

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,</p> <p style="text-align:center">Complainant,</p> <p style="text-align:center">vs.</p> <p>NETWORK SERVICES BILLING INC.,</p> <p style="text-align:center">Respondent.</p>	<p style="text-align:center">DOCKET NO. C-07-245</p>
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**ORDER DENYING PETITION FOR PROCEEDING  
TO CONSIDER CIVIL PENALTY**

(Issued September 4, 2008)

On January 30, 2008, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) petitioned the Utilities Board (Board) to commence a formal proceeding to impose a civil penalty on Network Services Billing Inc. (NSBI) for an alleged slamming in violation of Iowa Code § 476.103. Based upon the record assembled in the informal complaint proceeding, the events to date can be summarized as follows:

On October 8, 2007, Ms. Susan Justin, owner of "Your Name Here Specialties," filed a complaint with Board staff alleging that NSBI changed her interstate long distance telephone service without her authorization. Ms. Justin stated she received a call from a representative of NSBI who held himself or herself

out as working for Qwest and that she willingly changed her long distance service because she was told that Qwest was changing billing providers. She said at all times NSBI represented itself as Qwest.

Board staff identified the matter as C-07-245 and, pursuant to Board rules, on October 8, 2007, forwarded the complaint to Main Street Telephone Service and to Qwest, Ms. Justin's local telephone service provider. Based on Ms. Justin's complaint, staff initially concluded Main Street Telephone Service was the alleged slamming carrier; however, after researching the issue, staff discovered Ms. Justin's service was allegedly changed by NSBI, and on November 9, 2007, forwarded the complaint to NSBI.

On October 19, 2007, Qwest responded stating that Ms. Justin's long distance telephone service had been with Qwest since October 16, 2006, when it was changed from AT&T at Ms. Justin's request. Qwest stated that it had not received a change request from any other carrier.

On November 27, 2007, NSBI responded stating that on July 11, 2007, a sales representative for NSBI contacted Ms. Justin and she identified herself as the owner of the business. NSBI further stated that Ms. Justin indicated that she wished to change long distance services to NSBI. NSBI's representative then transferred the call to the verification company, where Ms. Justin confirmed her decision, stated that she was over the age of 18, and authorized changing the telephone service for her business to NSBI. NSBI stated that Ms. Justin provided date of birth as proof of her

identity. At this point, the verifier confirmed the company telephone numbers for the switch. NSBI sent Board staff a copy of the third-party verification (TPV) recording. Lastly, NSBI stated that it had canceled and credited the account in full.

On December 5, 2007, staff forwarded a copy of the TPV to Ms. Justin for her review. Ms. Justin responded on December 13, 2007, stating that she willingly agreed to affirm her affiliation with Qwest, which is the company she thought was calling her. She further says that she was told that Qwest was changing its billing contractor and that unless she went through the verification process, she would be charged an additional \$15 per month for billing services. Ms. Justin also stated that the voice on the verification is her voice, but she was only agreeing to change her long distance service provider from Qwest to Qwest.

On January 16, 2008, staff issued a proposed resolution concluding that a slam had occurred in this matter based on all the information reviewed.

On January 30, 2008, Consumer Advocate filed a petition for a formal proceeding to consider civil penalty. Consumer Advocate stated that Board staff's proposed resolution was correct as far as it went and asked that a hearing be held and civil penalties assessed. Consumer Advocate stated it is well established that misrepresentations can occur during the unrecorded solicitation portion of a call and that misrepresentation vitiates any authorization Ms. Justin might otherwise have given for the switch. Consumer Advocate further notes that Ms. Justin stated that the

verification recording is not an accurate reproduction of the conversation that actually occurred between the verifier and Ms. Justin.

Consumer Advocate also stated that according to Ms. Justin, there was nothing in the actual conversation between the verifier and Ms. Justin making it clear that Ms. Justin's service was being switched to a company other than Qwest. Also, Consumer Advocate stated that subject to hearing rights to which NSBI is entitled under law, the proposed resolution should be augmented with a civil monetary penalty.

### **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 ground 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 no reasonable grounds to grant a formal proceeding to consider a civil penalty in this matter because NSBI fully complied with the Board's TPV requirements as expressed in Board rule 22.23(2)"a"(1)-(3).

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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).

Ms. Justin acknowledges that she spoke with a third-party verifier and authorized a change in her telecommunications service. During her conversation with the third-party verifier, Ms. Justin was asked and answered the following questions:

**Third-Party Verifier:** Are you 18 years of age or older and are you duly authorized by the telephone account holder to make changes on the account?

**Ms. Justin:** Yes.

**Third-Party Verifier:** You understand that while NSBI is unaffiliated with your local telephone company NSBI does charge you its \$4.95 per month service fee and long distance charges for a flat rate of 15 cents per minute for interstate calls for your convenience, correct?

**Ms. Justin:** Correct.

**Third-Party Verifier:** M'am is that a yes?

**Ms. Justin:** Yes.

**Third-Party Verifier:** These charges will appear on your local telephone bill **on behalf of NSBI**. Your local phone company may charge a small fee to make this change. **Do you authorize NSBI to provide new long distance service for all interstate long distance calls?**

**Ms. Justin:** Yes.

**Third-Party Verifier:** All Intra-Lata long distance calls?

**Ms. Justin:** Yes.

**Third-Party Verifier:** All Inter-Lata long distance calls?

**Ms. Justin:** Yes.

**Third-Party Verifier:** All International calls?

**Ms. Justin:** Yes.

**Third-Party Verifier:** For verification purposes we need the month and day of your birth and not the year.

**Ms. Justin:** 10, 30.

**Third-Party Verifier:** October 30<sup>th</sup> is that correct?

**Ms. Justin:** Yes.

**Third-Party Verifier:** Your new long distance service starts in 5 to 10 days **and is provided by Network Services Billing Incorporated which is not affiliated with you local phone company...**

(Recording of TPV; emphasis added).

In the TPV, Ms. Justin was told three times that NSBI was not affiliated with her local telephone provider. Furthermore, she answered yes to all relevant questions, including "Do you authorize NSBI to provide new long distance service for all interstate long distance calls?" This is a sufficient verification and in accordance with Board rules and therefore the Board finds no reasonable grounds to grant a formal proceeding to consider a civil penalty.

Ms. Justin says that during the unrecorded portion of the call, the NSBI representative told her that Qwest was changing their billing contractor and that she would be only switching billing contractors. Ms. Justin says she thought this was a Qwest to Qwest switch. The Board understands the issues surrounding the unrecorded solicitation portion of a telemarketing call to change telephone service and recognizes that misrepresentations may sometimes occur during the unrecorded

solicitation portion of the call. However, even if the NSBI representative told Ms. Justin that he or she was a Qwest representative, she was informed during the TPV that NSBI was not affiliated with her local telephone provider, which at the time was Qwest. Ms. Justin has alleged that the TPV is not an accurate recording, but she also admits her voice is on the recording and agrees she was authorizing a change. Without some corroborating evidence of an altered TPV, the bare allegation, without more, is insufficient to justify investigation in this case. Therefore, based on the TPV and the other facts submitted by the parties, the Board finds there are no reasonable grounds for granting a formal proceeding to consider a civil penalty in this matter.

**ORDERING CLAUSE**

**IT IS THEREFORE ORDERED:**

The "Petition for Proceeding to Consider Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on January 30, 2008, is denied as discussed in this order.

**UTILITIES BOARD**

/s/ John R. Norris

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Darrell Hanson

Dated at Des Moines, Iowa, this 4<sup>th</sup> day of September, 2008.