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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Buzz Telecom Corporation for New Operating Authority.	) ) )	Case No. 02-2617-CT-ACE
In the Matter of the Commission Staff's Investigation into the Alleged MTSS Violations of Buzz Telecom.	) ) )	Case No. 06-1443-TP-UNC
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
In the Matter of the Application of Business Options Incorporated for a Certificate of Public Convenience and Necessity.	) ) ) )	Case No. 96-259-CT-RRJ

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**MOTION TO CONSOLIDATE  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

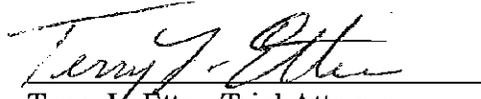
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The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of residential telephone customers, moves the Public Utilities Commission of Ohio ("Commission" or "PUCO") to consolidate the above-captioned proceedings, pursuant to Ohio Adm. Code 4901-1-12 and Ohio CivR 42(A)(1). The reasons for granting OCC's Motion are set forth in the attached Memorandum in Support.

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Respectfully submitted,

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

The current concerns in the four above-captioned cases all have their genesis in the misdeeds of Buzz Telecom, Corporation (“Buzz Telecom” or “Company”). During the past four years, the Company has been investigated by at least seven states and the Federal Communications Commission (“FCC”).<sup>1</sup> The FCC had even entered into a

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<sup>1</sup> See *In the Matter of the Application of Buzz Telecom Corporation for New Operating Authority*, Case No. 02-2617-CT-ACE (“02-2617”), Motion to Intervene and Motion for Suspension of Full Operating Authority by the Office of the Ohio Consumers’ Counsel (October 11, 2006) (“OCC Motions”), Attachment 2.

consent decree with Buzz Telecom and its affiliates regarding the Company's marketing practices, among other things.<sup>2</sup>

In Ohio, both OCC and the PUCO Staff have been investigating in order to resolve consumer inquiries about and complaints against the Company, including alleged deceptive sales practices. OCC is the representative of residential utility consumers in Ohio, under Ohio law. As a result of OCC's investigation, on October 11, 2006 OCC filed a motion to suspend Buzz Telecom's full operating authority in 02-2617. OCC asked the Commission to order Buzz Telecom to cease and desist from marketing new customers.<sup>3</sup> OCC also requested that the Commission require Buzz Telecom to show cause why its certificate in Ohio should not be revoked.<sup>4</sup>

On December 11, 2006, OCC renewed its motion to suspend Buzz Telecom's service in Ohio, and asked the Commission to revoke the Company's certificate of authority, to find that the Company's service is inadequate, to assess forfeitures against the Company as allowed by statute and to provide other relief.<sup>5</sup> The other relief that OCC requested included that the Commission:

should order an arrangement, by a near-term date certain, for the migration of existing customers of Buzz Telecom to new interexchange service providers, before the PUCO suspends Buzz's offering of services and revokes Buzz's certificate;<sup>6</sup>

should order Buzz Telecom to provide refunds to any past or present customers that were charged any untariffed fee or were

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<sup>2</sup> *In the Matter of Business Options, Inc.*, FCC EB Docket No. 03-85, Consent Order (February 20, 2004).

<sup>3</sup> OCC Motions at 6.

<sup>4</sup> *Id.* at 7.

<sup>5</sup> 02-2617, Renewed Motion (December 11, 2006).

<sup>6</sup> *Id.* at 6-8.

charged in excess of the tariffed rate for the service provided by the Company;<sup>7</sup> and

assess remedies and penalties for violations of the "slamming" provisions of R.C. 4905.72(B), after hearing.<sup>8</sup>

The same day that OCC filed its renewed motion, the PUCO Staff issued a report that, among other things, asked the Commission to order Buzz Telecom to show cause why its operating authority should not be revoked.<sup>9</sup> The Commission issued the order on December 13, 2006.

On January 10, 2007, Buzz Telecom filed a letter asking the Commission to cancel the Company's certificate to operate as a reseller of long distance service in Ohio.<sup>10</sup> In a related matter, an affiliate of Buzz Telecom, Business Options, Inc. ("Business Options"), has also sought to have its certificate cancelled.<sup>11</sup>

As discussed below, the four proceedings in Ohio – OCC's motion in 02-2617, the Staff Investigation, and the certificate cancellation cases – have a common basis, i.e., the wrongful acts of Buzz Telecom. In addition, the outcome of the Staff Investigation

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<sup>7</sup> Id. at 17.

<sup>8</sup> Id. at 14-16.

<sup>9</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"), Motion (December 11, 2006). On December 15, 2006, OCC filed a motion to intervene in the Staff Investigation; the motion was granted by an Entry issued on January 24, 2007.

<sup>10</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, Letter (January 10, 2007) ("Buzz Telecom Letter"). Because of the ongoing Staff Investigation and Buzz Telecom's failure to respond to the Commission's order in that proceeding, the Attorney Examiner suspended the abandonment proceeding on January 16, 2007. Case No. 07-23-TP-ABN, Entry (January 16, 2007) at 1-2.

