

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	EB Docket No. 07-197
)	
Kurtis J. Kintzel, Keanan Kintzel, and all Entities)	File No. EB-06-IH-5037
by which they do business before the Federal)	
Communications Commission)	FRN: 0007179054
)	
Resellers of Telecommunications Services)	NAL/Acct. No. 200732080029
)	

ORDER TO SHOW CAUSE AND NOTICE OF OPPORTUNITY FOR HEARING

Adopted: September 10, 2007

Released: September 10, 2007

By the Commission:

I. INTRODUCTION

1. In this *Order to Show Cause and Notice of Opportunity for Hearing*, we commence an evidentiary hearing before an administrative law judge to determine, among other things, whether the authority granted to Kurtis J. Kintzel, Keanan Kintzel, and any and all entities in which they are principals and/or do business,¹ to operate as common carriers, pursuant to Section 214 of the Communications Act of 1934, as amended, should be revoked and, further, whether Kurtis J. Kintzel, Keanan Kintzel, and any and all entities in which they are or may be principals and/or by which they do, or may do business, should be required to refrain from providing any interstate common carrier services in the future without first obtaining prior Commission consent. As discussed below, entities providing interstate common carrier services owned and controlled by the Kintzel brothers apparently willfully and repeatedly violated multiple terms of a Consent Decree to which they were signatories and apparently willfully and repeatedly violated multiple Commission rules and provisions of the Act relating to the provision of interstate common carrier services. Such apparent violations, and a lengthy history of noncompliance before the Commission, raise material and substantial questions regarding the basic qualifications of the Kintzel brothers to engage in the provision of interstate common carrier services now and in the future.

II. BACKGROUND

A. The BOI Consent Decree

2. Business Options, Inc. (“BOI”) is an entity controlled by the Kintzel brothers and which operates as an interstate telecommunications service provider. As early as 2002, the Enforcement Bureau began receiving consumer complaints about BOI’s operations, particularly its efforts to market services

¹ According to Commission records, Kurtis J. Kintzel and his brother, Keanan Kintzel, are or have been principals in entities doing business before the Commission as Business Options, Inc., Buzz Telecom Corporation, Link Technologies, AVATAR, and US Bell Corporation. For the purposes of this *Order to Show Cause and Notice of Opportunity for Hearing*, Kurtis J. Kintzel and Keanan Kintzel will be referred to as the “Kintzel brothers.” Such reference includes any and all entities in which they are principals, that they control and/or by which they do business.

to new customers. On April 7, 2003, following a full investigation by the Enforcement Bureau, the Commission released an Order to Show Cause and Notice of Opportunity for Hearing in EB Docket No. 03-85 (“the earlier proceeding”), initiating an evidentiary hearing against BOI.² The BOI Show Cause Order directed the Presiding Administrative Law Judge (“Presiding Judge”) to determine, among other things: whether BOI had intentionally provided incorrect or misleading information to the Commission;³ whether BOI had engaged in unlawful “slamming” activities by changing consumers’ long distance providers without authorization in violation of Section 258 of the Act and Section 64.1120(a)(1) of the Commission’s rules;⁴ whether BOI failed to file registration statements required under Section 64.1195 of the Commission’s rules; and whether BOI discontinued service to the public in violation of Section 214 of the Act and Section 63.71 of the Commission’s rules.⁵ After the hearing was commenced, additional issues were added to determine whether BOI had properly filed Telecommunications Reporting Worksheets, and made all required contributions to the Universal Service Fund (“USF”) and Telecommunications Relay Services Fund (“TRS”), respectively⁶.

3. On December 9, 2003, and December 24, 2003, the Presiding Judge issued orders granting the Enforcement Bureau’s motions for summary decision adverse to BOI on several key issues.⁷ In the December 9, 2003 order, the Presiding Judge concluded that BOI had indeed engaged in “slamming” activities on at least 16 separate occasions, failed to file an FCC Form 499A (Telecommunications Reporting Worksheet) as required by Section 64.1195 of the Commission’s rules, and discontinued service in violation of Section 214 of the Act and Section 63.71 of the Commission’s rules.⁸ In the December 24, 2003 order, the Presiding Judge concluded that BOI had failed to make required universal service and TRS payments.⁹

4. BOI faced possible sanctions for each of these violations, including \$80,000 for each of the 16 “slamming” violations; up to \$120,000 for unlawfully discontinuing service; and up to \$3,000 for its failure to file a sworn statement. According to the Presiding Judge’s December 24, 2003 order, BOI also faced possible sanctions of \$115,533.52 for failure to make required universal service contributions, \$10,000 for failure to file required Telecommunications Reporting Worksheets, and \$10,000 for failure to make required TRS contributions. Prior to final disposition of the hearing, however, the Enforcement Bureau and BOI entered into a consent decree (“Consent Decree”), pursuant to Section 1.93(b) of the

² See, *Business Options, Inc., Order to Show Cause and Notice of Opportunity for Hearing*, 18 FCC Rcd 6881 (2003) (“BOI 2003 Show Cause Order”).

