

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>GLOBAL YP,</p> <p style="padding-left: 100px;">Respondent.</p>	<p>DOCKET NO. FCU-06-53</p>
---	-----------------------------

PROCEDURAL ORDER AND NOTICE OF HEARING

(Issued October 30, 2006)

On August 2, 2006, Ms. Kristi Reck, office manager for Snow Engineering, Inc. (Snow Engineering), filed a complaint with the Utilities Board (Board) against Global YP, alleging that Global YP had placed an unauthorized charge of \$34.99 on Snow Engineering's local telephone bill. A copy of Snow Engineering's July 7, 2006, telephone bill from Qwest Corporation (Qwest) shows a charge submitted on behalf of Global YP identified as "GldBizPlnMoFee." Qwest is the local service provider for Snow Engineering. In her complaint, Ms. Reck stated she called Global YP to ask about the charge and was told that someone from Snow Engineering agreed to Global YP's services. She stated Global YP claimed to have sent a packet of information telling Snow Engineering it had 15 days to cancel, but Snow Engineering did not receive such a packet.

Board staff investigated the complaint and forwarded it to Qwest and Global Net Services for response. Qwest responded in a letter filed August 9, 2006. Among other things, Qwest stated it had received a call from the customer on July 18, 2006, disputing the charge, the charge was recoured back to Global YP, and a request was sent to stop future billings. Global Net Services responded in a letter filed August 14, 2006, stating it was not the responsible company.

On August 15, 2006, Board staff forwarded the complaint to Global YP for response. Global YP responded to the complaint in a letter received by the Board on August 17, 2006. Global YP stated it had a third-party verification recording in which a person named Robert Hearn stated his position as Vice-President of Snow Engineering, confirmed his authority to incur charges, and accepted the 15-day free trial on June 13, 2006. Global YP stated Mr. Hearn was told that charges would be incurred if the account were not cancelled within 15 days. Global YP sent a copy of the third-party verification recording and stated the account had been terminated on July 22, 2006.

Board staff forwarded a copy of Global YP's response and the third-party verification recording to Snow Engineering on August 17, 2006. On August 23, 2006, Ms. Reck responded and stated the recording did not include the first part of the conversation in which Global YP claimed to represent Qwest. She also stated that Global YP did not say what they were offering on the recording and it was misrepresented as a verification process for Qwest. Ms. Reck stated she has no

paperwork that represents itself as Global YP's welcoming packet and Global YP should be reprimanded for the fraudulent misrepresentation. She stated she still does not know what services Global YP provides and what they were billing Snow Engineering for.

On August 25, 2006, Board staff issued a proposed resolution finding that Global YP failed to provide acceptable proof that Snow Engineering authorized the charges and failed to provide the name, address, and telephone number of the third-party verification company. Board staff found that the charges billed to Snow Engineering were not authorized and that Global YP was in violation of the Board's cramming rules. Board staff acknowledged that Global YP had cancelled the account, directed Global YP to credit the unauthorized charges in full, and stated that Global YP could not collect the charges.

On September 6, 2006, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a petition for a proceeding to consider a civil penalty for a cramming or slamming violation pursuant to Iowa Code §§ 476.3 and 476.103 (2005). The Consumer Advocate argued that the proposed resolution is correct as far as it goes, discussed the alleged misrepresentations, and stated a hearing is needed to determine whether the misrepresentations occurred. The Consumer Advocate argued the misrepresentations as alleged worked a fraud upon Snow Engineering that vitiated any authorization that may have been given. The Consumer Advocate argued that a civil monetary penalty should be assessed to

secure future compliance with the statute and a credit alone is insufficient for this purpose.

Board staff forwarded the petition to Global YP and provided a deadline for response. On September 7, 2006, Global YP filed a response stating it is an Internet yellow page online directory. Global YP stated its services include creating and hosting websites for small businesses and advertising their businesses in Internet search engines. Global YP argued the law only requires it to record the agreement part of the third-party verification recording. It stated each telemarketing center that Global YP uses has assigned a dedicated staff to do the third-party verification. It argued this practice is commonly used. Global YP stated the welcome packet had been mailed to Snow Engineering and it could contact its third-party mailing company, Mailing It Right, for a confirmation. Global YP stated its billing department record stated that credit was adjusted on August 9, 2006.

The details of the informal complaint case are contained in informal complaint file number C-06-163, which is incorporated into the record in this case pursuant to 199 IAC 6.7.

On October 23, 2006, the Board issued an order finding there are reasonable grounds to warrant further investigation of the case, granting the Consumer Advocate's petition, docketing the case for formal proceeding, and assigning it to the undersigned administrative law judge.

Pursuant to the Board's order, Iowa Code §§ 476.3(1) and 476.103(4), and 199 IAC 6.5, a procedural schedule will be established and a hearing date set.

The statutes and rules involved in this case include Iowa Code §§ 476.3 and 476.103 and Board rules at 199 IAC 1.8, 1.9, 22.23, and chapters 6 and 7. Links to the Iowa Code and the Board's administrative rules (in the Iowa Administrative Code (IAC)) are contained on the Board's Web site at www.state.ia.us/iub.

THE ISSUES

The issues in this case generally involve Global YP's billing Snow Engineering \$34.99 for the service identified as "GldBizPlnMoFee" at issue in this case, whether Global YP complied with applicable law when it did so, whether imposition of a civil penalty is appropriate, and the factors regarding the amount of civil penalty in Iowa Code §476.103(4)(b). The parties may raise other issues prior to and during the hearing.

