

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="text-align:center">vs.</p> <p>HORIZON TELECOM, INC.,</p> <p style="padding-left: 100px;">Respondent.</p>	<p style="text-align:right">DOCKET NO. FCU-07-21 (C-07-90)</p>
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PROCEDURAL ORDER AND NOTICE OF HEARING

(Issued December 21, 2007)

On February 13, 2007, Ms. Glee Neibert filed a complaint with the Utilities Board (Board) against Horizon Telecom, Inc. (Horizon), alleging that Horizon placed unauthorized charges on her February 1, 2007, telephone bill and stating she did not authorize Horizon for long distance telephone service. Ms. Neibert stated that she did not authorize the charges and found out about them when she received her telephone bill from her carrier, South Slope Cooperative Telephone Company (South Slope). She stated that Horizon told her she had ordered the service on the Internet, which she denied. She also stated that Horizon told her they had sent e-mails to her, and if she did not respond, she would be billed. Ms. Neibert stated that she does not open e-mails unless she knows the person sending the e-mail. A customer service representative from South Slope also spoke with Horizon on behalf of Ms. Neibert. She stated that Horizon cancelled the service but would not credit Ms. Neibert's

account for the billed charges. On March 6, 2007, the South Slope customer representative e-mailed a copy of Ms. Neibert's March telephone bill to the Board showing additional charges from Horizon. She stated that Horizon cancelled the service on February 13, 2007, and the charges were prior to that date.

Board staff investigated the complaint and forwarded it to Horizon for response. Unfortunately, Board staff sent the complaint to Horizon's old address in Florida and not its current address in Las Vegas. However, the undersigned notes that in Office of Consumer Advocate v. Horizon Telecom, Inc., Docket No. FCU-07-22 (C-07-138), Horizon used its Florida address as its return address when it sent a letter to the complaining customer. Therefore, it is not clear whether Horizon continues to receive mail at its Florida address and whether it received the informal complaint documents in this docket. In any case, Horizon did not respond to the complaint. On March 20, 2007, Board staff issued a default resolution finding that Horizon was in violation of Board rules for failing to respond, directing Horizon to fully credit Ms. Neibert's account, and prohibiting Horizon from pursuing collection action for the charges. The default resolution did not specify that there was a slamming or a cramming violation. Board staff sent the default resolution to Horizon's Florida address.

The Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a petition for a proceeding to consider a civil penalty for a slamming violation on March 23, 2007. The Consumer Advocate argued that the proposed resolution was correct, but that it should be expanded to clarify that companies cannot escape civil penalties by ignoring allegations of violation and that a civil

penalty should be assessed for the default and to secure future compliance with the slamming statute. The Consumer Advocate served the petition on Horizon's Florida address. In addition, Board staff sent the petition to Horizon's Florida address and gave Horizon ten days to file a response. Horizon did not file a response.

Since the complaint, default resolution, Consumer Advocate petition, and Board staff letters were not previously served on Horizon's current Las Vegas address, a copy of each document must be served on Horizon with this order. Horizon will be given an opportunity to file a response to the Consumer Advocate's petition for a proceeding to consider a civil penalty.

The undersigned will give Horizon the benefit of the doubt and assume for the time being that Horizon did not respond in the informal complaint proceeding because it did not receive the documents that were sent to its prior Florida address. If a company is properly served and fails to respond to Board inquiries and orders, this is a serious violation. The Board has previously granted a motion for default judgment and issued a civil penalty in the amount of \$10,000 for failure to respond as required. In re: Office of Consumer Advocate v. ZWW-ISP, Docket No. FCU-05-59, "Order Granting Motion for Default Judgment and Ordering Payment of Default Judgment," (December 22, 2005).

On December 6, 2007, the Board issued an order finding there are reasonable grounds for further investigation in order to investigate Horizon's failure to comply and to determine whether Horizon received authorization for a change in service from Ms. Neibert. The Board's order granted the Consumer Advocate's petition, docketed

the case for formal proceeding, and assigned it to the undersigned administrative law judge. The Board served the order on Horizon's current Las Vegas address.

