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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY ON REHEARING

The Commission finds:

- (1) Pursuant to its Opinion and Order of October 3, 2007, the Commission determined that Buzz Telecom (Buzz) had violated a number of Ohio laws, Commission and Federal Communications Commission (FCC) rules and Commission orders. While the Commission assessed a forfeiture of \$251,000 for the violations discussed in the Opinion and Order, the Commission did not adopt the office of the Ohio Consumers' Counsel's (OCC) request that Buzz be ordered to identify all Ohio customers who were wrongly billed and require reimbursement for the affected customers of any charges that were paid to Buzz or to the local service provider as a result of wrongful billing. Specifically, the Commission noted the difficulty in identifying all affected customers and quantifying the extent of such individual customer's harm.
- (2) On November 2, 2007, OCC filed an application for rehearing of the Commission's Opinion and Order of October 3, 2007.
- (3) Section 4903.10, Revised Code, among other things, provides that any affected person, firm, or corporation may make an application for rehearing within 30 days following the journalization of the order. The Commission may grant and hold a rehearing on the matters specified in the application if, in its judgment, sufficient reason appears.
- (4) In support of its application for rehearing, OCC asserts that the Commission's Opinion and Order violates Section 4905.73(B), Revised Code, due to the failure to protect Ohioans from slamming by not ordering Buzz to identify and compensate aggrieved customers. OCC notes that pursuant to the Commission's Opinion and Order, the only relief available to harmed consumers is to file a complaint with a court and incur the potential expense of obtaining

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legal counsel. OCC submits that the amounts at issue for each individual subscriber are not likely large enough to justify such efforts.

OCC alleges that, although Section 4905.73, Revised Code, requires specific action following a finding of slamming activity, the Commission failed to order any of the mandated remedies. Further, OCC asserts that, while the Opinion and Order may serve as a basis for relief for those 121 Ohio consumers whose complaints were the subject of the Commission staff's investigation, the Opinion and Order is an inadequate remedy for the other Ohio subscribers who did not file a complaint, notwithstanding the fact that they too may have been slammed by Buzz or received inadequate service. Additionally, OCC avers that most Ohio consumers would likely be deterred from seeking damages pursuant to Section 4905.61, Revised Code, due to the fact that a judgment would first have to be obtained in Ohio and a second judgment would be required in Indiana, where Buzz is incorporated, in order to enforce the judgment.

In light of its stated concerns, OCC believes that the public interest would be best served if the Commission were to order Buzz to identify all Ohio consumers who the company unlawfully charged and to reimburse such customers for those charges. Further, OCC requests that the Commission clarify that the Opinion and Order in this proceeding serves as a basis for court action under Section 4905.61, Revised Code, by any Ohio customer of Buzz who may wish to seek treble damages from the company.

- (5) The Commission finds that OCC's application for rehearing presents reasonable grounds and should be granted in part and denied in part. Specifically, OCC is correct in its contention that, pursuant to Section 4905.73(B), Revised Code, the Commission is the proper forum for the purpose of ordering the appropriate remedy relative to an individual subscriber's contention of slamming. However, while the Commission has determined that Buzz has engaged in slamming activity, the Commission finds that the record does not consist of sufficient detail to allow the Commission to order slamming relief on an individual customer basis. Indeed, Buzz ceased responding to any individual customer complaints (Staff Ex. 3 at 3). Lastly, Buzz has transferred its customer base to another provider and no longer has individual customer records.

As to the request for individual customer remedies, any individual subscriber or OCC on their behalf is entitled to file a complaint and present the relevant evidence in order for the Commission to grant the appropriate relief pursuant to Section 4905.73, Revised Code. Although in reaching this determination, the Commission notes that the company is no longer in business, and has transferred its Ohio customer base to another provider. Additionally, the Commission notes that the company has failed to pay the ordered forfeitures in this case and is subject to enforcement actions in other states.<sup>1</sup> Therefore, the Commission recognizes that individual subscribers may find it difficult, if not impossible to obtain the applicable slamming relief.

With respect to OCC's request that the Commission clarify that the October 3, 2007, Opinion and Order serves as a basis for court action by any Ohio Buzz customer who may wish to seek treble damages from the company pursuant to Section 4905.61, Revised Code, the Commission finds that, while the Opinion and Order may serve as a basis for a court action pursuant to Section 4905.61, Revised Code, an individual subscriber must still demonstrate that he/she was injured as a result of the rule violation determined in this proceeding.

Finally, the Commission notes that its decision in this case is based on the unique circumstances of this proceeding and should not be viewed as precedent in future cases in which the Commission finds that a company has violated the applicable slamming rules.

It is, therefore,

ORDERED, That OCC's application for rehearing is granted in part and denied in part consistent with Finding (5). It is, further,

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<sup>1</sup> These states include Alabama, Florida, Georgia, Iowa, Kansas, Kentucky, Maine, Minnesota, Mississippi, Montana, North Carolina, Pennsylvania, and Wyoming (OCC Ex. 1 at 9-15).

ORDERED, That a copy of this entry on rehearing be served upon all parties and interested persons of record in this matter.

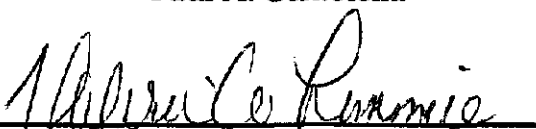
THE PUBLIC UTILITIES COMMISSION OF OHIO

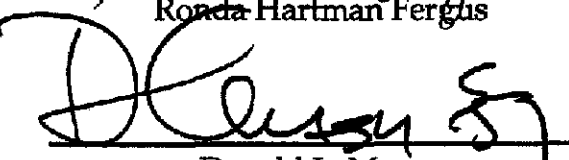
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Alan R. Schriber, Chairman

  
Paul A. Centolella

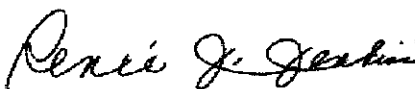
  
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Renee J. Jenkins  
Secretary