PREPARED TESTIMONY AND EXHIBITS

All parties will have the opportunity to present and respond to evidence and make argument on all issues involved in this proceeding. Parties may choose to be represented by counsel at their own expense. Iowa Code § 17A.12(4). The proposed decision that will be issued in this case must be based on evidence contained in the record and on matters officially noticed. Iowa Code §§ 17A.12(6) and 17A.12(8).

The submission of prepared evidence prior to hearing helps identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined concerning the statements already made in writing. The use of prepared testimony and submission of documentary evidence ahead of the hearing prevents surprise at the hearing and helps each party to prepare adequately so a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1) and (3); 199 IAC 7.10.

PARTY STATUS AND COMMUNICATION WITH THE BOARD

The Consumer Advocate and Global YP are currently the only parties to this proceeding. If Snow Engineering wishes to become a party to this case, it must notify the Board in writing in accordance with the procedural schedule established in this order.

Global YP should take note of the requirement to file a written appearance in 199 IAC 7.4(7).

Any party who communicates with the Board should send an original and ten copies of the communication to the Executive Secretary, 350 Maple Street, Des Moines, Iowa 50319-0069, accompanied by a certificate of service. One copy of the communication should also be sent at the same time to each of the other parties

to this proceeding, except that three copies must be served on the Consumer Advocate. 199 IAC 7.4(6)"c." These requirements apply, for example, to the filing of prepared testimony and exhibits with the Board.

These procedures are necessary to comply with Iowa Code § 17A.17 and 199 IAC 7.22, which prohibit ex parte communication. Ex parte communication is when one party in a contested case communicates with the judge without the other parties being given the opportunity to be present. In order to be prohibited, the communication must be about the facts or law in the case. Calls to the Board to ask about procedure or the status of the case are not ex parte communication. Ex parte communication may be oral or written. This means the parties in this case may not communicate about the facts or law in this case with the undersigned administrative law judge unless the other parties are given the opportunity to be present, or unless the other parties are provided with a copy of the written documents filed with the Board.

Pursuant to 199 IAC 6.7, the written complaint and all supplemental information from the informal complaint proceeding, identified as informal complaint file C-06-163, are part of the record of this formal complaint proceeding.

The materials that have been filed in this docket are available for inspection at the Board Records and Information Center, 350 Maple Street, Des Moines, Iowa 50319. Copies may be obtained by calling the Records and Information Center at

(515) 281-5563. There will be a charge to cover the cost of the copying. Board orders are available on the Board's Web site at www.state.ia.us/iub.

All parties should examine Iowa Code §§ 476.3, 476.103, and Board rules at 199 IAC 1.8 and 22.23, and chapters 6 and 7, for substantive and procedural rules that apply to this case.

IT IS THEREFORE ORDERED:

1. If Snow Engineering wishes to become a party to this case, it must file written notice with the Board no later than November 27, 2006.

2. On or before November 27, 2006, the Consumer Advocate and any intervenors must file prepared direct testimony and exhibits and a prehearing brief. The prepared direct testimony may refer to any document already in the record, and parties do not need to refile exhibits already submitted in the informal complaint process and made a part of the record. In prepared testimony and exhibits, the Consumer Advocate must address the issues discussed above, support each of the allegations made in its petition, and file any other evidence not previously filed. The Consumer Advocate should use exhibit numbers one and following. In its prehearing brief, the Consumer Advocate must explain why it believes imposition of a civil penalty would be appropriate and in accordance with applicable law in this particular case. If Snow Engineering becomes a party to this case and wishes to file prepared testimony and a brief, it must do so on or before November 27, 2006.

3. On or before December 27, 2006, Global YP must file prepared testimony and exhibits and a prehearing brief. Global YP may refer to any document in the record and does not need to refile exhibits already submitted in the informal complaint process and made a part of the record. In its prepared testimony and exhibits, Global YP must address the issues discussed above, support each of the allegations made in its responses in the informal complaint process, and file any other evidence not previously filed. Global YP should use exhibit numbers 100 and following. In its prehearing brief, Global YP must explain why it believes imposition of a civil penalty would not be appropriate and would not be in accordance with applicable law in this particular case.

4. If any party wishes to have a witness connected to the hearing by telephone conference call, the party must file written notification with the Board no later than January 17, 2007.

5. If the Consumer Advocate or any intervenor is going to file prepared rebuttal testimony and exhibits or a rebuttal brief, it must do so on or before January 17, 2007.

6. A hearing for the presentation of evidence and the cross-examination of witnesses will be held in the Board Hearing Room, 350 Maple Street, Des Moines, Iowa, on Tuesday, February 6, 2007, commencing at 9 a.m. Each party must provide a copy of its prepared testimony and exhibits to the court reporter. Persons with disabilities requiring assistive services or devices to observe or participate should

contact the Board at 1-515-281-5256 no later than five business days prior to the hearing to request that appropriate arrangements be made.

7. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination will become part of the evidentiary record of these proceedings. Pursuant to 199 IAC 7.23(4)"d," the party making reference to the data request must file one original and three copies of the data request and response with the Executive Secretary of the Board at the earliest possible time.

8. Any person not currently a party who wishes to intervene in this case must meet the requirements for intervention in 199 IAC 7.13. The person must file a petition to intervene on or before 20 days following the date of issuance of this order, unless the petitioner has good cause for the late intervention. 199 IAC 7.13(1).

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 30th day of October, 2006.