

Before the FEB 20 11 04M-08
FEDERAL COMMUNICATIONS COMMISSION 03046
Washington, D.C. 20554

In the Matter of)	EB Docket No. 03-85
)	
BUSINESS OPTIONS, INC.)	File No. EB-02-TC-151
)	
Order to Show Cause and Notice of)	NAL/Acct. No. 200332170002
Opportunity for Hearing)	FRN: 0007179054
)	

CONSENT ORDER

Issued: February 18, 2004

Released: February 20, 2004

This is a ruling on Joint Request for Adoption of Consent Decree and Termination of Proceeding, filed on February 17, 2004, by the Enforcement Bureau ("Bureau") and Business Options, Inc. ("BOI") in accordance with §§ 1.93 and 1.94 of the Commission's rules [47 C.F.R. §§ 1.93, 1.94].¹

This proceeding was set for hearing by *Order to Show Cause and Notice of Opportunity for Hearing*, 18 F.C.C. Rcd 6881, released April 7, 2003 ("OSC"). Issues were specified to determine whether BOI had made misrepresentations or engaged in lack of candor (Issue a); to determine whether BOI had changed consumers' preferred carrier without their authorization in willful or repeated violation of § 258 of the Communications Act of 1934, as amended (the "Act") and §§ 64.1100-1190 of the Commission's rules (Issue b); to determine whether BOI had failed to file FCC Form 499-A in willful or repeated violation of § 64.1195 of the Commission's rules (Issue c); to determine whether BOI had discontinued service without Commission authorization in willful or repeated violation of § 214 of the Act and §§ 63.71 and 63.505 of the Commission's rules (Issue d); to determine whether BOI's authorization pursuant to § 214 of the Act to operate as a common carrier should be revoked (Issue e); and to determine whether the BOI 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 (Issue f). *See OSC*, 18 F.C.C. Rcd at 6894 (¶ 36).

¹ The parties submitted a draft *Consent Order* to the Presiding Judge for consideration in accordance with § 1.94(b)(7). The *Consent Order* provides for termination of the proceeding after the period prescribed for a Commission review *sua sponte* has expired. *See* § 1.94(e) of the Commission's rules. There has been no change, addition, or modification of the *Consent Decree*.

If it were shown that BOI willfully or repeatedly violated the provisions of the Act or the Commission's rules noted above, then it would further be determined whether a forfeiture, in the maximum amount of \$80,000 for each unauthorized conversion of listed complainants' long distance service, \$3,000 for the failure to file a sworn statement, and \$120,000 for the unauthorized discontinuance of service, should be imposed. *See OSC*, 18 F.C.C. Rcd at 6894-95 (¶ 39).

By *Memorandum Opinion and Order*, FCC 03M-33, released August 20, 2003 ("MO&O"), additional issues were specified to determine whether BOI and its related entities, Buzz Telecom Corp. ("Buzz"), U.S. Bell and/or Link Technologies (collectively, "U.S. Bell") failed to make required universal service contributions in violation of § 254(d) of the Act and § 54.706 of the Commission's rules (Issue g); to determine whether BOI, Buzz and/or U.S. Bell had failed to make required contributions to the Telecommunications Relay Services Fund in violation of § 64.604(c)(5)(iii)(A) of the Commission's rules (Issue h); and to determine whether BOI, Buzz and/or U.S. Bell failed to file Telecommunications Reporting Worksheets ("Worksheets") in violation of §§ 54.711, 54.713 and 64.604(c)(iii)(B) of the Commission's rules (Issue i). In addition, if it were shown that BOI, Buzz and/or U.S. Bell willfully or repeatedly violated the provisions of the Act or the Commission's rules noted above, then it would further be determined whether a forfeiture, in the amount of \$115,533.52 for the failures to make required universal service contributions, \$10,000 for each failure to timely file Worksheets, and \$10,000 for each failure to make required contributions to the TRS Fund (Issue j) should be imposed. *Memorandum Opinion and Order*, FCC 03M-33 at 4 (¶ 10), *clarified*, *Memorandum Opinion and Order*, FCC 03M-57, released December 23, 2003, and *clarification Order*, FCC 04M-04, released January 30, 2004.

By *Memorandum Opinion and Order*, FCC 03M-54, released December 9, 2003, Issues b, c and d were resolved by summary decision against BOI. By *Memorandum Opinion and Order*, FCC 03M-58, released December 24, 2003, Issues g, h, and i were resolved against BOI, Buzz and U.S. Bell. *See* 47 C.F.R. § 1.94 (f) (consent decree provisions shall not effect procedures for resolving issues by summary decision after hearing designation. There were no findings of misrepresentation or lack of candor, or of any case dispositive issue in connection with either of these summary decisions.

