

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Staff's)
Investigation into the Alleged Violations of) Case No. 06-1443-TP-UNC
the Minimum Telephone Service Standards)
by Buzz Telecom, Corporation.)

ENTRY

The attorney examiner finds:

- (1) On August 20, 2007, the Office of the Ohio Consumers' Counsel (OCC) filed a motion (OCC Motion) to preserve evidence and request for expedited ruling in this matter. Accompanying OCC's Motion is a memorandum in support (OCC Memorandum). OCC requests that the Commission, under Rule 4901-1-12, Ohio Administrative Code (O.A.C.), order Buzz Telecom, Corporation (Buzz) to preserve customer records containing evidence vital to this proceeding. Further, OCC seeks an expedited ruling and requests that the attorney examiner, upon his own motion and pursuant to Rule 4901-1-12(F), O.A.C., issue the expedited ruling without the filing of a memorandum contra, under circumstances where the issuance of such a ruling will not adversely affect a substantial right of a party.
- (2) As introduction, OCC's Memorandum notes that based on numerous slamming complaints against Buzz received by the Commission, the Commission and OCC sought sanctions against Buzz. In this matter, OCC has asked the Commission, among other things, to (a) order Buzz to identify all Ohio customers who were wrongfully billed by Buzz and reimburse those customers any charges that the customers paid to Buzz, (b) after Buzz has provided such reimbursement, revoke Buzz's Ohio certificate to provide telephone service, (c) assess a forfeiture of \$294,000 against Buzz for slamming and other violations, as recommended by Commission staff, (d) assess a forfeiture of \$1,790,000 against Buzz for violations of Revised Code requirements and O.A.C. rules pertaining to the transfer of Buzz assets to UMCC Holdings, Inc. (UMCC), (e) require Buzz to file with the Commission adequate security to ensure compliance with Commission orders to pay forfeitures, (f) inform the Federal Communications Commission of Buzz's

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actions, (g) order Buzz to cease all marketing and collections efforts, and (h) find that Buzz provided inadequate service to its customers.

- (3) Next, OCC's Memorandum explained that because Buzz and UMCC have apparently ceased long distance operations, OCC is concerned about the security of customer records and other documents involving the transfer of assets between Buzz and UMCC. OCC noted that during discovery and also during a deposition of UMCC President Scott Wilson (Mr. Wilson), Mr. Wilson stated that UMCC is rescinding its December 2006 transaction with Buzz and transferring back to Buzz those assets, including computerized customer billing records, that had been purchased from Buzz. OCC expressed additional concern because Buzz had asked the Commission to cancel its Ohio certificate, thus possibly providing Buzz with reason to believe that it has no obligation to maintain its customer records, even though the certificate has not been cancelled.

OCC adds that the destruction of such customer records could make it almost impossible to ensure that UMCC or Buzz reimburses those Ohio customers who the companies unlawfully billed and who subsequently made payments to the companies. Therefore, concluded OCC, the Commission should order Buzz to preserve all records regarding Ohio customers and other documents concerning the transfer of assets between Buzz and UMCC.

- (4) Regarding its request for an expedited ruling without the filing of a memorandum contra, OCC asserted that there would be no adverse affect upon any substantial right of Buzz. OCC noted that the Ohio Supreme Court has determined that the interest necessary to create a substantial right may be characterized as a "present interest" and an "immediate and pecuniary" interest. *Ohio Domestic Violence Network v. Pub. Util. Comm.*, 65 Ohio St. 3d 438, 439 (1992), citing *Ohio Contract Carriers Ass'n v. Pub. Util. Comm.*, 140 Ohio St. 160, 161-162 (1942). In OCC's opinion, a Commission order directing Buzz to retain the documents would not affect a pecuniary interest of Buzz. OCC concluded that an expedited decision by the Commission would help protect OCC's substantial rights in this proceeding on behalf of residential telephone customers by ensuring the

maintenance of documents necessary for the monetary remedies that OCC has proposed in this matter and in OCC's case against UMCC.

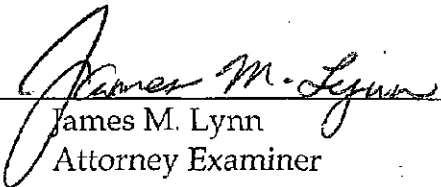
- (5) The attorney examiner agrees with OCC concerning the importance of the customer records in the proceeding and the fact that Buzz's interests would not be adversely affected by an order to preserve such records, even in the absence of the filing of a memorandum contra by Buzz. Therefore, the attorney examiner grants the OCC motion to preserve those assets, including computerized customer billing records, of former Buzz customers in Ohio until such time as the Commission orders otherwise.


It is, therefore,

ORDERED, That Buzz preserve those assets, including computerized customer billing records, concerning former Buzz customers in Ohio. It is, further,

ORDERED, That a copy of this entry be served upon Buzz by certified mail and to all other parties of record by ordinary mail.

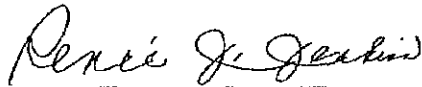
THE PUBLIC UTILITIES COMMISSION OF OHIO

By: 
James M. Lynn
Attorney Examiner

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Entered in the Journal

AUG 28 2007



Renee J. Jenkins
Secretary