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February 25, 2008

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

RE: Filing Motion to Compel; EB Docket No. 07-197

Dear Madame Secretary:

Enclosed for filing on behalf of parties Kurtis J. Kintzel, Keanan Kintzel, and all other Entities by which they do business before the Federal Communications Commission, is the original and 6 copies of the Motion to Compel Answers to Defendants' First Set of Interrogatories, and Motion for Remedy for Enforcement Bureau's Failure to Submit Interrogatory Responses Under Oath, in the above-referenced matter.

Sincerely,

Catherine Park, Esq.

Catherine Park, Esq.

Enclosures: Original + 6 Copies

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

In the Matter of	)	
	)	
Kurtis J. Kintzel, Keanan Kintzel, and all Entities by which they do business before the Federal Communications Commission	)	EB Docket No. 07-197
	)	
Resellers of Telecommunications Services	)	

To: Presiding Judge (Richard L. Sippel, Chief ALJ)

MOTION TO COMPEL ANSWERS TO DEFENDANTS' FIRST SET OF INTERROGATORIES, AND MOTION FOR REMEDY FOR ENFORCEMENT BUREAU'S FAILURE TO SUBMIT INTERROGATORY RESPONSES UNDER OATH

1. Kurtis J. Kintzel, Keanan Kintzel, and all Entities by which they do business before the Federal Communications Commission, by and through undersigned counsel, hereby submit this Motion to Compel Answers to Defendants' First Set of Interrogatories, and Motion for Remedy for Enforcement Bureau's Failure to Submit Interrogatory Responses Under Oath. Defendants respectfully request that the Presiding Judge, pursuant to 47 C.F.R. § 1.323(c), compel Answers to Interrogatories Nos. 5-6, and 8-11, propounded in Defendant's First Set of Interrogatories. Defendants further respectfully request that the Presiding Judge grant an appropriate remedy, under 47 C.F.R. § 1.323(d), for the Bureau's failure to submit its interrogatory responses under oath or affirmation, as required by 47 C.F.R. § 1.323(b).

Enforcement Bureau's Failure to Submit Interrogatory Responses Under Oath

2. Defendants' First Set of Interrogatories was filed on February 6, 2008. A copy is appended hereto as Exhibit A. On the day of filing, Defendants' counsel contacted the Bureau to express willingness to agree to a Consent Motion to extend time for the Bureau's Responses, but

apparently the Bureau did not need the extension of time. The Bureau filed its Objections and Responses to Defendants' First Set of Interrogatories ("EB's Objections and Responses") on February 20, 2008. A copy is appended hereto as Exhibit B.

3. Answers and objections to interrogatories must be submitted under oath or affirmation. 47 C.F.R. § 1.323(b). The Enforcement Bureau's Objections and Responses contained no such oath or affirmation, in violation of § 1.323(b).

4. Defendants do not doubt that the omission was inadvertent. However, in the instant proceeding, the Bureau seeks to impose penalties of "up to ... $1,325,000" for the same omission allegedly committed by Defendants (alleged omission of a sworn statement by Kurtis J. Kintzel in submitting his January 17, 2007 response to a Bureau letter dated December 20, 2006.[1]). EB's Objections and Responses, pp. 12-13.

5. Kurtis J. Kintzel submitted his response to the December 20, 2006 letter without assistance from legal counsel due to financial hardship.[2] Kurtis J. Kintzel is not a lawyer. The Bureau, on the other hand, is composed almost entirely of lawyers. The fact that the Bureau made the same mistake in filing its Objections and Responses shows that there is no inherent willfulness or bad faith in such an inadvertent omission.[3]

6. Defendants submit that, now that the shoe is on the other foot, the Bureau be made to realize that its proposed penalties of "up to ... $1,325,000" for the above-mentioned inadvertent omission are grossly disproportional to the harm alleged. The Bureau risks the

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[1] *See* Request No. 67, EB's Requests for Admission ... to Kurtis J. Kintzel, filed October 31, 2007.

[2] *See* Answer to Request No. 57, Supplement to Answers to Enforcement Bureau's Requests for Admission ... to Kurtis J. Kintzel, filed January 24, 2008.

