

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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| <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>BUSINESS NETWORK LONG<br/>DISTANCE, INC.,</p> <p style="padding-left: 40px;">Respondent.</p> | <p>DOCKET NO. FCU-06-23</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 27, 2005, the Board received a complaint from Cheryl Nelson of the Iowa City Area Association of Realtors (Association) alleging that the Association's long distance service provider was changed without authorization. Ms. Nelson explained that she had been contacted by persons claiming to be with Qwest

Corporation (Qwest), the Association's long distance provider, about credits owed to the Association's account due to overcharges. Ms. Nelson stated she expressed her concern about the legitimacy of the call and was told the call was from Qwest and that no changes would be made to the account. Ms. Nelson stated she completed a verification process by answering questions but was never asked if she wanted to switch her long distance provider.

Board staff identified the matter as C-05-254 and learned the Association's new long distance provider was BNLD. Staff forwarded the complaint to BNLD for response. BNLD's response to the complaint was dated January 24, 2006. BNLD stated its telemarketer contacted the Association on November 4, 2005; Ms. Nelson told the telemarketer she wanted to change long distance providers; and the account had been canceled and charges credited. BNLD attached a copy of the recording of the third-party verification.

Staff forwarded the recording to Ms. Nelson for her review. After listening to the recording, Ms. Nelson stated that the voice on the recording sounds like her voice, but the recording does not reflect the conversation she had. Ms. Nelson stated she believed the recording had been altered. Ms. Nelson explained that any representations made to her by the telemarketer were about a credit to the account and that she never agreed to switch long distance providers.

On February 9, 2006, Board staff issued a proposed resolution finding that the recording provided by BNLD was not sufficient to show the change in service was

properly authorized. Staff concluded that BNLD changed the Association's long distance service without proper authorization. Staff noted that the Association's long distance provider had been changed back to the previous provider chosen by the Association, and that charges and fees associated with the change had been credited.

In its February 13, 2006, petition, Consumer Advocate asserts the misrepresentations alleged by Ms. Nelson 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-05-254 is docketed for formal proceeding, identified as Docket No. FCU-06-23.

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.