

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of:

COMPLAINT PURSUANT TO KRS 278.260 AND)
EMERGENCY MOTION FOR AN INVESTIGATION)
OF BUZZ TELECOM, CORP. WITH A HEARING)
TO REVOKE THE CERIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO)
PROVIDE TELEPHONY SERVICES OF)
BUZZ TELECOM, CORP. AND TO IMPOSE)
CIVIL PENALTIES PURSUANT TO KRS 278.990)

CASE NO. 2007-00068

ATTORNEY GENERAL'S RESPONSE
TO COMMISSION ORDER DATED 6 MARCH 2007

Comes now the Attorney General of the Commonwealth of Kentucky (hereinafter the "Attorney General"), by and through his Office of Rate Intervention, and responds to the Commission's 6 March 2007 order affording the Attorney General the opportunity to "state a claim upon which relief may be based" and to "attempt to state a *prima facie* case."¹

¹ Order, at page 1.

ARGUMENT

BUZZ HAS NOT FILED NOTICE OF ITS ELECTION UNDER KRS 278.543(1) AND REMAINS UNDER THE JURISDICTION OF THE COMMISSION. THUS, THE ATTORNEY GENERAL'S ORIGINAL REQUESTED RELIEF SHOULD BE AWARDED BECAUSE A CLAIM HAS BEEN STATED AND A CASE EXISTS UPON WHICH THE COMMISSION MUST STATUTORILY ACT.

The Commission goes to some length to disclaim jurisdiction over any complaint against Buzz by maintaining that a simple letter indicating the company's intent to close its business will suffice to request a withdrawal of its tariff. However, the Commission then bootstraps its position on KRS 278.541, KRS 278.542, KRS 278.543, and KRS 278.544, which have the "effect to deregulate much of the telecommunications industry in Kentucky, except for 'basic service' and other, very limited instances such as 'slamming' and 'cramming'." While the Attorney General is uncertain what the Commission means with "other, very limited instances", he notes that KRS 278.542 lists a total of 14 paragraphs referencing numerous statutes under which the Commission retains jurisdiction.

Moreover, the Commission fails to address the fact that KRS 278.543 requires a company to **adopt** the price regulation plan, or deregulation, embodied in KRS 278.541, 278.542, 278.543, and 278.544. Specifically, at paragraph (1), an election under this section shall be effective immediately upon written notification from the electing utility to the Commission. To the best of the undersigned's knowledge, and as he pointed out in his Complaint at page 1, footnote 1, Buzz has not made such a request. As a result, the Commission retains jurisdiction over Buzz.

The Commission makes reference to KRS 278.544(4) but fails to emphasize the applicable portion of the statute. In particular, the nonbasic services are exempted from action or review by the Commission under certain statutes **except** as specifically stated in KRS 278.541 to KRS 278.544. Nothing in these statutes shall affect the Commission's jurisdiction with respect to slamming under KRS 278.542(1)(g). As the Attorney General has emphatically pleaded, the Commission itself has received numerous complaints from citizens who have been billed by Buzz. While the Attorney General, who also has received complaints, has yet to confirm any slamming, the point remains that citizens are being dunned by Buzz illegally.² As evidenced by the refusal by Buzz to respond to the Commission's inquiries, serious questions remain outstanding and should be pursued by the Commission on its own accord with or without a complaint by the Attorney General. Indeed, even if a company has elected deregulation under KRS 278.040, the Commission shall regulate utilities and enforce the provisions of Chapter 278, including but not limited to KRS 278.542(1)(g). In light of the illegal activity, it should not err on the side of abstaining from taking jurisdiction, as it appears to be doing, but should take all action necessary to protect the citizens of the Commonwealth.

Although the Commission correctly states that the Attorney General has jurisdiction to pursue fraudulent billing practices in Circuit Court, the Commission here nonetheless ignores its statutory mandate to protect non-customers from a utility – a requirement that it has to date practiced. By way of a hypothetical example, if a non-

² The Attorney General has filed a case in Fayette Circuit Court against Buzz for billing for telephony services not rendered or illegally switching customers. A temporary restraining order was granted on 9 February 2007. See in *Commonwealth of Kentucky, ex rel. Gregory D. Stumbo, Attorney General v. Buzz Telecom Corporation*, Division 9, Civil Action No. 07-CI-701.

customer receives a bill from a utility that he does not owe, the Commission has exercised its jurisdiction over the utility and demanded that the company cease any attempts to collect same³. As another example, if a person within a service territory of a utility desires service or the restoration of service and the company refuses, the person, or non-customer, can complain to the Commission and seek relief in order to become a customer. Both types of hypothetical examples have been realized because, at least to date, the Commission has fulfilled its statutory mandate under KRS 278.040 to regulate utilities, regardless of whether the complaining person is a customer or a non-customer.

The Commission is incorrect when it maintains that it lacks jurisdiction to prevent slamming and can not penalize a company for engaging in such illegal activity. The Commission's own records evidence the possibility, if not the probability, of such conduct thus requiring the Commission to conduct the necessary review to determine whether the activity has occurred. Buzz has refused to respond any inquiries. The Commission has both the jurisdiction and authority to prevent this type of illegal conduct.

Stated more simply, going forward, a company would be able to engage in any prescribed, prohibited activity under KRS278.542 – including slamming – and escape Commission jurisdiction and authority by merely filing a letter announcing closure of its business from absconding money from Kentucky's citizens.

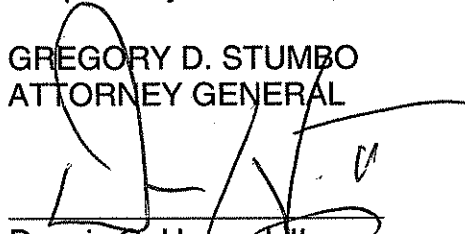
³ See, for example, *In the Matter of Roy Gaines Walton and Gerald Walton v. Kentucky Utilities Company*, Case No. 2005-00136.

CONCLUSION

WHEREFORE, in order to demonstrate that it has exhausted its statutorily mandated function, the Commission must afford the Attorney General his originally requested relief or, in the alternative, proceed independently of the Attorney General's complaint given the Commission's own evidence of illegal activity. To do otherwise, the Commission will turn its back on the current miscarriage of justice and endorse future, similar ones.

Respectfully submitted,

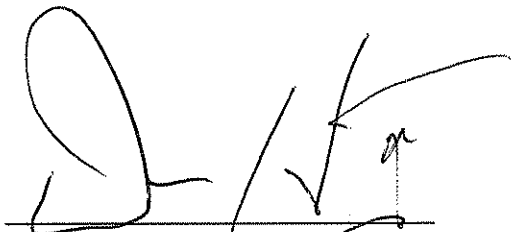
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Certificate of Service and Filing

Counsel certifies that an original and ten photocopies of this Response to Commission Order Dated 6 March 2007 were served and filed by hand delivery to Beth O'Donnell, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; furthermore, it was served by mailing a true and correct copy of the same, first class postage prepaid, to Buzz Telecom, Corporation at 8380 Louisiana Street, Merrillville, Indiana 46410, Buzz Telecom, P.O. Box 11735, Merrillville, Indiana 46410 and Buzz Telecom Corporation at National Registered Agents, Inc., 400 W Market Street, Ste 1800, Louisville, Kentucky 40202, all on this 23rd day of March, 2007.



Assistant Attorney General