[3] Furthermore, the Bureau's letter of December 20, 2006 was faxed without attachments describing the 10 slamming complaints, for which the Bureau was seeking information from Kurtis J. Kintzel. *See* Answer to Request No. 55, Supplement to Answers to Enforcement Bureau's Requests for Admission ... to Kurtis J. Kintzel, filed January 24, 2008. Requiring a non-lawyer to answer a legal letter from the Bureau, without even providing the source documents (the 10 slamming complaints) referenced in the legal letter, then to seek $1,325,000 in penalties for that single alleged incident of non-responsiveness to a Commission inquiry, is beyond unreasonable and could be construed as an attempt to shift blame to Defendants for the Bureau's errors in the first instance.

appearance of a double-standard and prosecutorial fiat by seeking to hold Defendants to a standard of conduct that the Bureau has shown itself incapable of modeling.

7. The Bureau apparently has a long history of non-compliance with § 1.323(b) in actions involving Defendants. An examination of discovery responses in the case docket for the 2003 proceeding against Business Options, Inc. (EB Docket No. 03-85) reveals just a single interrogatory response submitted by the Bureau, filed July 11, 2003, and *not made upon oath or affirmation*, as required by 47 C.F.R. § 1.323(b).

8. The Presiding Judge may impose consequences for insufficient interrogatory responses, under § 1.323(d). Defendants request that the Presiding Judge order the Bureau to prepare an oath or affirmation, and that such oath or affirmation be appended to the Enforcement Bureau's Objections and Responses. Defendants also request that the Bureau be prohibited from submitting the entire pleading anew, as the Bureau may use the opportunity to revise its answers in view of the content herein.

9. Defendants further request that the Presiding Judge grant an appropriate remedy in view of the severity (or lack of severity) of harm caused by the Bureau's inadvertent omission. The Presiding Judge may impose procedural consequences under § 1.323(d), such as adverse findings of fact and dismissal with prejudice. Defendants respectfully request that, if the harm caused by the Bureau's inadvertent omission is deemed to be slight, the allegations against Defendants for the same omission (Kurtis J. Kintzel's alleged non-responsiveness to the Bureau's letter of December 20, 2006[4]) should also be deemed slight, and, in view whereof, that such allegations against Defendants be dismissed with prejudice—for want of any inference of willfulness or bad faith inherent in such inadvertent omissions of no severity.

Bureau's Insufficient Objections and Responses to Interrogatory No. 5

[4] *See, e.g.*, Request No. 67, EB's Requests for Admission ... to Kurtis J. Kintzel, filed October 31, 2007.

10. Interrogatory No. 5 in Defendants' First Set of Interrogatories requests that the Bureau disclose the existence and location of all documents and tangible things related to the negotiation and drafting of the 2004 Consent Decree. The Bureau objects to Interrogatory No. 5 on grounds of relevance, not reasonably calculated to lead to the discovery of admissible evidence, and the assertion that Defendants waived their right to contest the validity of the Consent Decree, thus are not entitled to discovery on the subject of the Consent Decree. EB's Objections and Responses, p. 14.

11. Defendants are not contesting the validity of the Consent Decree, only its meaning and scope. The Bureau in its Requests for Admissions, filed on October 31, 2007, repeatedly sought Admissions from Defendants that Buzz Telecom Corp., U.S. Bell/Link Technologies Corp., and Avatar Enterprises, Inc., were "signatories" to the Consent Decree.[5] ***The fact that the Bureau called them "signatories" in the Requests for Admission, and calls them "parties" now, is evidence of wobbling—in support of which, Defendants submit the following:***

12. 47 C.F.R. § 1.93 and § 1.94 only permit Consent Orders to be negotiated between the Commission and "parties" to proceedings. The Bureau contends in its Objections and Responses that the issues were enlarged in the 2003 proceeding so that Buzz Telecom Corp., U.S. Bell/Link Technologies Corp., and Avatar Enterprises, Inc., were made "parties" in that proceeding. Response to Interrogatory No. 7, EB's Objections and Responses, p. 15. ***However, there is no evidence in the case docket (EB Docket No. 03-85) that they were made parties.*** The evidence only shows that issues were added late in the proceeding to investigate allegations against those entities. Memorandum Opinion and Order, FCC 03M-58. Nowhere in that

[5] *See* Enforcement Bureau's Requests for Admission ... to" Kurtis J. Kintzel, Keanan Kintzel, Buzz Telecom Corp., Business Options, Inc., U.S. Bell/Link Technologies Corp., Avatar Enterprises, Inc., all filed on October 31, 2007.

