

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of Buzz )  
Telecom Corporation for New Operating ) Case No. 02-2617-CT-ACE  
Authority. )

PUCO

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**RENEWED MOTION FOR A FULL SUSPENSION OF BUZZ TELECOM'S  
SERVICE TO OHIO CUSTOMERS  
AND  
MOTION FOR REVOCATION OF PUCO CERTIFICATE NO. 90-6096  
GRANTED TO BUZZ TELECOM  
AND  
MOTION FOR A FINDING THAT BUZZ TELECOM'S SERVICE IS  
INADEQUATE  
AND  
MOTION FOR ASSESSMENT OF FORFEITURES AGAINST BUZZ TELECOM  
AND FOR OTHER RELIEF  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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December 11, 2006

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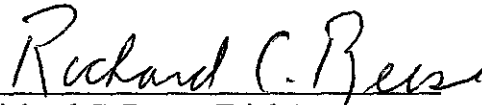
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The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of residential telephone customers, renews its motion to the Public Utilities Commission of Ohio ("PUCO" or "Commission") for a full suspension of the services that Buzz Telecom Corporation ("Buzz" or "Company") is offering in Ohio, pursuant to Ohio Adm. Code 4901:1-6-04(B). OCC moves also for the revocation of the PUCO Certificate of Public Convenience and Necessity granted to Buzz Telecom. In addition, OCC moves for a finding that Buzz Telecom is providing inadequate service in Ohio, in violation of, *inter alia*, R.C. 4905.22. Furthermore, OCC moves for the assessment of forfeitures against Buzz Telecom, pursuant to, *inter alia*, R.C. 4905.54, and for other relief under law, rule and order.

The reasons why OCC's Motions should be granted *post-haste* for the protection of Ohio consumers are set forth in the attached Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

A handwritten signature in cursive script that reads "Richard C. Reese".

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## **TABLE OF CONTENTS**

|  | <b><u>PAGE</u></b> |
|--|--------------------|
| I. INTRODUCTION .....  | 1                  |
| II. BUZZ TELECOM'S PRACTICES APPEAR TO VIOLATE RULES,<br>LAW AND THE PUBLIC INTEREST.....  | 2                  |
| III. MOTIONS FOR A FULL SUSPENSION AND REVOCATION OF<br>CERTIFICATE .....  | 3                  |
| A. The Commission should order a full suspension of Buzz Telecom's<br>services, pursuant to Ohio Adm. Code 4901:1-6-04(B) .....  | 3                  |
| B. The PUCO should revoke Certificate No. 90-6096 that it granted for<br>Buzz to offer interexchange service in Ohio.....  | 4                  |
| C. The Commission should order an arrangement, by a near-term date<br>certain, for the migration of existing customers of Buzz Telecom to<br>new interexchange service providers, before the PUCO suspends<br>Buzz's offering of services and revokes Buzz's Certificate ..... | 6                  |
| IV. MOTION FOR A HEARING ON WHETHER BUZZ TELECOM IS<br>PROVIDING INADEQUATE SERVICE IN VIOLATION OF OHIO<br>LAW. ....  | 8                  |
| A. Complaints and inquiries received by OCC and the PUCO show that<br>Buzz is engaged in the unauthorized switching of the telephone<br>service providers of Ohio consumers in violation of R.C. 4905.72<br>and Ohio Adm. Code 4901:1-5-08.....                                | 8                  |
| B. Complaints and inquiries received by OCC, the PUCO and AT&T<br>show that Buzz appears to be engaged in unfair, deceptive or<br>unconscionable acts in violation of Ohio Adm. Code 4901:1-5-7 and<br>its own tariffs .....   | 11                 |
| C. A finding, subsequent to hearing, that Buzz Telecom is operating in<br>violation of the Minimum Telephone Service Standards and/or other<br>related Ohio laws and rules is sufficient to determine that the<br>Company is providing inadequate service .....                | 13                 |
| V. THE COMMISSION SHOULD ORDER APPROPRIATE FORFEITURES<br>AND REMEDIES FOR VIOLATIONS OF OHIO LAW, RULES AND<br>ORDERS.....  | 14                 |

## **TABLE OF CONTENTS CONT'D**

|  | <b><u>PAGE</u></b> |
|--|--------------------|
| A. R.C. 4905.73, which grants the Commission jurisdiction regarding any public utility violation of the "slamming" provisions of R.C. 4905.72(B), also provides for the assessment of remedies and penalties for such violations after hearing. ....   | 14                 |
| B. Buzz Telecom should be ordered to provide refunds to any past or present customers that were charged any untariffed fee or were charged in excess of the tariffed rate for the service provided by the Company. ....  | 16                 |
| C. Buzz Telecom appears to be in violation of R.C. 4905.54, which provides that any utility that does not comply with an order of the Commission shall forfeit to the state not more than \$10,000 for each such noncompliance. ....   | 17                 |
| D. Subsequent to a finding of inadequate service by the Commission or a finding that Buzz is in violation of an order, Buzz would not be permitted to issue a dividend to its shareholders (if it issues such dividends) unless and until the Commission permits such dividends after a hearing, pursuant to R.C. 4905.46..... | 18                 |
| VI. CONCLUSION.....  | 19                 |
| CERTIFICATE OF SERVICE .....   | 21                 |
| Attachment 1   |                    |
| Attachment 2   |                    |
| Attachment 3   |                    |

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

On October 9, 2002, Buzz Telecom Corporation filed an application to offer interexchange service (long-distance service) to Ohioans. On November 9, 2002, Buzz Telecom's application for a certificate of public convenience and necessity was automatically granted by the PUCO in this docket, pursuant to Ohio Adm. Code 4901:1-6-05(C).<sup>1</sup>

Four years later it would appear that Buzz has distinguished itself in Ohio -- and not in a good way -- by violating law, rule and order. These circumstances prompted OCC, the state's advocate for residential utility consumers, to file a Motion to Intervene and a Motion for Full Suspension of Operating Authority ("Initial Motions") in the above-captioned case, on October 10, 2006. Buzz did not deign to respond to OCC's motions, despite the protocol of Ohio Adm. Code 4901-1-12(B) and despite the gravity of the averments against it.

