

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: 40px;">Complainant,</p> <p style="padding-left: 40px;">vs.</p> <p>QWEST CORPORATION,</p> <p style="padding-left: 40px;">Respondent.</p>	<p>DOCKET NO. C-06-146</p>
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**ORDER DENYING REQUEST FOR RECONSIDERATION**

(Issued November 7, 2006)

On October 6, 2006, the Utilities Board (Board) issued an "Order Denying Request for Proceeding to Consider Civil Penalty" in this docket. The Board denied a request filed by the Consumer Advocate Division of the Department of Justice (Consumer Advocate) for a proceeding to consider a civil penalty for an alleged cramming violation committed by Qwest Corporation (Qwest). The request for a proceeding to consider a civil penalty arose out of an informal complaint from a consumer regarding charges from her long distance provider, Qwest.

In its October 6, 2006, order, the Board stated that, while it has jurisdiction to investigate complaints alleging unauthorized charges for long distance calls and to assess civil penalties where appropriate, exercise of its jurisdiction over this particular complaint would be improper. The Board concluded that further investigation would

not change the fact that Qwest is not subject to a civil penalty for its actions in this case.

On October 9, 2006, Consumer Advocate filed a request for reconsideration asking the Board to reconsider its decision to deny the request for proceeding to consider civil penalty. Consumer Advocate refers to the law of contracts in support of its argument that further investigation is needed to learn whether any extraordinary circumstances may justify relieving the consumer of her obligation to pay Qwest for the disputed long distance charges. Consumer Advocate attaches a copy of a news article describing an instance in which a telephone company in another state reduced bills from \$1,000 to \$19 and argues that further investigation in this case may show that justice requires a reduction and that the disputed charges are unauthorized. Consumer Advocate suggests that if Qwest makes a reduction, a penalty may not be appropriate.

On October 23, 2006, Qwest filed a response to Consumer Advocate's request for reconsideration. Qwest supports the Board's decision to deny Consumer Advocate's request for proceeding to consider a civil penalty and urges the Board not to revisit its decision. Qwest asserts that Consumer Advocate's request for reconsideration does not contest the Board's findings that there is no suggestion in the record that the calls did not occur as shown on the telephone bill; the customer intended to call the Internet service provider, but did not intend to incur toll charges; and any wrongdoing or mistake in this case cannot be traced back to Qwest.

Qwest identifies two problems with Consumer Advocate's argument that the law of contracts might provide some support for excusing the consumer of her obligation to pay Qwest for the disputed long distance charges. First, Qwest argues that an assumption that the consumer might be excused from performance on equitable grounds does not provide the basis for assessing a civil penalty for a cramming violation. Second, Qwest asserts that Consumer Advocate's argument ignores the fact that the Internet service provider, not Qwest, provided the consumer with the telephone numbers she dialed to obtain Internet access. Qwest argues that the Board correctly suggested that the consumer consider a civil action or complaint against the Internet service provider filed with the Consumer Protection Division of the Attorney General's Office.

Qwest states it has offered to work with the consumer regarding the charges and will continue to work with her and the Internet service provider toward reaching an accommodation acceptable to all parties, with each party bearing appropriate responsibility.

The Board will deny Consumer Advocate's request for reconsideration of its October 6, 2006, order denying further proceedings in this matter. The Board finds that its order adequately addresses the issue of whether further proceedings to consider a civil penalty against Qwest are warranted and that Consumer Advocate did not provide sufficient new information or argument to merit a reconsideration of the order. The Board restates its position that, while a proceeding to consider a civil

penalty against Qwest is not warranted, it does not intend to foreclose any other means of relief for the consumer.

**IT IS THEREFORE ORDERED:**

The request for reconsideration filed by the Consumer Advocate Division of the Department of Justice on October 9, 2006, is denied.

**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 7<sup>th</sup> day of November, 2006.