Memorandum Opinion and Order is it mentioned that the entities were made "parties"; no subsequent filings in the docket refer to the addition of parties; those entities are never referred to as "parties" in subsequent filings; and the Consent Order dated February 18, 2004 expressly refers only to the Commission and Business Options, Inc., as "parties" in the proceeding. FCC 04M-08.

13. Furthermore, the Bureau apparently places great stock in its opinion that "the Consent Decree speaks for itself," as that statement appears numerous times in the Bureau's Objections and Responses. *See, e.g.,* EB's Objections and Responses, p. 15. If the Consent Decree is truly permitted to speak for itself, the record should reflect that ***the Consent Decree does not refer to the entities as "parties" either.*** Nor were Kurtis J. and Keanan Kintzel named "parties" in the earlier proceeding. The Bureau is seeking to maintain the untenable position that all of the entities and individuals named in the instant proceeding are liable as "parties" to the Consent Decree. Absurd. A categorical violation of 47 C.F.R. § 1.93 and § 1.94. The foregoing is the crux and cornerstone of Defendants' defenses to the alleged Consent Decree violations. Preparation of defenses to those allegations requires discovery of documents and other tangible things related to the negotiation and drafting of the Consent Decree. The objection must be overruled.

14. As to the Bureau's objections on grounds of relevance and not calculated to lead to the discovery of admissible evidence: The foregoing shows relevance and likelihood of discovery of admissible evidence. Furthermore, relevance at the discovery stage is broadly construed. *E.g., Tequila Centinela v. Bacardi & Co., Ltd.,* 242 F.R.D. 1, 6 (D.D.C. 2007). Relevance "should be interpreted to mean 'anything that is or may become an issue in the litigation.'" *Dunn v. Evening Star Newspaper Co.*, 232 A.2d 293, 295 (D.C. 1967) (quoting 4

Moore, Federal Practice 33.15). Discovery related to the negotiation and drafting of the 2004 Consent Decree satisfies the minimal standards of relevance under the Federal Rules of Civil Procedure. Such discovery would reveal, inter alia, the states of mind of the contracting parties, whether there was intent to draft the Consent Decree in accordance with § 1.93 and § 1.94, or in contravention thereof, whether there was disagreement between the parties as to the meaning of various provisions, etc. The Bureau's objections must be overruled and answers compelled.

Bureau's Insufficient Objections and Responses to Interrogatory No. 6

15. Interrogatory No. 6 asks whether the Consent Decree was negotiated and drafted in accordance with 47 C.F.R. § 1.93 and § 1.94. The Bureau objects, inter alia, on the ground that it calls for a legal conclusion. No legal conclusion is called for. Under Federal Rule of Civil Procedure 33(b), "[a]n interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact ...." F.R.C.P. 33(b). Interrogatory No. 6 deals with the application of law to fact. The "fact" is the Consent Decree; the "law" is § 1.93 and § 1.94, which the Bureau is asked to apply to the aforementioned fact in its answer to the interrogatory.

16. The federal district court for the District of Columbia has observed that "Rule 33(b) clearly contemplates two things: (1) the existence of specific facts in the record to which the interogatee's contentions or legal opinions must apply; and (2) a sharp distinction between permissible interrogatories and inquiries in 'issues of pure law'." *Kendrick v. Sullivan*, 125 F.R.D. 1, 2 (D.D.C. 1989). "The Rule further recognizes that the propriety of a 'contention interrogatory' may depend upon the point in the proceedings at which it is served. If premature, i.e., if served before prior discovery has established a reasonable factual predicate, such interrogatories may do more harm than good." *Id.*

