

PUCO

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Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



Terry L. Etter, Trial Attorney

David C. Bergmann

Richard C. Reese

Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

(614) 466-8574 Telephone

(614) 466-9475 Facsimile

[etter@occ.state.oh.us](mailto:etter@occ.state.oh.us)

[bergmann@occ.state.oh.us](mailto:bergmann@occ.state.oh.us)

[reese@occ.state.oh.us](mailto:reese@occ.state.oh.us)

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
Business Options Incorporated for a	)	Case No. 96-259-CT-RRJ
Certificate of Public Convenience and	)	
Necessity.	)	

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

On January 17, 2007, Business Options, Inc. ("Business Options" or "Company") filed a letter asking the Commission to cancel Business Options' certificate to operate as a reseller of long distance service in Ohio.<sup>1</sup> The only PUCO rules addressing voluntary cancellation of a certificate of authority are the abandonment rules. Under Ohio Adm. Code 4901:1-6-10(B)(4), absent Commission action, an application to abandon competitive services other than basic service is automatically approved on the 15<sup>th</sup> day after the application is filed.<sup>2</sup> In the letter, signed by Company president Kurtis Kintzel, the Company states that it "has not acquired new customers in years and no longer has any customers in your state." The letter also notes that Business Options has sold "some assets... including its trade names...."

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<sup>1</sup> The Company was granted a certificate in April 1996. The letter was originally docketed in Case No. 07-40-TP-ABN. That docket has since been voided, and the letter now appears only in the certification proceeding, Case No. 96-259-CT-RRJ.

<sup>2</sup> As is typical with this company and its affiliates, the request for abandonment was not made using the required Telecommunications Application Form. The PUCO has noted that failure to include the Telecommunications Application Form for a new application "will result in dismissal of the new application." Ohio Adm. Code 4901:1-6-03(A)(3).

Business Options, however, failed to mention that the Company is closely affiliated with Buzz Telecom, Corporation ("Buzz Telecom"). Both the PUCO Staff and OCC have been investigating Buzz Telecom in order to resolve consumer complaints against Buzz Telecom, including alleged deceptive sales practices.<sup>3</sup> On January 19, 2007, the PUCO Staff filed a 566-page supplement to its earlier report in the Staff Investigation. The supplement noted that, based on customer contacts with the PUCO, the Commission had opened two investigations regarding Business Options.<sup>4</sup>

Based on the failure of Buzz Telecom to respond to an order adopted by the Commission in the Staff Investigation, the PUCO Staff recommended that the Commission immediately:

- (1) Revoke Buzz's certificate of public convenience and necessity in accordance with this report;
- (2) Inform the [Federal Communications Commission] of Buzz's actions and put other providers in the state of Ohio on notice of the Commission's revocation of Buzz's certificate and ensure no company is providing Buzz access to the network or its customers;
- (3) Order Buzz to cease all marketing and collection efforts to the extent any such actions are occurring;
- (4) Find Buzz provided inadequate service to the customers of record in this case (allowing further customers to be added to the class in this docket) thus allowing those customers to seek treble damages in a civil court;
- (5) Order a civil forfeiture in the amount of \$294,400 based upon the nature of the violations and company size.

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<sup>3</sup> See *In the Matter of the Commission Staff's Investigation into the Alleged MTSS Violations of Buzz Telecom*, Case No. 06-1443-TP-UNC ("Staff Investigation"); *In the Matter of the Application of Buzz Telecom Corporation for New Operating Authority*, Case No. 02-2617-CT-ACE, Motion to Intervene, and Motion for Suspension of Full Operating Authority by the Office of the Ohio Consumers' Counsel (October 11, 2006).

<sup>4</sup> See Staff Investigation, Supplement to the Staff Report Concerning Buzz Telecom (January 19, 2007), Updated Facts and Timeline at 1.

(6) Take any other action the Commission deems appropriate.<sup>5</sup>

The PUCO Staff's recommendation regarding revocation of Buzz Telecom's certificate was limited; the PUCO Staff noted that the revocation should be "other than for purposes of addressing outstanding consumer concerns."<sup>6</sup>

Mr. Kintzel, as president of Buzz Telecom, also filed an abandonment case for Buzz Telecom;<sup>7</sup> that case has been suspended due to the Staff Investigation.<sup>8</sup> Based on the foregoing, as well as the information provided below, the PUCO should grant OCC's Motion to Intervene in this proceeding. The PUCO should also grant OCC's Motion to Suspend this proceeding in order to ensure that consumers may get the full benefit from the Staff Investigation.

## II. INTERVENTION

OCC moves to intervene in this proceeding under its legislative authority to represent the interests of the residential utility consumers of Ohio, pursuant to R.C. Chapter 4911. Pursuant to the intervention standard in R.C. 4903.221, and given that the ownership of Business Options and Buzz Telecom are one and the same, the interests of residential telephone customers may be "adversely affected" by this case, as described above. The criteria set forth in R.C. 4903.221(B) shall be considered by the Commission

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<sup>5</sup> Id. at 4.

<sup>6</sup> Id. at 2.