Public Interest

BOI, its affiliates (Buzz and U.S. Bell) and their management company, Avatar Enterprises, Inc. (collectively, the "Companies"),² and the Bureau have entered into a *Consent Decree* which would resolve all of the issues. Approval of the *Consent Decree* authorizes terminating this proceeding.

² BOI, Buzz and U.S. Bell, Inc. and, its successor, Link Technologies, are owned and controlled by Kurtis Kintzel and his brother, Keanan Kintzel. In addition, both BOI and Buzz are "managed" by another entity, Avatar Enterprises, Inc., which is also owned and controlled by Kurtis and Keanan Kintzel.

Approval of the *Consent Decree* will further the public interest by securing repayment of BOI's universal service debt, adequately sanctioning BOI for the violations cited in the summary decisions, and instituting a compliance plan that will ensure that BOI remains current with its universal service and TRS obligations and that will ensure compliance with the Commission's slamming and reporting requirements, in exchange for the prompt disposition of this proceeding's remaining issues. In addition, the *Consent Decree* requires BOI to make a voluntary payment (not a fine or a forfeiture) in the amount of \$510,000 to the United States Treasury over four years.³

The *Consent Decree* will secure future compliance with the law by the Companies and their principals in exchange for the prompt disposition of this proceeding. See § 1.93(b) of the Commission's rules. Accordingly, based upon a review and evaluation of the *Consent Decree*, it is concluded that the requirements of §§ 1.93 and 1.94 of the Commission's rules are satisfied, and that the public interest would be served by approval.

The *Consent Decree* is to be filed with the Secretary and placed on the public record by the effective date of this *Consent Order*.

Rulings

IT IS ORDERED pursuant to § 1.94(d) of the Commission's rules, that the *Consent Decree* IS APPROVED.

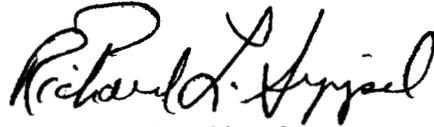
IT IS FURTHER ORDERED pursuant to § 1.94(d) of the Commission's rules, that the record of this proceeding IS CLOSED.

IT IS FURTHER ORDERED pursuant to § 1.94(b)(7) of the Commission's rules, that all of the issues specified in the *Order to Show Cause and Notice of Opportunity for Hearing* ARE RESOLVED.

³ The amount of the voluntary payment was determined as follows: \$115,000 (essentially, the maximum figure cited in the most recent clarification of the issue, *see Order*, FCC 04M-04, released January 30, 2004) for BOI's repeated failures to make universal service contributions in a timely manner; \$3,000 (the maximum provided in the *OSC*) for BOI's willful failure to timely file its Registration Statement; \$12,000 (below the maximum allowed by the *OSC* but not inconsistent with precedent, *see, e.g., Broadstreet Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 7938 (Enf. Bur. 2002)) for the unauthorized discontinuation of service in Vermont; \$40,000 (below the maximum allowed by the *OSC* but not inconsistent with precedent (*see, e.g., 47 C.F.R. § 1.80*, note to section (b)(4), Section 1) for each of nine unauthorized changes of long distance telephone service for a total of \$360,000; \$10,000 (the maximum allowed by *MO&O*, FCC 03M-33) for BOI's willful failure to timely make its TRS contribution; and \$10,000 (less than what *MO&O*, FCC 03M-33 allowed but consistent with 47 C.F.R. § 1.80, note to section (b)(4), Section 1) for BOI's repeated failures to timely file Worksheets.

IT IS FURTHER ORDERED that pursuant to § 1.94(e) of the Commission's rules, the Joint Request for Adoption of Consent Decree and Termination of Proceeding IS GRANTED.⁴

FEDERAL COMMUNICATIONS COMMISSION⁵



Richard L. Sippel
Chief Administrative Law Judge

⁴ However, the Commission may review the *Consent Decree* on its own motion under § 1.302 of the Commission's rules. See § 1.94(e). Therefore, this *Consent Order* and the *Consent Decree* will become effective and this proceeding is terminated 50 days after its public release if the Commission does not review the *Consent Order* and/or the *Consent Decree* on its own motion. 47 C.F.R. § 1.302.

⁵ Courtesy copies of this *Consent Order* were sent to counsel for the parties by fax or e-mail on the day of issuance.