

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-07-22 (C-07-138)</p>
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PROCEDURAL ORDER AND NOTICE OF HEARING

(Issued December 21, 2007)

On March 6, 2007, Ms. Toni Vawter filed a complaint with the Utilities Board (Board) on behalf of her grandmother, Ms. Dorothy Gordon, against Horizon Telecom, Inc. (Horizon). The complaint alleged that Horizon sent a letter to Ms. Gordon claiming that she had ordered Horizon calling cards online and telling her that she would be billed on her local telephone bill for the cards. The complaint further alleged that Horizon had switched Ms. Gordon's long distance telephone service to Horizon without authorization and that Ms. Gordon had not ordered the Horizon calling cards. On March 7, 2007, Ms. Vawter sent a second complaint letter with additional information stating that Horizon refused to refund a \$4.99 charge that had already been billed to Ms. Gordon's account.

Board staff investigated the complaint and forwarded it to Horizon and Qwest Corporation (Qwest), Ms. Gordon's local telephone service provider, for response. Board staff sent the complaint to Horizon's old address in Florida and not its current address in Las Vegas. However, Horizon used its Florida address as its return address when it sent the letter to Ms. Gordon. 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 13, 2007, Qwest responded by letter stating that on March 2, 2007, it received an electronic order from Global Crossings changing Ms. Gordon's long distance service to carrier code 0444. Qwest processed the change. Qwest also stated that on March 6, 2007, Ms. Gordon called to have her long distance carrier changed back to "none," as it had been previously, and that Qwest also established a carrier change freeze on Ms. Gordon's account when it changed the carrier back to "none." Qwest stated its records showed no charges from Horizon or Global Crossing had been billed to Ms. Gordon's account, and that Qwest would check her April bill and recourse any charges if they were billed.

On March 23, 2007, Board staff issued a default resolution stating it had investigated the complaint for unauthorized billing of long distance services and finding that Horizon was in violation of Board rules for failing to respond. The default resolution directed Horizon to fully credit and close Ms. Gordon's account, and

prohibited Horizon from pursuing collection action for the charges. 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 29, 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 10, 2007, the Board issued an order finding there are reasonable grounds for further investigation in order to investigate Horizon's failure to comply with Board rules and to determine whether Horizon received authorization for a change in service from Ms. Gordon. 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. Gordon's long distance telephone service and telling her it would bill her telephone account for calling cards Ms. Gordon states she did not order, 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 whether Horizon billed Ms. Gordon's account, and if it did, the amount billed and whether the total amount claimed to be unauthorized has been credited to Ms. Gordon'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. Gordon 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 6, 2007, in In re: Office of Consumer Advocate v. Horizon Telecom, Inc., Docket No. FCU-07-21, 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. Glee Neibert and Horizon's billing allegedly unauthorized charges to her telephone account. Pursuant

to 199 IAC 7.14, in the interest of administrative efficiency, the undersigned proposes to consolidate this case with Docket No. FCU-07-21. 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-07-21.

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-07-138, 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 29, 2007, and an appearance.
3. If Ms. Gordon 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-07-21, 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. Gordon 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 1 p.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.