

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,</p> <p style="padding-left: 40px;">Complainant,</p> <p style="text-align:center">vs.</p> <p>ACCXX COMMUNICATIONS, LLC,</p> <p style="padding-left: 40px;">Respondent.</p>	<p style="text-align:right">DOCKET NO. FCU-08-5 (C-07-225)</p>
---	--

**ORDER DOCKETING FOR FORMAL PROCEEDING TO CONSIDER CIVIL  
PENALTY AND SETTING DEADLINE FOR RESPONSE**

(Issued February 5, 2008)

On October 2, 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 slamming violation committed by Accxx Communications, LLC (Accxx). Based upon the record assembled in the informal complaint proceeding, the events to date can be summarized as follows:

On August 9, 2007, Ms. Lillian Robertson filed a complaint with the Board saying that Accxx switched her long distance telephone service provider without her authorization and billed her \$68.01. Ms. Robertson stated that as soon as she learned of the unauthorized switch, she placed an order to switch her long distance telephone service back to Qwest Corporation (Qwest) and added a preferred interexchange carrier (PIC) freeze onto her account in order to prevent unauthorized

switches from happening in the future. Ms. Robertson stated that she had attempted to contact Accxx, however, every time she called she was placed on hold and then disconnected.

Board staff identified the matter as C-07-225 and, pursuant to Board rules, on August 13, 2007, forwarded the complaint to Accxx and Ms. Robertson's local telephone carrier, Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom).

On August 20, 2007, Iowa Telecom responded and stated that on May 24, 2005, Ms. Robertson contacted Iowa Telecom to change her interLATA and intraLATA long distance carrier from Iowa Telecom to Qwest, and Iowa Telecom processed a service order to complete the transaction. Iowa Telecom further stated that on June 20, 2007, Ms. Robertson contacted Iowa Telecom to add a PIC freeze to her account for interLATA and intraLATA long distance with carrier code 432 and that Iowa Telecom processed that service order to complete the transaction. Iowa Telecom further stated that it had confirmed in the central office switch that Ms. Robertson has long distance with carrier code 432, Qwest. Also, Iowa Telecom stated that the change of long distance carriers to Accxx did not result in a change of PIC code, so Iowa Telecom did not assess Ms. Robertson any switching fees.

Accxx did not file a response within the ten-day deadline. Accxx e-mailed Board staff requesting a ten-day extension to September 4, 2007. Accxx did not respond by its requested extension date and Board staff contacted Accxx on September 17 and 19, 2007. On September 19, 2007, Accxx responded to the complaint by e-mail. Accxx stated that it was in the process of database changes

and an error occurred. Accxx further stated that Ms. Robertson's old telephone number was still in its database as an inactive customer, and when the error occurred, all of the old accounts were re-activated and long distance service was switched from Ms. Robertson's current provider to Accxx. Accxx stated that the error was resolved and Ms. Robertson was not responsible for the bill. Accxx further stated that the account had been credited for the full amount of the charges and terminated from its database.

On September 20, 2007, staff issued a proposed resolution and concluded that Accxx committed a slam in violation of Iowa Code § 476.103 and Board rules because it switched Ms. Robertson's long distance telephone service without authorization. Additionally, staff noted that Accxx did not explain why Ms. Robertson's telephone number was in its database or whether Ms. Robertson previously had service with Accxx. Staff also noted that the account was fully credited and closed.

On October 2, 2007, Consumer Advocate filed a petition requesting a formal proceeding to consider a civil penalty. Consumer Advocate stated staff's proposed resolution was correct and subject to hearing rights to which Accxx is entitled to under law, a civil monetary penalty should be assessed in order to secure future compliance with the statute and a credit alone is insufficient for that purpose.

Consumer Advocate requests the Board commence a proceeding pursuant to Iowa Code §§ 476.3 and 476.103 for the purposes of: (1) affording Accxx notice and an opportunity for hearing; (2) affirming staff's determination that Accxx committed a

slamming violation; and (3) considering a civil 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 grounds 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. The Board concludes that there are reasonable grounds to grant a formal proceeding to further investigate this matter and to consider a civil penalty based upon Accxx's failure to submit sufficient verification in apparent violation of Iowa Code § 476.103 and Board rules.

Iowa Code § 476.103(3)"a"(1)<sup>2</sup> and Board rule 199 IAC 22.23(2)"a"<sup>3</sup> require sufficient verification of an authorized change of service. Accxx provides no verification of Ms. Robertson's authorization of a preferred carrier change in accordance with Iowa Code § 476.103 or Board rules and, thus, the Board finds reasonable grounds for further investigation. The Board does note that Accxx, in its

---

<sup>1</sup> Office of Consumer Advocate v. MCI Communications of Iowa, Inc., and Frontier Communications of Iowa, "Order Denying Reconsideration," Docket No. C-06-281 (April 2, 2007).

<sup>2</sup> Iowa Code § 476.103(3)"a"(1) states: "[a] submitting service provider shall obtain verification of customer authorization of a change in service before submitting such change in service."

<sup>3</sup> Board rule 199 IAC 22.23(2)"a" states: "No service provider shall submit a preferred carrier change order or other change in service order to another service provider unless and until the change has first been confirmed in accordance with one of the following procedures." The rule goes on to list the procedures sufficient for verification.

response, stated that the change of service and charges billed to Ms. Robertson's telephone bill was due to an error during the processing of database changes which, Accxx stated, resulted in all of its old accounts being re-activated. However, the Board believes Accxx's response leaves some questions unanswered. Based upon Accxx's record with the Board,<sup>4</sup> the similarity of the complaints against Accxx, and the similarity of response to the complaints by Accxx, the Board finds reasonable grounds for further investigation.

**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 October 2, 2007, is granted as discussed in this order. File No. C-07-225 is docketed for formal proceeding identified as Docket No. FCU-08-5.

2. Accxx Communications, LLC is directed to file a response to Consumer Advocate's petition within 30 days of the date of 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 5<sup>th</sup> day of February, 2008.

<sup>4</sup> Since July 2007, Board staff has received five complaints against Accxx. Accxx filed almost identical responses in each case, and staff concluded that slamming had taken place in each case.