

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: 100px;">Complainant,</p> <p style="padding-left: 40px;">vs.</p> <p>BUSINESS NETWORK LONG DISTANCE, INC.,</p> <p style="padding-left: 100px;">Respondent.</p>	<p>DOCKET NO. FCU-06-50</p>
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**ORDER DOCKETING FOR FORMAL PROCEEDING AND  
SETTING DEADLINE FOR RESPONSE**

(Issued September 26, 2006)

On July 27, 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 June 5, 2006, the Board received a complaint from Sharon Phillips of Phillips Funeral Homes in Vinton, Iowa, alleging that the long distance service for the business was changed without authorization. Ms. Phillips stated that on February 15, 2006, her business received a telephone call from someone claiming to be from

Qwest Corporation (Qwest), the long distance provider for the business, offering a new long distance rate. Mrs. Phillips stated her daughter, Mary Phillips, answered the call and gave the caller the telephone numbers for the business. Mrs. Phillips stated she was concerned when she heard the conversation and called Qwest. Qwest referred Mrs. Phillips to the billing agent for BNLD. Mrs. Phillips stated that the company told her it had an authorization for the change in service and played a recording which did not include the part of the conversation indicating the caller was from Qwest.

Board staff identified the matter as C-06-135 and, on June 6, 2006, forwarded the complaint to Qwest and BNLD. In response, Qwest stated its records show that long distance service for the three lines in question was changed to BNLD on February 15, 2006, pursuant to a request from BNLD. Qwest also stated it changed the long distance service back to Qwest when Mrs. Phillips called on May 1, 2006, to report the change in service.

The Board received BNLD's response on June 27, 2006. BNLD stated its records show its telemarketer contacted Phillips Funeral Homes on February 9, 2006, and spoke to Ms. Mary Phillips who identified herself as the assistant office manager and told the telemarketer she wanted to change long distance service for the business. BNLD also stated Ms. Phillips completed a third-party verification process in which she confirmed her decision to switch to BNLD and gave personal identification information. BNLD attached an electronic copy of the third-party verification recording to its response. BNLD also stated that, as a result of

disciplinary measures adopted by BNLD, the telemarketer who contacted Phillips Funeral Homes no longer works for BNLD's marketing agent, and that BNLD canceled the long distance service for the numbers in question and issued credits totaling \$382.75. Board staff forwarded a copy of the recording of the third-party verification to Phillips Funeral Homes.

The Board received Mary Phillips' reply on July 19, 2006. Ms. Phillips confirms it is her voice on the recording, but states her dispute is with the phone conversation that took place before the verification recording. Ms. Phillips states the woman who called her stated she was with Qwest and that, pursuant to the settlement of a lawsuit, Qwest was required to notify its business customers to refund excess charges. Ms. Phillips stated the woman also said that Qwest was changing the set up of business service so that the overcharging would not occur again, and that to get the refund and change of service, she would have to complete the third-party verification process. Ms. Phillips stated that after she completed the verification process, she realized she might have been slammed, and tried calling the toll-free number provided by the verification agent. She states that no one answered that number. Ms. Phillips also stated she dialed the number provided by the telemarketer and received a "no longer in service" message.

On July 20, 2006, Board staff issued a proposed resolution finding no slam occurred because BNLD submitted acceptable proof of authorization to switch the long distance service for Phillips Funeral Homes. Staff observed that the recording said nothing about the refund or reduced charges from Qwest and that Ms. Phillips

cooperated with the verification process and gave no indication the information was different than what the telemarketer said.

In its July 27, 2006, petition, Consumer Advocate asserts that the proposed resolution is incorrect. Consumer Advocate argues neither the recording of the verification portion of the call nor anything else in the file contains any basis for discrediting the customers' account of the misrepresentations made by the telemarketer. Consumer Advocate asserts it is well established that misrepresentations can occur during the unrecorded solicitation portion of a call and the potential for misrepresentation is elevated in the context of telemarketing. Consumer Advocate suggests the fact that BNLD acknowledged it took disciplinary action against the telemarketer supports the customers' allegations. Further, Consumer Advocate argues that while the verifier's statement on the recording that BNLD was not affiliated with the local telephone company may support an inference that Ms. Phillips might have been able to detect the fraud sooner by paying closer attention to what the verifier was saying, it does not prove the misrepresentations allegedly made by the telemarketer did not occur and does not excuse such misrepresentations. Consumer Advocate argues that whether the misrepresentations were made cannot be properly determined without a hearing. Finally, Consumer Advocate argues that the alleged misrepresentations were fraudulent and such fraud vitiates any authorization the customer may have given for the switch. Consumer Advocate argues that credits are an insufficient response and

that civil penalties are necessary to secure future compliance with the statute. 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 July 27, 2006, is granted. File C-06-135 is docketed for formal proceeding, identified as Docket No. FCU-06-50.

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/ Judi K. Cooper  
Executive Secretary

/s/ Curtis W. Stamp

Dated at Des Moines, Iowa, this 26<sup>th</sup> day of September, 2006.