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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

OCT 27 2003

Federal Communications Commission  
Office of the Secretary

In the Matter of	)	EB Docket No. 03-85
	)	
BUSINESS OPTIONS, INC.	)	File No. EB-02-TC-151
	)	NAL/Acct. No. 30033217002
Order to Show Cause and	)	FRN: 0007179054
Notice of Opportunity for Hearing	)	

To: Chief Administrative Law Judge  
Richard L. Sippel

**ENFORCEMENT BUREAU'S**  
**MOTION FOR PARTIAL SUMMARY DECISION**

Respectfully submitted,

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## SUMMARY

The Enforcement Bureau seeks partial summary decision with respect to designated issues (b), (c) and (d). As demonstrated in the Bureau's motion, Business Options, Inc. ("BOI") willfully and repeatedly failed to comply with 47 U.S.C. § 258 and 47 C.F.R. § 64.1120, which require a carrier's compliance with Commission verification procedures before the carrier may switch a customer's long distance telephone service. In nine instances, BOI's verification procedures failed to elicit information prescribed by the Commission's rules, while in seven other cases, BOI simply switched customers back to its service without even seeking their permission to do so, much less verifying that it had such permission. BOI also willfully failed to file its FCC Form 499-A, contrary to the requirements set forth in 47 C.F.R. 64.1195, in a timely manner. The form was due April 1, 2002; BOI filed its form in late September 2003. Finally, BOI discontinued service to customers in Vermont before receiving Commission authorization to do so, contrary to 47 U.S.C. § 214 and 47 C.F.R. § 63.71. Consequently, the Presiding Administrative Law Judge should resolve issues (b), (c) and (d) against BOI. However, inasmuch as the Bureau is not yet presenting its case relative to the forfeitures that should be imposed, no determination as to the amount of the forfeitures should be made at this time.

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1. The Enforcement Bureau (the "Bureau"), pursuant to section 1.251 of the Commission's rules, 47 C.F.R. § 1.251, hereby submits its Motion for Partial Summary Decision in the above-captioned proceeding. As demonstrated herein with respect to the designated issues for which summary decision is sought, "the truth is clear" and "the basic facts are undisputed." *Big Country Radio, Inc.*, 50 FCC 2d 967 (Rev. Bd. 1975). Thus, because there is no genuine issue of material fact for determination at a hearing, summary decision is warranted. *See New Broadcasting Corp.*, 44 FCC 2d 386 (Rev. Bd. 1973).

2. The *Order to Show Cause and Notice of Opportunity for Hearing*, 18 FCC Rcd 6881 (2003) (the "OSC"), specified the following issues against Business Options, Inc. ("BOI"):

- (a) to determine whether Business Options, Inc. made misrepresentations or engaged in lack of candor;
- (b) to determine whether Business Options, Inc. changed consumers' preferred carrier without their authorization in willful or repeated

violation of section 258 of the Act and sections 64.1100-1190 of the Commission's rules;

- (c) to determine whether Business Options, Inc. failed to file Form FCC [sic] 499-A in willful or repeated violation of section 64.1195 of the Commission's rules;
- (d) to determine whether Business Options, Inc. discontinued service without Commission authorization in willful or repeated violation of section 214 of the Act and sections 63.71 and 63.505 of the Commission's rules;
- (e) to determine, in light of all the foregoing, whether Business Options, Inc.'s authorization pursuant to section 214 of the Act to operate as a common carrier should be revoked; and
- (f) to determine whether, in light of all the foregoing, Business Options, Inc., and/or its principals should be ordered to cease and desist from the provision of any interstate common carrier services without the prior consent of the Commission.<sup>1</sup>

3. "Business Options, Inc.'s Answers to the Enforcement Bureau's Request for Admission of Facts and Genuineness of Documents," filed June 19, 2003 ("BOI Admissions"),<sup>2</sup> and other materials cited herein establish that *OSC* issues (b), (c) and (d) should be resolved against BOI as a matter of law. Specifically, the evidence

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<sup>1</sup> The *OSC* further provides that, if BOI willfully or repeatedly violated any provision of the Act or the Commission's rules cited in the *OSC*, it is to be further determined whether an Order for Forfeiture should be issued pursuant to 47 U.S.C. § 503(b) in the amount of no more than: (a) \$80,000 for each unauthorized conversion of complainants' long distance service in violation of 47 U.S.C. § 258 and 47 C.F.R. § 64.1120; (b) \$3,000 for the failure to file a sworn statement or a Registration Statement in violation of a Commission directive and 47 C.F.R. § 64.1195; and (c) \$120,000 for the unauthorized discontinuance of service to a community in violation of 47 U.S.C. § 214 and 47 C.F.R. §§ 63.71 and 63.505. While the instant Motion addresses *OSC* issues (b), (c) and (d), it does not address the question of the appropriate sanction as the evidence on that aspect of this proceeding is not yet fully developed and may be affected by the resolution of this proceeding's other issues.