³ *Id.* at 6887 (¶16).

⁴ See 47 C.F.R. §64.1120(a)(1). Slamming refers to the practice of executing a change in a subscriber’s telephone exchange service or telephone toll service without the subscriber’s authorization and/or without following the verification procedures established by the Commission

⁵ See BOI 2003 Show Cause Order, at 6892-93 (¶¶ 27-31).

⁶ See Section 54.706 of the Commission’s rules relating to payment of universal contributions. See also Section 64.604(c)(5)(iii)(A) of the Commission’s rules relating to payment of Telecommunications Relay Services contributions.

⁷ See *Memorandum Opinion and Order*, FCC 03M-54, released December 9, 2003, and see also *Memorandum Opinion and Order*, FCC 03M-58, released December 24, 2003.

⁸ See *Memorandum Opinion and Order*, FCC 03M-54, released December 9, 2003.

⁹ See *Memorandum Opinion and Order*, FCC 03M-58, released December 24, 2003.

Commission's rules.¹⁰

5. The terms of the Consent Decree specifically applied to all entities owned, directed, or controlled by the Kintzel brothers,¹¹ and was intended to ensure their future compliance with Sections 214, 254, and 258 of the Act¹² and related Commission rules. The Consent Decree contemplated a voluntary contribution to the United States Treasury in the total amount of \$510,000 to be paid in 48 scheduled monthly installments;¹³ payment of all outstanding universal service and TRS debts;¹⁴ and timely payment of all future universal service and TRS assessments.¹⁵ In addition, the Kintzel brothers agreed to henceforth obtain all appropriate and necessary authorizations prior to discontinuing service in any state and to implement procedures regarding marketing of services to new customers and verification procedures related to these marketing efforts. The Consent Decree also required the filing of regular reports with the Commission relating to compliance with various Commission rules and Consent Decree requirements.¹⁶ The Presiding Judge approved the Consent Decree and terminated the BOI hearing on February 20, 2004.¹⁷

B. Post-Consent Decree Misconduct

6. In the fall of 2006, the Enforcement Bureau received information indicating that the Kintzel brothers had discontinued making the required regularly scheduled monthly installment payments toward satisfaction of their voluntary contribution under the 2004 Consent Decree. The information also suggested that an entity controlled by the Kintzel brothers, and subject to the terms of the Consent Decree, Buzz Telecom Corporation ("Buzz"), had unlawfully discontinued service to the public, and failed to pay required universal service and TRS assessments. Both Buzz and BOI are entities controlled by the Kintzel brothers that apparently operated separately; both resold the interstate voice telecommunications services of other carriers to business and residential subscribers; and both were signatories subject to the Consent Decree.

7. During the last quarter of 2006, the Commission also received a number of consumer complaints alleging that Buzz, like BOI, had engaged in prohibited slamming and/or cramming activities. Consequently, the Enforcement Bureau, on December 20, 2006, initiated an investigation of, and directed a Letter of Inquiry ("LOI") to, Buzz and BOI requiring the production of various documents and responses to interrogatories concerning these allegations.

¹⁰ See 47 C.F.R. § 1.93(b).

¹¹ See *Consent Order*, FCC 04M-08, released February 20, 2004 ("2004 Consent Decree"), at ¶2(c). See also *Presiding Judge Order Approving Consent Decree*, 19 FCC Rcd 2916 (2004) ("Approving Order") (noting "BOI, its affiliates (Buzz and U.S. Bell) and their management company, Avatar Enterprises, Inc. (collectively, the "Companies"), 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.")

¹² See 47 U.S.C. §§ 214, 254 and 258.

¹³ Consent Decree at ¶15.

¹⁴ *Id.* at ¶14 (h)-(i).

¹⁵ *Id.* at ¶14 (f)-(g).

¹⁶ *Id.* at ¶14 (o).

¹⁷ See *Approving Order*, 19 FCC Rcd 2916 (2004).

