

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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<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>GLOBALYP.NET,</p> <p style="padding-left: 100px;">Respondent.</p>	<p style="text-align:center">DOCKET NO. C-07-66</p>
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**ORDER DENYING PETITION FOR PROCEEDING TO CONSIDER CIVIL PENALTY**

(Issued December 26, 2007)

**PROCEDURAL BACKGROUND**

On March 15, 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 GlobalYP.Net (Global) for an alleged cramming in violation of Iowa Code § 476.103. Global has not filed a response to Consumer Advocate's petition.

**INFORMAL COMPLAINT PROCEEDING**

On February 7, 2007, Mr. Douglas Coonrad filed a complaint with Board staff against Global for placing unauthorized charges on the local telephone bill at his business, The Coonrad Law Firm. Mr. Coonrad stated that for the last six months, he

has had a problem with Global submitting bills through Qwest. Mr. Coonrad stated that he has repeatedly protested to both Global and Qwest and that Qwest had refused to become involved. Mr. Coonrad also stated that Global has continued to bill him. In an e-mail to Global from Mr. Coonrad dated January 15, 2007, Mr. Coonrad stated:

We have repeatedly contacted you complaining about your billings to our phone number . . . . You have several times credited our account . . . , but have continued billing, most recently in the sum of \$170.99 within the 3-day period of December 24-27. We now have an outstanding bill at Qwest of nearly \$250 . . .

On February 9, 2007, Board staff sent a copy of the complaint to Global. Board staff requested a copy of the verification conversation; electronically recorded or by transcript. Board staff also requested that Global provide proof of written notice of the service charge and informed Global that copies of its response and any information it submitted would be forwarded to the consumer and Consumer Advocate.

On February 20, 2007, Global responded that due to a technical error, Mr. Coonrad's cancellation request in the billing system was not processed and a full credit adjustment had been issued to Mr. Coonrad's business phone account. The first credit adjustment, Global stated, was for the amount of \$139.96 on December 23, 2006, and the second credit adjustment was for the amount of \$139.96 on January 27, 2007. Global also stated that it did not have the entire verification recording because it only required its telemarketing centers to provide the

third-party verifications (TPV) to Global. Global sent Board staff a partial recording of a TPV. Global stated that on June 12, 2006, a Global representative talked to Christina Shriver, an attorney at the Coonrad Law Firm, and that "it was clear that she agreed to the terms and conditions of our service and began the free trial on June 12, 2006."

On February 26, 2007, Board staff forwarded the partial TPV recording to Mr. Coonrad. Board staff received no response from Mr. Coonrad.

On March 1, 2007, Board staff issued a proposed resolution concluding that no further action was necessary. Board staff concluded that Ms. Shriver authorized Global to add services to the account for a 15-day free trial, then canceled the services during the 15-day period, but the cancellation was not processed due to a technical error. Board staff noted that Global had now applied a credit to the account. Board staff informed Mr. Coonrad that if he believed this proposed ruling was in error, he could, within 14 days, provide new information.

On March 15, 2007, Consumer Advocate filed a petition for a proceeding to consider a civil penalty. Consumer Advocate stated that Board staff's proposed resolution was incorrect. Consumer Advocate asserted that the TPV recording was insufficient. Furthermore, Consumer Advocate stated that during the actual telephone call, Ms. Shriver advised the verifier that she had no authority to incur charges. Consumer Advocate also stated that Global admitted that Mr. Coonrad's firm canceled within the free trial period and therefore the charges were

unauthorized. Consumer Advocate continues stating "Global YP continued to bill despite repeated protests over a six month period" and the error was not corrected until Mr. Coonrad complained to the Board. Consumer Advocate is concerned that Global did not respond to Board staff's request that it identify the independent third-party verifier. Last, Consumer Advocate stated that subject to hearing rights to which Global is entitled to under law, a civil monetary penalty should be assessed in order to secure future compliance with the statute and the Board should commence a proceeding pursuant to Iowa Code §§ 476.3 and 476.103 for the purposes of affording Global notice and opportunity for hearing, determining that Global committed a cramming or slamming violation, and to consider a 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,<sup>1</sup> the statute prohibiting unauthorized changes in service. As the Board has said before, § 476.3 requires that the Board grant a

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<sup>1</sup> 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).

petition for a formal proceeding any time the Board determines there is any reasonable ground for doing so. Thus, the Board only denies petitions for formal proceedings when there are no reasonable grounds for further investigation. The Board concludes that there are no reasonable grounds to grant a formal proceeding to consider a civil penalty in this matter, because, as it appears in the informal record, an employee of the consumer accepted the offer by Global for a 15-day free trial offer of Global's services and that employee then canceled within the 15-day trial period, but the cancellation was not processed due to a technical error. Consequently, the change to add the service was authorized and the failure to cancel the service is a normal billing dispute, not a cramming violation. Although there were unauthorized charges on Mr. Coonrad's telephone bill, those charges were a result of a technical error in processing the cancellation of Global's services, not an attempt by Global to add unauthorized services. The issue has now been resolved and the account has been credited. Thus, there are no reasonable grounds for further investigation.

The Board takes note of the other issues raised by Consumer Advocate, including Global's failure to properly cancel the requested services, Global's failure to correct the error until a complaint was filed with the Board, and Global's failure to identify the third-party verifier. None of these issues is sufficient to provide reasonable grounds for further investigation in this case, where the customer authorized a change in service. However, the Board emphasizes to Global and to the telecommunications industry in general that in the right circumstances these

factors could justify formal proceedings. If, for example, there was reason to believe that a service provider was showing a pattern of technical errors that resulted in customer charges, there might be grounds for further investigation. Moreover, Global's failure to identify its independent third-party verifier is a potential concern; again, if this failure were to become a pattern or practice, it could justify further proceedings.

**ORDERING CLAUSE**

**IT IS THEREFORE ORDERED:**

The "Petition for Proceeding to Consider Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on March 15, 2007, is denied as discussed in this order.

**UTILITIES BOARD**

/s/ John R. Norris

/s/ Krista K. Tanner

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Darrell Hanson

Dated at Des Moines, Iowa, this 26<sup>th</sup> day of December, 2007.