

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,</p> <p style="padding-left: 40px;">Complainant,</p> <p style="padding-left: 40px;">vs.</p> <p>BUZZ TELECOM, CORP.,</p> <p style="padding-left: 40px;">Respondent.</p>	<p>DOCKET NO. FCU-06-55 (C-06-159, C-06-175, C-06-195, C-06-200, C-06-206, C-06-220, C-06-223, C-06-230, C-06-231, C-06-233, C-06-242)</p>
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**ORDER DOCKETING FOR FORMAL PROCEEDING,
CONSOLIDATING PROCEEDINGS, AND
SETTING DEADLINE FOR RESPONSE**

(Issued December 15, 2006)

On September 15, October 16, and November 1 and 15, 2006, pursuant to Iowa Code §§ 476.3 and 476.103, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) petitions for proceedings to consider civil penalties for alleged slamming or cramming violations committed by Buzz Telecom, Corp. (Buzz). On November 1 and 15, 2006, Consumer Advocate also filed with the Board motions to consolidate the various proceedings against Buzz. Based upon the record assembled in the informal complaint proceedings, the events to date can be summarized as follows:

1. Informal complaint proceedings

In April of 2006, Board staff began receiving complaints from Iowa consumers alleging they were misled into changing their long distance telephone service to Buzz.¹ According to the complaints, Buzz telemarketers claimed to be calling on behalf of the consumers' local telephone companies but failed to tell the consumers they were calling to switch them to a new service. The consumers reported that the telephone bills they received after being contacted by Buzz were higher than their previous bills. In some cases, consumers said they were charged for Buzz's services even though their long distance service was not actually switched to Buzz. Based on the number of complaints brought by or on behalf of elderly consumers, it appears Buzz may have targeted senior citizens, allegedly promising a senior discount in some cases. Many of the complainants reported that they live on fixed incomes and make few long distance calls, and some stated they do not subscribe to long distance service. Several complainants live in retirement homes and care facilities. Complainants were charged \$29.95 to "activate" the service from Buzz and a \$9.85 monthly service fee.

The following is a summary of the 11 complaints that are the subject of Consumer Advocate's pending requests for proceedings to consider civil penalties.

¹ From April through December 13, 2006, the Board received 146 written complaints against Buzz.

a. C-06-159

LaVon Maynard filed a complaint with the Board on July 26, 2006, stating she was contacted by a telemarketer who indicated Ms. Maynard was eligible for a special plan because of a partnership with her local telephone company. After the telemarketing call, Ms. Maynard was billed for monthly service charges from Buzz even though no change was made to her long distance service and she was still assigned to her preferred carrier.

Buzz responded to the complaint and provided a recording of a third-party verification (TPV) allegedly approving the change in Ms. Maynard's service. Ms. Maynard reviewed a copy of the recording and stated it is her voice on the tape, but explained she responded the way she did because she thought she was speaking with someone affiliated with her local telephone company.

Staff issued a proposed resolution on September 7, 2006, finding that slamming had occurred because Buzz misrepresented itself to Ms. Maynard and billed her for services even though she had not been switched away from her preferred carrier.

b. C-06-175

Ms. Aileen Hillyard filed a complaint with the Board on August 18, 2006, explaining she was contacted by a telemarketer who claimed to be with Qwest Corporation (Qwest). She was told she was eligible for a special program with a lower rate than what she was currently paying. She was then billed for services allegedly provided by Buzz.

Buzz responded to the complaint and provided a copy of a TPV recording allegedly approving the change. Ms. Hillyard reviewed a copy of the recording and indicated it was her voice on the tape, but she responded to the questions the way she did because she thought she was speaking with Qwest and had been promised a lower rate.

Staff issued a proposed resolution October 10, 2006, finding that slamming occurred because Buzz had misrepresented itself, causing Ms. Hillyard to believe she was speaking with her local phone company instead of a third party.

c. C-06-195

On September 15, 2006, Edna Stein filed a complaint with the Board alleging that Buzz misrepresented itself as being affiliated with her local telephone company, South Slope Cooperative Telephone Company. Ms. Stein characterized the call as "high-pressured" and stated she agreed only after the caller assured her five times that South Slope knew the telemarketer was calling. Ms. Stein explained her monthly South Slope bill is normally \$23, but the Buzz charges brought the bill to over \$60.

