

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>BUSINESS NETWORK LONG DISTANCE, INC.,                      Respondent.</p>	<p>DOCKET NO. FCU-06-22</p>
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**ORDER DOCKETING FOR FORMAL PROCEEDING AND  
SETTING DEADLINE FOR RESPONSE**

(Issued March 17, 2006)

On February 13, 2006, pursuant to Iowa Code §§ 476.3 and 476.103, 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 slamming violation committed by Business Network Long Distance, Inc. (BNLD). Based upon the record assembled in the informal complaint proceeding, the events to date can be summarized as follows:

On December 8, 2005, the Board received a complaint from Teresa Brown of Brown's Kitchen Center of Ottumwa, Iowa, alleging that the long distance service provider for Brown's Kitchen Center was changed without authorization. Ms. Brown explained that on November 14, 2005, she received a phone call from a woman who

identified herself as someone required by the government to contact business customers of Qwest Corporation (Qwest) to explain that their accounts would be credited for overcharges. According to Ms. Brown, the woman explained that a "mediator" would come on the line to verify certain information about the account, and that Ms. Brown was to agree to what the "mediator" would say. Ms. Brown stated the "mediator" did come on the line and confirmed phone numbers, names, and Ms. Brown's relationship with Brown's Kitchen Center. Ms. Brown stated that nothing was said about switching long distance service. Ms. Brown stated that upon receipt of her Qwest bill on December 5, 2005, she looked for a credit but instead found charges from "Business Network LD" totaling \$13.94. Ms. Brown stated she called the toll-free number listed on the bill to inquire about the charges and was told that on November 14, 2005, she agreed to change her long distance service to BNLD. She requested that her account be canceled and was told she would receive a credit.

Board staff identified the matter as C-05-239 and forwarded the complaint to BNLD for response. BNLD's response was dated December 28, 2005. BNLD stated Ms. Brown authorized the change in service and completed a third-party verification confirming her authorization for the change. BNLD also stated the account had been canceled and a credit was issued. BNLD sent Board staff an electronic copy of the recording of the third-party verification.

Board staff forwarded the recording to Ms. Brown for her review. After listening to the recording, Ms. Brown stated it was her voice on the recording, but that she had been instructed to say "yes" in order to get the credit for her account. Ms. Brown also stated she wished the earlier portion of the call had been recorded.

On February 7, 2006, Board staff issued a proposed resolution finding that slamming occurred in this matter because BNLD did not provide acceptable proof that Ms. Brown authorized the change in long distance service. Staff noted that Ms. Brown was not specifically asked if she was switching service to BNLD. Also, staff stated it believed that Ms. Brown cooperated with the verification process to receive a Qwest refund promised by the first caller. Staff concluded that long distance service for Brown's Kitchen Center was switched without proper authorization.

In its February 13, 2006, petition, Consumer Advocate asserts the misrepresentations alleged by Ms. Brown were fraudulent and the fraud vitiates any authorization she may have given for the switch. Consumer Advocate argues the proposed resolution should be augmented with a civil penalty. Consumer Advocate contends a civil penalty is necessary to deter future violations and because a credit alone will not stop the unlawful practice of slamming. BNLD has not responded to Consumer Advocate's petition.

The Board has reviewed the record to date and finds there are reasonable grounds to warrant further investigation of this matter. The Board will grant Consumer Advocate's petition for proceeding to consider a civil penalty but will delay

establishing a procedural schedule to allow BNLD an opportunity to respond 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 February 13, 2006, is granted. File C-05-239 is docketed for formal proceeding, identified as Docket No. FCU-06-22.

2. Business Network Long Distance, Inc., is directed to file a response to Consumer Advocate's petition within 30 days of the date of this order.

**UTILITIES BOARD**

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Margaret Munson  
Executive Secretary, Deputy

/s/ Curtis W. Stamp

Dated at Des Moines, Iowa, this 17<sup>th</sup> day of March, 2006.