Pursuant to the Board's order and Iowa Code §§ 476.3 and 476.103, and 199 IAC 6.5, a procedural schedule will be established and a hearing date set.

The statutes and rules involved in this case include Iowa Code §§ 476.3 and 476.103 and Board rules at 199 IAC 1.8, 1.9, 22.23, and chapters 6 and 7. Links to the Iowa Code and the Board's administrative rules (in the Iowa Administrative Code (IAC)) are contained on the Board's Web site at www.state.ia.us/iub.

THE ISSUES

The issues in this case generally involve Horizon's switching Ms. Neibert's long distance telephone service and billing her telephone account for the charges Ms. Neibert states are unauthorized, whether Horizon complied with applicable law when it did so, whether imposition of a civil penalty is appropriate, and the factors regarding the amount of civil penalty in Iowa Code § 476.103(4)(b). The issues also include the total amount Horizon billed to Ms. Neibert and whether the total amount claimed to be unauthorized has been credited to Ms. Neibert's account.

PREPARED TESTIMONY AND EXHIBITS

All parties will have the opportunity to present and respond to evidence and make argument on all issues involved in this proceeding. Parties may choose to be represented by counsel at their own expense. Iowa Code § 17A.12(4). The proposed decision that will be issued in this case must be based on evidence

contained in the record and on matters officially noticed. Iowa Code §§ 17A.12(6) and 17A.12(8).

The submission of prepared evidence prior to hearing helps identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined concerning the statements already made in writing. The use of prepared testimony and submission of documentary evidence ahead of the hearing prevents surprise at the hearing and helps each party to prepare adequately so a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1) and (3); 199 IAC 7.10.

In its prepared testimony, Horizon must clarify its current address, whether it is still using its Florida address for some purposes, and whether it received the informal complaint documents in this case that were sent to its Florida address.

PARTY STATUS AND COMMUNICATION WITH THE BOARD

The Consumer Advocate and Horizon are currently the only parties to this proceeding. If Ms. Neibert wishes to become a party to this case, she must notify the Board in writing in accordance with the procedural schedule set forth below.

Horizon must file an appearance pursuant to 199 IAC 7.4(7) that identifies one person upon whom the Board may serve all orders, correspondence, and other documents in this proceeding.

Any party who communicates with the Board must send an original and ten copies of the communication to the Executive Secretary, 350 Maple Street, Des Moines, Iowa, 50319-0069, accompanied by a certificate of service. One copy of the communication should also be sent at the same time to each of the other parties to this proceeding, except that three copies must be served on the Consumer Advocate. 199 IAC 7.4(6)"c."

These procedures are necessary to comply with Iowa Code § 17A.17 and 199 IAC 7.22, which prohibit ex parte communication. Ex parte communication is when one party in a contested case communicates with the judge without the other parties being given the opportunity to be present. In order to be prohibited, the communication must be about the facts or law in the case. Calls to the Board to ask about procedure or the status of the case are not ex parte communication. Ex parte communication may be oral or written. This means the parties in this case may not communicate about the facts or law in this case with the undersigned administrative law judge unless the other parties are given the opportunity to be present, or unless the other parties are provided with a copy of the written documents filed with the Board.

The materials that have been filed in this docket are available for inspection at the Board Records and Information Center, 350 Maple Street, Des Moines, Iowa 50319. Copies may be obtained by calling the Records and Information Center at 515-281-5563. There will be a charge to cover the cost of the copying. Board orders are available on the Board's Web site at www.state.ia.us/iub.

All parties should examine Iowa Code §§ 476.3, 476.103, and Board rules at 199 IAC 1.8 and 22.23, and chapters 6 and 7, for substantive and procedural rules that apply to this case.