8. By letter dated January 17, 2007, Kurtis Kintzel replied to the LOI on behalf of Buzz and BOI. In his LOI Response, Kintzel admitted that the voluntary contribution of \$510,000 had not been completely satisfied, and that \$192,600 was past due. Kintzel attributed the failure to comply with the required payment schedule to a shortage of working capital resulting from protracted litigation and a shrinking customer base. Kintzel also conceded that Buzz and BOI had discontinued service to all customers in each state where they had been providing services despite having failed to request and obtain Commission authorization to do so. In addition, despite information from the Universal Service Administrative Company (“USAC”) and the National Exchange Carrier Association (“NECA”) that Buzz had failed to make required universal service and TRS payments, Kintzel represented in his LOI response that the entities that he and his brother controlled were up to date and in compliance with all such obligations. Kintzel’s LOI Response also failed to provide any information about the multiple slamming and cramming complaints the Commission had received from consumers. This failure compelled the Enforcement Bureau to direct a follow-up communication to Kintzel requesting the same information. Kintzel again failed to provide the requested information. In addition, despite the Enforcement Bureau’s request, Kintzel failed to produce information about slamming and cramming complaints that Buzz had received directly from consumers.

III. DISCUSSION

A. Apparent Violations of the 2004 Consent Decree

9. A consent order adopted pursuant to Section 1.93 of the Commission’s rules is an order of the Commission under Section 416 of the Act.¹⁸ All persons, agents, and employees of an entity subject to the order must observe and comply with the terms of the order as long as it remains in effect.¹⁹ Consent orders are an important aspect of the Commission’s enforcement effort because they promote the public interest through prompt compliance and the timely and efficient disposition of proceedings. Where, as here, a party to a consent order apparently engages in willful and repeated violations of the terms of the order, it undermines public confidence in the consent order process and the ability of consent orders to serve the public interest. As such, violations of a consent order represent a serious breach of the Commission’s rules that must be deterred.

10. The Kintzel brothers and the Commission jointly filed a request for adoption of the 2004 Consent Decree on February 17, 2004.²⁰ In executing the agreement and jointly filing for adoption, the Kintzel brothers made certain representations and promises to the Commission about their commitments to comply with the Commission’s rules and various provisions of the Act. The Enforcement Bureau relied on those representations and promises in good faith in agreeing to jointly seek termination of the BOI hearing proceeding. As discussed below, the information now before the Commission indicates that the Kintzel brothers reneged on their promises to the Commission, and deliberately engaged in conduct that was inconsistent with the terms of the Consent Decree to which they were signatories.

11. The Consent Decree, at paragraph 14(d), required the Kintzel brothers to obtain authorization from either the Commission or the applicable state public utility commission prior to

¹⁸ See 47 U.S.C. §416(c).

¹⁹ *Id.*

²⁰ See *Approving Order*, 19 FCC Rcd 2916 (2004) (noting “[t]his 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”).”

discontinuing long distance telephone service to customers.²¹ In addition, and independent of the Consent Decree, Section 63.71 of the Commission's rules requires any domestic carrier seeking to reduce or impair service to comply with a series of procedures, including furnishing notice to all affected customers, providing a copy of its application to the state public service commission and the Governor of each state, and furnishing an application to the Commission confirming notification to the foregoing.²² The purpose of Section 63.71, upon which paragraph 14(d) of the Consent Decree was predicated, is to prevent the interruption of service to communities without prior notice, and to allow affected customers to make alternate arrangements for continued service when a carrier seeks to discontinue service. The information before the Commission indicates that the Kintzel brothers failed to notify either the Commission or the appropriate state officials and regulatory bodies prior to terminating service to customers in 43 states in November of 2006. Such failure is manifestly inconsistent with the terms of the Consent Decree and Section 63.71 of the Commission's rules. Accordingly, issues will be specified to determine whether the Kintzel brothers discontinued service to the public in willful and repeated violation of the terms of the Consent Decree and in willful and repeated violation of Section 63.71 of the Commission's rules.

12. The Consent Decree, at paragraph 14(f), required the Kintzel brothers to make all federal universal service contributions by the due date specified in each invoice sent by the USAC.²³ The requirement to pay universal service contributions is also codified in Section 54.706 of the Commission's rules and is critical to maintaining the vitality of the universal service fund and guaranteeing the continued availability of funds.²⁴ The information before the Commission indicates that one of the Kintzel brothers' companies, Buzz, apparently failed to make 22 required universal service contributions. The Kintzel brothers' apparent utter disregard for their universal service obligations is flatly inconsistent with their commitments under the terms of the Consent Decree and contrary to the requirements set forth in Section 54.706 of the Commission's rules. Accordingly, an issue will be specified to determine whether the Kintzel brothers failed to make required universal service payments in willful and repeated violation of the Consent Decree and of Section 54.706 of the Commission's rules.