17. As to Interrogatory No. 6, the factual predicate has been fully established. The 2003 proceeding leading up to the Consent Decree is complete; nothing can be added to the factual record. The Bureau must apply the law of § 1.93 and § 1.94 to the fact specified—the Consent Decree—and render the requested opinion. In *Kendrick v. Sullivan*, the federal district court discussed, as an example of a permissible interrogatory requesting the application of law to fact, an interrogatory asking defendant "to describe why certain of the plaintiff's acts, detailed elsewhere in the interrogatories, were illegal." *Kendrick, supra*, at 3 (citing *O'Brien v. Internat'l Broth. Of Elec. Workers*, 443 F. Supp. 1182, 1187-88 (N.D. Ga. 1977)). That interrogatory was not deemed improper as calling for a legal conclusion. *Id.* The *Kendrick* Court noted that permissibility of such a "contention interrogatory" often turns on whether sufficient facts exist at that stage of discovery to enable the interrogatee to apply the law to such fact. *Id.*, at 3 ("Rule 33(b)'s language requires that the contentions or legal opinions of an interogatee must relate to, or be applied to, *a fact*"). With respect to Interrogatory No. 6, the factual predicate surrounding the Consent Decree has been fully established. Therefore, the Bureau can assert no defense to answering interrogatories requesting the application of law to fact, i.e., legal opinions, about the Consent Decree. All objections to this interrogatory must be overruled, and answers compelled.

Bureau's Insufficient Objections and Responses to Interrogatory No. 8

18. Interrogatory No. 8 asks why Buzz Telecom Corp., U.S. Bell/Link Technologies Corp., and Avatar Enterprises, Inc., are not mentioned in the first paragraph of the Consent Decree as contracting parties. The Bureau objects, inter alia, on the ground that it calls for a legal conclusion. The interrogatory in no way calls for a legal conclusion. The federal district court for the District of Columbia has observed that "the existence of a contract and the language contained therein is a factual matter. Moreover, the intent of the parties and what they

understood the contract to mean is also an issue of fact." *Disability Rights Council of Greater Washington v. Washington Metropolitan Area Transit Authority*, 234 F.R.D. 1, 3 (D.D.C. 2006). Interrogatory No. 8 propounds a simple question of fact. The objection must be overruled.

19. The Bureau also objects to Interrogatory No. 8 as outside the purview of permissible discovery against Commission personnel under 47 C.F.R. § 1.311(b)(4). There is nothing impermissible about Interrogatory No. 8 under that Commission rule. § 1.311(b)(4) states, "Commission personnel may be questioned generally by written interrogatories regarding the description, nature, custody, condition and location of relevant documents and things and regarding the identity and location of persons having knowledge of relevant facts, and may otherwise only be examined regarding facts of the case as to which they have direct personal knowledge." The Bureau's objection fails to explain which part of § 1.311(b)(4) is violated by the interrogatory. 47 C.F.R. § 1.323(b) requires that if objections are submitted, "the reasons for the objection shall be stated in lieu of an answer." The Bureau has failed to state reasons for its objection.

20. If the Bureau personnel who prepared the Objections and Responses (Michele Levy Berlove and Trent B. Harkrader) lack direct personal knowledge, they should have sought out the Commission personnel who possess such knowledge. Defendants' First Set of Interrogatories is addressed to the Chief, Enforcement Bureau (Kris Monteith), in accordance with 47 C.F.R. § 1.311(b)(2). That same paragraph states that interrogatories "will be answered and signed by those personnel with knowledge of the facts." *Id.* If neither Bureau counsel (Michele Levy Berlove nor Trent B. Harkrader) possesses direct personal knowledge, the Commission personnel who have such knowledge must be identified, and they must answer the interrogatory. The mere assertion that Interrogatory No. 8 violates § 1.311(b)(4) is insufficient,

under the standard of § 1.323(b) ("reasons for the objection shall be stated in lieu of an answer").

21. The Bureau additionally objects to Interrogatory No. 8 on the assertion that Defendants waived their right to contest the validity of the Consent Decree. As mentioned above, Defendants are not contesting the validity of the Consent Decree, only its meaning and scope. The objection must be overruled and answers compelled.

Bureau's Insufficient Objections and Responses to Interrogatory No. 9

22. Interrogatory No. 9 asks whether the Bureau believes that drafting errors were made in the Consent Decree, which errors were made, and whether the Bureau is seeking reformation. The Bureau objects on the grounds of legal conclusion, not permissible under § 1.311(b)(4), not reasonably calculated to lead to discovery of admissible evidence, and the assertion that Defendants waived their right to contest the validity of the Consent Decree.

