

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
Marshall Johnson
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner

In the Matter of the Commission's
Investigation of UMCC Holdings' Provision of
Telephone Service in Minnesota

ISSUE DATE: July 5, 2007

DOCKET NO. P-999/CI-07-24

ORDER REFERRING VIOLATIONS FOR
CIVIL PENALTIES, REQUIRING UMCC TO
CEASE AND DESIST, AND OTHER
ACTION

PROCEDURAL HISTORY

On January 12, 2007, the Commission revoked the authority of Buzz Telecom (Buzz) and Business Options, Inc. (Business Options) to do business in Minnesota. The Commission also opened an investigation of UMCC Holdings, Inc. (UMCC).¹

UMCC is under investigation because it was identified in a letter sent to the Minnesota Office of the Attorney General on December 18, 2006 by the president of Buzz and Business Options. The letter identified UMCC as the successor for the provision of service formerly provided by Buzz and Business Options. The letter did not indicate whether or not UMCC would provide telephone service in Minnesota in the future.

On January 18, 2007, the Commission issued a Notice for Comments to gather information about UMCC. The Notice requested information from Qwest and other parties regarding the extent and nature of any telephone service that UMCC or its affiliates was providing in Minnesota.

On March 19, 2007, the Residential Utilities Division of the Office of the Attorney General (RUD/OAG) filed comments. The RUD/OAG filing indicated that UMCC was operating and billing customers as of March 1, 2007.

On March 19, 2007, Qwest filed comments.

On March 23, 2007, the Commission requested further information from Qwest regarding the business arrangements between Qwest and UMCC and/or Ultimate Medium of Minnesota, Inc.

¹ Cease and Desist Order Revoking Authority, Requiring Disconnection, and Opening an Investigation, Docket Nos. P-5331,6189/PA-05-621; P-6189/RV-05-1597; P-999/CI-07-24 (January 12, 2007).

On April 2, 2007, Qwest responded to the Commission inquiry, raising federal confidentiality concerns about the providing the information requested, but indicating its willingness to comply in response to an administrative subpoena.

On April 5, 2007, the Commission met to consider whether to subpoena records and information from Qwest relevant to its investigation of UMCC. A representative of UMCC participated by telephone and authorized Qwest or others to provide data pertaining to UMCC to the Commission.

On April 9, 2007, the Commission issued a Notice of Revised Comment Period soliciting comments regarding UMCC or any other entities providing telephone service to customers as a successor to Buzz or Business Options.

On April 9, 2007, the Department of Commerce (the Department) sent a letter to UMCC, requesting that UMCC apply for a certificate of authority or provide a response as to why it believes it does not need a certificate of authority, as well as other information requests relevant to this investigation. The Department has received no response from UMCC to the letter, requests for information, or follow-up telephone calls from the Department.

On April 13, 2007, Qwest responded to the Commission's March 23 inquiry and the Department's request for information.

On May 7, 2007, the RUD/OAG filed a response.

On May 9, 2007, the Department filed its response.

On June 14, 2007, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

A. Department and RUD/OAG Recommendations

Based on the investigation conducted, the Department recommended that the Commission find that UMCC is in violation of Minn. Statutes § 237.74, subd. 1, § 237.74, subd. 12, § 237.662, subd. 1 & 2, and § 237.661, subd. 2, and refer the matter to the Office of the Attorney General to pursue civil penalties. The Department also recommended that the Commission order UMCC to cease providing and billing for telecommunications service in Minnesota, as well as other relief.

The RUD/OAG recommended that the Commission continue its own efforts to investigate and address violations of Minnesota law by UMCC, but did not recommend a referral to the Office of the Attorney General, citing longer time constraints.