<sup>2</sup> The Bureau filed its "Request for Admission of Facts and Genuineness of Documents" ("EB Admissions Request") on May 27, 2003.

conclusively demonstrates that BOI changed consumers'<sup>3</sup> preferred carriers without their authorization, in willful and/or repeated violation of section 258 of the Act and sections 64.1100-1190 of the Commission's rules; failed to file FCC Form 499-A, in willful and/or repeated violation of section 64.1195 of the Commission's rules; and discontinued service without Commission authorization, in willful and/or repeated violation of section 214 of the Act and section 63.71 of the Commission's rules. An issue-by-issue analysis of BOI's misconduct follows.

## **I. BOI Changed Consumers' Preferred Carrier without Their Authorization**

### **A. Background**

4. BOI is a non-dominant common carrier, owned and controlled by two brothers, Kurtis and Keanan Kintzel.<sup>4</sup> In late 1999, the Kintzel brothers formed U.S. Bell, whose sole activity was to resell BOI's long distance service.<sup>5</sup> Pursuant to a contract between U.S. Bell and Qwest Communications Corporation ("Qwest"),<sup>6</sup> U.S. Bell resold Qwest's

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<sup>3</sup> The *OSC* uses the term "consumers," while the Communications Act of 1934, as amended (the "Act"), and the Commission's rules use the term "subscribers" to describe the "customers" BOI acquired. This Motion uses the three terms interchangeably.

<sup>4</sup> BOI Admissions 1, 5-9, 14, 17.

<sup>5</sup> BOI Admissions Answers 3-4. Transcript of July 14, 2003, Deposition of Kurtis Kintzel, pp. 23-4, 65-8, 97, 104 (Attachment 1); Certificate of Existence with Status in Good Standing, BUSOP 03332 (Attachment 2); Transcript of July 15, 2003, Deposition of Keanan Kintzel, p. 20 (Attachment 3).

<sup>6</sup> Records obtained by the Bureau from Qwest reflect that Qwest and U.S. Bell entered into an agreement, which became effective May 25, 2000, which allowed U.S. Bell to resell Qwest long distance. *See* Declaration of Jean Griffiths, p. 1 (Attachment 4); Transcript of July 14, 2003, Deposition of Kurtis Kintzel, pp. 10-11 (Attachment 5).

long distance telephone service to residential and business customers.<sup>7</sup>

5. During the first four months of 2002, BOI marketed its long distance service through the use of telemarketers, all of whom were BOI employees. The telemarketers used a script approved by Kurtis Kintzel. The sales pitch touted the value of BOI's "Super Saver" plan, which promised that, for \$4.90 per month, subscribers would be able to call state-to-state for \$.07 per minute. The sales pitch was silent about the cost for in-state long distance calls.<sup>8</sup>

6. If a telemarketer succeeded in getting a potential subscriber interested, BOI would make a second call to the subscriber in order to verify the order. The verifier used a script prepared by BOI.<sup>9</sup> Like the original sales pitch, the verification script informed the subscriber about the monthly cost of the Super Saver plan but was silent about in-

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<sup>7</sup> U.S. Bell no longer sells Qwest on behalf of BOI. In the summer of 2002, all U.S. Bell employees became employees of Buzz Telecom Corporation ("Buzz"), which was formed on June 18, 2002. Although the majority of employees who sell BOI long distance service receive paychecks from Buzz, BOI has acknowledged that those same employees are BOI employees. See Certificate of Existence with Status in Good Standing, BUSOP 06244 (Attachment 6); Transcript of July 14, 2003, Deposition of Kurtis Kintzel, pp. 65-8 (Attachment 1); Letter from Shannon Dennie, Dir. of Corporate Affairs, BOI, to Peter Wolfe, FCC (Dec. 9, 2002), p. 2 ("BOI LOI Response") (Attachment 7). Based on the information then available, the OSC viewed as interchangeable BOI, Buzz Telecom, and US Bell, including any affiliates, successors or assigns. See OSC, 18 FCC Rcd 6881, n. 1. Information obtained subsequently confirms that U.S. Bell and Buzz are merely alter-egos of BOI and that the three corporations should be viewed as interchangeable. Hence, for ease of reference in this Motion, the Bureau will refer to the companies as BOI.