23. As to legal conclusion: None is asked for. Interrogatory No. 9 only asks for facts, and for the application of law to fact, regarding the Bureau's understanding of the contract and its drafting. What the parties understand a contract to mean is an issue of fact. *Disability Rights Council, supra,* at 3. One of the purposes of discovery is "to exact from the opposing party his contentions as to factual issues, thus narrowing the scope of the trial." *U.S. v. Maryland and Virginia Milk Producers' Ass'n*, 22 F.R.D. 300, 301 (D.D.C. 1958). Furthermore, the federal district court for the District of Columbia has held that, in the context of Requests for Admission, "interpretation of a contract at issue in a case involves the application of law to the unique facts of that case and, therefore, would be permissible." *Sigmund v. Starwood Urban Retail VI, LLC*, 236 F.R.D. 43, 46 (D.D.C. 2006). The interrogatory was propounded in good faith, and must be answered in good faith. If the Bureau believes that drafting errors were made, it must admit those errors and seek reformation. If the Bureau contends that no errors were made, it must so

contend. But the Bureau cannot avoid answering altogether, in contravention of Commission rules and well-established legal precedent in this jurisdiction.

24. As to beyond the permissible scope of § 1.311(b)(4): Again, the Bureau's objection fails to explain how answering the interrogatory violates that section. The mere assertion that the interrogatory violates § 1.311(b)(4) is insufficient, under § 1.323(b). If the Bureau personnel who prepared the answers and objections lack direct personal knowledge, they must seek out Commission personnel with such knowledge. To fail to seek out such personnel violates § 1.311(b)(2), which states that interrogatories "will be answered and signed by those personnel with knowledge of the facts."

25. As to the objection that Interrogatory No. 9 would not lead to the discovery of admissible evidence: On the contrary, documents would be identified regarding the Bureau's intent with respect to the Consent Decree, any wavering on that intent, whether disagreement existed between the parties as to intent, etc. As to Defendants' purported waiver of their right to contest the validity of the Consent Decree: Validity is not contested, only meaning and scope. All objections to Interrogatory No. 9 must be overruled and answers compelled.

Bureau's Insufficient Objections and Responses to Interrogatory No. 10

26. Interrogatory No. 10 asks the Bureau to identify the Commission personnel involved in negotiating and drafting the Consent Decree. The Bureau objects, inter alia, that the interrogatory is not permissible under § 1.311(b)(4). Again, the Bureau offers no explanation why answering the interrogatory would violate § 1.311(b)(4). The mere assertion that the interrogatory violates § 1.311(b)(4) is insufficient, under § 1.323(b). If the Bureau personnel lack direct personal knowledge, they must seek out those Commission personnel with such knowledge. To fail to seek out such personnel violates § 1.311(b)(2), which states that

interrogatories "will be answered and signed by those personnel with knowledge of the facts." The Bureau fails to assert privilege or any credible objection to avoid answering this simple factual interrogatory. All objections to this interrogatory must be overruled, and answers compelled.

Bureau's Insufficient Objections and Responses to Interrogatory No. 11

27. Interrogatory No. 11 requests that all Commission lawyers involved in the negotiation and drafting of the Consent Decree answer a series of questions designed to elicit information about their contract drafting experience. The Bureau objects, inter alia, that the interrogatory is not permissible under § 1.311(b)(4). Again, the Bureau offers no explanation why answering this interrogatory would violate § 1.311(b)(4). The objection is insufficient under § 323(b) and must be overruled.

28. The Bureau also objects on the ground that Interrogatory No. 11 is not calculated to lead to the discovery of admissible evidence. On the contrary, Defendants would obtain much admissible evidence helpful to their case through this interrogatory. It is Defendants' position that the Consent Decree is rife with drafting and legal errors. This interrogatory provides the Bureau with an opportunity to refute that theory by disclosing the extensive contract drafting experience of its personnel. If its personnel lack such extensive contract drafting experience, the Bureau must so admit, in good faith. But to refuse to answer frustrates the purposes of discovery, and prevents Defendants from obtaining evidence to which they are entitled under Commission rules and well-established federal law. There is nothing impermissible about this interrogatory. In any direct examination or cross-examination, the examining lawyer elicits information from a witness by asking a series of questions. Furthermore, F.R.C.P. 33(b) permits interrogatories that call for "opinion or contention that relates to fact or the application of law to

fact." The factual predicate for the interrogatory (negotiations and drafting of the Consent Decree) has been fully established and is unalterable. The Bureau cannot legally avoid answering this interrogatory. The objections must be overruled and answers compelled.

