

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="text-align:center">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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**PROCEDURAL ORDER AND NOTICE OF HEARING**

(Issued February 7, 2008)

On November 7, 2006, Ms. Ann Bennett, owner of the Curling Post beauty salon, filed a complaint with the Utilities Board (Board) against YP Values, alleging that YP Values placed an unauthorized charge of \$29.95 on her October 2006 telephone bill. Ms. Bennett stated that she had received a call from a telemarketer for YP Values asking her to put her business on a Web site. Ms. Bennett stated since most of her customers are elderly and do not have computers, she told the telemarketer she was not interested. The telemarketer then offered to put her business on the Web site free for one month, but Ms. Bennett stated she very clearly told the telemarketer several times that she was not interested in the service. She further stated that, at the continued insistence of the telemarketer, she agreed to allow YP Values to send her literature regarding its services. Ms. Bennett stated the

telemarketer asked her to verify her address, which she did. She stated that YP Values then charged her telephone account. Ms. Bennett stated that when she contacted YP Values to remove the charge, the YP Values representative told her that by verifying her business address, she had authorized YP Values to bill her for Web services. Ms. Bennett stated that during the conversation, the woman repeatedly asked her to verify her address, which made her feel like she was trying to trap her again. Ms. Bennett stated that the woman finally said they would refund the charge. Ms. Bennett further stated that the same thing had happened the previous year and it took her a year to get that charge removed from her telephone bill.

Board staff investigated the complaint and forwarded it to YP Values for response. On December 11, 2006, YP Values responded to the complaint with a letter and copy of the third-party verification recording. YP Values stated that, according to its records, a YP Values representative contacted Ms. Bennett about a 30-day free trial of its services on or about July 31, 2006, and that Ms. Bennett accepted the offer. YP Values stated it sent a welcome letter to Ms. Bennett and that prior to the conclusion of the 30-day free preview of its services, it sends information that tells the customer how to cancel the service. YP Values stated it followed its company policies and issued a credit to the Curling Post on October 31, 2006. YP Values further stated that the company it contracted to perform the third-party recording of verifications is Voice Log, LLC.

On December 22, 2006, Board staff forwarded a copy of the third-party verification recording to Ms. Bennett and requested her response. Board staff did not

receive a response, and again contacted Ms. Bennett on February 1, 2007. Ms. Bennett stated that although it appeared she answered "yes" to the questions, she thought she was just in the process of verifying information and nothing more. Ms. Bennett stated she has never had Internet service on her business computer, so the type of service offered by YP Values would be worthless to her. Ms. Bennett also stated she had listened to the recording and believed it had been altered to include an automated voice because she remembered speaking with a live person only.

On February 7, 2007, Board staff issued a proposed resolution finding that the charges by YP Values were unauthorized and that YP Values had committed a cramming violation. Staff noted that YP Values had applied a credit of \$29.95 plus applicable taxes to Ms. Bennett's account.

The Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a petition for a proceeding to consider a civil penalty for a cramming violation on February 19, 2007. The Consumer Advocate stated that the proposed resolution was correct as far as it went. In addition, the Consumer Advocate argued, according to Ms. Bennett, the third-party verification recording cuts off her response to the lengthy question asked on the recording, in which she again went on to make it clear her answer was "no" rather than "yes." The Consumer Advocate argues it therefore appears the recording is an incomplete and therefore unreliable reproduction of even the verification portion of the call. In addition, argues the Consumer Advocate, if it is true the YP Values telemarketer told Ms. Bennett that YP Values was only verifying existing information during the unrecorded portion of the

telemarketing call, this was a material misrepresentation that worked a fraud upon Ms. Bennett and vitiated any authorization she otherwise may have given. The Consumer Advocate argues a civil penalty should be imposed to secure future compliance with the statute.

On March 15, 2007, YP Values filed a response to the Consumer Advocate's petition and a motion to dismiss the petition. YP Values denied the recording cut off any response Ms. Bennett gave or that the recording was incomplete. YP Values further denied that its telemarketer had made material misrepresentations to Ms. Bennett during the unrecorded portions of the telemarketing call, denied that fraud occurred to vitiate authorization, and denied that the charges were unauthorized. YP Values denied that a civil penalty should be imposed. It moved that the petition be dismissed and stated its version of the events that occurred in support of its motion to dismiss.

The details of the informal complaint case are contained in informal complaint file number C-06-269, which is incorporated into the record in this case pursuant to 199 IAC 6.7.

On January 28, 2008, the Board issued an order finding there are reasonable grounds for further investigation of this matter. The Board noted the requirement in 199 IAC 22.23(2)"a"(3) that "the content of the verification must include clear and conspicuous confirmation that the customer has authorized a preferred carrier change," and stated that investigation is necessary to determine whether Ms. Bennett actually authorized the services she was billed for. The Board also noted Ms.

Bennett stated she repeatedly told the telemarketer she was not interested in the service and only agreed to verify information after continued pressure, and that, as the informal record indicated, this information was used as authorization for YP Values' service. The Board denied YP Values' motion to dismiss and granted the Consumer Advocate's petition for a formal proceeding to consider a civil penalty. It docketed the case for formal proceeding and assigned it to the undersigned administrative law judge.

Pursuant to the Board's order and Iowa Code §§ 476.3 and 476.103 (2007), 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](http://www.state.ia.us/iub).

### **THE ISSUES**

The issues in this case generally involve YP Values' billing Ms. Bennett's business telephone account \$29.95 for the Internet advertising service at issue in this case, whether YP Values complied with applicable law when it did so, whether Ms. Bennett authorized the change in service that occurred, whether imposition of a civil penalty is appropriate, and the factors regarding the amount of civil penalty contained in Iowa Code § 476.103(4)(b). The parties may raise other issues prior to and during the hearing.

### **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).

Although it is customary in Board cases to file prepared testimony prior to the hearing, it is not necessary in this case. The parties' positions have been the subject of an informal proceeding and the case does not appear to include complex facts. It does not appear that prepared testimony is needed to aid in an understanding of what happened in this case. Therefore, the parties will present their cases at the hearing without the use of prepared testimony.

### **PARTY STATUS AND COMMUNICATION WITH THE BOARD**

The Consumer Advocate and YP Values are currently the only parties to this proceeding. If Ms. Bennett wishes to become a party to this case, she must notify the Board in writing in accordance with the procedural schedule set forth below.

As of the date of this order, YP Values has not retained local counsel to represent it. If YP Values retains counsel, the counsel must file an appearance pursuant to 199 IAC 7.4(7) that clarifies who is to receive service on behalf of YP Values in this proceeding.

Any party who communicates with the Board should send an original and ten copies of the communication to the Executive Secretary, Iowa Utilities Board, 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](http://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.

**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-06-269, are part of the record of this formal complaint proceeding.
2. If Ms. Bennett wishes to become a party to this case, she must file written notice with the Board no later than February 25, 2008.
3. If any party wishes to file a prehearing brief, the brief must be filed on or before February 25, 2008.
4. If any party wishes to have a witness connected to the hearing by telephone conference call, the party must notify the Board no later than February 25, 2008.
5. 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 Thursday, March 13, 2008, beginning at 9:30 a.m. In preparing exhibits for the hearing, the Consumer Advocate should use exhibit numbers one and following. YP Values should use exhibit numbers 100 and following. 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.

6. 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.

7. 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).

**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 7<sup>th</sup> day of February, 2008.