<sup>8</sup> BOI LOI Response, pp. 6-9 (Attachment 7); Transcript of July 15, 2003, Deposition of Kanan Kintzel, p. 67 (Attachment 8). A revised version offered customers \$.059 (5.9 cents) per minute for interstate calls for \$4.95 per month. BOI LOI Response, p. 7 (Attachment 7).

<sup>9</sup> Transcript of July 14, 2003, Deposition of Kurtis Kintzel, pp. 84-85, 88 (Attachment 9).

state long distance charges.<sup>10</sup> The individuals who performed the verifications occupied offices in the same building as, and adjacent to, those of BOI. Although the verifiers were nominally in the employ of another company, F&G Verifications (“F&G”), they were paid by BOI.<sup>11</sup> Moreover, during the period discussed herein, although the verifying company nominally was F&G, the individuals performing verifications identified themselves as employees of Great Lakes Verifications, an entity that no longer existed.<sup>12</sup>

7. Following verification, the order for BOI’s long distance service would be sent to BOI’s data entry personnel, who would enter the customer information into a BOI database, create an electronic file, and send the file with customer information to Qwest. Qwest, in turn, would forward the information regarding the customer to that customer’s local exchange carrier (“LEC”), which would change its records to reflect that BOI was now that customer’s long distance telephone company. Once the customer started making long distance telephone calls, the LEC would send the call records to BOI, which, in turn, would assign a rate to the call and forward the information to its billing service, USBI. USBI would then forward the charges to the appropriate LEC, which would include BOI’s charges on the monthly bill sent to the LEC’s customers.<sup>13</sup> The

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<sup>10</sup> *See, e.g.*, Barbara Beeson Verification, BUSOP 02222 (Attachment 10).

<sup>11</sup> Transcript of July 14, 2003, Deposition of Kurtis Kintzel, pp. 69, 79, 92 (Attachment 11).

<sup>12</sup> *See* Attachments 10 and 11.

<sup>13</sup> Transcript of July 14, 2003, Deposition of Kurtis Kintzel, pp. 168-69 (Attachment 12); Declaration of Jean Griffiths, p. 1 (Attachment 4).

bills sent to customers would reflect billing either by USBI on behalf of BOI or, simply, by USBI.<sup>14</sup>

8. At all times during the first six months of 2002, BOI had a policy that led to the automatic “re-provisioning” of a customer. Thus, when BOI noted that a customer whom it had acquired apparently no longer had BOI as its long distance provider without having informed BOI directly that it was dropping BOI, BOI would send an order to Qwest to re-add the customer to BOI’s service. In other words, even when a customer called his LEC to change his long distance service from BOI, BOI would switch the customer back to its own service unless the customer directly communicated with BOI and informed BOI that its service was no longer desired.<sup>15</sup>

9. The practices outlined above did not comply with the Commission’s rules. As described in greater detail herein, whenever BOI solicited a prospective customer to buy its long distance service, which included both in-state and state-to-state service, it did not obtain a separate authorization or verification for intraLATA/intrastate toll, in violation of section 64.1120(b) of the Commission’s rules.<sup>16</sup> In addition, with respect to each verification, BOI did not use an independent third party to confirm the carrier change, in

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<sup>14</sup> Compare Apr 7- May 6, 2002, statement for Paul & Ruth Brackett at p. 6 (showing USBI billing on behalf of Business Options, Inc.), with 04-13-02 billing date for John A. & Lorie J. Hart Sr., p. 4 (showing USBI as the carrier) (Attachment 13).

<sup>15</sup> Transcript of July 14, 2003, Deposition of Kurtis Kintzel, pp. 165-66 (Attachment 14); Transcript of July 15, 2003, Deposition of Keanan Kintzel, pp. 90-92 (Attachment 15); Transcript of July 15, 2003, Deposition of Elizabeth Ontiveros Rosas, pp. 40-41 (Attachment 16). Upon advice of counsel, BOI eliminated this policy in 2003. Transcript of July 14, 2003, Deposition of Kurtis Kintzel, pp. 165-66 (Attachment 14)

<sup>16</sup> 47 C.F.R. 64.1120(b) (2002).

violation of section 64.1120(c)(3).<sup>17</sup> As to the contents of the verifications, BOI never elicited the names of the carriers affected, in violation of section 64.1120(c)(3)(iii).<sup>18</sup> Finally, in each instance where BOI “re-provisioned” a customer, it changed a customer’s preferred carrier without obtaining authorization or verification, in violation of section 64.1120(a)(1) of the Commission’s rules.<sup>19</sup>