13. The Consent Decree, at paragraph 14(g), required the Kintzel brothers to make all required TRS contributions by the due date on each invoice received from NECA.²⁵ The requirement that carriers providing interstate telecommunications services timely pay TRS contributions is codified in Section 64.604(c)(5)(iii)(A) of the Commission's rules.²⁶ The information before the Commission indicates that the Kintzel brothers, doing business as Buzz, failed to pay annual TRS assessments for either 2005 or 2006. NECA indicates that Buzz has an outstanding balance of \$2,709.92. The failure to make timely TRS contributions to NECA over the course of two years is unquestionably inconsistent with the obligations of an interstate common carrier, and constitutes apparent willful and repeated violations of the Consent Decree and of Section 64.604(c)(5)(iii)(A) of the Commission's rules.

²¹ *Id.* at ¶14(d).

²² *See* 47 C.F.R. §63.71.

²³ *See* Consent Decree, at ¶14(f).

²⁴ *See* 47 C.F.R. §54.706. This section of the Commission's rules unambiguously directs "entities [providing] interstate telecommunications to the public . . . for a fee . . . contribute to the universal service support programs."

²⁵ *See* Consent Decree, at ¶14(g).

²⁶ *See* 47 C.F.R. §64.604(c)(5)(iii).

Accordingly, an issue will be specified to determine whether the Kintzel brothers failed to make TRS payments in willful and repeated violation of the Consent Decree and Section 64.604(c)(5)(iii)(A) of the Commission's rules.

14. The Consent Decree, at paragraph 15, required the Kintzel brothers to remit to the Commission a voluntary contribution in the total amount of \$510,000, to be paid in regularly scheduled installments for 48 consecutive months.²⁷ The information before the Commission indicates, however, that the Kintzel brothers only made timely payments from May 2004 through May 2005 before missing their first scheduled payment in June 2005. Thereafter, they apparently made one payment in July 2005 and missed their next ten scheduled payments before making another payment in May 2006. No further payments have been received. As of the date of this *Order to Show Cause and Notice of Opportunity for Hearing*, at least \$224,700 is apparently past due. Accordingly, an issue will be specified to determine whether the Kintzel brothers failed to make timely payments to the Commission in willful and repeated violation of the terms of the Consent Decree to which they were signatories.

B. Other Apparent Violations

15. Section 218 of the Act authorizes the Commission to "obtain from . . . carriers . . . full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created."²⁸ Section 403 of the Act also grants the Commission the power to direct responses to inquiries in order to execute its functions.²⁹ The Commission has previously held that the failure to respond to an LOI from the Commission may result in a forfeiture.³⁰ The Enforcement Bureau sent an LOI to the Kintzel brothers on December 20, 2006, and a follow-up request for information on January 19, 2007. Kurtis Kintzel provided only a partial response to the LOI, and only a partial response to the follow-up request. Specifically, Kintzel failed to provide verification tapes associated with ten slamming complaints received by the Commission, failed to provide a list of complaints received by Buzz from May of 2006 to the date of the LOI, and failed to provide verification tapes associated with such complaints. The apparent failure of the Kintzel brothers to provide all of the information requested by the Enforcement Bureau in a timely and comprehensive manner prevented the Commission staff from carrying out its statutory obligations. Accordingly, an issue will be specified to determine whether the Kintzel brothers failed to respond fully and completely to staff inquiries for information, in willful and/or repeated violation of Sections 218 and 403 of the Act.

16. Section 258 of the Act, as amended, prohibits telecommunications carriers from executing a change in a subscriber's selection of a provider of telephone exchange or telephone toll service except in accordance with Commission rules.³¹ Section 64.1120 of the Commission's rules requires telecommunications carriers to obtain authorization from a subscriber prior to executing a change in the subscriber's telephone exchange or telephone toll service, and to verify the subscriber's authorization in accordance with the procedures specified therein.³² The Enforcement Bureau requested

²⁷ Consent Decree, at ¶15.

²⁸ See 47 U.S.C. §218.

²⁹ See 47 U.S.C. §403. See also *Unicom Communications, LLC*, 21 FCC Rcd 4361, 4364 (2006).

³⁰ See *id.* See also *International Telecom Exchange, Inc.*, 21 FCC Rcd 6232 (2006) and *Universal Telecommunications, Inc.*, 21 FCC Rcd 6579 (2006).

³¹ See 47 U.S.C. §258(a).