The circumstances that prompted OCC to file its Initial Motions and the Motions herein are reflected in complaints and inquiries concerning Buzz received by the PUCO,

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<sup>1</sup> Certificate number 90-6096 was issued to Buzz on January 16, 2003. (Attachment 1)

OCC, and AT&T<sup>2</sup> as well as a review of actions taken in other states.<sup>3</sup> Since OCC filed the Initial Motions, additional action has been taken against Buzz in other states, as discussed below. In addition, the Commission has taken no action on OCC's Initial Motions. It is time for action. In the following Memorandum OCC will describe the actions that the Commission should undertake to protect Ohio consumers.

## **II. BUZZ TELECOM'S PRACTICES APPEAR TO VIOLATE RULES, LAW AND THE PUBLIC INTEREST.**

Attachment 1 to OCC's Initial Motions contains a summary of the customer contacts received by the PUCO and OCC concerning Buzz's actions. The OCC's review reveals the following allegations, which the OCC believes to be true:

- Buzz marketing personnel have intentionally misrepresented their identities and have misled elderly consumers into believing that they were speaking to personnel from the Incumbent Local Exchange Company ("ILEC").
- Buzz marketing personnel have intentionally misled customers into thinking that Buzz was merely the name of a calling plan rather than a different carrier.
- Buzz marketing personnel have advised elderly customers to agree to all questions during the third party verification ("TPV") process.
- Consumers who discovered unexpectedly high charges on their monthly phone bills and called Buzz to cancel service were informed that they would have to pay an additional, nontariffed, \$19.95 early termination fee ("ETF").
- Buzz is charging a \$4.95 "USF Carrier Administrative Fee" on a \$34.85 initial bill.<sup>4</sup> This fee is an excessive amount, considering

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<sup>2</sup> Initial Motions Attachments 1 and 3.

<sup>3</sup> Initial Motions Attachment 2.

<sup>4</sup> OCC does not have subsequent bills to determine what is charged for the USF Carrier Administrative Fee after the first bill.

that the USF percentage to be assessed on interstate service by the FCC has been approximately 10% since the first quarter of 2006.<sup>5</sup>

### **III. MOTIONS FOR A FULL SUSPENSION AND REVOCATION OF CERTIFICATE**

#### **A. The Commission should order a full suspension of Buzz Telecom's services, pursuant to Ohio Adm. Code 4901:1-6-04(B).**

OCC renews its recommendation that the Commission order a full suspension of Buzz's services, pursuant to Ohio Adm. Code 4901:1-6-04(B), to protect Ohioans. This rule expressly provides for an *ex post facto* suspension of the operating authority of a telecommunications provider if "a determination is made that a service previously automatically authorized may not be in the public interest or is in violation of commission rules and regulations."

As described above and in the Initial Motions, Buzz appears to be operating contrary to the public interest and in violation of several significant laws and Commission rules that are intended to protect Ohio consumers. Such violations cannot be tolerated. The Commission should suspend Buzz's offering of services for the reasons stated above and more fully set forth in OCC's Initial Motions in this case.

As OCC explains in a section below, the Commission's order to suspend Buzz's certificate should arrange a date certain by which Buzz's long-distance customers are transferred to one or more other interexchange carriers. The customers' continuity of service should be ensured before the effective date of the suspension of Buzz's service,

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<sup>5</sup> If the line item is intended to recover costs other than the federal USF assessment, then it is misleadingly labeled, in violation of Ohio Adm. Code 4901:1-5-7(A). This is consistent with Buzz's modus operandum as shown herein.



so that customers are not placed in the involuntary situation of being without "dial-one" interexchange service for their long-distance calls.

At a minimum, the Commission should immediately order Buzz to cease and desist from solicitations of new customers. The PUCO "may require the telephone company to refrain from obtaining new customers subsequent to the suspension until such time as the commission takes further action," pursuant to Ohio Adm. Code 4901:1-6-04(C). Suspension of the offering of services to new customers is a "partial suspension" under the rule. A partial suspension would be a preliminary protective step, but this situation requires that the PUCO put its foot down to protect all consumers -- past, present and future.

**B. The PUCO should revoke Certificate No. 90-6096 that it granted for Buzz to offer interexchange service in Ohio.**

The PUCO's Certificate for Buzz to offer services in Ohio contains eighteen words that are of special significance for reasons which, at this moment, must be all too obvious. Those words are: "This certificate is revocable if all of the conditions set forth in the aforementioned case(s) are not met." For the reasons stated in this pleading and in OCC's Initial Motions, "all of the conditions" for Buzz to enjoy the privilege of an Ohio certificate have not been met. The Certificate should be revoked.