10. Section 258(a) of the Act provides: “No telecommunications carrier shall submit or execute a change in a subscriber’s selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe.”<sup>20</sup> Subpart K of Part 64 of the Commission’s rules sets forth, *inter alia*, the procedures a carrier must follow before it can change a consumer’s telephone toll service. Specifically, section 64.1120(a)(1)(ii) of the Commission’s rules<sup>21</sup> requires that submitting carriers obtain verification of a subscriber’s authorization in accordance with one of three procedures. Thus, before submitting a change order, the carrier must verify the order either by obtaining from the subscriber: (1) his written or electronically signed authorization;<sup>22</sup> (2) his electronic authorization from the telephone number on which the preferred carrier is to be

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<sup>17</sup> 47 C.F.R. 64.1120(c)(3) (2002).

<sup>18</sup> 47 C.F.R. 64.1120(c)(3)(iii) (2002).

<sup>19</sup> 47 C.F.R. 64.1120(a)(1) (2002).

<sup>20</sup> 47 U.S.C. § 258(a).

<sup>21</sup> 47 C.F.R. § 64.1120(a)(1)(ii) (2002).

<sup>22</sup> 47 C.F.R. § 64.1120(c)(1) (2002).

changed;<sup>23</sup> or (3) his oral authorization through use of an appropriately qualified “independent third party” who must elicit, at a minimum, the identify of the subscriber, confirmation that the person on the call is authorized to make the change, confirmation that the person on the call wants to make the carrier change, the names of the carriers affected by the change, the telephone number to be switched, and the types of service involved.<sup>24</sup> In addition, when a carrier is selling more than one type of service (for example, intraLATA/intrastate toll and interLATA/interstate toll), each authorization must be verified separately.<sup>25</sup>

11. As demonstrated herein with respect to eight separate customers, BOI did not follow the Commission’s prescribed procedures for verifying the customers’ changes in long distance telephone service. In addition, BOI’s “re-provisioning” policy resulted in repeated changes of consumers’ long distance service without their authorization and without BOI having taken any steps to verify those changes.

## **B. Individual Cases**

### **1. Barbara Beeson**

12. BOI twice changed the long distance service of Barbara Beeson and her husband, Doyle, using procedures that were contrary to the Commission’s rules. With respect to the first change, BOI did not obtain authorization or verification to change the Beesons’ in-state long distance service; it did not use an independent third party verifier; and, in any event, its verification did not include all of the elements required by the

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<sup>23</sup> 47 C.F.R. § 64.1120(c)(2) (2002).

<sup>24</sup> 47 C.F.R. § 64.1120(c)(3) (2002).

<sup>25</sup> 47 C.F.R. § 64.1120(b) (2002).

Commission's rules. With respect to the second switch, BOI did not speak with either of the Beesons, thus failing to secure their authorization and failing to obtain verification of the switch.

13. In March 2002, Barbara Beeson and her husband, Doyle, had Verizon as both their LEC and long distance provider. Among other services, Verizon provided the Beesons its Illinois "State Saver" plan. The plan cost \$4.75 per month and allowed the Beesons to make unlimited in-state long distance calls at \$.05 per minute and unlimited state-to-state long distance calls at \$.09 per minute.<sup>26</sup>

14. On March 6, 2002, BOI employee Amanda Bernard telephoned Mrs. Beeson for the purpose of selling BOI's "Super Saver" plan. BOI employee Tim Krause subsequently called to verify Mrs. Beeson's order.<sup>27</sup> As required by 47 C.F.R. § 64.1120(c)(3)(iv), BOI made a tape recording of their conversation.<sup>28</sup>

15. The transcript of the call reflects that Mr. Krause identified himself as Tim with Great Lakes Verifications.<sup>29</sup> Mr. Krause elicited some, but not all, of the information required by 47 C.F.R. § 64.1120(c)(3)(iii). Specifically, while the verification process clearly elicited the identity of the subscriber and the telephone number to be switched, it did not elicit the names of the carriers affected by the change and it did not elicit all of the types of service involved.<sup>30</sup> Thus, the verification did not point out that Verizon

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<sup>26</sup> Declaration of Barbara Beeson, pp. 1, 7-8 (Attachment 17).

<sup>27</sup> "Business Options, Inc.'s Answers to the Enforcement Bureau's First Interrogatories," p. 2 ("BOI Interrogatory Answers") (Attachment 18).

