

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="padding-left: 100px;">vs.</p> <p>YP VALUES,</p> <p style="padding-left: 100px;">Respondent.</p>	<p style="text-align:right">DOCKET NO. FCU-08-3 (C-06-269)</p>
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**ORDER DOCKETING FOR FORMAL PROCEEDING, DENYING MOTION TO DISMISS, AND ASSIGNING TO ADMINISTRATIVE LAW JUDGE**

(Issued January 28, 2008)

On February 19, 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 YP Values. Based upon the record assembled in the informal complaint proceeding, the events to date can be summarized as follows:

On November 7, 2006, Ann Bennett, owner of a beauty salon named the "Curling Post," filed a complaint with the Board regarding unauthorized charges on her telephone bill. Ms. Bennett stated that she had received a call from a telemarketer for YP Values regarding Internet advertising. Ms. Bennett said that she remembered that she was very clear with the representative in stating that she did

not want the service offered by YP Values; however, Ms. Bennett said that after continued insistence by the YP Values representative, she agreed to allow YP Values to send her information regarding its services. At that point, Ms. Bennett said that the sales representative for YP Values asked to verify some information about Ms. Bennett's business, to which she complied. Ms. Bennett stated that a \$29.95 charge was then placed on her October 2006 telephone bill by YP Values. She contacted YP Values and was told by a YP Values representative that by verifying her address, she authorized YP Values to bill her for Web services. Ms. Bennett then said she asked the YP Values representative to remove the charge from her telephone bill and was told that the charge would be refunded and the service cancelled.

Board staff identified the matter as File No. C-06-269 and, pursuant to Board rules, on November 15, 2006, forwarded the complaint to YP Values. On December 6, 2006, Board staff received a response from YP Values with a copy of the third-party verification (TPV). YP Values stated that according to its records, on or about July 31, 2006, a YP Values representative contacted Ms. Bennett about a 30-day free trial of its services, which she then accepted. YP Values further stated that prior to the conclusion of the 30-day preview of its services, customers are sent information informing the consumer of their service cancellation options.

On December 22, 2006, Board staff forwarded a copy of the TPV to Ms. Bennett and requested her response. Board staff did not receive a response from

Ms. Bennett. On February 1, 2007, Board staff contacted Ms. Bennett for her response to the TPV. Ms. Bennett said she had listened to the recording and believed that it had been altered because she remembered speaking with a live representative. Ms. Bennett also said that she did not have an Internet connection; therefore, the services offered by YP Values would not have been of any use to her business, even during the free trial period.

On March 5, 2007, Board staff issued a proposed resolution stating that the charges by YP Values were unauthorized and a cramming violation had occurred. Board staff concluded that YP Values had advised Ms. Bennett that she would only be verifying existing records and then used the information obtained as if it were an authorization for a change in service.

On February 19, 2007, Consumer Advocate requested a formal proceeding to consider a civil penalty in order to afford YP Values notice and opportunity for hearing and to consider a penalty in an amount designed to deter future violations.

Consumer Advocate stated that according to Ms. Bennett, the TPV cuts off her response to the question posed by YP Values in which Ms. Bennett responds "no" and therefore the recording is incomplete. Furthermore, Consumer Advocate states that if it is true that the YP Values telemarketer told Ms. Bennett during the telemarketing portion of the call that YP Values was only verifying existing information, YP Values made a material misrepresentation and that

misrepresentation worked a fraud upon Ms. Bennett, thereby vitiating any authorization.

On March 15, 2007, YP Values responded to Consumer Advocate's request for formal proceeding to consider civil penalty. YP Values requested that the Board dismiss Consumer Advocate's petition and specifically denied that the recording of the TPV cut off any response Ms. Bennett gave. YP Values also denied that the TPV was incomplete. Furthermore, YP Values denied that material misrepresentations were made to Ms. Bennett during the unrecorded portion of the telemarketing call.

### **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 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

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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).

Board has reviewed the record to date and concludes there are reasonable grounds for further investigation of this matter.

Although YP Values submitted a TPV, the Board believes that further investigation of the matter is necessary. Board rule 22.23(2)"a"(3), in relevant part, states "the content of the verification must include clear and conspicuous confirmation that the customer has authorized a preferred carrier change . . . ." The Board believes that an investigation is necessary in order to determine whether Ms. Bennett actually authorized the services she was billed for.

In Ms. Bennett's complaint to Board staff, she stated that she repeatedly told the YP Values telemarketer that she was not interested in YP Values services and only after continued pressure did Ms. Bennett finally agree to verify information, which as the informal record indicated, was used as authorization for YP Values services.

The Board finds that further investigation is appropriate in order to determine whether Ms. Bennett authorized the change in service that occurred. The Board will deny YP Values' motion to dismiss and grant Consumer Advocate's petition for proceeding to consider a civil penalty.

The Board will assign this case to its administrative law judge (ALJ) for further proceedings pursuant to Iowa Code § 17A.11(1)"b" (2007) and 199 IAC 7.3. The ALJ may take all appropriate action, which may include setting a hearing date, presiding at the hearing, and issuing a proposed decision.

**ORDERING CLAUSES**

**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 19, 2007, is granted as discussed in this order. File No. C-06-269 is docketed for formal proceeding, identified as Docket No. FCU-08-3.
2. The motion to dismiss requested by YP Values on March 15, 2007, is denied.
3. Pursuant to Iowa Code § 17A.11(1)"b" and 199 IAC 7.3, Docket No. FCU-08-3 is assigned to the Board's administrative law judge, Amy Christensen, for further proceedings. The administrative law judge shall have the authority provided under 199 IAC 7.3.

**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 28<sup>th</sup> day of January, 2008.