

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>ZWW-ISP,</p> <p style="padding-left: 100px;">Respondent.</p>	<p>DOCKET NO. FCU-05-59</p>
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**ORDER GRANTING MOTION TO VACATE DEFAULT JUDGMENT,
APPROVING SETTLEMENT AGREEMENT, AND
ASSESSING CIVIL PENALTY**

(Issued May 16, 2006)

On September 6, 2005, 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 ZWW-ISP. Consumer Advocate asserts ZWW-ISP placed unauthorized charges on a consumer's telephone bill in violation of Iowa's law against cramming, Iowa Code § 476.103. The proceeding was identified as Docket No. FCU-05-59.

ZWW-ISP did not respond to Consumer Advocate's petition as directed by Board order. On November 29, 2005, Consumer Advocate filed an application for entry of judgment by default. On December 22, 2005, the Board issued an order

granting Consumer Advocate's motion for default judgment and ordering payment of default judgment in the amount of \$10,000.

On May 11, 2006, Consumer Advocate and ZWW-ISP submitted a joint motion to vacate the default judgment and for approval of a settlement agreement contained in the motion. The filing indicates that ZWW-ISP alleges it never received notice of the consumer complaint that originated these proceedings. It appears that Consumer Advocate disputes ZWW-ISP's allegation that it did not receive notice, but, in consideration of ZWW-ISP's agreement to pay a monetary penalty pursuant to the settlement agreement, agrees to the joint motion to vacate the default judgment.

The Board has reviewed the motion to vacate the default judgment and the settlement agreement and will approve them. Vacating the default judgment will allow the parties to settle the dispute. The Board approves of ZWW-ISP's statements in the settlement agreement that it will credit all charges previously billed to the consumer and continue its efforts to avoid occurrences of cramming.

The parties' settlement agreement addresses all issues in the docket and includes a monetary penalty in the amount of \$500, which is to be paid within 30 days of the date of this order. The settlement agreement is reasonable in light of the record, conforms with all applicable statutes and rules, and is in the public interest.

199 IAC 7.18.

IT IS THEREFORE ORDERED:

1. The "Joint Motion to Vacate Default Judgment" and "Joint Motion for Approval of Settlement Agreement" filed in this docket on May 11, 2006, are approved.

2. The "Order Granting Motion for Default Judgment and Ordering Payment of Default Judgment" issued in this docket on December 22, 2005, is vacated.

3. Pursuant to Iowa Code § 476.103 and the "Settlement Agreement" filed May 11, 2006, ZWW-ISP is assessed a civil penalty in the amount of \$500. Payment, in the form of a check made payable to the Iowa Utilities Board, should be forwarded to the Executive Secretary of the Iowa Utilities Board at 350 Maple Street, Des Moines, Iowa 50319-0069. Payment is due within 30 days of the date of this order. The docket number listed on this order shall be listed on the check or in the accompanying correspondence.

UTILITIES BOARD

/s/ John R. Norris

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Curtis W. Stamp

Dated at Des Moines, Iowa, this 16th day of May 2006.