<sup>28</sup> Barbara Beeson Verification, BUSOP 02222 (Attachment 10).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

would no longer be the Beesons' long distance carrier and that the switch was to cover both state-to-state and in-state long distance service. Moreover, the verification combined the question concerning authorization with the question concerning permission to change the service, a practice which the Commission specifically found confusing in the *OSC*.<sup>31</sup> In any event, Mrs. Beeson found the interaction with BOI so confusing that she believed that she had been dealing with Verizon.<sup>32</sup>

16. After purportedly verifying the Beeson order, BOI sent a change request to Qwest on March 7, 2002. BOI thereby informed Qwest to submit a change order to the Beesons' LEC (Verizon) to switch both their intraLATA and interLATA long distance service to BOI. Qwest did so, resulting in a change of the Beesons' long distance service no later than March 8, 2002.<sup>33</sup>

17. Consequently, the Beesons' statement from Verizon for the period ending April 4, 2002, reflects that their long distance provider was changed from Verizon to Qwest on March 8, 2002. That same statement shows that an in-state toll calls placed on or after March 8, 2002, now cost \$.20 per minute, instead of the \$.05 per minute that the Beesons had been previously charged pursuant to Verizon's "State Saver" plan. The April 4, 2002 statement also reflects BOI charges of \$4.95 for the "Super Saver" plan, and a \$3.75 charge for "Universal Service Fund Usage Chrg."<sup>34</sup>

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<sup>31</sup> See *OSC*, 18 FCC Rcd at 6891, ¶ 23.

<sup>32</sup> Declaration of Barbara Beeson, p. 1 (Attachment 17).

<sup>33</sup> Declaration of Jean Griffiths, pp. 1-2, 4, 7 (Attachment 4); Letter from Marie T. Breslin, Director, Federal Regulatory, Verizon, to Peter G. Wolfe, FCC (Dec. 9, 2002), p. 9 ("Verizon letter") (Attachment 19).

<sup>34</sup> Declaration of Barbara Beeson, pp. 1, 11-2 (Attachment 17).

18. On April 15, 2002, Mrs. Beeson reviewed her April 4, 2002, statement from Verizon and became aware of BOI's charges. Believing that there had been some mistake, she called BOI but was unable to speak with anyone at BOI's business office. Thereafter, Mrs. Beeson called Verizon and switched her long distance service back to Verizon.<sup>35</sup> Verizon executed the order that day, and the Beesons' May 4, 2002 statement from Verizon reflects that, between April 18 and 22, 2002, the Beesons' in-state long distance charges of \$.05 per minute pursuant to Verizon's "State Saver" plan.<sup>36</sup>

19. Sometime between April 15 and 22, 2002, BOI became aware that the Beesons no longer had its service. On April 22, 2002, BOI submitted a request to Qwest to change back both the Beesons' intraLATA and interLATA long distance service to BOI.<sup>37</sup> Before doing so, BOI did not obtain Mrs. Beeson's (or her husband's) authorization, nor did it follow any of the verification procedures required by the Commission.<sup>38</sup> Nevertheless, Verizon received and effectuated the change order from Qwest on April 23, 2002.<sup>39</sup>

20. Mrs. Beeson did not become aware that a second switch of her long distance service to BOI had occurred until she reviewed the June 4, 2002, statement from Verizon.<sup>40</sup> That statement showed BOI as the Beesons' long distance service provider. It

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<sup>35</sup> *Id.*, pp. 1-2.

<sup>36</sup> *Id.*, pp. 2, 19.

<sup>37</sup> Declaration of Jean Griffiths, pp. 4, 7 (Attachment 4); BOI Admissions 86, 104.

<sup>38</sup> BOI Admissions 84, 89-100, 102, 107-118.

<sup>39</sup> Verizon letter, p. 9 (Attachment 19).

<sup>40</sup> Declaration of Barbara Beeson, p. 2 (Attachment 17).

also showed that BOI charged \$.20 per minute for in-state calls but only \$.07 per minute for the out-of-state calls the Beesons had made between April 24 and May 11, 2002; and that BOI imposed both a monthly fee of \$4.90 and a \$3.75 fee for universal service.<sup>41</sup> On June 13, 2002, Mrs. Beeson called Verizon to switch her plan back to its “State Saver” plan, and she also placed a “freeze order” on her long distance telephone service. Thereafter, Mrs. Beeson received no further charges from BOI.<sup>42</sup>

21. The foregoing demonstrates that BOI twice failed to comply with the Commission’s rules. First, in March 2002, contrary to section 64.1120(b),<sup>43</sup> BOI did not obtain a separate authorization or verification before switching the Beesons’ in-state long distance toll service. In addition, contrary to section 64.1120(c)(3),<sup>44</sup> BOI did not use an independent third party verifier, and, contrary to section 64.1120(c)(3)(iii),<sup>45</sup> BOI’s verification did not elicit the names of the carriers affected by the change. Second, in April 2002, BOI changed the Beesons’ long distance service without obtaining their authorization or verification of an authorization, contrary to section 64.1120(a)(1) of the Commission’s rules.<sup>46</sup>

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<sup>41</sup> *Id.*, p. 25.

