

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>AMERICA NET, L.L.C.,                      Respondent.</p>	<p>DOCKET NO. FCU-06-46</p>
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**ORDER DOCKETING FOR FORMAL PROCEEDING AND  
SETTING DEADLINE FOR RESPONSE**

(Issued August 10, 2006)

On June 30, 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 America Net, L.L.C. (America Net). Based upon the record assembled in the informal complaint proceeding, the events to date can be summarized as follows:

On May 11, 2006, the Board received a complaint from Amy Creutzmann of MT Cartridge/Gateway Consulting, Inc. (MT Cartridge), of Ankeny, Iowa, alleging that in October of 2005, MT Cartridge was contacted by someone alleging to be from Qwest Corporation (Qwest) and offering to switch MT Cartridge's long distance plan

to a lower rate. Ms. Creutzmann stated she was told that the company offering the lower rate was a subsidiary of Qwest and the service would be provided by Qwest. Ms. Creutzmann stated she completed a third-party verification. Ms. Creutzmann stated she noticed a change fee from Qwest and a new long distance provider on the next telephone bill. Ms. Creutzmann stated she contacted Qwest and was told she was slammed. Qwest identified the new long distance carrier as On Hold and gave Ms. Creutzmann contact information for that company. Ms. Creutzmann stated she was not able to reach On Hold by phone. Ms. Creutzmann's complaint detailed the problems she had in trying to contact On Hold.

Board staff determined that On Hold was the billing agent for America Net. Staff identified the matter as C-06-123 and, on May 15, 2006, forwarded the complaint to America Net for response. The Board received America Net's response on May 25, 2006. America Net attached to its response what it alleged were copies of a third-party verification recording, a transcript of the recording, and a written notice sent to the customer. America Net stated it fully credited the charges totaling \$58.62 and canceled the account. Board staff sent these materials to Ms. Creutzmann for review.

Ms. Creutzmann responded on June 9, 2006, stating that she never received the letter America Net claims to have sent. Ms. Creutzmann confirmed it is her voice on the recording, but stated the recording did not include the questions she asked and the telemarketer's answer that the company was a subsidiary of Qwest. Ms.

Creutzmann stated the conversation she heard on the recording was faint and muffled and the telemarketer spoke so quickly she could not tell what he was saying. Ms. Creutzmann stated that when she asked questions, the telemarketer would stop the recording, answer her questions, and then record the conversation from the beginning.

On June 21, 2006, Board staff issued a proposed resolution finding America Net provided acceptable proof that Ms. Creutzmann authorized the change in long distance service.

In its June 30, 2006, petition, Consumer Advocate asserts the proposed resolution is incorrect and does not address the consumer's allegations about the verification recording. Consumer Advocate argues these factual disputes cannot be resolved without further investigation and hearing. Consumer Advocate argues America Net's misrepresentations were fraudulent and vitiate any consent the consumer may have given for the change in service. Consumer Advocate asserts a civil penalty is necessary to deter future violations and because a credit alone will not stop the unlawful practice of slamming. America Net 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 America Net 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 June 30, 2006, is granted. File C-06-123 is docketed for formal proceeding, identified as Docket No. FCU-06-46.

2. America Net, L.L.C., 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/ Judi K. Cooper  
Executive Secretary

/s/ Curtis W. Stamp

Dated at Des Moines, Iowa, this 10<sup>th</sup> day of August, 2006.