<sup>7</sup> *In the Matter of the Application of Buzz Telecom, Corporation to Cancel Its Authority to Provide InterLATA, IntraLATA and Interstate Long Distance Service in Ohio*, Case No. 07-23-TP-ABN (January 10, 2007). Concurrent with its intervention in this proceeding, OCC is moving to intervene in the Buzz Telecom abandonment proceeding.

<sup>8</sup> Id., Entry (January 16, 2007) at 1-2.

in deciding whether to grant a request for intervention:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

The nature and extent of OCC's interest lies, for example, in ensuring that residential telephone customers who have filed complaints against the Company or Buzz Telecom are not adversely affected by the decision in this case. OCC's legal position is directed toward ensuring, *inter alia*, that the issues, such as the need to make refunds to customers that residential telephone customers have with the Company or Buzz Telecom are fully resolved before the Company is permitted to abandon service in Ohio. OCC's intervention will not unduly prolong or delay the proceeding, but should provide insights that will assist the Commission in its treatment of Buzz Telecom. OCC will significantly contribute to the full development and equitable resolution of the issues herein. OCC brings its statewide, consumer-focused perspective to this case. OCC's interest in this case is consistent with its statutory role as the representative of residential consumers of public utility service.

Similarly, OCC meets the Commission's required showing for a party that has a "real and substantial interest" according to Ohio Adm. Code 4901-1-11(A)(2), and should therefore be permitted to intervene in these cases. Ohio Adm. Code 4901-1-11(B) states that the Commission may consider: (1) the "nature of the person's interest," (2) the "extent to which the person's interest is represented," (3) whether the intervention

“would unduly delay the proceeding,” and (4) the person’s “contribution to a just and expeditious resolution of the issues.”

In addition, OCC’s motion to intervene in the Staff Investigation was granted was granted on January 24, 2007.<sup>9</sup> Because the Staff Investigation and this proceeding are related, OCC should also be granted intervention here.

OCC meets the criteria set forth in R.C. 4903.221, the Commission’s rules and precedent of the Ohio Supreme Court.<sup>10</sup> OCC’s Motion to Intervene should be granted.

### **III. SUSPENSION**

Ohio Adm. Code 4901:1-6-04 allows suspension of any application on an automatic timeframe. Ohio Adm. Code 4901:1-6-10(B)(4) provides that, absent suspension, the Company’s application would automatically be approved on the 15<sup>th</sup> day following the filing.<sup>11</sup> That date would be February 1, 2007.

As noted above, the similar abandonment proceeding of the Company’s affiliate, Buzz Telecom, has been suspended because of the ongoing Staff Investigation. Subsequent to the Entry in the Buzz Telecom abandonment proceeding, the PUCO Staff submitted the supplement in the Staff Investigation, which notes that complaints about Business Options are a part of that proceeding. The supplement also contains a limited recommendation for revocation of the Buzz Telecom certificate, i.e., “other than for purposes of addressing outstanding consumer concerns.”

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<sup>9</sup> Staff Investigation, Entry (January 24, 2007) at 5.

<sup>10</sup> *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 11 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 15-16.

<sup>11</sup> Assuming that the Company’s letter is an application that falls under the automatic timeframe.

Because of the relationship between the Company and Buzz Telecom, and because of the PUCO Staff's limitation on its recommendation to revoke Buzz Telecom's certificate, the Company's application should not be approved automatically. The Commission should suspend this proceeding, as it did Buzz Telecom's abandonment proceeding.

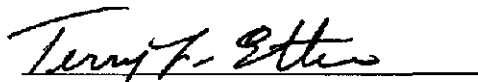
As noted above, if the Commission deems the Company's letter to be an application to abandon service, the application could be automatically approved next Thursday, February 1. An immediate suspension of this proceeding is therefore necessary in order to protect consumers.

#### **IV. CONCLUSION**

OCC's Motion to Intervene should be granted. The Commission also should immediately suspend this proceeding pending possible further action after the completion of the Staff Investigation.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



Terry L. Etter, Trial Attorney  
David C. Bergmann  
Richard C. Reese  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

(614) 466-8574 Telephone

(614) 466-9475 Facsimile

[etter@occ.state.oh.us](mailto:etter@occ.state.oh.us)

[bergmann@occ.state.oh.us](mailto:bergmann@occ.state.oh.us)

[reese@occ.state.oh.us](mailto:reese@occ.state.oh.us)



## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion to Intervene and Motion to Suspend by the Office of the Ohio Consumers' Counsel was served by first class United States Mail, postage prepaid, to the persons listed below, on this 26<sup>th</sup> day of January 2007.

  
Terry L. Etter  
Assistant Consumers' Counsel

## **SERVICE LIST**

**DUANE W. LUCKEY**  
Assistant Attorney General  
Chief, Public Utilities Section  
180 East Broad Street, 12<sup>th</sup> Floor  
Columbus, Ohio 43215-3793

**KURTIS KINTZEL**  
President  
Buzz Telecom Corporation  
P.O. Box 11735  
Merrillville, Indiana 46411