<sup>42</sup> *Id.*, pp. 2-3, 27 *et seq.*

<sup>43</sup> 47 C.F.R. § 64.1120(b) (2002).

<sup>44</sup> 47 C.F.R. § 64.1120(c)(3) (2002).

<sup>45</sup> 47 C.F.R. § 64.1120(c)(3)(iii) (2002).

<sup>46</sup> 47 C.F.R. § 64.1120(a)(1) (2002).

## 2. Paul Brackett

22. BOI twice violated the Commission's rules in changing the long distance service of Paul Brackett. Before making the first switch, BOI did not verify its change of Mr. Brackett's in-state long distance, it failed to use an independent third party verifier, and its verification did not elicit required information. Before making the second switch, BOI did not obtain Mr. Brackett's authorization nor did it attempt to verify authorization.

23. On January 4, 2002, BOI employee Robin Doe called Paul Brackett to market BOI's "Super Saver" plan. That same day, BOI employee Carol Mose, identifying herself as being with Great Lakes Verification Company, called Mr. Brackett.<sup>47</sup> Their conversation appears as Attachment A of the EB Admissions Requests.<sup>48</sup> At the time of the calls, Mr. Brackett apparently used long distance infrequently, as his telephone bills for the two months through January 6, 2002, reflect only five toll calls, all within the State of Maine.<sup>49</sup>

24. As the transcript reflects, the verification did not elicit the name of the prior carrier, the telephone number to be switched, and it combined questions regarding authority to switch carriers and the desire to make the change. Indeed, in response to the combined question, Mr. Brackett stated: "Well, what's that changing business?" Moreover, the BOI employee commented only about the state-to-state rate, thus giving no hint that the intended change would cover in-state toll service as well.<sup>50</sup> BOI did not

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<sup>47</sup> BOI Interrogatory Answers, p. 2 (Attachment 18); BOI Admissions 125-27.

<sup>48</sup> BOI Admissions 138, 153.

<sup>49</sup> Declaration of Bruce Brackett, pp. 1, 6, 11 (Attachment 20).

<sup>50</sup> See OSC, 18 FCC Rcd 6890-91, ¶¶ 23-25. See also BOI Admissions 139-140, 155-56.

obtain verification of Mr. Brackett's authorization to change his long distance telephone service through the other means prescribed in the Commission's rules.<sup>51</sup>

25. On January 7, 2002, BOI submitted a request to Qwest to change Mr. Brackett's intraLATA and interLATA service to BOI. Qwest, in turn, submitted a change order to Verizon, Mr. Brackett's LEC.<sup>52</sup> Verizon added BOI as Mr. Brackett's service provider both for long distance and regional service on January 12, 2002.<sup>53</sup> Paul Brackett's telephone bills thereafter reflect that, until May 2002, BOI was his long distance service provider.<sup>54</sup>

26. In the spring of 2002, Bruce Brackett, Paul Brackett's nephew, started to exercise a power-of-attorney with respect to Paul Brackett's estate, which he had obtained the previous autumn. Paul Brackett was elderly and had become ill.<sup>55</sup> After reviewing his uncle's telephone bills, Bruce noted a change in the service provider and charges that had not appeared before BOI started service. Bruce brought the matter to his uncle's attention and suggested a discontinuance of BOI's long distance service. Following his uncle's agreement with this course of action, Bruce Brackett called Verizon to cancel Paul Brackett's long distance service with BOI and to order Verizon's

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<sup>51</sup> BOI Admissions 135-36, 150-51.

<sup>52</sup> Declaration of Jean Griffiths, pp. 1, 4-5 (Attachment 4); BOI Admissions 132, 147.

<sup>53</sup> BOI Admissions 128-29; Declaration of Bruce Brackett, pp. 1, 16 (Attachment 20).

<sup>54</sup> BOI Admissions 144, 160; Declaration of Bruce Brackett, pp. 1, 14-33 (Attachment 20). All of Mr. Brackett's toll calls between January 7, 2002 and May 14, 2002, were in-state. *Id.*

<sup>55</sup> *Id.*, p. 1.

