

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of the Office)
of the Ohio Consumers' Counsel,)

Complainant,)

v.)

UMCC Holdings, Inc.)

Respondent.)

Case No. 07-546-TP-CSS

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 UMCC Holdings, Inc. (UMCC) 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 on May 7, 2007, OCC filed a complaint against UMCC alleging that UMCC had engaged in the business of providing telephone service in Ohio without Commission authorization. OCC further alleged that UMCC had purchased Buzz Telecom, Corporation (Buzz) accounts and assets without Commission approval or proper customer notification, had billed customers for telephone service provided after UMCC's accounts and assets were purchased from Buzz, and had not provided Commission or OCC contact information on the bills, as required by the Commission's minimum telephone service

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standards (MTSS). Finally, OCC asserted that UMCC had billed Ohio customers for telephone service without notifying customers that their local service cannot be disconnected for nonpayment of long distance charges, in violation of the MTSS, and had changed Ohio customers' long distance carriers without the customers' prior consent.

- (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 Scott Wilson (Mr. Wilson), UMCC's president, 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 UMCC 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 UMCC. 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 UMCC to retain the documents would not affect a pecuniary interest of UMCC. 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 Buzz.

- (5) The attorney examiner agrees with OCC concerning the importance of the customer records in the proceeding and the fact that UMCC'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 UMCC. 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 UMCC 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 UMCC by certified mail and to all other parties of record by ordinary mail.

THE PUBLIC UTILITIES COMMISSION OF OHIO

By:

James M. Lynn
James M. Lynn
Attorney Examiner

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Act

Entered in the Journal

AUG 28 2007

Reneé J. Jenkins

Reneé J. Jenkins
Secretary