The PUCO can consider, for determining whether to revoke the Certificate, the actions taken against Buzz Telecom in other states as cited by OCC in Attachment 2 of OCC's Initial Motions. The list of state actions is growing. Buzz has recently been ordered to stop doing business in the State of North Carolina and has been ordered to

provide refunds to all customers who filed complaints with the State's Attorney General.<sup>6</sup> The Attorney General of Kentucky has also issued a cease and desist order against Buzz based on complaints lodged primarily by senior citizens who claimed that they had received "false billing statements."<sup>7</sup>

The allegations in other states, like those in Ohio, include Buzz's promises of discounts to consumers of senior years and then a doubling or tripling of the consumers' monthly long-distance rates as well as claims that Buzz's personnel posed as representatives of other long distance companies.<sup>8</sup> OCC reiterates that the need for the Commission to take immediate action to prevent additional harm to Ohio's residential telephone customers is underscored by the widespread and ongoing nature of the problems with Buzz.

As OCC explains in a section below, the PUCO should arrange a date certain by which Buzz's long-distance customers are transferred to one or more other interexchange carriers. The customers' continuity of service should be ensured before the effective date of the revocation of the Certificate, so that customers are not placed in the involuntary situation of being without "dial-one" interexchange service for their long-distance calls.

In any event, Buzz Telecom should be required to forfeit its "right to provide regulated telecommunication services in Ohio." Those words are in the PUCO's abandonment rule, which can provide guidance here. Ohio Adm. Code 4901:1-6-10(A)(9). The breadth of the violations of laws, rules, and orders as outlined above and

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<sup>6</sup> Attachment 2.

<sup>7</sup> Attachment 3.

<sup>8</sup> See OCC Initial Motion.

in OCC's Initial Motions, combined with the experiences in other states where Buzz operates, warrant the permanent revocation of the Company's Certificate to conduct business in Ohio.

At the very least, the PUCO should order Buzz to show cause why its certificate should not be revoked. As the Commission has found in other cases,<sup>9</sup> a lack of a response by Buzz to a Commission show cause order would be sufficient grounds for revocation of Buzz' certificate.

- C. The Commission should order an arrangement, by a near-term date certain, for the migration of existing customers of Buzz Telecom to new interexchange service providers, before the PUCO suspends Buzz's offering of services and revokes Buzz's Certificate.**

In order to ensure that current customers of Buzz Telecom have continuity of service and are not caused further harm, the Commission should ensure that they are afforded protections similar to those outlined in Ohio Adm. Code 4901:1-6-10(A). That rule provides various protections for consumers when their telephone company is proposing to abandon service to them. Similarly, Ohio Adm. Code 4901:1-6-09(G)(2) provides that, should a competitive local exchange carrier seek "to remove an exchange or exchanges from its service territory, affected customers must be given notice by electronic mail (should the customer consent), direct mail, or bill message, fifteen days prior..." to filing.

The LEC abandonment rules provide in pertinent part:

- (A) This rule applies when a LEC intends to discontinue the LECs' entire operations and to cancel the company's tariff and certificate of public convenience and necessity. A LEC shall not

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<sup>9</sup> *In the Matter of the Self-Complaint of Budget Phone, Inc. for Approval to Increase its Rates and Modify the Terms and Conditions of Service in Ohio*, Case No. 05-1235-TP-SLF, Entry (November 8, 2006).

abandon its entire operations under a certificate without filing an abandonment application and obtaining commission approval.

(1) Abandonment applications shall be filed at least ninety days prior to the effective date that the LEC will cease providing service. The application shall include copies of any notices provided pursuant to paragraphs (A)(2) to (A)(4) as well as the list pursuant to (A)(10) of this rule.

(2) At least ninety days prior to abandoning operations, a LEC shall provide written notice to each ILEC in whose certified territory the LEC operates of its intent to cease providing service.

(3) At least ninety days prior to abandoning operations, a LEC shall provide written notice to its customers of its intent to abandon service. At a minimum, the notice should provide the proposed effective date of the abandonment, instructions to the customers on how they may obtain replacement service(s), and identify the commission's toll free and TTY-TDD telephone numbers.

(4) The LEC shall also provide notice of its abandonment on each billing statement rendered to customers beginning at least ninety days prior to the effective date of the abandonment and continue to provide such notice on all subsequent billing statements until the service is abandoned.

(5) A LEC abandoning operations shall return all deposits, including applicable interest, to its customers no later than ninety days after filing its abandonment application unless a court orders otherwise.

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(7) An abandoning LEC may not discontinue services provided to any customer or telephone company until the abandonment application has been approved by the commission.

(8) No telephone company may discontinue services provided to an abandoning LEC until the abandonment application has been approved by the commission.

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Ohio Adm. Code 4901:1-6-10(A).

The consumer protections outlined in the abandonment rule and exchange removal rule cited above are analogous to those that should be afforded to consumers in the present case. The notice to affected consumers should include that, in the event consumers neglect to select a new long-distance provider, they will be "no-PICed" and therefore will be without a long-distance provider that can be accessed by dialing "1-plus." Customers should be given adequate time to obtain service from a new provider, before the PUCO suspends Buzz's service and revokes the Certificate.

#### **IV. MOTION FOR A HEARING ON WHETHER BUZZ TELECOM IS PROVIDING INADEQUATE SERVICE IN VIOLATION OF OHIO LAW**

Companies such as Buzz Telecom that have been authorized by the PUCO to operate in Ohio, are required to provide service that is adequate and just and reasonable:

Every public utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable. All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the commission.