“Pine Tree State” service.<sup>56</sup> Verizon executed the changes on May 14, 2002.<sup>57</sup>

27. Sometime between May 14 and 22, 2002, BOI became aware that Paul Brackett no longer had its service. On May 22, 2002, BOI submitted a request to Qwest to change Paul Brackett’s intraLATA and interLATA long distance service back to BOI.<sup>58</sup> Before doing so, BOI did not obtain Paul or Bruce Brackett’s authorization, nor did it follow any of the verification procedures required by the Commission.<sup>59</sup> Verizon received and effectuated the change order from Qwest on May 23, 2002.<sup>60</sup>

28. Notwithstanding Bruce Brackett’s May 14, 2002, order to discontinue BOI’s long distance service for his uncle, Paul Brackett’s June 2002 statement contained BOI charges. Specifically, BOI imposed two charges for universal service, each for \$3.75, one monthly service fee of \$4.90, and charged \$.25 per minute for toll calls made before May 14 and after May 23, 2002.<sup>61</sup> On June 17, 2002, Bruce Brackett ordered a discontinuance of BOI’s long distance service, which Verizon effectuated that day.<sup>62</sup>

29. As demonstrated, BOI twice failed to comply with the Commission’s rules with respect to Paul Brackett. First, in January 2002, contrary to section 64.1120(b),<sup>63</sup> BOI

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<sup>56</sup> *Id.*, pp. 1-2.

<sup>57</sup> *Id.*, p. 36.

<sup>58</sup> Declaration of Jean Griffiths, pp. 1-2, 4-5 (Attachment 4); BOI Admissions 174, 197.

<sup>59</sup> BOI Admissions 163, 170, 172, 174, 177-91, 193-95, 197-214.

<sup>60</sup> Verizon letter, p. 4 (Attachment 19).

<sup>61</sup> Declaration of Bruce Brackett, pp. 2, 39 (Attachment 20). (Once again, all calls made were in-state); BOI Admissions 192, 215.

<sup>62</sup> Declaration of Bruce Brackett, pp. 2, 42 (Attachment 20).

<sup>63</sup> 47 C.F.R. § 64.1120(b) (2002).

did not obtain a separate authorization or verification before switching Mr. Brackett's in-state long distance toll service. In addition, contrary to section 64.1120(c)(3),<sup>64</sup> BOI did not use an independent third party verifier, and, contrary to section 64.1120(c)(3)(iii),<sup>65</sup> BOI's verification did not elicit the name of one of the carriers affected by the change or the telephone number to be switched. It also combined questions regarding Mr. Brackett's authority and his desire to make a change, a matter deemed by the Commission to be inherently confusing.<sup>66</sup> Second, in May 2002, BOI changed Mr. Brackett's long distance service without obtaining his (or his nephew's) authorization or verification of such authorization, contrary to section 64.1120(a)(1) of the Commission's rules.<sup>67</sup>

### **3. Norman Crowley**

30. For the reasons set forth in the *OSC* and, as discussed herein, BOI's verification for the first change made to Norman Crowley's long distance failed to comply with the Commission's requirements.<sup>68</sup> Specifically, the verification did not elicit the name of the carrier affected by the change and the telephone number to be switched, and it combined questions regarding the speaker's authority and desire to make the change. Moreover, BOI did not obtain verification of Mr. Crowley's authorization to change his long distance telephone service through the other means prescribed in the Commission's

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<sup>64</sup> 47 C.F.R. § 64.1120(c)(3) (2002).

<sup>65</sup> 47 C.F.R. § 64.1120(c)(3)(iii) (2002).

<sup>66</sup> *See OSC*, 18 FCC Rcd 6890-91, ¶¶ 23-25.

<sup>67</sup> 47 C.F.R. § 64.1120(a)(1) (2002).

<sup>68</sup> *See OSC*, 18 FCC Rcd 6890-91, ¶¶ 23-25. *See also* BOI Admissions 231-32, 248-49.

rules.<sup>69</sup> BOI's second change of Mr. Crowley's long distance service also failed to comply with the Commission's rules as BOI failed to obtain Mr. Crowley's authorization and it made no effort to verify authorization of the change.

31. On January 29, 2002, BOI employee Melissa Grissom called Norman Crowley's home telephone number to market BOI's "Super Saver" plan. She did not speak with Mr. Crowley, but with a woman named Laura.<sup>70</sup> Later that day, BOI employee Barbara Ballogg, who identified herself as being with Great Lakes Verifications, called Mr. Crowley's telephone number. She, too, spoke with a woman named Laura.<sup>71</sup> The conversation between Ms. Ballogg and Laura appears as Attachment B of the EB Admissions Request.<sup>72</sup> That conversation makes no mention of Mr. Crowley's then long distance provider and is silent about the provision of in-state long distance service.<sup>73</sup>

32. On February 6, 2002, BOI submitted a request to Qwest to change Norman Crowley's intraLATA and interLATA service to BOI. Qwest, in turn, submitted a change order to Verizon, Mr. Crowley's LEC.<sup>74</sup> Verizon added BOI as Mr. Crowley's

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<sup>69</sup> BOI Admissions 227-28, 242-43.