Buzz responded to the complaint and provided a TPV recording as proof that Ms. Stein authorized the change of her long distance provider and provided her mother's maiden name as a security password. Buzz claimed Ms. Stein requested its long distance services. Buzz also stated it had issued a credit and canceled the account.

Staff issued a proposed resolution on October 23, 2006, stating that, because of a long distance service provider freeze, Ms. Stein's service had not been switched.

Staff concluded that the Buzz charges were the result of the telemarketer misleading Ms. Stein into cooperating with the verification process. Buzz did not respond to staff's requests for clarification of whether a full credit was issued and for contact information for the verification company. Staff therefore found the charges billed on Ms. Stein's account were not authorized and were the result of cramming.

d. C-06-200

On September 22, 2006, Jason Blackman filed a complaint with the Board claiming that Buzz contacted him and offered a lower rate than his current long distance provider and to waive its \$39.80 start-up fee. Mr. Blackman stated Buzz did not honor the promotion to waive the fee. He also alleged the TPV was conducted improperly because he was never transferred to someone outside of Buzz.

Buzz responded to the complaint and provided a TPV recording as proof that Mr. Blackman ordered its long distance service and provided his date of birth as a security password. Buzz stated it issued a credit of \$39.80. Buzz did not respond to Mr. Blackman's allegation that the TPV was conducted improperly. Further, Buzz did not respond to staff's request to clarify whether the \$39.80 credit was a full credit and to provide the address and telephone number of the TPV company and proof that a written notice was provided to Mr. Blackman within 30 days after the account was established.

Staff issued a proposed resolution on November 1, 2006, concluding the charges were the result of cramming because Buzz provided no assurance that the TPV was completed by a company independent of Buzz or its telemarketing agent.

Staff also concluded that the telemarketer misled Mr. Blackman into cooperating with the TPV by falsely stating that the start-up fees would be credited.

e. C-06-206

On September 25, 2006, Ron Semran filed a complaint with the Board alleging that Buzz misrepresented itself as being affiliated with his local telephone company, Central Scott Telephone Company (Central Scott), and could save him \$10 per month on local telephone fees. Mr. Semran explained that he called Central Scott after the call from Buzz and learned that statements in Buzz's sales pitch were not true. He stated he attempted that same day to cancel the order, but Buzz's customer service number did not work. Two days later he reached a representative who promised to cancel the account so that no charges would bill. However, Buzz billed the set-up and monthly fees.

Buzz responded to the complaint and provided a TPV recording as proof that Mr. Semran ordered its long distance service and provided his mother's maiden name as a security password. Buzz stated it had issued a credit and canceled the account.

Staff issued a proposed resolution on October 23, 2006, stating that, because of a long distance service provider freeze, service on Mr. Semran's account had not been switched. Staff concluded the Buzz charges were the result of the telemarketer misleading Mr. Semran into cooperating with the verification process. Buzz did not answer staff's request to clarify that a full credit was issued and to provide contact information for the verification company. Staff found the charges billed on

Mr. Semran's account were not authorized and, therefore, were the result of cramming.

f. C-06-220

On October 5, 2006, Deb Billingsley filed a complaint with the Board on behalf of her mother, Lois Lebo, who lives in a nursing home in Boone.

Ms. Billingsley stated her mother is not mentally competent to make decisions on business transactions such as telephone service. Ms. Billingsley had been unsuccessful in reaching Buzz.

Buzz responded to the complaint and provided a TPV recording as proof that Ms. Lebo authorized the service and provided her maiden name as her security pass code. Buzz stated it canceled the account and issued a full credit.

Board staff issued a proposed resolution on October 18, 2006, stating Ms. Lebo authorized the change in service. Staff's investigation showed that no change in carrier was made, but charges were billed on the account. Staff found the charges billed on Ms. Lebo's account were not authorized and, therefore, were crammed on the telephone bill.

g. C-06-223

On October 9, 2006, Mary Ewen filed a complaint with the Board on behalf of her mother, Doris Ewen. Mary Ewen stated her mother lives in a nursing home and was contacted by someone from Buzz claiming to be affiliated with her local telephone provider, Clear Lake Telephone Company. Mary Ewen stated her

mother's designated long distance service provider was changed without her consent.

