

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,</p> <p style="padding-left: 100px;">Complainant,</p> <p style="padding-left: 40px;">vs.</p> <p>WEBXITES, LP,</p> <p style="padding-left: 100px;">Respondent.</p>	<p>DOCKET NO. FCU-05-7</p>
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**ORDER DOCKETING FOR FORMAL PROCEEDING AND
SETTING DEADLINE FOR RESPONSE**

(Issued March 18, 2005)

On February 11, 2005, pursuant to Iowa Code §§ 476.103 and 476.3, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition for a proceeding to consider a civil penalty for an alleged cramming violation committed by WebXites, LP (WebXites). Based upon the record assembled in the informal complaint proceedings, the events to date can be summarized as follows:

On January 13, 2005, Denise Allen of Allen Sign Co. (Allen Sign) of Davenport, Iowa, submitted a complaint to the Board alleging that the local phone bill for Allen Sign included unauthorized charges submitted by Enhanced Service Billing, Inc. (ESBI), on behalf of WebXites. Ms. Allen stated that Allen Sign received a phone call about website development and that the employee answering the call told the sales representative that he was not authorized to buy or change anything. Ms. Allen stated that the sales representative told the employee that anything he agreed to

would be formalized with a fax. Ms. Allen stated that Allen Sign never received a fax. Attached to the complaint was a copy of a bill showing charges submitted on behalf of WebXites in the amounts of \$49.95 for "gold setup" and \$49.95 for "gold mthly" fees.

Board staff identified the matter as C-05-6 and, pursuant to Board rules, on January 14, 2005, forwarded the complaint to WebXites for response within ten days. WebXites responded to the complaint by e-mail on January 28, 2005. The response included a partial copy of the third-party verification recording and a copy of a letter to Ms. Allen dated January 27, 2005. In the letter, WebXites stated that it canceled service effective January 10, 2005. WebXites stated that an independent third-party verification was conducted on November 5, 2004, and that this authorization contained an agreement to review the terms of sale and was accepted by an Allen Sign employee who claimed to be a decision maker for the company. WebXites also stated that it contacted Allen Sign on November 8, 2004, to verify authorization prior to sending a welcome package.

After listening to the recording of the third-party verification, Ms. Allen noted in a communication to Board staff that the recording was interrupted after every question and that the employee was told how to answer.

On January 31, 2005, Board staff issued a proposed resolution concluding that WebXites charged Allen Sign without proper authorization. Staff noted that WebXites did not receive permission from the person responsible for the bill. Staff directed WebXites to fully credit all charges.

In its February 11, 2005, petition, Consumer Advocate asserts the proposed resolution should be augmented with a civil penalty because credits alone will not

stop the unlawful practice. Consumer Advocate asserts that civil penalties are necessary to ensure compliance and deter future violations. WebXites 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 WebXites an opportunity to respond to the allegations raised in Consumer Advocate's petition.

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 February 11, 2005, is granted. File C-05-6 is docketed for formal proceedings, identified as Docket No. FCU-05-7.

2. WebXites, LP, is directed to file a response to Consumer Advocate's petition on or before April 15, 2005.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Margaret Munson
Executive Secretary, Deputy

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 18th day of March, 2005.