³² See 47 C.F.R. §64.1120.

that the Kintzel brothers provide information and verification tapes associated with at least ten apparent slamming complaints received by the Commission in the last calendar quarter of 2006. The Kintzel brothers failed to provide the information requested by the LOI and the follow-up communication. The Commission continues to receive complaints alleging that Buzz executed a change to a subscriber's telephone exchange or telephone toll service without authorization in apparent violation of Section 258 of the Act, as amended, and Section 64.1120 of the Commission's rules. The information before the Commission indicates that the Kintzel brothers have apparently violated Section 258 of the Act, as amended, and Section 64.1120 of the Commission's rules on numerous occasions. Accordingly, an issue will be specified to determine whether the Kintzel brothers have executed changes in a subscriber's selection of a provider of telephone exchange or telephone toll service, in willful and repeated violation of Section 258 of the Act, as amended, and Section 64.1120 of the Commission's rules.

C. Sanctions

17. Under Section 1.95 of the Commission's rules, the violation of a consent order subjects the consenting party to the entire range of sanctions that "could have been imposed" in the proceeding that led to the consent order if the issues in that proceeding had been decided against the consenting party, as well as additional sanctions for the consent violations.³³ The Commission carries the burden to demonstrate that the "consent order has been violated in some, but not all respects."³⁴ As discussed above, issues will be specified herein to determine whether multiple provisions of the 2004 Consent Decree were violated. If the Presiding Judge concludes on the basis of evidence adduced pursuant to those issues that the subject Consent Decree was in fact violated, it shall also be determined, as discussed below and pursuant to Section 1.95 of our rules, whether the entire, or some lesser range, of sanctions that could have been imposed from the earlier proceeding had all the issues been decided adversely to BOI should be imposed against the Kintzel brothers in the instant proceeding.

18. The BOI 2003 Show Cause Order, at paragraph 39, specified a potential forfeiture:

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.

The Presiding Judge in the earlier proceeding determined that BOI: (a) changed the long distance provider of a subscriber without authorization 16 times; (b) failed to file an FCC Form 499-A; and (c) 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.³⁵ In addition, the issues that were added in the earlier proceeding carried additional potential sanctions, including \$115,533.52 for failure to make timely universal service contributions; \$10,000 for each failure to timely file Telecommunications Reporting Worksheets ("Worksheets"); and \$10,000 for each failure to make timely TRS contributions. The Presiding Judge in the earlier proceeding determined that BOI (a) failed to make required universal

³³ 47 C.F.R. §1.95.

³⁴ *Id.*

³⁵ See *Memorandum Opinion and Order*, FCC 03M-54, released December 9, 2003.

service contributions in violation of Section 254(d) of the Act and Section 54.706 of the Commission's rules; (b) 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; and (c) failed to file Telecom Reporting Worksheets in violation of Sections 54.711, 54.713 and 64.604(c)(iii)(B) of the Commission's rules.³⁶ Consequently, with respect to the range of sanctions relating to violations of the Consent Decree, it shall be determined whether the Kintzel brothers are subject to a forfeiture in an amount not to exceed \$1,538,533.52.

19. In addition to issues relating to compliance with the Consent Decree, issues are also specified below to determine whether the Kintzel brothers engaged in conduct that may have violated Sections 54.706, 64.604(c)(5)(iii)(A), and 63.71 of the Commission's rules, and Section 218 of the Act. Section 503(b)(2)(B) of the Act states that violations of each of these provisions carry a potential forfeiture of \$130,000 per violation or each day of a continuing violation except that the amount assessed for any continuing violation shall not exceed \$1,325,000 for any single act or failure to act.³⁷ The information before the Commission indicates that the Kintzel brothers, doing business as Buzz, apparently failed to make 22 consecutive universal service contributions, failed to make two consecutive annual TRS contributions, and discontinued service without Commission authorization. The apparent universal and TRS contribution violations are subject to maximum forfeitures of \$29,150,000 and \$2,650,000 respectively under the Commission's rules. The Kintzel brothers also discontinued service without Commission authorization in violation of Sections 63.71 and 63.505 of the Commission's rules and failed to respond to a Commission inquiry in violation of Sections 218 and 403 of the Act. Each of these apparent violations is subject to a maximum forfeiture of \$130,000. Consequently, with respect to the range of sanctions relating to these apparent violations of the various sections of the Commission's rules and of the Act, it shall also be determined whether the Kintzel brothers are subject to a forfeiture in an amount not to exceed \$32,060,000.

