

**FILE**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**PUCO**

In the Matter of the Commission :  
Staff's Investigation into the Alleged : Case No. 06-1443-TP-UNC  
MTSS Violations of Buzz Telecom. :

**PREPARED TESTIMONY  
OF  
KERRY J. ADKINS  
RELIABILITY AND SERVICE ANALYSIS DIVISION**

**SUBMITTED ON BEHALF OF THE STAFF OF  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

STAFF EXHIBIT \_\_\_\_\_

Date submitted: February 7, 2007

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1       1.   Q.   Please state your name and business address.

2           A.   My name is Kerry J. Adkins. I am employed by the Public Utilities  
3               Commission of Ohio (Commission or PUCO), 180 East Broad Street,  
4               Columbus, Ohio 43215-3793.

5  
6       2.   Q.   What is your current position and duties at the PUCO?

7           A.   I am a Public Utilities Administrator 2 in the Reliability and Service Analysis  
8               Division of the Service Monitoring and Enforcement Department. I am the  
9               section supervisor of the Competitive Energy and Telecommunications  
10              Section. This section manages the Commission staff's review of certification  
11              applications filed by competitive retail natural gas service (CRNGS) and  
12              competitive retail electric service (CRES) providers; drafts and enforces the  
13              CRES, CRNGS, and Minimum Telephone Service Standards rules; reviews  
14              natural gas, electric, and telecommunication utilities' tariffs for compliance  
15              with Commission rules and policies; and responds to customer issues and  
16              complaints associated with their telecommunication services and participation  
17              in natural gas and electric markets.

18  
19       3.   Q.   Please briefly describe your educational background and work experience.

20           A.   I received a B.A. degree in history and political science from Ohio Northern  
21               University and a Master of Public Administration degree with concentrations  
22               in regulatory policy and fiscal administration from The Ohio State University.

1 I have been employed by the PUCO for more than seventeen years in a  
2 number of analyst and management positions. Prior to my employment with  
3 the PUCO, I was the Administrative Deputy for the City of Whitehall, Ohio.  
4

5 4. Q. Have you previously testified before the Commission?

6 A. Yes. I have provided testimony before the Commission in rate proceedings  
7 and complaint cases.  
8

9 5. Q. What is the purpose of your testimony in this proceeding?

10 A. The purpose of my testimony is to support the findings and recommendations  
11 made in the staff reports filed in this case on December 11, 2006 (hereafter the  
12 "Initial Staff Report") and January 19, 2007 (hereafter the "Supplemental  
13 Staff Report").  
14

15 6. Q. Briefly, what are the staff's findings and recommendations in the Initial and  
16 Supplemental Staff Reports?

17 A. In the Initial Staff Report, the staff analyzed 122 contacts to the PUCO  
18 Hotline regarding Buzz Telecom (Buzz) and found evidence of several rule  
19 violations. Specifically, the staff found that Buzz representatives:  
20

- 21 ■ engaged in deceptive sales practices in violation of Rule  
22 4901:1-5-07, O.A.C.;

- 1           ▪ failed to clear the line during third-party verification of customer
- 2           switches in violation of Rule 4901:1-5-08 (A)(2) and FCC Rule
- 3           47CFR 64.1100 (C)(3);
- 4
- 5           ▪ switched customers' long distance service without the customers'
- 6           consent or without proof of the customers' consent; and,
- 7
- 8           ▪ failed to respond to staff investigations and requests for information
- 9           in violation of Rules 4901:1-5-03 and 4901:1-5-05, O.A.C.
- 10

11           The Report also presents several representative examples of customer contacts  
12           that allege the types of rule violations described above. A copy of the  
13           customer contacts discussed in the Initial Staff Report is attached to my  
14           testimony as "Exhibit KA-1."

15

16           In the Initial Staff Report, the staff concluded that Buzz's sales practices and  
17           apparent rule violations could cause significant and ongoing harm to Ohio  
18           customers. Therefore, the staff recommended that the Commission open a  
19           formal proceeding to:

- 20
- 21           (1)     Immediately suspend Buzz's operating certificate;
- 22

1           (2)     Direct Buzz to work with the staff to resolve all customer complaints,  
2                     including switching customers back to their preferred provider and  
3                     issuing all appropriate credits; and,

4  
5           (3)     Order Buzz to appear before the Commission and show cause as to  
6                     why the Commission should not permanently revoke Buzz's operating  
7                     certificate for the rule violations described in the report.

8  
9           The Commission considered the staff's recommendations and issued an Entry  
10           on December 13, 2006 that opened a formal investigation, directed Buzz to  
11           cease and desist marketing its services in Ohio, and ordered that Buzz file a  
12           response to each of the allegations made in the Initial Staff Report by  
13           December 28, 2006. Also on December 13, 2006, the staff received a form  
14           letter from Buzz's president Kurtis Kintzel that was sent in response to open  
15           investigations of customer complaints to the PUCO Hotline. The form letter  
16           indicated that Buzz had sold its assets, including trade names and rights to  
17           service and bill customers, to UMCC holdings. However, Buzz did not file a  
18           response to the allegations made in the Initial Staff Report by December 28,  
19           2006 as the Commission ordered. In addition, the staff continued to receive

1 customer complaints similar to those described in the Initial Staff Report<sup>1</sup> and  
2 copies of customer solicitations from Buzz despite the Commission's  
3 December 13, 2006 directive that it cease and desist from marketing in Ohio.  
4

5 The staff filed a Supplemental Staff Report on January 19, 2007 in order to  
6 bring to the Commission's attention that Buzz had failed to file a response to  
7 the allegations made in the Initial Staff Report by the deadline established by  
8 the Commission and to update the Commission by pointing out that the staff  
9 was continuing to receive customer complaints about Buzz and that Buzz was  
10 continuing to send solicitations to Ohio customers despite the Commission's  
11 directive that it not do so. The staff also made several recommendations to  
12 the Commission in the Supplemental Staff Report. In summary, the staff  
13 recommended the following actions.  
14

- 15 (1) The Commission should permanently revoke Buzz's operating  
16 certificate in Ohio, except for the purposes of addressing outstanding  
17 customer complaints, as a consequence of its failure to respond to the  
18 Commission as directed and its violations of the Commission's  
19 Minimum Telephone Standards rules.

