3<sup>rd</sup> day of September, 2002.