20. Issues are specified below to determine whether the Kintzel brothers engaged in conduct that violates paragraph 15 of the Consent Order. Each violation of this paragraph carries a potential forfeiture of \$130,000 per violation or each day of a continuing violation except that the amount assessed for any continuing violation shall not exceed \$1,325,000 for any single act or failure to act. The Kintzel brothers apparently failed to remit 12 consecutive monthly voluntary contributions required under paragraph 15. These apparent violations each represent a separate continuing violation, and it therefore shall be determined whether the Kintzel brothers are subject to a forfeiture in an amount not to exceed \$15,900,000.

21. Issues are specified below to determine whether the Kintzel brothers, doing business as Buzz, engaged in conduct that may have violated Section 258 of the Act and Section 64.1120 of the Commission's rules. Each complaint alleging an unauthorized change to the telephone exchange or telephone toll service of a subscriber, in violation of the foregoing that is determined to be a violation is subject to a maximum forfeiture of \$130,000.

22. In sum, the Kintzel brothers, through their various businesses, appear to have engaged in

³⁶ See *Memorandum Opinion and Order*, FCC 03M-58, released December 24, 2003.

³⁷ See 47 C.F.R. §1.80 (b)(2). The Kintzel brothers have engaged in a pattern of misconduct that spans more than five years and now multiple enforcement proceedings. Their conduct represents a systemic abrogation of their obligations as a common carrier and demonstrates a blatant disregard for Commission Rules. We therefore believe it is appropriate to consider assessing the statutory maximum for each of these recent violations.

a pervasive pattern of misconduct that includes slamming, failure to make universal service and TRS contributions, failure to seek appropriate authorizations from the Commission, and, most recently, failure to honor their obligations under the Consent Decree. The extensive list of apparent violations, and the fact that the misconduct appears to have continued *after* prior enforcement proceedings were resolved through a negotiated Consent Decree, plainly suggest that the Kintzel brothers and the entities they control have little regard for the Commission's rules and the compliance responsibilities of a common carrier. Such egregious behavior is patently inconsistent with the obligations of a Commission regulatee and calls into question whether the Kintzel brothers are qualified to be and remain interstate common carriers. Consequently, appropriate issues are specified below to determine whether the blanket authority conferred upon the Kintzel brothers, as defined herein, to provide common carrier services should be revoked and, further, whether they should be required in the future to refrain from providing such services without prior written application to and consent from the Commission.

D. Procedural Matter

23. We note that Section 1.95 of the Commission's rules provides that "violation of the consent order and the sanctions to be imposed shall be the only issues considered in a proceeding concerning such an alleged violation."³⁸ This language contemplates that a proceeding initiated to consider an entity's violation of a consent order will ordinarily be limited to alleged violations of the order. Where, in addition to possible consent order violations, there are also alleged violations of Commission rules that arise out of the same misconduct, relate closely to the alleged violations of a consent order, and collectively raise very serious questions about the fundamental qualifications of the entities in question, it is administratively efficient and would serve the public interest to consider such issues in a consolidated proceeding. We therefore waive Section 1.95 to the extent that it would otherwise restrict the scope of this proceeding to allow a comprehensive inquiry into all of the apparent violations referenced above committed by the Kintzel brothers.

V. ORDERING CLAUSES

24. ACCORDINGLY, IT IS ORDERED, pursuant to Sections 4(i) and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i) and 214, that Buzz Telecom Corporation, Business Options, Inc., US Bell Corporation, Link Technologies, AVATAR, and/or their principals Kurtis J. Kintzel and/or Keanan Kintzel ARE DIRECTED TO SHOW CAUSE why the operating authority bestowed on them pursuant to Section 214 of the Communications Act of 1934, as amended, should not be REVOKED, in a consolidated proceeding before an administrative law judge, at a time and place to be specified in a subsequent order, upon the following issues:

(a) to determine whether Buzz Telecom Corporation, Business Options, Inc., US Bell Corporation, Link Technologies, AVATAR, and/or their principals Kurtis J. Kintzel and/or Keanan Kintzel willfully and/or repeatedly violated Paragraph 14(d) of the Consent Decree in EB Docket No. 03-85 by discontinuing service in one or more states without first notifying either the Commission or the appropriate state regulatory authority;

(b) to determine whether Buzz Telecom Corporation, Business Options, Inc., US Bell Corporation, Link Technologies, AVATAR, and/or their principals Kurtis J. Kintzel and/or Keanan Kintzel willfully and/or repeatedly violated Paragraph 14(f) of the Consent

³⁸ 47 C.F.R. §1.95.