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<sup>1</sup> As of the filing date of the Supplemental Staff Report on January 19, 2007, the staff had received a total of 274 Customer complaints to the PUCO Hotline about Buzz. Copies of these complaints are appended to the Supplemental Staff Report.

1           (2)    The Commission should order Buzz to cease all marketing activity in  
2                   Ohio and cease any attempt to collect balances due from Ohio  
3                   customers that were obtained via a transaction that violated the  
4                   Commission's rules.

5  
6           (3)    The Commission should inform the Federal Communications  
7                   Commission of Buzz's activities and rule violations in Ohio and put  
8                   all regulated telecommunications providers in this state on notice of  
9                   the Commission's revocation of Buzz's operating certificate to ensure  
10                  that no company is providing Buzz access to the network or  
11                  customers.

12  
13          (4)    The Commission should find that, as a result of its multiple rule  
14                  violations and failure to comply with the Commission's orders, Buzz  
15                  has failed to provide adequate service to its customers as required by  
16                  Rule 4901:1-5-02(E). The staff's attorneys advise that such a finding  
17                  by the Commission will enable customers that have been harmed by  
18                  Buzz's misleading, deceptive, and unconscionable sales practices to  
19                  go to a civil court to seek treble damages as redress for their harm.

20  
21          (5)    The Commission should order Buzz to pay a civil forfeiture in the  
22                  amount of \$294,400.00 for its failure to respond to the Commission as

1 directed, its failure to comply with the Commission's order that it  
2 cease and desist all solicitation of Ohio customers, and its multiple  
3 violations of the Commission's rules.

4  
5 (6) The Commission should take any other action that it deems  
6 appropriate.

7 7. Q. Are there any other developments that may have a bearing on this case that  
8 should be noted?

9 A. Yes. On January 10, 2007 a staff member in the Commission's Utilities  
10 Department received a copy of what appears to be a form letter dated January  
11 6, 2007 from Buzz's president indicating that Buzz was going out of business  
12 and requesting that each state that received the letter to cancel Buzz's  
13 operating certificate in that state. The Utilities Department staff member took  
14 the letter to the Commission's Docketing Division and an abandonment  
15 docket was opened as Case No. 07-23-TP-ABN. On January 16, 2007, an  
16 Attorney Examiner Appointed by the Commission issued an Entry that  
17 suspended review of Buzz's abandonment application in light of the ongoing  
18 Commission investigation of Buzz in this proceeding.<sup>2</sup>

19  

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2

This Entry was erroneously cited to be opened January 12, 2006 in the Supplemental Staff Report.

1 More recently on February 2, 2007, the staff received a letter signed by Buzz  
2 "Corporate Affairs" that states in pertinent parts: "Thank you for your recent  
3 correspondences regarding some (emphasis supplied) customer accounts...  
4 Enclosed you will find independent third party verifications for the billing  
5 telephone numbers on the attached page..." The letter had five compact disks  
6 enclosed that contain recordings of third party verifications of customer  
7 enrollments with Buzz, purportedly for those telephone numbers attached to  
8 the letters. It is not clear if Buzz intended this letter and attached third-party  
9 verification recordings (TPVs) as a response to the many requests for  
10 information that staff investigators sent to the company when investigating the  
11 customer complaints about Buzz that are detailed in the Initial and  
12 Supplemental Staff Reports, as a belated response to the staff's September 21,  
13 2006 formal information request, or as an answer to the Commission's  
14 directives and orders in this case. Regardless of Buzz's intent, however, the  
15 letter and associated TPVs are all but non-responsive to either the  
16 Commission or the staff. They fail completely to address the specific  
17 customer complaints appended to the Supplemental Staff Report and answer  
18 any of the allegations of rule violations detailed in the Staff Reports as  
19 directed by the Commission.

1       8. Q.    Do you have any recommendations?

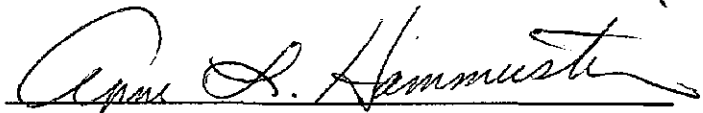
2           A.   Yes. I would respectfully recommend that the Commission find that Buzz has  
3               violated the Commission's rules and orders as detailed in the Initial and  
4               Supplemental Staff Reports and that the Commission adopt all of the staff's  
5               recommendations as set forth in the Supplemental Staff Report. Further, I  
6               would recommend that any ruling on Buzz's abandonment application in Case  
7               No. 07-23-TP-ABN be consistent with the staff's recommendations in this  
8               case.

9  
10       9. Q.   Does this conclude your pre-filed testimony?

11       A.   Yes.

## **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Testimony of Kerry J. Adkins submitted on behalf of the Staff of the Public Utilities Commission of Ohio was served by regular U.S. mail, postage prepaid, to the following parties of record.



**Anne L. Hammerstein**  
Assistant Section Chief

### **Parties of Record:**

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