

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:center">DOCKET NO. FCU-08-5</p>
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**ORDER GRANTING MOTION FOR DEFAULT JUDGMENT AND
ORDERING PAYMENT OF DEFAULT JUDGMENT**

(Issued May 6, 2008)

On March 26, 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 October 2, 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 9, 2007, in which 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.

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 Corporation (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.

In its motion for default judgment, Consumer Advocate states that Accxx is in default in Docket No. FCU-08-5 as it did not respond to the petition for proceeding to consider civil penalty no later than March 6, 2008, as directed by the Board's February 5, 2008, order. Consumer Advocate states that on March 11, 2008, it mailed Accxx a notice of intention to file application for default judgment in this docket by U.S. mail 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 February 5, 2008, 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-08-5. 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 March 26, 2008, is granted.
2. Judgment by default is granted against Accxx Communications, LLC, in Docket No. FCU-08-5 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 6th day of May, 2008.