B. Commission Analysis and Action

Based on the investigation conducted, and the lack of cooperation and/or response from UMCC following its appearance at the April 5, 2007, Commission meeting, the Commission finds as follows:

According to a letter from Buzz and Business Options received by the RUD-OAG on December 13, 2006, Buzz and Business Options transferred the right to bill and serve customers to

UMCC, another reseller of Qwest long distance services. UMCC bills to Minnesota customers state that, "On December 1, 2006 UMCC Holdings, Inc. acquired the active and valid long distance customers of Buzz Telecom and Business Options."² It is therefore clear that UMCC acquired some or all of the former customer base of Buzz and/or Business Options.

UMCC did not request Commission approval to acquire Buzz and/or Business Options customers, and has not shown that the acquisition is in the public interest, which the Commission finds to be in violation of Minn. Stat. § 237.74, which requires prior Commission approval for the acquisition or transfer of control of the assets or customers of a telecommunications carrier.

UMCC has not applied for or obtained a Certificate of Authority to provide telecommunications service in Minnesota, in violation of Minn. Stat. § 237.74, subd. 12. In addition, despite billing Minnesota customers, UMCC has no tariff on file with the Commission, in violation of Minn. Stat. § 237.74, subd. 1.

It also appears that UMCC was in violation of Minn. Stat. § 237.661, subd. 2, the anti-slamming prohibitions. From the evidence available, it does not appear that Buzz customers were notified of the pending disconnection of services on November 28, 2006. Buzz and UMCC appear to have transferred at least a portion of Buzz's former Minnesota customers to UMCC shortly after the November 28 disconnection of services without providing customers the opportunity to select their own long distance carrier.

Finally, UMCC is in violation of Minn. Stat. § 237.662, subd. 1 and 2, which addresses the notice and disclosure requirements of long distance providers.

Based on the foregoing, and the recommendations of the Department, the Commission will order UMCC to issue refunds for all revenues collected from Minnesota customers for unauthorized intrastate telecommunications service and billings. The Commission will also order UMCC to file the records that demonstrate that it has complied with this requirement.

The Commission will also order UMCC to notify affected customers of the pending disconnection and their opportunity to choose another long distance carrier. In an effort to notify all affected customers, the Commission will issue a press release to inform Minnesota consumers that Buzz, Business Options, and UMCC are not authorized to provide telecommunications service in Minnesota, and that customers who have received bills from these companies are not obligated to pay them.

Further, the Commission will order all Minnesota telecommunications service providers to discontinue providing service (including the provision of billing detail that has enabled UMCC to bill Minnesota customers) to UMCC in Minnesota, once notification is complete.

Finally, the Commission will require Qwest, in the event of a customer complaint regarding lack of notice given by UMCC, to provide information as to the names and addresses of UMCC customers.

² UMCC was operating and billing customers in Minnesota as recently as March 1, 2007, according to bills from the Company received by Minnesota customers, as evidenced in the March 19, 2007 comments of RUD/OAG.

ORDER

1. The Commission finds that UMCC is in violation of Minn. Stat. §§ 237.74, subd. 1, 237.74, subd. 12, 237.662, subd. 1 and 2, and 237.661, sub. 2 and refers these violations to the Office of the Attorney General to pursue civil penalties pursuant to Minn. Stat. § 237.461.
2. UMCC shall cease providing and billing for telecommunications service in Minnesota.
3. UMCC shall issue refunds within 30 days of this Order, for all amounts collected from Minnesota customers for unauthorized intrastate telecommunications service and billings.
4. UMCC shall file a report and records demonstrating that it has complied with the requirement of Paragraph 3 within 10 days of completion of the refund.
5. UMCC shall notify affected customers that their service with UMCC will be disconnected and that the customers can choose another long distance carrier. UMCC should submit its proposed notice to customers to the Commission, RUD/OAG and the Department within five days of the Commission's Order for review and approval.
6. After UMCC has notified affected customers that UMCC will not be providing service in Minnesota, all Minnesota telecommunications providers shall discontinue providing service (including billing detail that would allow UMCC to bill Minnesota customers) to UMCC.
7. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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