STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, vs. NETOPUS.NET, Respondent.	DOCKET NO. FCU-07-8 (C-07-160)

ORDER DOCKETING FOR FORMAL PROCEEDING TO CONSIDER CIVIL PENALTY AND SETTING DEADLINE FOR RESPONSE

(Issued June 29, 2007)

PROCEDURAL BACKGROUND

On May 4, 2007, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) petitioned the Utilities Board (Board) to commence an administrative proceeding to impose a civil penalty on NetOpus.net (NetOpus) for an alleged cramming in violation of Iowa Code § 476.103. NetOpus did not respond to Consumer Advocate's petition.

INFORMAL COMPLAINT PROCEEDING

On April 9, 2007, Mr. Curtis Carlson filed a complaint on behalf of Carlson Trucking alleging that One.com placed charges on his telephone bill without his authorization. Mr. Carlson stated that he contacted Qwest, which informed him that the originator of the charge was NetOpus. Mr. Carlson stated he then contacted

NetOpus and talked to a representative who stated that NetOpus called Carlson Trucking on January 8, 2007, and talked to an employee named Sara Sorensen, and the charges placed on the Carlson Trucking telephone bill were authorized by Ms. Sorensen. Mr. Carlson stated that as he was on the telephone with NetOpus, he had Ms. Sorensen join him on the telephone line, and at that time Ms. Sorensen stated to the NetOpus representative that she did not authorize the charges.

Mr. Carlson stated that the NetOpus employee then offered and played a recording of the authorization. Mr. Carlson further stated that the conversation between the NetOpus representative and Ms. Sorensen was a conversation only verifying information about Carlson Trucking and asking Ms. Sorensen to repeat the information. Mr. Carlson further stated that during the telephone call with Ms. Sorensen, the NetOpus representative then asked two more questions regarding Ms. Sorensen's ability to authorize charges and that the recording sounded like a repeat of the earlier answers Ms. Sorensen had given. Mr. Carlson stated that he then told the NetOpus representative that the recording was an obvious scam and requested to speak to a NetOpus supervisor; the representative stated that she was the supervisor. Mr. Carlson told the NetOpus representative that he would turn the matter over to the Iowa Attorney General. Mr. Carlson then filed his written complaint with the Board.

On April 10, 2007, Board staff forwarded the complaint to Qwest and NetOpus. On April 18, 2007, staff received a response from Qwest stating that Mr. Carlson had been a Qwest long distance customer since January 15, 2004. Qwest further stated

that Mr. Carlson received three bills from Qwest that included monthly service charges from Paymentone (NetOpus) for $34.95 each and that Qwest, as a billing agent, is required to provide billing services for companies that have either no billing resource or are not sure who the charges are to be billed to. Last, Qwest stated that it had found no record of any calls from Mr. Carlson to Qwest to dispute the charges and that Qwest had issued a memorandum of recourse of the charges to Paymentone (NetOpus) for full credit of $104.85 on Mr. Carlson's account.

On April 23, 2007, staff received a response from NetOpus stating that Mr. Carlson's account had been terminated on April 6, 2007, that the situation was a result of an error in its system, and that it was willing to bring the matter to resolution. NetOpus further stated that it would issue a full refund.

On April 30, 2007, Board staff issued a proposed resolution. Staff stated that because NetOpus did not respond in a timely matter, staff issued the resolution by default. Staff found that NetOpus violated Board rules by not responding to the complaint within ten days. Staff required NetOpus to fully credit the charges and immediately close the account. Furthermore, staff prohibited NetOpus from pursuing collection action in relation to the charges. Last, staff gave NetOpus 14 days to request a formal proceeding if they disagreed with the proposed resolution.

On May 4, 2007, Consumer Advocate filed a petition for proceeding to consider civil penalty. Consumer Advocate stated that the proposed resolution was correct since NetOpus' untimely response did not include a copy of the third-party verification recording of Carlson Trucking's authorization for the charges, nor did it

respond to Mr. Carlson's allegations regarding the recording played to Mr. Carlson and Ms. Sorensen. Furthermore, Consumer Advocate stated that a civil monetary penalty should be assessed in order to secure future compliance with the statute and a credit alone is insufficient. Last, Consumer Advocate stated that the Board should commence a proceeding pursuant to Iowa Code §§ 476.103 and 476.3 for the purpose of affording NetOpus with notice and opportunity for hearing; affirming staff's determination that NetOpus committed a cramming violation and considering a civil penalty in an amount designed to deter future violations.

DISCUSSION

Iowa Code § 476.3(1) states that "[i]f the consumer advocate determines the public utility's response to the complaint is inadequate, the consumer advocate may file a petition with the board which shall promptly initiate a formal proceeding if the board determines that there is any reasonable ground for investigating the complaint." The Board has previously determined that § 476.3 should be read together with Iowa Code § 476.103;[1] the statute prohibiting unauthorized changes in service. As the Board has said before, § 476.3 requires that the Board grant a petition for a formal proceeding any time the Board determines there is any reasonable ground for doing so.

The Board concludes that there are reasonable grounds to grant a formal proceeding to consider a civil penalty in this matter because of the failure of NetOpus

[1] Office of Consumer Advocate v. MCI Communications of Iowa, Inc., and Frontier Communications of Iowa, "Motion for Reconsideration," Docket No. C-06-281 (March 8, 2007).

to include proof of authorization with its response to staff regarding Mr. Carlson's complaint as required by 199 IAC 22.23(2)"a"(5). The issues in this docket will include that failure and such other issues as may be developed.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The "Petition for Formal Proceeding to Consider Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on May 4, 2007, is granted as discussed in this order. File No. C-07-160 is docketed for formal proceeding, identified as Docket No. FCU-07-8.

2. NetOpus.net is directed to file a response to Consumer Advocate's petition within 30 days of the date of this order.

UTILITIES BOARD

/s/ John R. Norris

/s/ Curtis W. Stamp

ATTEST:

/s/ Sharon Mayer
Executive Secretary, Assistant to

/s/ Krista K. Tanner

Dated at Des Moines, Iowa, this 29th day of June, 2007.