<sup>70</sup> It is the Bureau's understanding that Mr. Crowley is not married and that the woman who answered Mr. Crowley's telephone was his housekeeper, Laura Vachon. However, since the Bureau has not been able to obtain verification of this matter, we will assume for the purpose of the Motion that "Laura" was Mr. Crowley's wife.

<sup>71</sup> BOI Interrogatory Answers, p. 2 (Attachment 18); BOI Admissions 216-18.

<sup>72</sup> BOI Admissions 230, 245.

<sup>73</sup> The conversation also reflects Laura's understanding that the telephone bill was going to be 15 percent lower. EB Admissions Request, Attachment B, p. 3.

<sup>74</sup> Declaration of Jean Griffiths, pp. 1-2, 4, 8 (Attachment 4); BOI Admissions 224.

service provider, both for long distance and regional service, sometime in early February 2002.<sup>75</sup>

33. On April 1, 2002, Norman Crowley called Verizon and complained that he had not authorized the change to BOI. Consequently, at Mr. Crowley's direction, Verizon changed his long distance service from BOI.<sup>76</sup>

34. Sometime between April 1 and 8, 2002, BOI became aware that Norman Crowley no longer had its service. On April 8, 2002, BOI submitted a request to Qwest to change Norman Crowley's intraLATA and interLATA long distance service back to BOI.<sup>77</sup> Before doing so, BOI did not seek any authorization, nor did it follow any of the verification procedures required by the Commission.<sup>78</sup> Verizon received and effectuated the change order from Qwest on April 8, 2002.<sup>79</sup>

35. BOI billed Mr. Crowley for service and long distance telephone calls made between April 8 and 29, 2002.<sup>80</sup> On April 29, 2002, Mr. Crowley again complained to Verizon about BOI. Consequently, Verizon removed BOI as Mr. Crowley's long distance service provider.<sup>81</sup>

36. As it failed to do with Barbara Beeson and Paul Brackett, BOI twice failed to

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<sup>75</sup> BOI Admissions 236, 253.

<sup>76</sup> Verizon letter, p. 5 (Attachment 19).

<sup>77</sup> Declaration of Jean Griffiths, pp. 1-2, 4, 8 (Attachment 4); BOI Admissions 265, 283.

<sup>78</sup> BOI Admissions 268-79, 286-97.

<sup>79</sup> Verizon letter, p. 5 (Attachment 19).

<sup>80</sup> BOI Admissions 280, 298.

<sup>81</sup> Verizon letter, p. 5 (Attachment 19).

follow the Commission's rules in its changes of Norman Crowley's long distance telephone service. In January 2002, contrary to section 64.1120(c)(3),<sup>82</sup> BOI did not use an independent third party verifier, and, contrary to section 64.1120(c)(3)(iii),<sup>83</sup> BOI's verification did not elicit the name of one of the carriers affected by the change or the telephone number to be switched. It also combined questions regarding Laura's authority and her desire to make a change, a matter the Commission found to be inherently confusing.<sup>84</sup> Second, in April 2002, BOI changed Mr. Crowley's long distance service without obtaining his authorization or verification of the authorization, contrary to section 64.1120(a)(1) of the Commission's rules.<sup>85</sup>

#### **4. Ida Guptill**

37. BOI again twice failed to comply with the Commission's verification procedures before switching Ida Guptill's long distance telephone service. Specifically, although the conversation between Mrs. Guptill and BOI's verifier, which preceded the first change, covered some of the requirements for third party verifications, it clearly did not inform Mrs. Guptill that her then-current long distance service provider was about to be changed, nor did it provide any information about BOI's in-state rates.<sup>86</sup> Also, the verifier was not employed by an independent third party. Moreover, BOI did not obtain verification of the authorization of either Mrs. Guptill or her husband, Donald, to change

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<sup>82</sup> 47 C.F.R. § 64.1120(c)(3) (2002).

<sup>83</sup> 47 C.F.R. § 64.1120(c)(3)(iii) (2002).

<sup>84</sup> *See OSC*, 18 FCC Rcd 6890-91, ¶¶ 23-25.

<sup>85</sup> 47 C.F.R. § 64.1120(a)(1) (2002).

<sup>86</sup> BOI Admissions 321, 338.