R.C. 4905.22. The service provided by Buzz appears to be inadequate, unjust and unreasonable in several respects. The PUCO should conduct a hearing to determine whether Buzz is providing inadequate service as well as the extent of the Company's noncompliance with Commission rules and orders and Ohio law.

**A. Complaints and inquiries received by OCC and the PUCO show that Buzz is engaged in the unauthorized switching of the telephone service providers of Ohio consumers in violation of R.C. 4905.72 and Ohio Adm. Code 4901:1-5-08.**

The numerous examples of PUCO and OCC complaints and inquiries described above and in OCC's Initial Motions appear to show Buzz to be in violation of Ohio Adm. Code 4901:1-5-8(A). That rule mirrors Federal Communications Commission ("FCC") rules that prohibit "slamming," which in this circumstance is the unauthorized changing of a customer's long distance carrier. It seems clear from OCC's review that Ohio's residential telephone customers are being misled by Buzz. It seems equally clear that Ohio consumers are being billed for charges that are not tariffed or approved by the Commission.

OCC also notes that AT&T, in a letter to Buzz Telecom dated October 6, 2006, noted that it has received numerous complaints from its customers that are similar in nature to those cited above. AT&T's letter demands that Buzz cease "engaging in false, deceptive, misleading and/or unfair business practices with AT&T customers in Ohio." Initial Motion, Attachment 3. These circumstances require action by the Commission to protect Ohio's residential telephone customers.

The applicable provisions of Ohio law read, in pertinent part:

(B) (1) No public utility shall request or submit, or cause to be requested or submitted, a change in the provider of natural gas service or public telecommunications service to a consumer in this state, without first obtaining, or causing to be obtained, the verified consent of the consumer in accordance with rules adopted by the public utilities commission pursuant to division (D) of this section.

(2) No public utility shall violate or fail to comply with any provision of a rule adopted by the commission pursuant to division (D) of this section or any provision of an order issued by the

commission pursuant to division (B) or (C) of section 4905.73 of the Revised Code.

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R.C. 4905.72.

Buzz is also in violation of Ohio Adm. Code 4901:1-5-8(A), which implemented the above-cited Ohio Revised Code provisions that prohibit “slamming” or unauthorized changes of long distance carriers. The rule provides, in pertinent part:

(A) No telecommunications provider shall submit or execute a change on behalf of a subscriber in the subscriber’s selection of a provider of telecommunications service prior to obtaining:

(1) Authorization from the subscriber;

(2) Verification of that authorization in accordance with the verification procedures prescribed by the federal communications commission (FCC) and in effect at the time of the change.

(B) A change of telecommunications provider may take place immediately upon request. However, within ten business days of verification by the submitting carrier of a subscriber request for a change of a telecommunications provider, the submitting telecommunications provider shall send each new subscriber an information package, by first class mail, containing at least the following information concerning the requested change:

(1) The information is being sent to confirm an order placed by the subscriber within the last two weeks;

(2) The name of the submitting telecommunications provider;

(3) A description of any terms, conditions, and/or charges that will be incurred;

(4) The name, address, and telephone number of the subscriber;

(5) A toll-free customer service telephone number, a postal address, and (if applicable) an e-mail address or website address for use to place inquiries or complaints with the submitting telecommunications provider; and

(6) The address, telephone number, and website address of the Commission.

(C) Any telecommunications provider that is informed by a subscriber or the commission of an unauthorized provider change shall follow the informal complaint procedures and remedies prescribed by the federal communications commission for the resolution of informal complaints of unauthorized changes of telecommunications providers.

(D) Any subscriber or telecommunications provider whose complaint cannot be resolved informally may file a formal complaint under section 4905.26 of the Revised Code, regarding any violation of section 4905.72 of the Revised Code, or of this rule. If the Commission finds, after notice and hearing, that a telecommunications provider has violated section 4905.72 of the Revised Code or this rule, the telecommunications provider shall be subject to the remedies provided for in section 4905.73 of the Revised Code.

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Ohio Adm. Code 4901:1-5-08.

In Attachment 1 to OCC's Initial Motions, OCC summarized the customer contacts received by the PUCO and OCC concerning Buzz's actions. The statutes adopted by the General Assembly to protect Ohioans and the implementing rules adopted by the PUCO clearly prohibit the switching of telecommunications providers in the manner that has been alleged by many residential telephone customers of Buzz Telecom.

**B. Complaints and inquiries received by OCC, the PUCO and AT&T show that Buzz appears to be engaged in unfair, deceptive or unconscionable acts in violation of Ohio Adm. Code 4901:1-5-7 and its own tariffs.**

The complaints and inquiries received by the PUCO, OCC, and AT&T also show that Buzz has violated Ohio Adm. Code 4901:1-5-7(A), which states: "No telecommunications service provider shall commit an unfair, deceptive, or unconscionable act or practice in connection with a consumer transaction."



The rule concerning marketing reads, in pertinent part:

(A) No telecommunications service provider shall commit an unfair, deceptive, or unconscionable act or practice in connection with a consumer transaction. Without limiting the scope of this section, the act or practice of a telecommunications service provider is deceptive if the provider:

(1) Fails to clearly highlight, in written or printed advertising or promotional literature, any material exclusions, reservations, limitations, modifications, or conditions associated with special offers or promotions;

(2) Fails to place material exclusions, reservations, limitations, modifications, or conditions within close proximity to the words stating such special offer(s) or promotion(s);

(3) Fails to clearly state all specific exclusions, reservations, limitations, modifications, or conditions when making offers through radio or television advertisement; or

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Ohio Adm. Code 4901:1-5-07.

