

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,</p> <p style="padding-left: 40px;">Complainant,</p> <p style="padding-left: 80px;">vs.</p> <p>NETPAGENOW,</p> <p style="padding-left: 40px;">Respondent.</p>	<p style="text-align:right">DOCKET NO. FCU-07-16 (C-06-224)</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 9, 2006, the Board received a complaint from Mr. Mark Miller on behalf of Cherokee Building Center in Cherokee, Iowa, alleging that the bill from Qwest Corporation (Qwest), the local telephone service provider for Cherokee Building Center, included unauthorized charges submitted on behalf of NPN. Mr.

Miller stated he did not sign up for service from NPN nor did he authorize the charges.

Board staff identified the matter as C-06-224 and, on October 11, 2006, forwarded the complaint to NPN for response. The Board received a response from NPN on October 23, 2006, stating that NPN provides Web page services for residential and business customers through independent telemarketers. NPN stated its records show that its telemarketer spoke to Mr. Miller on March 15, 2006, and that Mr. Miller accepted an offer to create a Web page for Cherokee Building Center. NPN claimed that the telemarketer created a Web page with Mr. Miller and then transferred the call to a third-party verification company. NPN stated that during the verification call, Mr. Miller confirmed his decision to accept the creation of the Web page, provided his date of birth as proof of his identity, and agreed to the charge of \$29.95 to be billed through the local telephone company. NPN stated that it canceled the Internet Web page services for Cherokee Building Center and issued a full credit in the amount of \$149.75. NPN provided an electronic copy of the recording of the third-party verification.

On November 30, 2007, staff forwarded a copy of the recording to Mr. Miller for his review. In response, Mr. Miller stated he believes the most important part of the conversation was not recorded. He stated he remembers being told to verify information but does not recall any mention of a Web page.

On January 23, 2007, staff issued a proposed resolution concluding that cramming did not occur in this matter. Staff noted that NPN's records, including the third-party verification, show that Mr. Miller confirmed the change in service.

In its February 1, 2007, petition, Consumer Advocate asserts the proposed resolution is incorrect. Consumer Advocate argues that staff's proposed resolution improperly credits NPN's assertion that the charges were authorized. Consumer Advocate reports that Mr. Miller states he already has a Web page and there was no way he would have authorized the creation of a Web page. Consumer Advocate states that Mr. Miller's position that the charges were not authorized cannot be discredited without a hearing.

Further, Consumer Advocate argues that the recording of the verification portion of the call is not persuasive evidence that the charges were authorized. Consumer Advocate quotes from a transcription of the recording to point out problems with the verification and states there is no recorded verification of the authorization allegedly given. 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 claims that Mr. Miller was told during the unrecorded portion of the call that the purpose of the call was to verify existing information. According to Consumer Advocate, that statement was a material misrepresentation which undoes any authorization Mr. Miller may have given. Finally, Consumer Advocate argues that a credit is an insufficient response to the alleged violation and that a civil penalty is necessary to deter future violations. Consumer Advocate states that Mr. Miller is prepared to testify in support of the complaint.

NPN has not responded to Consumer Advocate's petition.

Based on Consumer Advocate's contention that the verification process may not have been conducted in accordance with federal regulations (which the Board enforces after opting into the Federal Communications Commission's slamming enforcement effort in 2000) and on NPN's failure to respond to Consumer Advocate's petition, the Board finds reasonable grounds for further investigation of this matter. Further proceedings may determine whether the verification complied with federal regulations and whether penalties are appropriate. 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 granted. File C-06-224 is docketed for formal proceeding, identified as Docket No. FCU-07-16.

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.