STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, vs. QWEST CORPORATION, Respondent.	DOCKET NO. C-06-146

ORDER DENYING REQUEST FOR PROCEEDING TO CONSIDER CIVIL PENALTY

(Issued October 6, 2006)

On August 8, 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 cramming violation committed by Qwest Corporation (Qwest).

1. Informal complaint proceeding

Based on the record assembled in the informal complaint proceeding, the events to date can be summarized as follows:

On June 26, 2006, the Board received a complaint from Jill Hansen of Ames, Iowa, regarding a large long distance telephone bill she received from her long distance provider, Qwest. For the period of April 12, 2006, through May 2, 2006, the

charges in question totaled almost $1,900.[1] Ms. Hansen indicated her normal monthly long distance charges were approximately $40. Ms. Hansen stated that she contacted Qwest to ask about the charges and was told that the access number her computer was using for dial-up Internet access had probably been changed from a local number to a toll number. Ms. Hansen stated her Internet provider has been America Online (AOL) since 1997 and that she had not experienced any problems before this. Ms. Hansen also stated she contacted AOL and was told she needed to dispute the charges with her telephone company. Ms. Hansen stated she contacted Qwest a second time and was told she was responsible for the charges and could set up a payment plan.

Board staff initially classified the complaint as a billing complaint and on June 28, 2006, forwarded the complaint to Qwest for response. The Board received a response from Qwest on July 12, 2006, in which Qwest stated its records show that from April 10, 2006, to May 2, 2006, long distance calls were placed from the customer's number to a number in Algona, Iowa, identified as the connection number the customer used for AOL services. Qwest stated it was not responsible for the charges and that Ms. Hansen's long distance service had been suspended due to non-payment.

[1] The Qwest bill dated May 16, 2006, submitted by Ms. Hansen showed charges for multiple calls to the same number in Algona, Iowa, made between April 12 and May 2, 2006. The calls lasted anywhere from six minutes to over 60 hours.

On July 25, 2006, Board staff issued a proposed resolution stating that Qwest had concluded the number to which the calls were made was a dial-up access number for Ms. Hansen's AOL service and that AOL had apparently changed the access number without notifying Ms. Hansen. Staff concluded that the Board does not have jurisdiction over long distance service. Staff suggested that Ms. Hansen contact AOL for further explanation.

On August 2, 2006, the Board received a letter from Ms. Hansen responding to the proposed resolution and stating that both Qwest and AOL claim they are not responsible for the charges. Ms. Hansen restated her position that she did not authorize the charges and asked that the file remain open.

2. Consumer Advocate's petition for proceeding to consider civil penalty

In its August 8, 2006, petition for proceeding to consider civil penalty, Consumer Advocate argues the proposed resolution is incorrect. Consumer Advocate asserts that, pursuant to Iowa Code § 476.103, the Board has jurisdiction to assess civil monetary penalties for the placement of unauthorized charges on phone bills to Iowa consumers and there is no exemption in the statute for long distance telephone services. Consumer Advocate contends that neither Qwest's response nor Board staff's proposed resolution addresses the customer's allegation that the disputed charges were unauthorized. Consumer Advocate argues this allegation cannot be discredited without a hearing and that the facts in this case are not clear. Consumer Advocate objects to the proposed resolution's finding that AOL

"apparently" changed the dial-up access number without notifying the customer and argues that the basis for this conclusion does not appear in the record. Consumer Advocate argues that further investigation is necessary to determine what happened.

On August 31, 2006, the Board received a response from Qwest clarifying that its records show that prior to April 12, 2006, and after May 2, 2006, calls were placed from Ms. Hansen's number to two different numbers for extended times, possibly for AOL access. Qwest states it was not able to verify that the telephone numbers are AOL numbers, but that when called they provide the same dial-up signal.

3. Discussion

Iowa Code § 476.3 provides, in relevant part, that the Board shall grant a request for formal complaint proceedings whenever the Board determines there are reasonable grounds for investigating a complaint. Here, for several reasons, the Board is unable to find any reasonable grounds for further investigation of the complaint and will deny Consumer Advocate's request for proceeding to consider civil penalty. First, there is no suggestion in the record that the calls did not occur as shown on the telephone bill. Also, because Qwest was the customer's designated long distance provider, it cannot be said that Qwest's billing for the long distance calls was improper. Further, it is apparent that the customer intended to call AOL; she simply did not intend to make the calls in a manner that incurred toll charges. That circumstance cannot be traced back to any action by Qwest, which is the only entity in this matter subject to the Board's direct jurisdiction. On these facts, there is no

reasonable likelihood that further investigation would support a conclusion that Qwest violated the Board's rule and statute prohibiting unauthorized changes in service by "cramming" the charges onto the customer's account and consequently is subject to a civil penalty.

The Board will clarify the proposed resolution of its staff to eliminate any possible confusion over the statement in the resolution that the Board does not have jurisdiction over long distance service. To that end, the Board agrees with Consumer Advocate that the Board has jurisdiction to investigate complaints alleging unauthorized charges for long distance calls and to assess civil penalties where appropriate. However, the Board's exercise of its jurisdiction over this complaint would be improper. To the extent that any wrongdoing or mistake may have occurred in this case, whether it be AOL's wrongdoing in failing to notify the customer of a change in access number or the customer's mistake in failing to notice a change that was made, that wrongdoing or mistake cannot be traced back to Qwest. While further investigation might help to provide an answer as to what happened between the customer and her Internet service provider in this case, it will not change the fact that Qwest is not subject to a civil penalty for its actions in this case.

If Ms. Hansen believes she is entitled to relief because of any wrongdoing by AOL, she should consider renewing her complaint with the Consumer Protection Division of the Attorney General's Office or seek relief through an action in small claims court.

IT IS THEREFORE ORDERED:

The "Petition for Proceeding to Consider Civil Penalty" filed on August 8, 2006, by the Consumer Advocate Division of the Department of Justice is denied.

UTILITIES BOARD

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Curtis W. Stamp

Dated at Des Moines, Iowa, this 6th day of October, 2006.