

Board staff identified the matter as C-05-18 and, pursuant to Board rules, on February 9, 2005, forwarded the complaint to LAYP for response within ten days. LAYP filed its response with the Board on March 1, 2005, stating that it provides Internet services for small businesses and offers a free 14-day trial period which does not begin to run for billing purposes until a fulfillment package, including a welcome letter, is mailed to the customer. LAYP stated that Larry Mitchell, Ms. Mitchell's husband, agreed to a free 14-day trial period. LAYP included a copy of the recording of the third-party verification.

Board staff forwarded a copy of the recording to Ms. Mitchell for her review. Ms. Mitchell responded by stating that she never received a letter from LAYP, so she and her husband did not have instructions as to how to cancel and did not have LAYP's telephone number.

Board staff issued a proposed resolution on March 8, 2005, stating that it appears that Mr. Mitchell authorized LAYP to provide a 14-day free trial of an Internet package and that the verifier told Mr. Mitchell he would receive a welcome letter with instructions in approximately five to seven days. Staff noted that when the verifier asked Mr. Mitchell if he agreed to accept the 14-day trial, he responded, "I will but I know I won't keep it." Staff concluded there was no evidence that Mr. Mitchell received the welcome letter with instructions and that the 14-day trial period was not to start until he received the letter. Staff observed that it was possible that Mr. Mitchell had no way to try the service without the instructions contained in the

welcome letter. Staff noted that the charges had been credited in full, but that the account had not yet been canceled. Staff directed LAYP to close the account.

In its March 21, 2005, petition, Consumer Advocate argues that LAYP was authorized to bill for its service only after the welcome letter arrived and the trial period had concluded, and because the letter never arrived, there was no authorization. Consumer Advocate asserts the charge was unlawfully crammed onto the customer's phone bill. Consumer Advocate argues that the proposed resolution should be augmented with civil penalties because credits alone will not stop the unlawful practice of cramming and penalties are needed to deter future violations.

On March 21, 2005, LAYP filed with the Board additional information in response to staff's proposed resolution. LAYP states that the welcome letter was mailed from San Francisco, California, on November 3, 2004, and that there are no records of the letter not reaching its destination. LAYP states that the solicitation call was made to a company known as Comedia Musica Players and that the account was canceled on January 20, 2005, the first time Ms. Mitchell contacted the company about the account. LAYP has not responded to 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 March 21, 2005, is granted. File C-05-18 is docketed for formal proceedings, identified as Docket No. FCU-05-19.

2. Local Area Yellow Pages is directed to file a response to Consumer Advocate's petition on or before May 27, 2005.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 29th day of April, 2005.