

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,</p> <p style="padding-left: 40px;">Complainant,</p> <p style="padding-left: 40px;">vs.</p> <p>MEMBER'S EDGE, L.L.C.,</p> <p style="padding-left: 40px;">Respondent.</p>	<p style="text-align:center">DOCKET NO. FCU-05-22</p>
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**ORDER DOCKETING FOR FORMAL PROCEEDING,
GRANTING REQUEST TO AMEND PETITION, AND
SETTING DEADLINE FOR RESPONSE**

(Issued May 13, 2005)

On April 6, 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 Member's Edge, L.L.C. (Member's Edge). Based upon the record assembled in the informal complaint proceedings, the events to date can be summarized as follows:

On March 3, 2005, the Board received a complaint from Patricia Packard of Hampton, Iowa, disputing charges for e-mail services appearing on her mother's telephone bill. Board staff learned the charges were submitted on behalf of Member's Edge, L.L.C. (Member's Edge). Board staff identified the matter as

C-05-47 and, pursuant to Board rules, on March 4, 2005, forwarded the complaint to Member's Edge for response within ten days.

Member's Edge's response to the complaint was filed with the Board on March 14, 2005, by counsel for an entity known as Family Discount Network. The response indicated that a credit had been processed and the account was closed. Member's Edge disputed Ms. Packard's claim that she did not sign up for e-mail services and stated that Member's Edge obtained written documentation of the customer's consent and authorization. The company attached what it labeled as "Letter of Authorization Information" and a copy of confirmation e-mails sent to the customer.

On March 16, 2005, Board staff forwarded a copy of the company's response to the customer for her review. Ms. Packard speculated that she might have provided the personal information in the course of completing an insurance questionnaire or signing up for free airline tickets. She stated she did not knowingly sign up for e-mail services.

On March 30, 2005, Board staff issued a proposed resolution concluding that the printout of the Website page filed by Member's Edge as a written letter of authorization did not meet the Board's requirements for proof of authorization. Staff noted that Board rules require that a letter of authorization not be combined with any inducements and be a separate document containing only the language authorizing service. Staff observed that the screen printout provided by Member's Edge refers to

"4 Free Airline Tickets" and discounts on prescriptions, vision service, legal service, and other benefits. Board staff concluded the charges submitted on behalf of Member's Edge were the result of cramming.

In its April 6, 2005, petition, Consumer Advocate notes that text attached to Member's Edge's response to the customer's complaint states that the company's authorization to provide and bill for its services is obtained by way of the customer's electronic signature, but that no electronic signature appeared in the attachment. Consumer Advocate asserts the proposed resolution should be augmented with a civil penalty because credits alone will not stop the unlawful practice of cramming. Consumer Advocate argues that civil penalties are necessary to ensure compliance and deter future violations. Member's Edge has not responded to Consumer Advocate's petition.

On April 13, 2005, Consumer Advocate filed a request for leave to amend its petition by deleting the last two sentences of paragraph 10 for the reason that those sentences are not essential to establishing the alleged cramming violation. No response to the petition has been filed, so the amendment will not prejudice the interests of any other person. The Board has reviewed Consumer Advocate's request to amend its petition and will approve the request.

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 to allow Member's Edge an opportunity to respond to the allegations raised in Consumer Advocate's amended 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 April 6, 2005, is granted. File C-05-47 is docketed for formal proceeding, identified as Docket No. FCU-05-22.

2. The "Request for Leave to Amend" its petition filed by the Consumer Advocate Division of the Department of Justice on April 13, 2005, is granted.

3. Member's Edge, L.L.C., is directed to file a response to Consumer Advocate's amended petition within 30 days of the date of this order.

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 13th day of May, 2005.