Buzz responded to the complaint and provided a TPV recording as proof that Doris Ewen authorized the change of her long distance provider. Buzz stated the TPV recording was difficult to hear and did not meet Buzz's standard. Buzz issued a credit for the charges and closed the account.

Staff issued a proposed resolution on October 25, 2006, finding the TPV recording was difficult to hear. Staff noted that Doris Ewen questioned the fees and her response to the TPV may have been misinterpreted. Staff found the TPV did not comply with Board rules and, therefore, the change in carrier was not authorized.

h. C-06-230

On October 18, 2006, Katie Herman filed a complaint with the Board stating she was misled by Buzz. She stated although she was told there would be no charge for the change in service and she would receive a senior discount, she was billed for a connection fee and a full monthly service fee. Buzz failed to respond to the complaint.

On November 13, 2006, staff issued a proposed resolution finding Buzz violated the Board's rules by default. Staff's investigation showed Ms. Herman's long distance provider was changed. Staff directed Buzz to credit the charge in full and close the account.

i. C-06-231

On October 18, 2006, Orin Dundee filed a complaint with the Board alleging that Buzz billed him even though Alpine Communications, L.C., (Alpine) was supposed to be his telephone service provider. He provided a copy of a bill from Buzz for \$7.91 and stated he was not able to reach a representative to discuss the charges because Buzz's telephone number was constantly busy.

Buzz did not respond to the complaint. Alpine indicated that Buzz did not change the long distance carrier. Alpine issued a credit of \$21.90 to clear the Buzz charges off of the Alpine bill.

Staff issued a proposed resolution on November 13, 2006, finding that Buzz violated Board rules by not responding to the complaint. Staff directed Buzz to fully credit and close the account.

j. C-06-233

On October 19, 2006, Mildred C. Toney filed a complaint with the Board alleging that Buzz switched her long distance service without authorization. Buzz did not respond to the complaint. Qwest, Ms. Toney's local carrier, indicated that Buzz changed her long distance service and Qwest sent back a charge of \$29.95 to clear the Buzz charges from the Qwest bill.

Staff issued a proposed resolution on November 13, 2006, finding that Buzz violated Board rules by not responding to the complaint. Staff directed Buzz to fully credit and close the account.

k. C-06-242

On October 30, 2006, Madelyn Connolly filed a complaint with the Board stating she received a bill from Buzz but had not heard about the company.

Ms. Connolly stated she has selected Qwest for her phone service. Ms. Connolly was billed directly by Buzz. Buzz failed to respond to the complaint.

On November 13, 2006, staff issued a proposed resolution finding that Buzz violated the Board's rules. Staff explained its investigation showed Ms. Connolly's telephone service provider was not changed. Staff directed Buzz to credit the charge and close the account.

2. Consumer Advocate's requests for proceedings to consider civil penalties

On September 15, 2006, Consumer Advocate filed a petition for a proceeding to consider a civil penalty in File No. C-06-159.

On October 16, 2006, Consumer Advocate filed a petition for a proceeding to consider a civil penalty and other remedies in File No. C-06-175.

On November 1, 2006, Consumer Advocate filed a petition for proceedings to consider civil penalties and other remedies in File Nos. C-06-195, C-06-206, C-06-220, C-06-223, and a motion to consolidate those proceedings with the proceedings in File Nos. C-06-159, C-06-176,² and C-06-175.

² On December 4, 2006, the Board issued an order granting Consumer Advocate's request for proceeding to consider civil penalty and docketing C-06-176, an informal complaint proceeding involving similar allegations against Buzz, for formal proceeding identified as Docket No. FCU-06-55.

On November 15, 2006, Consumer Advocate filed a petition for proceedings to consider civil penalties and other remedies in File Nos. C-06-200, C-06-230, C-06-231, C-06-233, and C-06-242 and a motion to consolidate these files with the other proceedings against Buzz.

In the petitions, Consumer Advocate states the complaints against Buzz allege multiple fraudulent and abusive practices in Buzz's telemarketing activities, particularly as directed to elderly lowans. Consumer Advocate states: 1) Buzz has misrepresented its affiliation with customers' local telephone companies; 2) Buzz has misrepresented that its rates are lower than those of the customers' existing carriers; 3) Buzz has misrepresented that certain charges would be refunded or credited; 4) Buzz has not obtained verification from an independent third party; 5) TPV recordings submitted by Buzz have not been authentic; and 6) customers have not been able to speak to Buzz to inquire or complain about charges as they have been kept on hold for extended periods of time.