Numerous consumers claim, among other things, that they were misled as to the name of the Company, the total monthly charge for Buzz's service or were threatened with an untariffed early termination fee that was never disclosed. Such acts would constitute a clear violation of several provisions of the Minimum Telephone Service Standards ("MTSS").

In addition to committing numerous violations of the MTSS, the Company appears to be violating its own tariff in violation of the Ohio Revised Code:

No public utility shall charge, demand, exact, receive, or collect a different rate, rental, toll, or charge for any service rendered, or to be rendered, than that applicable to such service as specified in its schedule filed with the public utilities commission which is in effect at the time.

R.C. 4905.32 (emphasis added). The PUCO has previously found that a public utility is acting unreasonably and unlawfully when it violates its tariffs that are approved by the Commission.<sup>10</sup> The charging of any untariffed fee such as the early termination fee or the imposition of service termination conditions that are not approved by the Commission is clearly unlawful.

**C. A finding, subsequent to hearing, that Buzz Telecom is operating in violation of the Minimum Telephone Service Standards and/or other related Ohio laws and rules is sufficient to determine that the Company is providing inadequate service.**

The MTSS set forth the minimum requirements for the provision of telephone service in Ohio. The MTSS, in turn, are prescribed pursuant to the Ohio Revised Code:

The public utilities commission may make such investigations as it deems necessary and ascertain and prescribe reasonable standards of telephone service. Such standards shall be minimum requirements for the furnishing of adequate telephone service.

R.C. 4905.231. A Commission hearing that determines Buzz has failed to achieve these minimum requirements necessitates a finding that Buzz is providing inadequate service.

The Commission has spoken on this topic in a previous case that concerned compliance with the MTSS:

Section 4905.231, Revised Code, authorizes the Commission to prescribe reasonable standards of telephone service and that such standards shall be the minimum requirements for the furnishing of adequate telephone service. This Commission has determined in its opinion and order that Ameritech has failed to achieve many of those minimum standards and that its failures occurred on numerous occasions. At the close of the period covered by the

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<sup>10</sup> *In the Matter of the Complaint of the Office of the Consumers' Counsel on behalf of Jim and Helen Heaton, et al., and Certain Other Unnamed Individuals, Complainants, v. Columbus and Southern Ohio Electric Company, Respondents, Relative to alleged unjust, unreasonable, and unlawful policies and practices with regard to establishing new service for residential customers in rural areas of its service area*, Case No. 83-1279-EL-CSS, Opinion and Order (April 16, 1985) ("Heaton") at 18.

Commission's order, there was no indication that Ameritech was meeting even these minimum requirements. Ameritech needs to take corrective action to restore its service levels and, until that occurs, the Commission has no intention of changing its position that Ameritech is providing inadequate service to its customers.<sup>11</sup>

At a minimum, Buzz appears to be in violation of Ohio law and the MTSS concerning marketing and slamming. Just as in the case cited above, Buzz has violated several of the MTSS and Ohio law, and appears to have done so on numerous occasions. As such, a finding of inadequate service is warranted in the present case.

**V. THE COMMISSION SHOULD ORDER APPROPRIATE FORFEITURES AND REMEDIES FOR VIOLATIONS OF OHIO LAW, RULES AND ORDERS.**

If the Commission determines that Buzz has operated in violation of Ohio's laws as well as Commission rules and orders, the Company should be subject to the full panoply of forfeitures and penalties prescribed by the Ohio General Assembly and the PUCO. It is incumbent on the PUCO to implement the law and send a message that such conduct against the public will not be tolerated in Ohio.

- A. R.C. 4905.73, which grants the Commission jurisdiction regarding any public utility violation of the "slamming" provisions of R.C. 4905.72(B), also provides for the assessment of remedies and penalties for such violations after hearing.**

The Ohio Revised Code provides for specific remedies and penalties for the violation of R.C. 4905.72. The remedies and penalties are as follows:

- (B) Upon complaint or initiative under division (A) of this section, if the commission finds, after notice and hearing pursuant to**

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<sup>11</sup> *In the Matter of the Commission-Ordered Investigation of Ameritech Ohio Relative to Its Compliance with Certain Provisions of the Minimum Telephone Service Standards Set Forth in Chapter 4901:1-5, Ohio Administrative Code*, Case No. 99-938-TP-COI, Entry on Rehearing (September 19, 2000) ("AMT Service Case") at 31.

*section 4905.26 of the Revised Code*, that a public utility has violated *section 4905.72 of the Revised Code*, the commission, by order, shall do all of the following:

- (1) Rescind the aggrieved consumer's change in service provider;
- (2) Require the public utility to absolve the aggrieved consumer of any liability for any charges assessed the consumer, or refund to the aggrieved consumer any charges collected from the consumer, by the public utility during the thirty-day period after the violation or failure to comply occurred or, where appropriate, during such other period after that occurrence as determined reasonable by the commission;
- (3) Require the public utility to refund or pay to the aggrieved consumer any fees paid or costs incurred by the consumer resulting from the change of the consumer's service provider or providers, or from the resumption of the consumer's service with the service provider or providers from which the consumer was switched;
- (4) Require the public utility to make the consumer whole regarding any bonuses or benefits, such as airline mileage or product discounts, to which the consumer is entitled, by restoring bonuses or benefits the consumer lost as a result of the violation or failure to comply and providing bonuses or benefits the consumer would have earned if not for the violation or failure to comply, or by providing something of equal value.

