

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>AT&T COMMUNICATIONS OF THE MIDWEST, INC.,</p> <p style="padding-left: 100px;">Respondent.</p>	<p style="text-align:right">DOCKET NO. FCU-08-9 (C-06-402)</p>
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PROCEDURAL ORDER AND NOTICE OF HEARING

(Issued July 30, 2008)

On December 13, 2006, Ms. Maggie Bates filed a complaint with the Utilities Board (Board) against AT&T Communications of the Midwest, Inc. (AT&T), on behalf of her parents, James J. and Nancy L. Bates. Ms. Bates alleged that on March 13, 2006, her parents cancelled their long distance telephone service with AT&T by contacting their local telephone service provider, Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom). In spite of this cancellation, Ms. Bates stated that AT&T continued to bill her parents for nine months. She further stated that after much difficulty and talking with two AT&T customer service representatives, she was able to successfully close the account and receive credit for three of the nine

months the account had been closed. Ms. Bates requested assistance from the Board to obtain credit for the remaining six months' billings.

Board staff investigated the complaint and forwarded it to AT&T and Iowa Telecom for response. Iowa Telecom filed a response on December 26, 2006. AT&T filed a response on January 8, 2007. In its response, among other things, AT&T stated it would refund the entire \$125.67 the Bates had paid to AT&T. On January 24, 2007, Board staff issued a proposed resolution finding that the continued billing was the result of a clerical error and no cramming had taken place.

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 6, 2007. AT&T filed an opposition to the petition on March 23, 2007.

On December 21, 2007, the Board issued an order denying the Consumer Advocate's petition, finding there were no reasonable grounds for further investigation. The Consumer Advocate filed a motion for reconsideration with the Board on January 10, 2008. AT&T filed a response in opposition to the Consumer Advocate's motion on January 24, 2008. On January 28, 2008, the Consumer Advocate filed a reply to AT&T's response, and it filed an amendment on February 11, 2008. On February 8, 2008, the Board issued an order granting reconsideration "solely for the purposes of further consideration," rather than allowing the motion to be denied by operation of law.

On May 23, 2008, the Board issued an order granting the Consumer Advocate's motion for reconsideration, docketing the case for formal proceedings, and assigning it to the undersigned administrative law judge.

Pursuant to the Board's order and Iowa Code §§ 476.3 and 476.103, and 199 IAC 6.5, a procedural schedule will be established and a hearing date set. The parties agreed to the procedural schedule and hearing date set forth in this order at a prehearing conference held on July 29, 2008.

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.

THE ISSUES

The issues in this case generally involve AT&T's billing of the Bates for interstate long distance telephone service from April through December 2006, whether AT&T complied with applicable law when it did so, whether imposition of a civil penalty is appropriate, and the factors regarding the amount of civil penalty in Iowa Code § 476.103(4)"b." The issues also include the circumstances regarding the cancellation of the Bates' interstate long distance telephone service and the communications between Iowa Telecom and AT&T regarding the changes to the Bates' account. One issue is whether AT&T received the Bates' account switching information from Iowa Telecom. There is also a legal issue of whether AT&T's

actions in this case, including the failure to cancel the Bates' long distance account when requested and subsequent billing, are a violation of Iowa Code § 476.103 and the Board's rules. The parties may raise other issues during the course of this proceeding.

PREPARED 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).

The submission of prepared evidence prior to hearing helps identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined concerning the statements already made in writing. The use of prepared testimony and submission of documentary evidence ahead of the hearing prevents surprise at the hearing and helps each party to prepare adequately so a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1) and (3); 199 IAC 7.10.

PARTY STATUS AND COMMUNICATION WITH THE BOARD

The Consumer Advocate and AT&T are currently the only parties to this proceeding. If Ms. Bates wishes to become a party to this case, she must notify the Board in writing in accordance with the procedural schedule set forth below. If Iowa Telecom wishes to become a party to this case, it must notify the Board in writing in accordance with the procedural schedule set forth below.

Any party who communicates with the Board must send an original and ten copies of the communication to the Executive Secretary, 350 Maple Street, Des Moines, Iowa, 50319-0069, accompanied by a certificate of service. One copy of the communication must 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.

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-06-402, are part of the record of this formal complaint proceeding.
2. If Ms. Bates wishes to become a party to this case, she must file written notice with the Board no later than August 25, 2008. If Iowa Telecom wishes to become a party to this case, it must file written notice and an appearance with the Board no later than August 25, 2008.
3. The Consumer Advocate is directed to alert Ms. Bates and Iowa Telecom to the existence of this order and deadline as soon as possible.

4. On or before August 25, 2008, the Consumer Advocate and any intervenors must file prepared direct testimony and exhibits. The prepared direct testimony may refer to any document already in the record, and parties do not need to refile exhibits already submitted in the informal complaint process and made a part of the record. In prepared testimony and exhibits, the Consumer Advocate must address the issues discussed above, support each of the allegations made in its petition, and file any other evidence not previously filed. The Consumer Advocate should use exhibit numbers one and following. If it wishes to file a prehearing brief, the Consumer Advocate must file it on or before August 25, 2008.

5. If Ms. Bates becomes a party to this case and wishes to file prepared testimony and a brief, she must do so on or before August 25, 2008. If Iowa Telecom becomes a party to this case and wishes to file prepared testimony and a brief, it must do so on or before August 25, 2008.

6. On or before September 12, 2008, AT&T must file prepared direct testimony and exhibits. The prepared direct testimony may refer to any document already in the record, and parties do not need to refile exhibits already submitted in the informal complaint process and made a part of the record. In prepared testimony and exhibits, AT&T must address the issues discussed above, support each of the allegations made in its response to the complaint filed January 8, 2007, and its opposition to the petition filed March 23, 2007, and file any other evidence not

previously filed. AT&T should use exhibit numbers 100 and following. If it chooses to file a prehearing brief, AT&T must do so on or before September 12, 2008.

7. At the prehearing conference on July 29, 2008, the parties agreed that some of the witnesses may testify at the hearing by telephone conference call.

8. If the Consumer Advocate or any intervenor chooses to file prepared rebuttal testimony and exhibits or a rebuttal prehearing brief, it must do so on or before September 26, 2008.

9. 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 Tuesday, October 7, 2008, beginning at 9:30 a.m. Witnesses who wish to be connected to the hearing by telephone conference call must dial 1-866-685-1580, and enter the conference code 2816326 followed by # when prompted. Each party must provide a copy of its prepared testimony and exhibits to the court reporter. 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.

10. Simultaneous initial post-hearing briefs must be filed on or before October 28, 2008. In its brief, the Consumer Advocate must explain why it believes imposition of a civil penalty would be appropriate and in accordance with applicable law in this particular case. In its brief, AT&T must explain why it believes imposition of a civil penalty would not be appropriate and would not be in accordance with

applicable law in this particular case. Simultaneous post-hearing reply briefs must be filed on or before November 11, 2008.

11. 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 this proceeding. 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.

12. Any person not currently a party (in addition to Ms. Bates and Iowa Telecom) 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/ Margaret Munson
Deputy Executive Secretary

Dated at Des Moines, Iowa, this 30th day of July, 2008.