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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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 TO COMPEL ANSWERS TO
FOURTH SET OF INTERROGATORIES**

1. The Enforcement Bureau (the "Bureau"), pursuant to section 1.323(c) of the Commission's rules, 47 C.F.R. § 1.323(c), hereby submits the following Motion to Compel Answers to Fourth Set of Interrogatories (the "Motion to Compel"). Specifically, BOI failed to respond properly to three of five interrogatories and violated the Commission's rules with respect to a fourth.¹

2. Background. By *Memorandum Opinion and Order*, FCC 03M-33, the presiding Administrative Law Judge (the "presiding ALJ") added the following issues to this proceeding:

(g) To determine whether Business Options, Inc., Buzz Telecom Corp., U.S. Bell, Inc. and/or Link Technologies failed to make required contributions to universal service support programs, in violation of Section 254(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 254(d), and section 54.706 of the Commission's rules, 47 C.F.R. § 54.706;

(h) To determine whether Business Options, Inc., Buzz Telecom Corp., U.S. Bell Inc. and/or Link Technologies failed to make required contributions to the Telecommunications Relay Services Fund, in violation of section 64.604(c)(5)(iii)(A) of the Commission's rules, 47 C.F.R. § 64.604(c)(5)(iii)(A);

¹ The interrogatories at issue relate to BOI's status under the Commission's universal service filing and contribution rules. *See infra* ¶¶ 4-8. Although BOI also failed to answer a fourth interrogatory (Interrogatory 4), the Bureau has opted not to seek an answer to that one.

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(i) To determine whether Business Options, Inc., Buzz Telecom Corp., U.S. Bell Inc. and/or Link Technologies failed to file Telecommunications Reporting Worksheets, in violation of sections 54.711, 54.713, and 64.604 (i) of the Commission's rules, 47 C.F.R. §§54.711, 54.713, 64.604 (c) (iii) (B);

(j) To determine whether an Order for Forfeiture should be issued pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), against Business Options, Inc., Buzz Telecom Corp., U.S. Bell, Inc. and/or Link Technologies failure to make the required universal service contributions in a timely manner, in violation of Section 254(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 254(d) and Section 54.706 of the Commission's Rules, 47 C.F.R. § 54.706; \$10,000 for each failure to file the required Forms 499 in a timely manner, in violation of Sections 54.711, 54.713, 64.604(c)(5)(iii)(B) of the Commission's Rules, 47 C.F.R. §§54.711, 54.713, 64.604(c)(5)(iii)(B); and c) \$10,000 for each failure to file required contributions to the Telecommunications Relay Services Fund, in violation of Section 64.604(c)(5)(iii)(A) of the Commission's Rules, 47 C.F.R. §64.604(c)(5)(iii)(A).

3 On November 7, 2003, the Bureau sent to Business Options, Inc. ("BOI") a fourth set of interrogatories, consisting of five questions. The questions seek to ascertain when BOI should have first prepared and filed a universal service worksheet (the "Worksheet") as well as when BOI would have become obligated to contribute to federal universal service support programs. BOI filed its objections and answer to the Bureau's fourth set of interrogatories on November 21, 2003. BOI objected to and did not answer four of the five interrogatories. The Bureau seeks answers for three of the four interrogatories that BOI failed to answer. In addition, with respect to the interrogatory it did answer, unless its counsel is prepared to testify as a witness, BOI must support its interrogatory answers as specified by the Commission's rules. *See* 47 C.F.R. § 1 323(b).

4. Discussion. Section 254(d) of the Communications Act of 1934, as amended (the "Act") requires that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the

specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”² Consistent with this statutory mandate, the Commission has assessed carrier contributions to universal service based upon gross billed end-user telecommunications revenues.³ Thus, all telecommunications carriers that provide interstate telecommunications service and certain other providers of such services must contribute to the universal service fund based upon their gross billed interstate and international end-user telecommunications revenues.⁴

5. In implementing section 254 of the Act, the Commission authorized the Universal Service Administrative Company (“USAC”) to administer universal service support mechanisms and to perform billing and collection functions.⁵ The Commission directed USAC to distribute, receive, and process the Telecommunications Reporting Worksheet (the “Worksheet”), by which carriers must report certain categories of revenues for the purpose of calculating their required universal service contributions, and to adjust contributions in accordance with certain factors

² 47 U.S.C. § 254(d).

³ See *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 9206-07, ¶¶ 843-44 (1997) (subsequent history omitted).

⁴ 47 C.F.R. §§ 54.706, 54.709. Section 54.706(a)(16) specifically includes resellers of interstate services in the definition of providers of interstate telecommunications services. 47 C.F.R. § 54.706(a)(16).

⁵ See *Amendment of Parts 54 and 69 -- Changes to the Board of Directors of the National Exchange Carriers Association, Inc.*, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400, 18415, ¶ 25 (1997) (“NECA Changes Order”); 47 C.F.R. § 54.702(b).

established by the Commission.⁶ Prior to March 14, 2001, the Commission required carriers to file Worksheets twice each year for the purpose of determining their contributions.⁷ Carriers were required to file revenues for January through June by September 1 of each year and to file revenues for the entire calendar year by the following April.⁸ Beginning March 14, 2001, the Commission modified its reporting requirements to require carriers to file not only an Annual Worksheet,⁹ but also to file a Telecommunications Reporting Worksheet each quarter with their interstate and international revenues from the previous period.¹⁰ A carrier's failure to file the worksheets or submission of inaccurate or untruthful information "may subject the contributor to the enforcement provisions of the Act and any other applicable law."¹¹

6. The Bureau's first interrogatory asks BOI to:

State when BOI first became a telecommunications carrier that provided interstate telecommunications services.

BOI objects to this interrogatory, claiming it is "vague, ambiguous, argumentative, assumes facts

⁶ *NECA Changes Order*, 12 FCC Rcd at 18442, ¶ 80. See *FCC Form 499-A Telecommunications Reporting Worksheet -- Annual Filing*, <http://www.fcc.gov/Forms/Form499-A/499a.pdf> (April 2003) ("Form 499-A"). See also *FCC Form 499-Q Telecommunications Reporting Worksheet -- Quarterly Filing for Universal Service Contributors*, <http://www.fcc.gov/Forms/Form499-Q/499q.pdf> (April 2003) ("Form 499-Q").

⁷ See *Globcom, Inc*, Notice of Apparent Liability for Forfeiture, FCC 03-231, released September 30, 2003, at pp. 2-3, ¶ 4 and n. 15.

⁸ See *id.*, at p. 3, n. 16.

⁹ See *id.*, n. 17.

¹⁰ See *id.*, n. 18.

¹¹ 47 C.F.R. § 54.713. See also *NECA Changes Order*, 12 FCC Rcd at 18442 n.165 (citing 47 U.S.C. §§ 206-209, 312, 403, 503).

that are in controversy, and purports to call for legal conclusion.”¹² The Bureau disagrees. The interrogatory calls for a date. BOI can ascertain that date through review of its own records, which should reveal when it made the transition from being a marketing arm of telecommunications carriers to a reseller of interstate telecommunications services; hence, when it became a telecommunications carrier and therefore subject to universal service filing and contribution obligations. In this regard, although BOI suggests in its answer to Interrogatory 5 that it became a telecommunications carrier sometime in 1998, it may have commenced business as a telecommunications carrier as early as late 1996.¹³ If such were the case, BOI should have filed its initial Worksheet by September 1, 1997, would have been billed by USAC in January 1998, and thus would have been subject to universal service contribution requirements as early as February 1998.¹⁴ By dodging the question, BOI may well be hiding additional violations of the Commission’s rules.

7. The Bureau’s second interrogatory asks BOI to:

Describe how BOI first became a telecommunications carrier that provided interstate telecommunications services. Such description must include the manner by which BOI became such a carrier (for example, as a reseller of long distance telephone service provided by another carrier); and the identification of all documents relating to BOI’s commencement of service as a telecommunications

¹² BOI’s additional objection is that the interrogatory is “not reasonably calculated to lead to the discovery of admissible evidence, is overly broad, unduly burdensome and oppressive.” BOI is unduly imaginative, because, as shown above, the interrogatory is asking for a date, a date which BOI can reasonably ascertain and which likely triggered BOI’s universal service filing and contribution obligations.

¹³ See Transcript of July 18, 2003, Deposition of William Brzycki, pp. 8-13 (Attachment 1).

¹⁴ See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, 12 FCC Rcd 22423, 22425, ¶ 4 (1997). See also *ConQuest Operator Services Corp.*, 14 FCC Rcd 12518 (1999).

service provider (for example, any contract BOI had with a telecommunications carrier to resell its service as well as the first tariff BOI filed with any governmental unit and/or any application that BOI may have filed with any governmental unit for the purpose of obtaining the right to provide a telecommunications service).

BOI lodges the same objections to this interrogatory as discussed previously. BOI's objections are without merit. The second interrogatory merely seeks verifying information, which will confirm or contradict BOI's first interrogatory answer.

8. The Bureau's third interrogatory asks BOI to:

State when BOI first realized income of any nature whatsoever as a result of its provision of interstate telecommunications services.

Once again, BOI trots out its standard litany of objections. Once again, BOI's objections are without merit. As did interrogatory 2, interrogatory 3 merely seeks verifying information with respect to BOI's becoming a telecommunications carrier that would have been subject to federal universal service filing and contribution requirements.

9. Accordingly, the Bureau requests that the presiding ALJ issue an order that compels BOI to answer interrogatories 1, 2 and 3 from the Bureau's Fourth Set of Interrogatories in

accordance with 47 C.F.R. § 1.323(b).

Respectfully submitted,



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November 25, 2003

CERTIFICATE OF SERVICE

Moris Martinez, a staff assistant with the Enforcement Bureau's Investigations and Hearings Division, certifies that he has on this 25th of November, 2003, sent, by first class United States mail, copies of the foregoing "Enforcement Bureau's Motion to Compel Answers to Fourth Set of Interrogatories" to:

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* Chief Administrative Law Judge Richard L. Sippel
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Moris Martinez

* Hand-delivered

ATTACHMENT 1

ORIGINAL

1 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

2 WASHINGTON, D.C. 20554

3
4 IN THE MATTER OF: * EB DOCKET NO. 08-85
5 BUSINESS OPTIONS, INC., * FILE NO. EB-02-TC-151
6 ORDER TO SHOW CAUSE AND * NAL ACCOUNT NUMBER:
7 NOTICE OF OPPORTUNITY * 30033217002
8 FOR HEARING * FRN: 0007179054

9 * * * * *

10 DEPOSITION OF:

11 WILLIAM BRZYCKI,

12 was taken Friday, July 18, 2003, commencing at
13 9:05 a.m., at the LaQuinta Inn, 8210 Louisiana
14 Street, Merrillville, Indiana, before Nova
15 Hollister, Notary Public.

16 * * * * *



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1 A. Kurtis.

2 Q. And he signed it in what capacity?

3 A. Chief executive officer.

4 Q. Of?

5 A. Business Options.

6 Q. Was this your first employment with an
7 entity owned or controlled by Kurtis Kintzel?

8 A. I had been employed previous to this
9 by the company, this was my first agreement.

10 Q. When is it that you started to work
11 for the company?

12 A. October 15th, 1995.

13 Q. And that is Business Options Inc.?

14 A. No. That is Creative Financial
15 Options, and that was an entity also owned by
16 Kurtis. Creative Financial Options then was
17 dissolved and I moved to Business Options.

18 Q. What is it that you were supposed to
19 do at Creative Financial Options?

20 A. I started out working in the treasury,
21 handling income. And then I moved up to treasury

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1 manager. And I basically handled all the banking
2 and book-work type of stuff.

3 Q. By handling money, that meant that you
4 were responsible for ensuring that deposits made
5 its way to the bank?

6 A. Yes.

7 Q. And that checks were written and sent
8 to the proper people?

9 A. Yes.

10 Q. Was that both vendor checks and
11 payroll checks?

12 A. Not at the beginning. But after about
13 a year, we had a service doing the payroll.
14 After about a year, we started doing it
15 internally.

16 Q. Doing the payroll would involve making
17 sure that the employees got paid on time?

18 A. Yes.

19 Q. And that Social Security taxes were
20 paid?

21 A. I didn't really handle that aspect of

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1 it. I just did the actual calculation and wrote
2 checks for the employees.

3 Q. Calculation, meaning, that which was
4 to go to the employee on a particular day?

5 A. Yes.

6 Q. And somebody else was responsible for
7 ensuring that Social Security got paid?

8 A. Yes.

9 Q. Who was that?

10 A. I would assume it was Kurtis.

11 Q. For purposes of this deposition, if it
12 turns out that I ask you a question that you
13 don't know the answer to, it's perfectly
14 acceptable to say you don't know.

15 A. Okay.

16 Q. What is it that Creative Financial
17 Options did?

18 A. Creative Financial Options was a
19 multi-level marketing company. What they did was
20 sold long distance telephone service at ten cents
21 a minute, which at that time was unheard of.

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1 Nobody was doing it that cheap then.

2 Q. Was the product owned by Creative
3 Financial Services?

4 A. Can you define "owned by"?

5 Q. I'll give you some background and that
6 may help you understand why I'm asking the
7 question the way I did. Currently, it is our
8 understanding that the long distance product that
9 is being sold by the "company" -- and I use that
10 in quotes -- is Business Options Inc. product.
11 On the other hand, all the persons involved in
12 the sales of that product are employed by an
13 entity other than Business Options Inc., either
14 by Buzz Telecom or by Avatar. And Avatar has got
15 some other words attached to it. So that's why I
16 asked the question the way I did.

17 A. I wasn't involved in that aspect of
18 it. But my understanding of it at the time, was
19 that the product was from a carrier in
20 California.

21 Q. Was there -- did there come a time

1 when you became aware that Business Options Inc.
2 was also selling the long distance product?

3 A. Yes. And maybe a year, a year and a
4 half after I started, I became aware that there
5 was a Business Options. And at that time, the
6 company was not a carrier, but like an agent that
7 sold long distance for another company in
8 California. I don't remember that company's
9 name.

10 Q. Did there come a time when Business
11 Options began selling its own product?

12 A. Yes. They were licensed as a carrier,
13 I believe, in 1996 or 1997.

14 Q. And when you say "licensed," what is
15 it that you're referring to?

16 A. What happened was, they hired an
17 attorney and a company to write tariffs and that
18 kind of thing. And they went out and got their
19 license in each state and with the FCC.

20 Q. So in one sense, when you used the
21 term "license," you're referring to the authority

1 to sell Business Options' product in a particular
2 state?

3 A. Exactly.

4 Q. And that process had to be repeated
5 for however many states in which Business Options
6 wanted to sell its product?

7 A. Yes.

8 Q. Were you involved in any way in
9 obtaining -- preparing the tariff for Business
10 Options at this point in time?

11 A. No.

12 Q. Were you involved in any way in the
13 filing of such tariffs?

14 A. No.

15 Q. Did there come a time when you did
16 become involved in preparing tariffs for Business
17 Options?

18 A. Yes. At some point -- I don't
19 remember the exact dates, I believe it was in
20 1998 -- I was moved out of the operations aspect
21 of the company and into what was called