

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: 100px;">vs.</p> <p>NETPAGENOW,</p> <p style="padding-left: 100px;">Respondent.</p>	<p>DOCKET NO. FCU-07-15 (C-06-227)</p>
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**ORDER DOCKETING FOR FORMAL PROCEEDING AND
SETTING DEADLINE FOR RESPONSE**

(Issued November 9, 2007)

On February 1, 2007, 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 cramming violation committed by NetPageNow (NPN). Based upon the record assembled in the informal complaint proceeding, the events to date can be summarized as follows:

On October 16, 2006, the Board received a complaint from Suzanne Zillig, the office manager for Dr. Joanna Clancy in Cedar Rapids, Iowa, alleging that the bill from Qwest Corporation (Qwest), the local telephone service provider for the office, included unauthorized charges submitted on behalf of a company identified as

ESBI.¹ Ms. Zillig stated she contacted ESBI in July of 2006 in an attempt to stop the billing and was told the charges would stop. Ms. Zillig contacted ESBI again in September 2006 after the charges continued to appear on the bill.

Board staff identified the matter as C-06-227 and, on October 17, 2006, forwarded the complaint to ESBI for response. Staff also forwarded the complaint to Qwest, asking whether Qwest, as the local service provider for Dr. Clancy's office, had any information in its records relating to the alleged unauthorized charges.

The Board received a response from Qwest on October 24, 2006. Qwest stated its records show that monthly fees in the amount of \$29.95 were billed by ESBI for August, September, and October 2006. Qwest also stated that ESBI credited those charges.

On October 27, 2006, the Board received a response from ESBI explaining it submitted the disputed charges on behalf of NPN. ESBI attached NPN's response to the complaint. In its response dated October 25, 2006, NPN stated its records show that its telemarketer contacted Ms. Zillig and that she accepted an offer to create a Web page advertising the business on the Internet. On November 20, 2006, ESBI provided an electronic copy of the recording of the third-party verification submitted by NPN.

On November 20, 2006, Board staff forwarded a copy of the recording to Ms. Zillig and asked for her response by December 14, 2006. Ms. Zillig did not respond until January 16, 2007, at which time she explained that when she received the call

¹ Enhanced Services Billing, Inc., or ESBI, is the billing agent for NPN.

from the telemarketer she was told to answer yes to all the questions although she was not interested in the Web page service. Ms. Zillig also stated she could not recall what the telemarketer's initial comments were but she thought he was verifying her account information for Qwest.

On January 22, 2007, staff issued a proposed resolution concluding that cramming did not occur in this matter. Staff concluded that, based on the information provided in the third-party verification, Ms. Zillig authorized the Web page service.

In its February 1, 2007, petition, Consumer Advocate asserts the proposed resolution is incorrect. Consumer Advocate states that further investigation is needed to obtain reliable evidence of what was said during the telemarketing portion of the call because staff's explanation about Ms. Zillig's response to the verification recording does not fully capture the content of what the telemarketer said before transferring her to the verifier. Consumer Advocate reports that, according to Ms. Zillig, the substance of the telemarketing call was that she told the telemarketer she did not want the service, the telemarketer asked her to do him a favor by answering yes to all questions, and the telemarketer said he would immediately undo the order. Consumer Advocate asserts that the telemarketer's alleged statement that he would undo the order was a material misrepresentation which undoes any authorization Ms. Zillig may have given.

Consumer Advocate also asserts that, according to Ms. Zillig, the recording of the verification is incomplete because Ms. Zillig recalls that the telemarketer said

something to the effect of "remember, don't press that key" and the recording does not contain that statement. According to Consumer Advocate, because that statement is not heard on the recording, the recording of the verification portion of the call is unreliable. Consumer Advocate also states it appears the telemarketer stayed on the line during the verification portion of the call, which is contrary to federal regulations governing the verification process.

Consumer Advocate argues a credit is an insufficient response to the alleged violation and that consideration of a civil penalty is necessary to deter future violations. Consumer Advocate states Ms. Zillig is prepared to testify in support of the complaint. NPN has not responded to Consumer Advocate's petition.

Based on Consumer Advocate's assertion that the third-party verification process may not have been conducted in accordance with federal regulations, the Board finds reasonable grounds exist for further investigation of this matter.² Further proceedings may resolve several questions relating to whether the authorization was properly verified. The Board will docket this matter for formal proceeding but will delay establishing a procedural schedule to allow NPN an opportunity to respond to the allegations raised in Consumer Advocate's petition.

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 February 1, 2007, is

² The Board opted into the Federal Communications Commission's slamming enforcement process in September of 2000.

granted. File C-06-227 is docketed for formal proceeding, identified as Docket No. FCU-07-15.

2. NetPageNow is directed to file a response to Consumer Advocate's petition on or before 30 days from the date of this order.

UTILITIES BOARD

/s/ John R. Norris

/s/ Krista K. Tanner

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 9th day of November, 2007.