Decree in EB Docket No. 03-85 by failing to make required universal service contributions by the date indicated on invoices from USAC;

(c) to determine whether Buzz Telecom Corporation, Business Options, Inc., US Bell Corporation, Link Technologies, AVATAR, and/or their principals Kurtis J. Kintzel and/or Keanan Kintzel willfully and/or repeatedly violated Paragraph 14(g) of the Consent Decree in EB Docket No. 03-85 by failing to make required TRS contributions by the date indicated on invoices received from NECA;

(d) to determine whether Buzz Telecom Corporation, Business Options, Inc., US Bell Corporation, Link Technologies, AVATAR, and/or their principals Kurtis J. Kintzel and/or Keanan Kintzel willfully and/or repeatedly violated Paragraph 15 of the Consent Decree in EB Docket No. 03-85 by failing to make required voluntary contributions to the Commission in a timely manner;

(e) to determine whether Buzz Telecom Corporation, Business Options, Inc., US Bell Corporation, Link Technologies, AVATAR, and/or their principals Kurtis J. Kintzel and/or Keanan Kintzel willfully and/or repeatedly violated Section 63.71 of the Commission's rules by discontinuing service in one or more states without first notifying either the Commission or the appropriate state regulatory authority;

(f) to determine whether Buzz Telecom Corporation, Business Options, Inc., US Bell Corporation, Link Technologies, AVATAR, and/or their principals Kurtis J. Kintzel and/or Keanan Kintzel willfully and/or repeatedly violated Section 54.706 of the Commission's rules by failing to make required universal service contributions by the date indicated on invoices from USAC;

(g) to determine whether Buzz Telecom Corporation, Business Options, Inc., US Bell Corporation, Link Technologies, AVATAR, and/or their principals Kurtis J. Kintzel and/or Keanan Kintzel willfully and/or repeatedly violated Section 64.604(c)(5)(iii)(A) of the Commission's rules by failing to make required TRS contributions by the date indicated on invoices received from NECA;

(h) to determine whether Buzz Telecom Corporation, Business Options, Inc., US Bell Corporation, Link Technologies, AVATAR, and/or their principals Kurtis J. Kintzel and/or Keanan Kintzel willfully and/or repeatedly violated Sections 218 and/or 403 of the Communications Act of 1934, as amended, by failing to respond fully, completely, and in a timely manner to one or more Commission inquiries;

(i) to determine whether Buzz Telecom Corporation, Business Options, Inc., US Bell Corporation, Link Technologies, AVATAR, and/or their principals Kurtis J. Kintzel and/or Keanan Kintzel willfully and/or repeatedly violated Section 258 of the Communications Act of 1934, as amended, and Section 64.1120 of the Commission's rules by changing a subscriber's provider of telephone exchange or telephone toll service without authorization and/or without following the verification procedure's outlined in Section 64.1120 of the Commission's rules;

(j) to determine, in light of the evidence adduced pursuant to the foregoing issues, whether the authority conferred by Section 214 of the Communications Act of 1934, as amended, upon Buzz Telecom Corporation, Business Options, Inc., US Bell Corporation, Link

Technologies, AVATAR, and/or their principals Kurtis J. Kintzel and/or Keanan Kintzel to provide interstate common carrier services should be revoked;

(k) to determine, in light of the evidence adduced pursuant to the foregoing issues, whether Buzz Telecom Corporation, Business Options, Inc., US Bell Corporation, Link Technologies, AVATAR, and/or their principals Kurtis J. Kintzel and/or Keanan Kintzel should be ordered to henceforth cease, desist and otherwise refrain from providing interstate common carrier services of any kind without prior written application to and consent from the Commission.

25. IT IS FURTHER ORDERED, pursuant to Section 1.91(c) of the Commission's rules, that, to avail themselves of the opportunity to be heard, Buzz Telecom Corporation, Business Options, Inc., US Bell Corporation, Link Technologies, AVATAR, and/or their principals Kurtis J. Kintzel and/or Keanan Kintzel, SHALL FILE with the Commission within 20 calendar days of the mailing of this *Order to Show Cause and Notice of Opportunity for Hearing* a WRITTEN APPEARANCE stating that they will, individually and/or by legal representative, appear on the date fixed for hearing and present evidence on the issues specified herein.

26. IT IS FURTHER ORDERED that the Chief, Enforcement Bureau, SHALL BE MADE a party to this proceeding without the need to file a notice of appearance.