(C) In addition to the remedies under division (B) of this section, if the commission finds, after notice and hearing pursuant to *section 4905.26 of the Revised Code*, that a public utility has violated *section 4905.72 of the Revised Code*, the commission, by order, may impose any of the following remedies or forfeitures:

- (1) Require the public utility to comply or undertake any necessary corrective action;
- (2) Require the public utility to compensate the service provider or providers from which the aggrieved consumer was switched in the amount of all charges the consumer would have paid that particular service provider for the same or comparable service had the violation or failure to comply not occurred;
- (3) Require the public utility to compensate the service provider or providers from which the aggrieved consumer was switched for any costs that the particular service provider incurs as a result of making the consumer whole as provided in division (B)(4) of this section or of effecting the resumption of the consumer's service;
- (4) Assess upon the public utility forfeitures of not more than one thousand dollars for each day of each violation or failure to comply. However, if the commission finds that the public utility has engaged or is engaging in a pattern or practice of committing any such violations or failures to comply, the commission may assess upon the public utility forfeitures of not more than five

thousand dollars for each day of each violation or failure. Any forfeiture collected pursuant to this division shall be deposited into the state treasury to the credit of the general revenue fund.

(5) Require the public utility to file with the commission a security payable to the state in such amount and upon such terms as the commission determines necessary to ensure compliance and payment of any forfeitures assessed pursuant to division (C)(4) of this section;

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(F) The remedy available under *section 4905.61 of the Revised Code* may be applied to any violation of *section 4905.72 of the Revised Code*.

(G) The powers, remedies, forfeitures, and penalties provided by this section and section 4905.72 and division (D) of *section 4905.99 of the Revised Code* are in addition to any other power, remedy, forfeiture, or penalty provided by law.

R.C. 4905.73.

The Commission, in a recent complaint case, dealt at length with the slamming issue.<sup>12</sup> The Commission noted that it had authority to assess remedies and penalties under statutes dealing with slamming, in addition to its long-standing authority to assess penalties under R.C. 4905.54.<sup>13</sup> Because Buzz Telecom appears to be in violation of Commission rules and the statutes that specifically govern the unauthorized switching of telecommunications providers, the penalties imposed by the Commission must necessarily include those provided for in R.C. 4905.73.<sup>14</sup>

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<sup>12</sup> *In the Matter of the Complaint of Communication Options, Inc., Complainant, v. ValTech Communications LLC, Respondent*, Case No. 04-658-TP-CSS, Opinion and Order (September 13, 2006) (“Valtech”).

<sup>13</sup> *Id.* at 30.

<sup>14</sup> It appears from the large number of complaints received by the PUCO that Buzz Telecom has “persistently” violated the tenets of R.C. 4905.72 and would therefore also be in violation of R.C. 4905.74 which reads: “No public utility shall knowingly engage in a persistent practice or pattern of conduct of violating division (B) of section 4905.72 of the Revised Code.” Under R.C. 4905.99(D), violations of R.C. 4905.74 are a misdemeanor of the third degree.

- B. Buzz Telecom should be ordered to provide refunds to any past or present customers that were charged any untariffed fee or were charged in excess of the tariffed rate for the service provided by the Company.**

There is long-standing Commission precedent for the awarding of refunds when customers are charged other than the tariffed rate for their service:

The criteria under which this Commission will grant refunds have been discussed in *Ohio Gas Company*, Case No. 82-95-GA-COI, Opinion and Order issued March 5, 1983 and *Seifert v. Ohio Bell*, Case No. 84-473-TP-CSS, Opinion and Order dated January 8, 1985. Generally, the criteria for refunds have been that the wronged customers be identifiable, that the amount of the improper charges be readily ascertainable, and that the circumstances be such as to preclude the likelihood that an individual would pursue his remedy in a court of law.<sup>15</sup>

Such conditions exist in the present case. The harmed customers (including past and present customers) should be identified. The amount of the overcharges is easily ascertained and there is little likelihood that individual customers would pursue this matter in court. Buzz should be required by the Commission to publish a newspaper notice, such as that required in *Valtech* at p.32, to notify all harmed customers that they may be entitled to remedies. Past and present customers who were harmed by Buzz Telecom should be recompensed.

- C. Buzz Telecom appears to be in violation of R.C. 4905.54, which provides that any utility that does not comply with an order of the Commission shall forfeit to the state not more than \$10,000 for each such noncompliance.**

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<sup>15</sup> *In the Matter of the Complaint of the Office of the Consumers' Counsel on behalf of Jim and Helen Heaton, et al., and Certain Other Unnamed Individuals, Complainants, v. Columbus and Southern Ohio Electric Company, Respondents, Relative to alleged unjust, unreasonable, and unlawful policies and practices with regard to establishing new service for residential customers in rural areas of its service area*, Case No. 83-1279-EL-CSS, Opinion and Order (April 16, 1985) at 19.

R.C. 4905.54 provides that any utility that does not comply with an order of the Commission shall forfeit to the state not more than \$10,000 for each such noncompliance. Buzz Telecom appears to be in violation of this law. Noncompliances are calculated by day and by violation for each customer, so the potential forfeitures for Buzz are substantial.

