

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,</p> <p style="text-align:center">Complainant,</p> <p style="text-align:center">vs.</p> <p>COMMUNICATIONS NETWORK BILLING, INC.,</p> <p style="text-align:center">Respondent.</p>	<p style="text-align:center">DOCKET NO. C-06-188</p>
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**ORDER DENYING REQUEST FOR PROCEEDING  
TO CONSIDER CIVIL PENALTY**

(Issued December 7, 2006)

On October 18, 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 Communications Network Billing, Inc. (CNBI).

**1. Informal complaint proceeding**

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

On September 1, 2006, the Board received a complaint from Jeannie Henry on behalf of Pannar Genetics of Boone, Iowa. Ms. Henry explained that she received

a call from someone named Carol Anderson who claimed to be a representative of Qwest Corporation (Qwest). According to Ms. Henry, Ms. Anderson stated that Pannar Genetics had been charged the wrong rates and Ms. Anderson needed to verify information so Qwest could issue a credit. Ms. Henry states that she later received a Qwest bill with a charge for changing Pannar Genetics' long distance carrier and charges from CNBI. Ms. Henry explained that she contacted Qwest to inquire about the charges and learned that Ms. Anderson had misrepresented herself. After Ms. Henry's inquiry, Qwest sent the charges back to CNBI.

Board staff identified the complaint as C-06-188 and, on September 11, 2006, forwarded the complaint to Qwest and CNBI for response. Qwest was asked to provide the change of carrier history for Pannar Genetics. Qwest indicated its records show it received an electronic change order request for Pannar Genetics' account on August 16, 2006, to change service from Global Crossing, Pannar Genetics' long distance provider, to Alliance Group Services, a company that resells services to CNBI. Qwest also stated its records show that Ms. Henry called on September 1, 2006, to request that service be changed back to Global Crossing.

The Board received CNBI's response on September 19, 2006. CNBI states its telemarketer contacted Pannar Genetics on August 9, 2006. According to CNBI, Ms. Henry told the telemarketer that she wished to change long distance services and confirmed that decision by completing a recorded third-party verification (TPV).

CNBI attached a copy of the recording, which appears to confirm that Pannar Genetics intended to change long-distance services.

On September 19, 2006, staff asked Ms. Henry for her e-mail address in order to send CNBI's response and the TPV for her review and asked her to notify staff if she did not receive the message or if she was not able to listen to the recording. Ms. Henry was given until October 2, 2006, to review CNBI's response and recording and to provide a reply to the Board. As of October 9, 2006, Ms. Henry had not responded.

Staff issued a proposed resolution on October 9, 2006, stating that without Ms. Henry's response, staff was unable to conclude that the change in service was unauthorized. Staff noted that the charges were credited in full and suggested the customer request a change-in-carrier freeze to prevent future unauthorized changes.

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

In its October 18, 2006, petition for proceeding to consider civil penalty, Consumer Advocate asserts the proposed resolution is incorrect. Consumer Advocate contends that the fact a consumer does not reply to a staff inquiry does not necessarily mean she agrees with the company, but could mean she does not see a reason to reply. Consumer Advocate states the complaint alleged the telemarketer made material misrepresentations and CNBI did not respond to those allegations. 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.

Further, Consumer Advocate argues that while the recording of the TPV may support an inference that Ms. Henry 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 the alleged misrepresentations committed by CNBI were fraudulent and vitiate any authorization Ms. Henry may have given for the change in service.

Finally, Consumer Advocate argues that credits are an insufficient response and that civil penalties are necessary to secure future compliance with the statute.

CNBI has not responded to Consumer Advocate's petition.

### **3. Discussion**

Iowa Code § 476.3 provides, in relevant part, that the Board shall grant a request for formal complaint proceeding whenever the Board determines there are reasonable grounds for investigating a complaint. In this situation, where the consumer that brought the complaint did not respond to a facially-sufficient TPV, the Board does not find reasonable grounds for further investigation. The consumer's reply to the company's response to the complaint and comments after listening to the recording of the TPV can be critical to Board staff's investigation and resolution of slamming or cramming complaints. Here, pursuant to the Board's rule at 199 IAC

6.8(3), staff sought the consumer's reply to the company's response and the recording of the TPV, but the consumer did not reply. In its proposed resolution, Board staff explained that without the consumer's reply, it was unable to conclude that the disputed change in service was not authorized as shown by the TPV recording. The Board finds no reason to revisit staff's proposed resolution, which indicates that the company canceled the account and credited the consumer for charges resulting from the disputed change in service, and no reason to expend additional resources on a formal proceeding. Therefore, the Board will deny Consumer Advocate's request for formal proceeding to consider a civil penalty.

**IT IS THEREFORE ORDERED:**

The "Petition for Proceeding to Consider Civil Penalty" filed on October 18, 2006, by the Consumer Advocate Division of the Department of Justice 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 December, 2006.