Consumer Advocate states it is well established that misrepresentations do occur during the unrecorded portion of the call and contends that the potential for misrepresentation is elevated in the telemarketing context. Consumer Advocate argues that the misrepresentations in these cases were fraudulent and vitiate any authorization the consumers may have given for the changes in service. Consumer Advocate contends civil monetary penalties should be assessed in order to secure future compliance with the statute. Also, Consumer Advocate suggests it appears that Buzz may have engaged in a pattern of violations in these and other cases and

suggests that the Board consider implementing the remedies provided for in Iowa Code § 476.103(5).³ Consumer Advocate argues a formal proceeding is necessary to give Buzz notice and opportunity for hearing; affirm staff's determinations that Buzz committed a slamming or cramming violation in these cases; consider civil penalties in an amount to deter future violations; and to consider the penalties for a pattern of violations.

Buzz has not responded to any of Consumer Advocate's petitions for proceedings to consider civil penalties.

3. Discussion

The Board concludes there are reasonable grounds for further investigation of whether the consumers in these cases cooperated with the third-party verification process based on the telemarketer's various assurances that the telemarketer was calling on behalf of or was affiliated with the consumer's local telephone company, was offering a senior discount, or would waive certain charges. The Board agrees with Consumer Advocate that further investigation of the alleged misrepresentations, and of other alleged problems with the third-party verifications and with Buzz's sales tactics in general, is necessary.

³ If the Board determines, after notice and opportunity for hearing, that a service provider has shown a pattern of violations of rules adopted pursuant to § 476.103, Iowa Code § 476.103(5) allows the Board to prohibit other service providers from billing charges on behalf of the violating provider and prohibit local exchange service providers from providing exchange access services to the violating provider, among other remedies.

Also, the Board concludes that further investigation is necessary to determine whether the Board should assess civil penalties, whether Buzz engaged in a pattern of violations, and whether the Board should implement the remedies provided for in Iowa Code § 476.103(5). Therefore, the Board will grant Consumer Advocate's requests for proceedings to consider civil penalties. Also, because these complaints involve allegations similar to those raised in another proceeding involving Buzz, the Board will consolidate these proceedings with Docket No. FCU-06-55.

Finally, the Board will delay establishing a procedural schedule to allow Buzz an opportunity to respond to the allegations raised in Consumer Advocate's petitions. However, given the number of complaints alleging similar misconduct by Buzz and because the Board continues to receive complaints involving Buzz, the Board believes it is appropriate to accelerate this proceeding. Therefore, the Board will require Buzz to respond to the allegations raised in Consumer Advocate's petitions within seven days of the date of this order.

The Board notes that its December 4, 2006, order docketing File No. C-06-176 for formal proceeding set a deadline of January 3, 2007, for Buzz to respond. The Board will shorten that deadline to require Buzz to respond within seven days of the date of this order

IT IS THEREFORE ORDERED:

1. The petitions for proceedings to consider civil penalties and other remedies filed by the Consumer Advocate Division of the Department of Justice on September 15, October 16, and November 1 and 15, 2006, are granted. File Nos.

DOCKET NO. FCU-06-55 (C-06-159, C-06-175, C-06-195, C-06-200, C-06-206,
C-06-220, C-06-223, C-06-230, C-06-231, C-06-233, C-06-242)
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C-06-159, C-06-175, C-06-195, C-06-200, C-06-206, C-06-220, C-06-223, C-06-230,
C-06-231, C-06-233, and C-06-242 are docketed for formal proceeding, identified as
Docket No. FCU-06-55.

2. The motions to consolidate filed by the Consumer Advocate on
November 1 and 15, 2006, are granted. File Nos. C-06-159, C-06-175, C-06-195,
C-06-200, C-06-206, C-06-220, C-06-223, C-06-230, C-06-231, C-06-233, and
C-06-242 are consolidated with Docket No. FCU-06-55.

3. Buzz Telecom, Corp., is directed to file a response to Consumer
Advocate's petitions within seven days of the date of this order.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 15th day of December, 2006.