

On July 1, 2003, Ms. Karen Mercer filed a written complaint with the Board alleging that she was induced to switch her long distance telephone service to AT&T by a telemarketer who represented that Ms. Mercer would receive a rate of \$.04 per minute for calls within the United States and \$.10 per minute on anytime calls to Germany. In addition, Ms. Mercer stated that the telemarketer represented that she would receive 60 free minutes for 6 months. Ms. Mercer alleged that based on this offer, she switched her long distance service to AT&T, but AT&T did not make good on the offer. Board staff identified the matter as C-03-162 and, pursuant to Board rules, on July 2, 2003, forwarded the complaint to AT&T for response.

AT&T responded to the complaint on July 17, 2003, stating that a credit was issued to Ms. Mercer's account for the appropriate charges in the amount of \$34.85, including taxes. AT&T further stated that it intended to take appropriate action in the matter.

On July 24, 2003, Board staff issued a proposed resolution finding that AT&T had misled Ms. Mercer into switching her long distance carrier to AT&T by quoting non-existent rates and, as such, changed Ms. Mercer's long distance service without proper authorization. The proposed resolution further stated that the credit offered by AT&T represented a fair resolution of the situation. No party other than Consumer Advocate has challenged the proposed resolution.

In its August 7, 2003, petition, Consumer Advocate asserts that a civil penalty should be imposed against AT&T to deter future slamming violations.

On August 14, 2003, AT&T filed a response to Consumer Advocate's request for formal proceeding as well as a motion to dismiss the request. In support of its response and motion to dismiss, AT&T stated Board staff had not determined that AT&T "willfully violated a provision of Iowa Code" and that a willful violation is the sole basis for imposing civil penalties. AT&T further stated that Consumer Advocate failed to allege a proper basis for imposition of civil penalties.

On August 21, 2003, Consumer Advocate filed a reply to AT&T's response and motion to dismiss, arguing that Iowa Code § 476.103 does not require Consumer Advocate to show there are reasonable grounds for further investigation; if the company is given notice and opportunity for hearing and the Board finds that the anti-slammings statute has been violated, civil penalties are appropriate. Therefore, Consumer Advocate concludes slammings violations should be processed under Iowa Code § 476.103 and civil penalties should be assessed.

The Board has reviewed the record to date as well as the additional slammings complaints made against AT&T and finds that there is sufficient information to warrant further investigation in this matter. The Board recognizes that there has not been any action in this matter for some time. Therefore, the Board will delay establishing a procedural schedule until March 2, 2004, and will request that the parties submit a report to the Board regarding the status of this matter on or before that date.

IT IS THEREFORE ORDERED:

1. The "Petition for Proceeding to Impose Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on August 7, 2003, identified as Docket No. FCU-03-46, is granted and docketed for formal proceeding.
2. The motion to dismiss the petition filed by AT&T Communications of the Midwest, Inc., on August 14, 2003, is denied.
3. The parties shall submit a status report to the Board on or before March 2, 2004, as described in this order.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 20th day of January, 2004.