<sup>11</sup> *In the Matter of the Application of Business Options Incorporated for a Certificate of Public Convenience and Necessity*, Case No. 96-259-CT-RRJ, Letter (January 17, 2007) ("Business Options Letter"). The letter originally was docketed as an abandonment case, Case No. 07-40-TP-ABN. That docket was later voided, however, and the letter was docketed in Business Options' certification case, 96-259-CT-RRJ.

has a direct bearing on the other three. Therefore, in order to ensure a complete resolution of the issues and for purposes of judicial efficiency, OCC urges the Commission to consolidate these proceedings.

**II. CONSOLIDATION IS NECESSARY IN ORDER TO ENSURE COMPLETE RESOLUTION OF THE ISSUES AND TO PROMOTE JUDICIAL EFFICIENCY.**

Ohio CivR 42(A)(1) allows for the consolidation of cases that have a similar subject matter:

When actions involving a common question of law or fact are pending before a court, that court after a hearing may order a joint hearing or trial of any or all the matters in issue in the actions; it may order some or all of the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

The four proceedings surrounding Buzz Telecom are eligible for consolidation.

OCC's motion to suspend Buzz Telecom's certificate and the Staff Investigation are both based on the numerous customer complaints against Buzz Telecom. OCC noted that more than 50 consumer complaints and inquiries had been received regarding the Company's marketing practices.<sup>12</sup>

On December 11, 2006, the PUCO Staff filed its first report regarding Buzz Telecom's operations.<sup>13</sup> The First Staff Report noted that, for the November 1, 2005 through October 31, 2006, timeframe, the PUCO Hotline logged 122 customer contacts

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<sup>12</sup> See 02-2617, OCC Motions at 4.

<sup>13</sup> Staff Investigation, Staff Report in Support of Motion Requesting a Commission-Ordered Investigation (December 11, 2006) ("First Staff Report").

regarding Buzz Telecom.<sup>14</sup> Seventy-six of those contacts involved claims of deceptive and/or misleading marketing practices.<sup>15</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 the PUCO had received an additional “65 letters marketing Buzz’s service in Ohio” since the Staff Investigation had been opened.<sup>16</sup> The Supplement also contained “supporting records for the 274 complaints handled by the Commission’s call center” regarding Buzz Telecom.<sup>17</sup> Based on the failure of Buzz Telecom to respond to the Commission order 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 FCC 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.
- (6) Take any other action the Commission deems appropriate.<sup>18</sup>

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<sup>14</sup> Id. at 3.

<sup>15</sup> Id.

<sup>16</sup> Staff Investigation, Supplement to the Staff Report Concerning Buzz Telecom (January 19, 2007) (“Supplement”), Updated Facts and Timeline at 2.

<sup>17</sup> Id. at 3.

<sup>18</sup> Id. at 4.

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>19</sup>

Shortly before the Supplement was filed, the Company filed the two requests for cancellation of the long distance authorizations for Buzz Telecom and Business Options. The stated reason for abandonment in both cases is that both companies no longer were acquiring customers in Ohio, no longer had any customers in Ohio and had sold "some assets ... including trade names...."<sup>20</sup> In the Staff Investigation, OCC has raised the issue of whether the asset sale – an integral part of the abandonment proceedings – resulted in an unauthorized transfer of control of the Company, in violation of R.C. 4905.48.<sup>21</sup> Such a transfer could increase the forfeitures that the Company would face in Ohio. Consolidating the abandonment cases with the Staff Investigation and the OCC Motions in 02-2617 would allow the Commission to examine all issues regarding Buzz Telecom and Business Options in one proceeding.

The consolidation of these proceedings is further supported by the transcript of the deposition of the Company's president, Kurtis Kinzle, taken by OCC on January 22, 2007 pursuant to Commission subpoena.<sup>22</sup> The transcript, incorporated here by reference, shows the connection between Buzz Telecom and Business Options, and the connection between the Company's marketing strategies, the Commission's investigation and the abandonment proceedings.

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<sup>19</sup> Id. at 2.

<sup>20</sup> Buzz Telecom Letter at 1; Business Options Letter at 1.

<sup>21</sup> See Staff Investigation, OCC Motion for a Full Suspension, Motion for Revocation, Motion for Finding, Motion to Investigate, Motion for Refunds and Forfeitures, Motion for Hearing (December 20, 2006) at 16.

<sup>22</sup> OCC filed the transcript in the Staff Investigation on January 25, 2007.

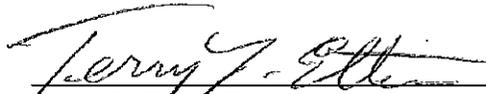
The issues involved in the four proceedings would best be addressed as a whole. In particular, the issue of customer reimbursements should be addressed before Buzz Telecom is allowed to abandon service. Consolidation of the four proceedings would promote judicial efficiency and would be in the public interest.

### III. CONCLUSION

Based on the above, the Commission should consolidate the four proceedings, pursuant to Ohio CivR 42(A)(1).

Respectfully submitted,

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CONSUMERS' COUNSEL

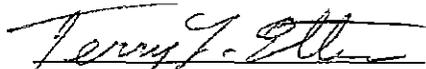


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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion to Consolidate 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 1<sup>st</sup> day of February 2007.

  
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