PROPOSAL TO CONSOLIDATE

On December 10, 2007, in In re: Office of Consumer Advocate v. Horizon Telecom, Inc., Docket No. FCU-07-22, the Board issued an "Order Docketing for Formal Proceeding and Assigning to Administrative Law Judge." The order granted the Consumer Advocate's petition to docket the case to consider a civil penalty for an alleged slamming violation committed by Horizon against Ms. Dorothy Gordon. Pursuant to 199 IAC 7.14, in the interest of administrative efficiency, the undersigned proposes to consolidate this case with Docket No. FCU-07-22. Although the complaining customers are not the same, the parties are identical and the cases involve common legal issues. The undersigned believes consolidation would be more efficient for the parties and would not adversely affect the substantial rights of any party. However, if either party objects, the cases will remain separate. If either party objects to consolidation of the cases, the party must file written notice of the objection with the Board in conformance with the procedural schedule set forth below. An identical proposal is included in the procedural order and notice of hearing that will be issued in Docket No. FCU-07-22.

IT IS THEREFORE ORDERED:

1. Pursuant to 199 IAC 6.7, the written complaint and all supplemental information from the informal complaint proceeding, identified as informal complaint

file C-07-90, are part of the record of this formal complaint proceeding. Since these documents were previously sent to Horizon's previous address in Florida, Board staff is directed to serve a copy of each of these documents on Horizon at its current address in Las Vegas with this order.

2. On or before January 11, 2008, Horizon must file a response to the Consumer Advocate's "Petition for Proceeding to Consider Civil Penalty" filed with the Board on March 23, 2007, and an appearance.

3. If Ms. Neibert wishes to become a party to this case, she must file written notice with the Board no later than January 11, 2008.

4. If any party objects to consolidation of this docket with Docket No. FCU-07-22, the party must file such objection with the Board on or before January 11, 2008, and explain why consolidation would be harmful to the party's interests in the case or contrary to Board rule.

5. On or before January 25, 2008, the Consumer Advocate and any intervenors must file prepared direct testimony and exhibits and a prehearing brief. The prepared direct testimony may refer to any document already in the record, and parties do not need to refile exhibits already submitted in the informal complaint process and made a part of the record. In prepared testimony and exhibits, the Consumer Advocate must address the issues discussed above, support each of the allegations made in its petition, and file any other evidence not previously filed. The Consumer Advocate should use exhibit numbers one and following. In its prehearing brief, the Consumer Advocate must explain why it believes imposition of a civil penalty would be appropriate and in accordance with applicable law in this particular

case. If Ms. Neibert becomes a party to this case and wishes to file prepared testimony and a brief, she must do so on or before January 25, 2008.

6. On or before February 15, 2008, Horizon must file prepared direct testimony and exhibits and a prehearing brief. The prepared direct testimony may refer to any document already in the record, and parties do not need to refile exhibits already submitted in the informal complaint process and made a part of the record. In prepared testimony and exhibits, Horizon must address the issues discussed above, support each of the allegations made in its response filed January 11, 2008, and file any other evidence not previously filed. Horizon should use exhibit numbers 100 and following. In its prehearing brief, Horizon must explain why it believes imposition of a civil penalty would not be appropriate and would not be in accordance with applicable law in this particular case.

7. If any party wishes to have a witness connected to the hearing by telephone conference call, the party must file written notification with the Board no later than February 26, 2008.

8. If the Consumer Advocate or any intervenor chooses to file prepared rebuttal testimony and exhibits or a rebuttal brief, it must do so on or before February 26, 2008.

9. A hearing for the presentation of evidence and the cross-examination of witnesses will be held in Board Conference Room 3, 350 Maple Street, Des Moines, Iowa, on Tuesday, March 4, 2008, beginning at 9:00 a.m. Each party must provide a copy of its prepared testimony and exhibits to the court reporter. Persons with disabilities requiring assistive services or devices to observe or participate should

contact the Board at 515-281-5256 no later than five business days prior to the hearing to request that appropriate arrangements be made.

10. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination will become part of the evidentiary record of these proceedings. Pursuant to 199 IAC 7.23(4)"d," the party making reference to the data request must file one original and three copies of the data request and response with the Executive Secretary of the Board at the earliest possible time.

11. Any person not currently a party who wishes to intervene in this case must meet the requirements for intervention in 199 IAC 7.13. The person must file a petition to intervene on or before 20 days following the date of issuance of this order, unless the petitioner has good cause for the late intervention. 199 IAC 7.13(1).

12. The parties are hereby put on notice that continuances to this procedural schedule will not be granted absent unusual circumstances.

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 21st day of December, 2008.