27. IT IS FURTHER ORDERED, pursuant to Section 1.92(c) of the Commission's rules, that if Buzz Telecom Corporation, Business Options, Inc., US Bell Corporation, Link Technologies, AVATAR, and/or their principals Kurtis J. Kintzel and/or Keanan Kintzel fail to timely file written appearances within the 20-day period referenced above, or have not filed a petition to accept, for good cause shown, a written appearance beyond the expiration of the 20-day period, their right to a hearing shall be deemed by the Presiding Administrative Law Judge to be waived,³⁹ and the Presiding Administrative Law Judge shall, at the earliest practicable date, issue an order terminating the hearing proceeding and certifying the case to the Commission.⁴⁰

28. IT IS FURTHER ORDERED, pursuant to Section 312(d) of the Communications Act of 1934, as amended,⁴¹ and Section 1.91(d) of the Commission's rules,⁴² that the burden of proceeding with the introduction of evidence and the burden of proof with respect to all of the issues specified above SHALL BE on the Chief, Enforcement Bureau.

29. IT IS FURTHER ORDERED that this document constitutes a NOTICE OF OPPORTUNITY FOR HEARING pursuant to Section 503(b)(3)(A) of the Communications Act of 1934, as amended.⁴³

30. IT IS FURTHER ORDERED that irrespective of whether Buzz Telecom Corporation, Business Options, Inc., US Bell Corporation, Link Technologies, AVATAR, and/or their principals

³⁹ See 47 C.F.R. §1.92(a).

⁴⁰ See 47 C.F.R. §1.92(c).

⁴¹ See 47 U.S.C. §312(d).

⁴² See 47 C.F.R. §1.91(d).

⁴³ See 47 U.S.C. §503(b)(3)(A).

Kurtis J. Kintzel and/or Keanan Kintzel are determined to be qualified to operate pursuant to Section 214 of the Communications Act of 1934, as amended, it shall be determined, pursuant to Section 503 of the Communications Act of 1934, as amended, whether an ORDER FOR FORFEITURE shall be issued against them, individually and/or collectively, for willful and/or repeated violations of the Consent Decree in EB Docket No. 03-85, specified as issues (a)-(c) above, in an amount not to exceed \$1,538,533.52.

31. IT IS FURTHER ORDERED that irrespective of whether Buzz Telecom Corporation, Business Options, Inc., US Bell Corporation, Link Technologies, AVATAR, and/or their principals Kurtis J. Kintzel and/or Keanan Kintzel are determined to be qualified to operate pursuant to Section 214 of the Communications Act of 1934, as amended, it shall be determined, pursuant to Section 503 of the Communications Act of 1934, as amended, whether an ORDER FOR FORFEITURE shall be issued against them, individually and/or collectively, for willful and/or repeated violations of the Commission's rules, and/or the Communications Act of 1934, as amended, specified as issues (d)-(g) above, in an amount not to exceed \$32,060,000.

32. IT IS FURTHER ORDERED that irrespective of whether Buzz Telecom Corporation, Business Options, Inc., US Bell Corporation, Link Technologies, AVATAR, and/or their principals Kurtis J. Kintzel and/or Keanan Kintzel are determined to be qualified to operate pursuant to Section 214 of the Communications Act of 1934, as amended, it shall be determined, pursuant to Section 503 of the Communications Act of 1934, as amended, whether an ORDER FOR FORFEITURE shall be issued against them, individually and/or collectively, for willful and/or repeated violations of the Commission's rules, and/or the Communications Act of 1934, as amended, specified as issue (h) above, in an amount not to exceed \$130,000 for each such violation.

33. IT IS FURTHER ORDERED that irrespective of whether Buzz Telecom Corporation, Business Options, Inc., US Bell Corporation, Link Technologies, AVATAR, and/or their principals Kurtis J. Kintzel and/or Keanan Kintzel are determined to be qualified to operate pursuant to Section 214 of the Communications Act of 1934, as amended, it shall be determined, pursuant to Section 503 of the Communications Act of 1934, as amended, whether an ORDER FOR FORFEITURE shall be issued against them, individually and/or collectively, for willful and/or repeated violations of the Commission's rules, and/or the Communications Act of 1934, as amended, specified as issue (i) above, in an amount not to exceed \$15,900,000.

34. IT IS FURTHER ORDERED that, Section 1.95 of the Commission's rules IS WAIVED to allow consideration of all of the issues specified above in one consolidated hearing proceeding.

35. IT IS FURTHER ORDERED that, a copy of this ORDER TO SHOW CAUSE AND NOTICE OF OPPORTUNITY FOR HEARING shall be sent by certified mail, return receipt requested, to Buzz Telecom Corporation, Business Options, Inc., US Bell Corporation, Link Technologies, AVATAR, and/or their principals Kurtis J. Kintzel and/or Keanan Kintzel.

36. IT IS FURTHER ORDERED that, a copy of this ORDER TO SHOW CAUSE, or a summary thereof, shall be published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary