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

JAN 14 2004
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. 300332170002
Order to Show Cause and)	FRN: 0007179054
Notice of Opportunity for Hearing)	

To: Chief Administrative Law Judge
Richard L. Sippel

**ENFORCEMENT BUREAU'S
FURTHER MOTION TO CLARIFY ISSUE (j)**

1. Pursuant to a directive from the presiding Administrative Law Judge (the "presiding ALJ"),¹ the Enforcement Bureau (the "Bureau") hereby submits its Further Motion to Clarify Issue (j) in the above-captioned proceeding. As demonstrated herein, the designated issue should be changed to read as follows:

- (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 for:
 - (1) \$40,000 for two months of non-payment, plus \$17,766.76 (one-half of the total contributions due for a representative two month period between August 2002 and July 2003),² plus a 100 percent upward adjustment of the sum of the preceding two figures (an additional \$57,766.76) for a total of \$115,533.52, unless the evidence adduced at hearing ultimately requires imposition of a greater forfeiture, for failures 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;
 - (2) \$10,000 for each failure to file the required Forms 499 in a timely manner, in

¹ *Business Options, Inc.*, (Memorandum Opinion and Order), FCC 03M-57 (released December 23, 2003) at 10 (the "MO&O").

² The Universal Service Administrative Company ("USAC") has informed the Bureau that based on the interstate and international revenues reported by Business Options, Inc. ("BOI") on its FCC Form 499A for the year 2002, USAC's highest monthly invoice to BOI for any of the 12 months ending July 31, 2003 would have been \$17,766.76.

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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 (3) \$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).

2. Background. On July 15, 2003, the Bureau filed a Motion to Enlarge Issues (the "Motion to Enlarge"). The Motion to Enlarge sought addition of four issues, each of which was predicated on the admitted failure of BOI to file Telecommunications Reporting Worksheets and to make contributions for federal universal service and telecommunications relay services. BOI did not oppose the Bureau's Motion to Enlarge. By *Order*,³ the presiding ALJ added all of the requested issues. The wording of the added issues, including Issue (j), was identical to that of the issues requested by the Bureau in its Motion to Enlarge.

3. By Motion to Clarify Issue (j), filed November 21, 2003, the Bureau sought to have Issue (j) clarified, specifically with respect to the possible maximum forfeiture that could be imposed for BOI's failures to make universal service contributions. The Bureau advocated that the issue should be clarified by referencing the methodology employed by the Commission in the Notice of Apparent Liability for Forfeiture and Order issued to Globcom, Inc.⁴ Alternatively, the Bureau suggested that the methodology employed by the Commission in the America's Tele-Network

³ FCC 03M-33 (released August 20, 2003).

⁴ *Globcom, Inc.* (Notice of Apparent Liability for Forfeiture and Order), 18 FCC Rcd 19893 (2003) ("*Globcom*").

Corporation forfeiture proceeding⁵ should be used.

4. In the *MO&O*,⁶ the presiding ALJ granted in part and denied in part the Bureau's Motion to Clarify Issue (j). In pertinent part, the *MO&O* permitted use of the *ATNC/Matrix* standard as a clarification of Issue (j).⁷ That standard imposed a forfeiture of \$20,000 for each of two months of failures to contribute (or \$40,000), plus one-half of the contributions due for those two months, plus either an upward or downward adjustment of the sum of the first two components. The percentage of the adjustment and whether it was an upward or downward adjustment varied according to the facts of the case.⁸ The *MO&O* further provided that, when the Bureau filed its Proposed Findings of Fact and Conclusions of Law, it could request increased forfeitures in

⁵ *America's Tele-Network Corp* (Notice of Apparent Liability for Forfeiture), 15 FCC Rcd 20903 (2000); (Forfeiture Order), 15 FCC Rcd 24391 (2000) ("*ATNC*"). See also *Matrix Telecom, Inc* (Notice of Apparent Liability for Forfeiture), 15 FCC Rcd 13544 (2000) ("*Matrix*").

⁶ See *MO&O* at 9-10.

⁷ See *id.* at 9, ¶ 20.

⁸ In *ATNC*, there was an upward adjustment of slightly less than 50 percent of the sum of the base forfeiture penalty and the monthly contribution that had not been timely paid where the carrier deliberately chose not to pay anything for more than two years and sought to justify nonpayment with inconsistent, specious arguments after receiving Enforcement Bureau inquiries. The upward adjustment occurred even though *ATNC* ultimately paid more than \$300,000 prior to the issuance of the notice of apparent liability. See *ATNC*, 15 FCC Rcd at 20905-07, ¶¶ 5, 9-10. In *Matrix*, there was a downward adjustment of 40 percent of the sum of the base forfeiture penalty and the monthly contribution that had not been timely paid because of payments made and a plan to eliminate arrearages, both of which occurred before Enforcement Bureau contact. See *Matrix*, 15 FCC Rcd at 13547, ¶ 9. See also *In the Matter of the Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17109, ¶ 50 (1997), *recon denied*, 15 FCC Rcd 303 (1999).

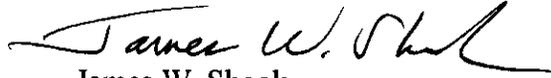
accordance with *Globcom*.⁹ Consequently, the Bureau has now framed Issue (j) in accordance with the *ATNC/Matrix* standard, while also taking into account the *MO&O*'s proviso that reference to *Globcom* might ultimately be required after a full hearing.¹⁰

5. Accordingly, the Bureau requests clarification of Issue (j) as described above.

Respectfully submitted,



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⁹ See *MO&O* at 10.

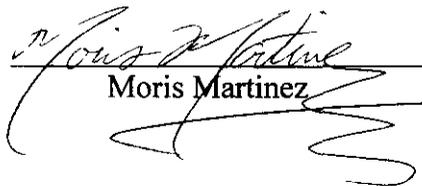
¹⁰ See *MO&O* at 9, ¶ 20 and n. 21.

CERTIFICATE OF SERVICE

Moris Martinez, a clerk in the Enforcement Bureau's Investigations and Hearings Division, certifies that he has, on this 14th day of January, 2004, sent by first class United States mail copies of the foregoing "Enforcement Bureau's Further Motion to Clarify Issue (j)" to:

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* Hand-delivered