The Ohio Revised Code provides that utilities are subject to forfeitures for violations of Commission orders. The forfeitures outlined in the statute above should be implemented by the PUCO in addition to any penalties, remedies and forfeitures provided for in the slamming-related statutes discussed above. The Commission has previously addressed its ability to assess forfeitures for violations of its orders and rules, including the MTSS:

The Commission adopted the existing MTSS in a rulemaking proceeding in Case No. 96-1175-TP-ORD, opinion and order signed on June 26, 1997; therefore, the Commission has already prescribed the rules and practices to be adopted and observed. Notice of the Commission's order was provided to the company. Ameritech is to comply with the rules of the Commission. Pursuant to Section 4905.54, Revised Code, every public utility must comply with the orders of the Commission made under the authority of Chapter 4905, Revised Code. Ameritech has failed to comply with the Commission's rules and its order; therefore, the Commission need not initiate another proceeding prior to assessing forfeitures.<sup>16</sup>

The Commission rules contained in the MTSS that govern marketing and slamming were adopted pursuant to a Commission order. Therefore, violations of those rules subject Buzz to the forfeitures envisioned by R.C. 4905.54 in addition to those provided for separately under other statutes.

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<sup>16</sup> 99-938, Entry on Rehearing (September 19, 2000) at 32.

- D. Subsequent to a finding of inadequate service by the Commission or a finding that Buzz is in violation of an order, Buzz would not be permitted to issue a dividend to its shareholders (if it issues such dividends) unless and until the Commission permits such dividends after a hearing, pursuant to R.C. 4905.46.**

The Ohio Revised Code provides that any public utility operating under a finding of inadequate service or in violation of a PUCO order shall not be permitted to issue a dividend to its shareholders, pending a determination after a Commission hearing. R.C. 4905.46.<sup>17</sup> To the extent that Buzz Telecom does issue dividends to shareholders, then it should be barred from issuing such a dividend subsequent to a Commission finding that the Company's service is inadequate or that Buzz is in violation of an order. In addition, the Commission should take any other appropriate actions available to it to preserve funds that Buzz may need to provide refunds to Ohio customers.

## **VI. CONCLUSION**

In the interest of protecting Ohio consumers, the PUCO should immediately review the matters raised in OCC's Initial Motion and these Motions. In this regard, the Commission should immediately suspend the service of Buzz Telecom in Ohio, with protections for continuity of service for customers. Upon review, the Commission should find that the continued operation of Buzz in Ohio is against the public interest, violates Commission rules and regulations, and is unjust and unreasonable. The Commission should revoke Buzz's Certificate.

Due to what appears to be the egregious nature and scope of Buzz Telecom's violations of Ohio law to the detriment of Ohio consumers, the Company should be

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<sup>17</sup> AMT Service Case, Supplemental Opinion and Order (March 8, 2001) at 10.



subject to wide-ranging penalties and forfeitures.<sup>18</sup> Importantly, the Commission should immediately act to protect the existing and past customers of Buzz, by ordering and ensuring refunds to Ohio customers for any charges Buzz collected from them in violation of, among other things, PUCO-approved tariffs.

Respectfully submitted,

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<sup>18</sup> Id. at 11. "The fact that the company gives affected customers the required remedies after violating an MTSS requirement does not insulate the company from a finding that the service being provided by the company is inadequate."

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motions by the Office of the Ohio Consumers' Counsel was served by either overnight delivery or first class United States Mail, postage prepaid, to the persons listed below, on this 11th day of December, 2006.



Richard C. Reese  
Assistant Consumers' Counsel

### **SERVICE LIST**

**DUANE W. LUCKEY**  
Assistant Attorney General  
Chief, Public Utilities Section  
180 East Broad Street  
Columbus, Ohio 43215-3793

**SHANNON DENNIE**  
Corporate Affairs Officer  
Buzz Telecom Corporation  
8380 Louisiana Street  
Merrillville, Indiana 46410

**PUBLIC UTILITIES COMMISSION OF OHIO***Certificate of Public Convenience and Necessity*

Certificate Number:  
90-6096

Issued Pursuant to Case Number(s):

**02-2617-CT-ACE**

A Certificate of Public Convenience and Necessity is hereby granted to **Buzz Telecom, Corporation**, whose office or principal place of business is located at **8380 Louisiana Street, Merrillville, IN 46410**, to provide competitive telecommunications services throughout the state of Ohio pursuant to its tariff filed in Case No. 90-6096-CT-TRF.

This Certificate is revocable if all of the conditions set forth in the aforementioned case(s) are not met.

Subject to all rules and regulations of the Commission, now existing or hereafter promulgated.

Witness the seal of the Commission affixed at Columbus, Ohio.

Dated: January 16, 2003

By Order of

  
PUBLIC UTILITIES COMMISSION OF OHIO

Gary E. Vigorito, Secretary  
Daisy L. Crockron, Acting Secretary  
Ronald D. Rose, Acting Secretary

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**Roy Cooper**  
**North Carolina Attorney General**

For immediate release  
 Date: November 14, 2006

Contact: Noelle Talley  
 Phone: 919/716-6413

## **Tricky telemarketer ordered out of NC, says AG Cooper**

*Buzz Telecom preyed on seniors, must now pay refunds and leave the state*

**Raleigh:** Buzz Telecom has been ordered to stop doing business in North Carolina and must pay refunds to consumers, Attorney General Roy Cooper announced today.

"This telemarketer tricked North Carolina seniors into paying too much for long distance phone service," said Cooper. "Now we've put a stop to their unwanted calls and collection notices, and consumers will get their money back."

