

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>AMERICA NET, LLC,</p> <p style="padding-left: 100px;">Respondent.</p>	<p style="text-align:center">DOCKET NO. C-08-24</p>
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ORDER DENYING PETITION FOR PROCEEDING TO CONSIDER CIVIL PENALTY

(Issued July 25, 2008)

On April 10, 2008, 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 America Net, LLC (America Net). Based upon the record assembled in the informal complaint proceeding, the events to date can be summarized as follows:

On March 14, 2008, Eric Rottinghaus filed a complaint against America Net with the Board. Mr. Rottinghaus stated that he had received a call from a customer informing him that his Waterloo, Iowa, telephone number was disconnected. Mr. Rottinghaus stated that he called his local telephone provider and was told that the problem was with his long distance service provider. Mr. Rottinghaus was referred to

MCI Communications Services, Inc. (MCI), which told him that America Net was now his long distance service provider. Mr. Rottinghaus stated that he called America Net and was told that Ryan Janssen, one of Mr. Rottinghaus's employees, had authorized a change of long distance telephone service to America Net. Mr. Rottinghaus stated that he asked Mr. Janssen about the change of service and Mr. Janssen told him that he recalled receiving the telephone call and that the representative had "a thick Latino accent" and was difficult to understand. Mr. Janssen also stated that the representative told him he was from "Qwest" and told him he only wanted to verify business information and the address of the company. Also Mr. Janssen stated he was told to provide his mother's maiden name, which he did. Mr. Janssen denied that he told the America Net representative that he was authorized to change long distance telephone service and he did not agree to switch long distance telephone service to America Net. Mr. Rottinghaus stated that he assumed his long distance telephone service was disconnected because of his failure to pay the bill, but America Net never sent him a bill.

Board staff identified the matter as C-08-24 and, pursuant to Board rules, on March 17, 2008, forwarded the complaint to America Net and Qwest Corporation (Qwest), Mr. Rottinghaus's local telephone service provider.

On March 19, 2008, Qwest responded that its records indicated that on February 15, 2008, it received an electronic change order request from MCI changing Mr. Rottinghaus's interstate and intrastate long distance service to America Net.

Qwest stated that Mr. Rottinghaus's interstate and intrastate telephone service was changed back to Qwest on March 13, 2008, at Mr. Rottinghaus's request.

On March 25, 2008, America Net responded. America Net provided a copy of a third-party verification (TPV) recording along with a transcript of the TPV. America Net stated that Mr. Janssen authorized the long distance provider change. America Net further stated it had canceled the account effective March 12, 2008, and issued a full credit of \$27.25.

On March 26, 2008, Board staff forwarded a copy of the TPV to Mr. Rottinghaus for his and Mr. Janssen's review and reply. On March 26, by e-mail, Mr. Rottinghaus responded stating that Mr. Janssen said that when he received the telephone call from the America Net representative, the individual calling identified himself as calling from Qwest and said that he had called to verify the address and billing information of Mr. Rottinghaus's business. Mr. Rottinghaus questioned the authenticity of the recording and notes the name of the provider was inaudible. He also stated "Ryan has stated repeatedly that he had no intention to change providers"

On March 28, 2008, Board staff issued a proposed resolution finding that Mr. Rottinghaus's telephone service was changed to America Net on February 15, 2008. Board staff noted that since America Net is not required to provide a copy of the sales call, staff could not make a decision regarding the statements the American Net representative may have made to Mr. Janssen regarding the purpose of the

telephone call. Board staff stated that it relied on the recording provided by the third-party company and there is no indication that the verifier claimed that service was staying with Qwest. Board staff also notes that the verifier did not have "a thick Latino accent" as suggested by Mr. Janssen. Staff also found that Mr. Janssen provided his mother's maiden name and acknowledged that he was authorized to make changes on the telephone account. Board staff determined that the TPV was not altered; however, staff found that the speaker was inaudible when stating the company's name. After reviewing the recording several times, Board staff concluded that the America Net representative did mention the name of the company, but it was difficult to understand. Therefore, Board staff concluded that America Net changed the service without proper authorization. Board staff noted that Mr. Rottinghaus was fully credited prior to contacting the Board.

On April 10, 2008, Consumer Advocate filed a petition for a proceeding to consider a civil penalty. Consumer Advocate stated that Board staff's proposed resolution was correct as far as it went, but should be augmented with a civil penalty. Consumer Advocate stated that a credit alone is not sufficient to stop a company's behavior and stated that a hearing is necessary to determine a civil penalty amount designed to secure future compliance with Iowa Code § 476.103.

On April 21, 2008, America Net responded to Board staff's proposed resolution saying that it disagreed with staff's proposed resolution and after listening to the original recorded verification, America Net believed its representative was very

clear in asking all of the questions, but especially to the question of "you do authorize America Net to be your long distance service provider ..." to which Mr. Janssen answered "yes."

On April 29, 2008, Consumer Advocate responded to America Net's response stating "it does not object to the Board granting a hearing for both parties." Consumer Advocate further stated that the law requires the company to provide proof of authorization which means an audible recording, not a company allegation that another original recording of the same conversation is audible. Consumer Advocate concluded companies need to provide clear verification when consumers dispute the authorization and America Net has not done so.

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 § 476.103,¹ 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.

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

The Board does not believe there are any reasonable grounds for further investigation or to consider civil penalties because it is highly unlikely that the Board would assess any civil penalties in this matter. America Net canceled the account and issued a full refund prior to a complaint being filed, which is in accord with Iowa Code § 476.103(3)"e," which encourages the resolution of customer complaints without the involvement of the Board, and with § 476.103(3)"f," which encourages the prompt reversal of unauthorized changes in service. In the absence of any compelling reason to do otherwise, the Board will not normally hear complaints that have already been resolved without Board involvement.

IT IS THEREFORE ORDERED:

The "Petition for Proceeding to Consider Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on April 10, 2008, is denied as discussed in the order.

UTILITIES BOARD

/s/ John R. Norris

/s/ Krista K. Tanner

ATTEST:

/s/ Margaret Munson
Executive Secretary, Deputy

/s/ Darrell Hanson

Dated at Des Moines, Iowa, this 25th day of July, 2008.