

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, typically a new long distance 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 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. Charges from Buzz included varying combinations of charges for long distance calls, a \$9.85 monthly service fee, a \$19.95 cancellation fee, and a \$29.95 activation fee.

Staff forwarded each of the complaints to Buzz for response. Buzz did not respond to any of the 17 complaints that are the subject of this order. Board staff's proposed resolutions found that Buzz violated the Board's rules by failing to respond to the complaints. In each case, staff directed Buzz to close the account and credit all charges.

In the petition for proceeding to consider civil penalties and other remedies, Consumer Advocate states the complaints against Buzz allege multiple fraudulent

¹ From April 2006 through February 15, 2007, the Board received 296 written complaints against Buzz.

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) third-party verification 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 and unreasonable periods of time.

Consumer Advocate states it is well established that misrepresentations sometimes occur during the unrecorded portion of a marketing 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 vitiates 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).²

² 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.

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 sufficient to deter future violations; and to consider the penalties for a pattern of violations.

On February 12, 2007, the Board received a letter from Mr. Kurtis Kintzel, the president of Buzz, apparently intended as a response to the allegations in Consumer Advocate's petitions. In the letter, Buzz asserts it does not have an affiliation with the local telephone companies; Buzz employees were told to represent Buzz as its own long distance company; sales representatives were monitored; the independent marketing firms used by Buzz used the same verification scripts as Buzz; Buzz's activation fee and long distance rates were disclosed to consumers; Buzz issued credits to consumers asking for credits and did not attempt to collect unpaid charges; Buzz obtained authentic verifications from an independent verification company; and consumers were able to discuss problems with Buzz, although when Buzz did not have enough employees to take customer calls, a voicemail system was installed. Further, Buzz asserts it did not purchase lists of senior citizens and did not target senior citizens in its telemarketing efforts.

On February 26, 2007, the Board received a letter from Buzz, attached to which was a compact disc marked "Buzz Telecom Verifications." The letter also included a list of 25 telephone numbers. It is not apparent from the information provided by Buzz whether the telephone numbers and verification recordings relate to

any of the 17 complaints addressed by this order. The Board finds that Buzz has not provided a meaningful response to Consumer Advocate's petition. Buzz did not provide the Board with sufficient information to connect the alleged third-party verification recordings to particular complaints before the Board. Such information would have allowed the Board to evaluate whether Buzz had shown it obtained appropriate authorization for the changes in service alleged to have occurred in these complaints. Further, in the letter received on February 26, 2007, Buzz does not identify to which complaints its response is meant to apply and does not respond to the specific allegations in each informal complaint before the Board.

In light of the incomplete responses from Buzz, 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.

Also, the Board concludes that further investigation is appropriate to determine whether the Board should assess civil penalties. 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.

With respect to Consumer Advocate's request for further investigation to determine whether the penalties provided in Iowa Code § 476.103(5) should be applied in these cases, the Board notes that in an order issued on January 30, 2007, in Docket No. FCU-06-55, the Board concluded that Buzz had engaged in a pattern of violations with respect to other complaints and issued appropriate penalties for those violations. The January 30, 2007, order prohibiting all carriers from serving or billing for Buzz remains in effect.

Finally, the Board will delay establishing a procedural schedule to allow Buzz an opportunity to provide a complete response to the allegations Consumer Advocate raises in its petition. Given the number of complaints alleging similar misconduct by Buzz, the Board believes it is appropriate to accelerate this proceeding. Therefore, the Board will require Buzz to provide a complete response to the allegations raised in Consumer Advocate's petitions within seven days of the date of this order. Buzz's response must identify and specifically address the allegations made in each of the 17 complaints addressed in this order. Buzz is cautioned that no extensions of this deadline will be granted. Further, if Buzz means to rely on the recordings of the third-party verifications received by the Board on February 26, 2007, it must provide the Board with more specific information explaining how the recordings correspond to the 17 complaints addressed in this order.

IT IS THEREFORE ORDERED:

1. The "Petition for Proceeding to Consider Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on February 9, 2007, is

granted. File Nos. C-07-6, C-07-20, C-07-26, C-07-27, C-07-28, C-07-32, C-07-33, C-07-34, C-07-36, C-07-37, C-07-38, C-07-39, C-07-40, C-07-41, C-07-45, C-07-46, and C-07-49 are docketed for formal proceeding.

2. The motion to consolidate filed by the Consumer Advocate on February 9, 2007, is granted. File Nos. C-07-6, C-07-20, C-07-26, C-07-27, C-07-28, C-07-32, C-07-33, C-07-34, C-07-36, C-07-37, C-07-38, C-07-39, C-07-40, C-07-41, C-07-45, C-07-46, and C-07-49 are consolidated with Docket No. FCU-06-55.

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

UTILITIES BOARD

/s/ John R. Norris

/s/ Curtis W. Stamp

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 5th day of March, 2007.