

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,  Complainant,</p> <p style="text-align:center">vs.</p> <p>ACCXX COMMUNICATIONS, LLC,  Respondent.</p>	<p>DOCKET NO. FCU-08-13 (C-07-222)</p>
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**ORDER DOCKETING FOR FORMAL PROCEEDING  
AND ASSIGNING TO ADMINISTRATIVE LAW JUDGE**

(Issued August 12, 2008)

On October 3, 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 2, 2007, Ms. Beth Kirstein filed a complaint with the Board stating that Accxx switched her long distance telephone service provider without her authorization and placed charges on her telephone bill in the amount of \$89.29. Ms. Kirstein stated that she contacted Accxx but was unable to get the matter resolved.

Board staff identified the matter as C-07-222 and, pursuant to Board rules, on August 3, 2007, forwarded the complaint to Accxx and Ms. Kirstein's local telephone carrier, Qwest Communications (Qwest).

Accxx failed to file a response within the ten-day deadline in accordance with 199 IAC 6.8(2); however, on August 20, 2007, Accxx contacted Board staff by e-mail and requested an extension of time so that several complaints against Accxx could be reviewed further by its staff. On August 30, 2007, Accxx responded to the complaint stating that it was in the process of database changes and an error occurred. Accxx further stated that Ms. Kirstein'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. Kirstein's current provider to Accxx. Accxx stated that the error was resolved and Ms. Kirstein would not be 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 12, 2007, Board staff spoke to a Qwest representative by telephone regarding Ms. Kirstein's complaint. Qwest stated that Ms. Kirstein's service was changed in June with an electronic order, but her service was switched back to the original provider in July and Ms. Kirstein was credited for the charges.

On September 27, 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. Kirstein's long distance telephone service without authorization. Additionally, staff noted that Accxx did not explain why Ms. Kirstein's telephone number was in its database or whether Ms. Kirstein previously had service with Accxx. Staff also noted that the account was fully credited and closed.

On October 3, 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 199 IAC 22.23(2)"a"<sup>3</sup> require verification of an authorized change of service. Accxx provides no verification of Ms. Kirstein'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. Accxx, in its response, stated that the change of service and charges billed to Ms. Kirstein's telephone bill were due to an error during the processing of database changes which, Accxx stated, resulted in all of its old accounts being re-activated. Accxx's response leaves some questions unanswered, as noted in the proposed resolution. 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,

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<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 for verification.

<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.

the Board finds reasonable grounds for further investigation pursuant to Iowa Code §§ 476.3 and 476.103.

**IT IS THEREFORE ORDERED:**

The "Petition for Proceeding to Consider Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on October 3, 2007, is granted as discussed in this order. Pursuant to Iowa Code § 17A.11(1)"b" and 199 IAC 7.3, this matter is assigned to the Board's Administrative Law Judge, Amy Christensen, for such further proceedings as may be appropriate. File No. C-07-222 is docketed for formal proceeding identified as Docket No. FCU-08-13.

**UTILITIES BOARD**

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/s/ Krista K. Tanner

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Darrell Hanson

Dated at Des Moines, Iowa, this 12<sup>th</sup> day of August, 2008.