Under an agreement signed Monday by Wake County Superior Court Judge John R. Jolly, Jr. Buzz Telecom of Merrillville, Indiana is permanently barred from soliciting customers in the state and must notify all of their current North Carolina customers within 30 days that the company is quitting the state.

Buzz must pay refunds to all consumers who have filed complaints about the company with Cooper's office, the NC Utilities Commission, or the Federal Trade Commission. To file a complaint with the Attorney General's Office, North Carolina consumers can call 1-877-5-NO SCAM toll-free or visit [www.ncdoj.com](http://www.ncdoj.com). North Carolina consumers who responded to collection notices from Buzz will also receive refunds.

Buzz has approximately 3,000 customers in North Carolina. Current Buzz customers will receive a letter from the company with details on how to switch to another long distance carrier.

In August, Cooper filed suit in Wake County Superior Court against Buzz alleging that it used unfair and deceptive practices and violated the state's telemarketing laws.

More than 60 consumers have complained about Buzz since 2004, mostly seniors, their children or caregivers. Cooper's office first learned about Buzz' telemarketing tactics when a Tennessee woman called to complain that her elderly parents in Robbinsville, NC had seen their phone bill double to \$58 a month. The couple recalled receiving a call from Buzz but had not wanted to switch their long distance service.

According to the complaint, Buzz began pitching its long-distance telephone service to North Carolinians sometime in 2003 through telemarketing calls. Buzz often claimed to be with the consumer's local phone company and regularly failed to tell consumers that they were switching them to a new phone service. The company especially targeted senior citizens, promising a senior discount to consumers who answered yes to a series of questions. Instead, consumers wound up with phone bills that were double or triple what they paid previously. Many of the seniors targeted by Buzz lived on fixed incomes and made few long distance calls.

Relatives and caregivers of seniors are also encouraged to be on the look out and to report similar scams to the Attorney General's Consumer Protection Division at 1-877-5-NO-SCAM.

Cooper reminded consumers to sign up for the Do Not Call Registry to cut down on all unwanted telemarketing calls. To add your home and mobile numbers to the list, go to [www.nocallsnc.com](http://www.nocallsnc.com) or call 1-888-382-1222 within North Carolina from the number you wish to register.

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## Office of the Attorney General Gregory D. Stumbo Commonwealth of Kentucky

Office of the Attorney General

# Attorney General Greg Stumbo Takes Action To Stop Long Distance Company From Preying on Kentucky Seniors

**Press Release Date:** Wednesday, December 06, 2006

**Contact Information:** Vicki Glass, 502-696-5643 Office

Attorney General Greg Stumbo today issued a Cease and Desist letter to Buzz Telecom Corporation of Merrillville, Indiana, based upon a recent rise in complaints from elderly consumers alleging that Buzz sent them false billing statements for its long distance service that the consumers neither requested nor utilized. The Attorney General's letter informs Buzz that false billing statements are a violation of the Kentucky Consumer Protection Act and that the unauthorized phone service switching or "slamming" is a violation of KRS 278.535. Violations are punishable by fines of at least \$2,000 per violation. Violations of the Kentucky No Call law are subject to fines of \$5,000 per violation.

"In the last week, there has been a surge in complaints from Kentucky seniors who have received bogus billings from this company for services that they never requested," Stumbo said. "There are indications of not only false billings but violations of the state's No Call law and Slamming law. We've put the company on notice to cease any unlawful activity and we've issued a civil subpoena to further investigate their activities in Kentucky. They've been in trouble in other states which have had hundreds of complaints and we're taking action now to make sure we don't have the same degree of problems in Kentucky. If they've violated the law, they will be held accountable. I urge any consumers, particularly seniors, not to pay any bills from Buzz Telecom unless they requested its services." Kentucky's "anti-slamming" law prohibits one carrier from switching a consumer's long distance service from another telephone carrier without verifiable authorization.

The bills which consumers are receiving are from Buzz Telecom of Merrillville, Indiana and impose charges for long distance telephone services ranging from about \$9 to approximately \$36. Most of the complaints have been from senior citizens whose phone numbers were listed on the Kentucky Do Not Call list. Although consumers tell the Office of the Attorney General that they never received a telemarketing call from Buzz Telecom, at least one consumer who complained to Buzz was informed that it has an audiotape verification of the consumer ordering the service. However, the consumer denies ever agreeing to switch long distance carriers. Meanwhile, Buzz has not registered with the Office of the Attorney General to receive a copy of Kentucky's No Call list in order to avoid calling listed numbers.

"There have been 17 Kentucky complaints, most filed within the last week as consumers received their November billing statement," Stumbo added. "We have complaints from people in Lexington, Somerset, Flemingsburg, Ashland, Murray, Liberty and Brooksville. It appears Buzz has sent these false billings to consumers across the state," Stumbo said.

Buzz has been the subject of investigation in several states including, Ohio and North Carolina.

Since 2004, Buzz has also been the subject of proceedings before the Federal Communications Commission (FCC) and the Public Utility Commissions in Maine and Montana. The North Carolina Attorney General sued the company in August and obtained a Temporary Restraining Order November 2nd requiring Buzz to cease operations in North Carolina. The Kentucky Public Service Commission is assisting the Attorney General by providing ongoing and current information on complaints filed with the PSC.

Consumers receiving questionable billings from Buzz Telecom are urged to contact the Attorney General's Consumer Protection Office at (888)432-9257.

Last Updated 12/6/2006

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