

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<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>GLOBAL YP,</p> <p style="padding-left: 40px;">Respondent.</p>	<p>DOCKET NO. FCU-06-53</p>
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**ORDER DOCKETING FOR FORMAL PROCEEDING AND
ASSIGNING TO ADMINISTRATIVE LAW JUDGE**

(Issued October 23, 2006)

On September 6, 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 or cramming violation committed by Global YP. Based upon the record assembled in the informal complaint proceeding, the events to date can be summarized as follows:

On August 2, 2006, the Board received a complaint from Kristi Reck, the office manager for Snow Engineering, Inc. (Snow Engineering), in Independence, Iowa, alleging that Global YP placed unauthorized charges on the local telephone bill for

Snow Engineering.¹ A copy of Snow Engineering's July 7, 2006, telephone bill from Qwest Corporation (Qwest), Snow Engineering's local service provider, shows a charge submitted on behalf of Global YP in the amount of \$34.99 and identified as "GldBizPInMoFee." Ms. Reck stated she contacted Global YP to ask about the charge and was told that someone from Snow Engineering agreed to Global YP's services and that Global YP sent Snow Engineering a packet of information explaining that Snow Engineering had 15 days to cancel the services. Ms. Reck stated that Snow Engineering did not receive the information from Global YP.

Board staff identified the matter as C-06-163 and forwarded the complaint to Qwest, asking if Qwest could provide any information related to the allegedly unauthorized charge on its bill. Qwest stated its records show that Ms. Reck contacted Qwest on July 18, 2006, to dispute the charge from Global YP and the charge was recouped back to Global YP.

On August 15, 2006, Board staff forwarded the complaint to Global YP for response. Global YP responded on August 17, 2006, stating it has a third-party verification recording from June 13, 2006, on which a person named Robert Hearn identified himself as vice president of Snow Engineering, confirmed his authority to incur charges, accepted a 15-day free trial of Global YP's services, and was told the account would be charged if the services were not canceled within 15 days. Global

¹ The complaint filed by Snow Engineering was the fifth complaint received by the Board against Global YP in 2006. In two of those cases, identified as C-06-32 and C-06-125, Consumer Advocate requested formal proceedings to consider civil penalties, but later withdrew the petitions, so the dockets were closed. See Docket Nos. FCU-06-28 and FCU-06-45. In the complaints identified as C-06-65 and C-06-165, Consumer Advocate did not request proceedings to consider civil penalties.

YP also stated the account was canceled on July 22, 2006. Board staff forwarded a copy of the recording to Ms. Reck for review.

Ms. Reck responded on August 23, 2006, stating the recording did not include the first part of the conversation in which Global YP claimed to represent Qwest. Ms. Reck also stated that the recording does not identify what service Global YP is offering, the recording was misrepresented as a verification process for Qwest, that she did not receive the welcome packet Global YP claims to have sent, and that she still does not know what service Global YP billed for.

Board staff issued a proposed resolution on August 25, 2006, concluding that Global YP failed to provide acceptable proof that Snow Engineering authorized the charges on its local telephone bill. Staff also noted that Global YP failed to provide the name, address, and telephone number of the independent verifier. Staff directed Global YP to credit the charges in full and to refrain from collecting the charges from Snow Engineering.

On September 6, 2006, Consumer Advocate filed its request for a proceeding to consider a civil penalty. Consumer Advocate states that Snow Engineering alleges that Global YP's telemarketer misrepresented during the unrecorded solicitation portion of the call that the call was made on behalf of Qwest as part of a verification process for Qwest. Consumer Advocate argues that neither the recording nor anything else in the record contains any basis for discrediting these allegations and that the potential for misrepresentation is elevated in the telemarketing context. Further, Consumer Advocate argues that the alleged misrepresentations were

fraudulent and vitiate any consent Snow Engineering may have given for the charges. Consumer Advocate states that while the fact that the verifier provided information about a free trial offer may support an inference that Snow Engineering might have been able to detect the fraud sooner by paying closer attention to what the verifier was saying, it does not prove the alleged misrepresentations did not occur and does not excuse such misrepresentations. Consumer Advocate contends that whether the alleged misrepresentations occurred cannot be determined without a hearing. Consumer Advocate claims a monetary penalty should be assessed to secure future compliance with the statute prohibiting unauthorized changes in service. Consumer Advocate states Mr. Hearn is prepared to testify in support of the complaint.

Board staff forwarded Consumer Advocate's petition to Global YP for its response. Global YP responded on September 7, 2006, stating it provides Internet yellow page online directory services including creating and hosting Web sites for small businesses and advertising in various Internet search engines. Global YP states it is not required to record the sales call and could provide proof that an information packet was sent to Snow Engineering.

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. Because Global YP has responded to Consumer Advocate's petition, the Board will assign this matter to an administrative law judge (ALJ) for further proceedings pursuant to Iowa

Code § 17A.11(1)"b" (2005) and 199 IAC 7.3. The ALJ may take all appropriate action, which may include setting a hearing date, presiding at the hearing, and issuing a proposed decision.

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 September 6, 2006, is granted. File C-06-163 is docketed for formal proceeding, identified as Docket No. FCU-06-53.

2. Pursuant to Iowa Code § 17A.11(1)"b" and 199 IAC 7.3, this docket is assigned to the Board's administrative law judge, Amy Christensen, for further proceedings. The administrative law judge shall have the authority provided under 199 IAC 7.3.

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 23rd day of October, 2006.