

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,</p> <p style="text-align:center">Complainant,</p> <p style="text-align:center">vs.</p> <p>ACCXX COMMUNICATIONS, LLC,</p> <p style="text-align:center">Respondent.</p>	<p style="text-align:center">DOCKET NO. FCU-07-14</p>
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**ORDER GRANTING MOTION FOR DEFAULT JUDGMENT AND
ORDERING PAYMENT OF DEFAULT JUDGMENT**

(Issued January 14, 2008)

On January 8, 2008, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a motion to enter judgment by default against ACCXX Communications, LLC (ACCXX).

On September 24, 2007, Consumer Advocate filed with the Board a petition for a proceeding to consider a civil penalty for an alleged slamming violation committed by ACCXX. That petition arose out of an informal complaint the Board received on August 22, 2007, in which Mr. Verlis Miller of Cedar Rapids, Iowa, complained that his long distance telephone service provider was changed without authorization from Qwest Corporation (Qwest) to ACCXX.

Board staff identified the matter as C-07-229 and forwarded the complaint to ACCXX for response. Staff also forwarded the complaint to Qwest requesting any information it might have about the change in service as the customer's local telephone service provider. Qwest responded on August 30, 2007, stating that its records show it received an electronic order on June 5, 2007, from Virtual Reach Corporation¹ requesting that the preferred carrier for Mr. Miller's long distance service be changed to Virtual Reach.

The Board received a response from ACCXX on September 6, 2007, stating that the customer's telephone number had been in its database as an inactive customer and that an error in the process of changing the database reactivated old accounts, changed long distance service for the accounts to ACCXX, and generated a bill. ACCXX stated the error had been resolved, the account was credited for the full amount, and the account was removed from its database. ACCXX asked that the customer provide a copy of the bill from the local phone company showing any switching fees that had been incurred and stated the customer would be reimbursed for those fees.

On September 10, 2007, Board staff issued a proposed resolution finding a slamming violation. Staff concluded that even though ACCXX claimed the change in service resulted from an error, the customer's account was slammed because the change in service was not authorized.

¹ Based on correspondence to the Board from ACCXX in C-07-229, it appears that Virtual Reach and ACCXX are the same company.

In its September 24, 2007, petition, Consumer Advocate asserted that a civil penalty is necessary to secure future compliance with the statute prohibiting unauthorized changes in service. Consumer Advocate argued a credit is insufficient for that purpose. ACCXX did not respond to Consumer Advocate's petition.

In an order issued on November 6, 2007, the Board docketed Consumer Advocate's petition for formal proceeding, identified as Docket No. FCU-07-14, and directed ACCXX to respond to the petition within 30 days. In reviewing the record, the Board noted it had received five complaints against ACCXX since July 2007 and that in each case ACCXX gave the same response. The Board noted that ACCXX's response did not provide sufficient detail or documentation to answer questions about this matter, including whether ACCXX obtained Mr. Miller's account information by way of a previous service relationship or by some other means and whether it was appropriate for ACCXX to maintain that information in its database.

ACCXX has not responded to Consumer Advocate's petition.

In its motion for default judgment, Consumer Advocate states that ACCXX is in default in Docket No. FCU-07-14 as it did not respond to the petition for proceeding to consider civil penalty by December 6, 2007, as directed by the Board's November 6, 2007, order. Further, Consumer Advocate asserts ACCXX is in default because it has failed to respond to Consumer Advocate's discovery requests. Consumer Advocate states that on December 14, 2007, it mailed ACCXX a notice of intention to file application for default judgment in this docket by both electronic mail and U.S.

mail. Consumer Advocate states the electronic mail failed, but the U.S. mail has not been returned, and that ACCXX has not responded to the notice. Consumer Advocate seeks judgment by default against ACCXX for a civil monetary penalty in an amount the Board deems appropriate, up to and including \$10,000, the maximum amount authorized by law.

ANALYSIS

Iowa Code § 17A.12(3) provides that if a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and make a decision in the absence of the party. Iowa Code § 476.103(4)"a" provides that a service provider who violates the section, a rule adopted pursuant to the section, or an order issued pursuant to the section is subject to a civil penalty of not more than ten thousand dollars per violation, which may be levied by the Board after notice and opportunity for hearing.

The Board finds that ACCXX has failed to respond to Consumer Advocate's petition and to the Board's November 6, 2007, order. The petition and the order gave ACCXX notice and opportunity for hearing. The Board agrees with Consumer Advocate that ACCXX is in default in Docket No. FCU-07-14. Failure to respond to Board orders is a serious violation. Here, ACCXX has shown a disregard for the Board's process by failing to comply with the Board's order. Pursuant to Iowa Code

§§ 17A.12(3) and 476.103(4)"a," the Board will grant Consumer Advocate's motion for default judgment against ACCXX in the amount of \$10,000.

IT IS THEREFORE ORDERED:

1. The "Application for Entry of Judgment by Default" filed by the Consumer Advocate Division of the Department of Justice on January 8, 2008, is granted.
2. Judgment by default is granted against ACCXX Communications, LLC, in Docket No. FCU-07-14 in the amount of \$10,000.
3. Payment, in the form of a check made payable to the Iowa Utilities Board, should be forwarded to the Executive Secretary of the Iowa Utilities Board at 350 Maple Street, Des Moines, Iowa 50319-0069. Payment is due within 35 days of this order. The docket number listed on this order shall be listed on the check or in the accompanying correspondence.

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 14th day of January, 2008.