

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,                      Complainant,</p> <p>vs.</p> <p>TCPB MARKETING, LTD.                      Respondent.</p>	<p style="text-align:center">DOCKET NO. FCU-04-48</p>
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**ORDER DOCKETING FOR FORMAL PROCEEDING AND  
SETTING DEADLINE FOR RESPONSE**

(Issued October 11, 2004)

On September 9, 2004, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition asking that the Board review the proposed resolution in Docket No. C-04-203 involving TCPB Marketing, Ltd. (TCPB), and consider the possibility of assessing a civil penalty pursuant to Iowa Code § 476.103(4)"a." Based upon the record assembled in the informal complaint proceedings, the events to date can be summarized as follows:

On August 16, 2004, Pam Berg of Northwest Concrete Products (Northwest) of Storm Lake, Iowa, submitted a complaint to the Board alleging that Northwest's long distance telephone service was changed without authorization. Northwest

disputed charges submitted with its monthly phone bill by USBI, a billing agent, on behalf of TCPB, a long distance carrier. Northwest stated in its complaint that it never authorized a change in carrier.

Board staff identified the matter as C-04-203 and, pursuant to Board rules, on August 18, 2004, forwarded the complaint to TCPB for response within ten days. TCPB filed a response with the Board on August 30, 2004, indicating that on or about June 30, 2004, a sales agent solicited Northwest to change its long distance carrier to TCPB. TCPB stated that the company it used to verify the switch was Vericom, Inc. (Vericom). TCPB stated that according to Vericom, Pam Berg of Northwest authorized the switch. TCPB did not provide proof of the verification. TCPB indicated that it issued a full credit in the amount of \$178.98 to Northwest for charges billed on behalf of TCPB, deactivated Northwest from its service, and placed Northwest on a "do not solicit" list.

On September 3, 2004, Board staff issued a proposed resolution concluding that slamming had occurred in this matter. Board staff noted that although TCPB claimed the customer authorized the switch in carrier, it failed to provide proof of verification. Staff noted that TCPB issued a full credit, canceled the account, and placed the customer on a "do not solicit" list.

On September 7, 2004, the Board received a letter dated September 1, 2004, from TCPB stating that it was in dispute with Vericom and unable to provide a copy of

the verification recording. TCPB suggested in the letter that Board staff might be able to retrieve the recording if they contacted Vericom directly.

In its September 9, 2004, petition, Consumer Advocate asserts the proposed resolution should be augmented with a civil penalty because a credit alone will not stop the unlawful practice of slamming. Consumer Advocate asserts that civil penalties are necessary to ensure compliance and deter future violations. TCPB has not responded to Consumer Advocate's petition.

The Board has reviewed the record to date and finds there is sufficient information to warrant further investigation into this matter. The Board will delay establishing a procedural schedule and allow TCPB an opportunity to respond to the allegations raised in Consumer Advocate's petition.

In response to TCPB's suggestion that Board staff contact the third-party verification company directly to request a copy of the recording of the alleged verification, the Board reminds TCPB that it is the respondents obligation to provide satisfactory evidence that the customer authorized a change in carrier. The Board and its staff cannot be expected to obtain that evidence on behalf of the respondent.

**IT IS THEREFORE ORDERED:**

1. The "Petition for Proceeding to Consider Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on September 9, 2004, is granted. File C-04-203 is docketed for formal proceedings, identified as Docket No. FCU-04-48.

2. TCPB Marketing, Ltd., is directed to file a response to Consumer Advocate's petition on or before November 8, 2004.

**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 11<sup>th</sup> day of October, 2004.