29. Wherefore, in view of the foregoing, Defendants respectfully request that the aforementioned objections by the Bureau to Defendants' First Set of Interrogatories be overruled and answers compelled to Interrogatories No. 5-6, and 8-11. Defendants further request that an appropriate remedy be granted for the Bureau's failure to submit its interrogatory responses under oath or affirmation.

Respectfully Submitted,

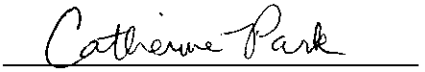

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Exhibit A

THE LAW OFFICE OF CATHERINE PARK

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February 6, 2008

FILED/ACCEPTED
FEB - 8 2008
Federal Communications Commission
Office of the Secretary

Marlene H. Dortch
Secretary
Federal Communications Commission
236 Massachusetts Avenue, NE
Suite 110
Washington, D.C. 20002

RE: Defendants' First Set of Interrogatories; EB Docket No. 07-197

Dear Madame Secretary:

Enclosed for filing on behalf of Kurtis J. Kintzel, Keanan Kintzel, and all Entities by which they do business before the Federal Communications Commission, is the Defendants' First Set of Interrogatories, in the above-referenced matter.

Sincerely,

Catherine Park, Esq.

Catherine Park, Esq.

Enclosures: Original + 3 Copies

No. of Copies rec'd_____
List ABCDE

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

In the Matter of	)	
	)	
Kurtis J. Kintzel, Keanan Kintzel, and all Entities by which they do business before the Federal Communications Commission	)	EB Docket No. 07-197
	)	
Resellers of Telecommunications Services	)	

FILED/ACCEPTED
FEB - 8 2008
Federal Communications Commission
Office of the Secretary

To: Chief, Enforcement Bureau (Kris Monteith)

DEFENDANTS' FIRST SET OF INTERROGATORIES

Kurtis J. Kintzel, Keanan Kintzel, and all Entities by which they do business before the Federal Communications Commission ("the Kintzels, et al."), by and through undersigned counsel, hereby request that the Commission/Enforcement Bureau answer the following Interrogatories fully, under oath, in accordance with 47 C.F.R. § 1.323, and subject to the definitions and instructions set forth below.

Definitions and Instructions

1. "You" means the Commission, the Enforcement Bureau, their representatives, and/or agents, including counsel.

2. These Interrogatories are deemed continuing in nature and require Supplemental Answers in the event that You learn additional facts not set forth in the original Answers or discover that information provided in the original Answers is erroneous and/or incomplete.

3. Your Answers shall be based upon information known to You or in Your possession, custody, or control.

4. When asked to identify individuals, You shall provide current information on

their whereabouts, including names, titles (specify whether employed or formerly employed by the Commission), business addresses, and phone numbers. If the individuals are no longer employed by the Commission, specify the dates of their departure and current whereabouts.

Interrogatories

1. Identify each individual likely to have discoverable information that You may use to support Your allegations and claims against the Defendants, and identify the subject matter of the discoverable information and how such discoverable information is relevant to Your allegations and claims. Identify each individual consulted in answering this Interrogatory, and the bases of the individuals' knowledge.

2. Disclose by description and location all documents, data compilations, emails, and all other tangible things (whether or not in Your possession, custody, or control—and specify who has or may have possession, custody, or control) that You may use to support Your allegations and claims. Identify each individual consulted in answering this Interrogatory, and the bases of the individuals' knowledge.

3. Provide information on each alleged instance of a violation of a statute, rule, or other law for which Defendants have been called before the Commission pursuant to the Order to Show Cause, FCC 07-165. The following information is requested:

   a. The dates on which each alleged instance of a violation is alleged to have occurred;

   b. The amount of penalty proposed for each alleged instance of a violation;

   c. The legal authority relied upon for imposing such penalty for each alleged instance of a violation (with citations to Commission rules, and citations to the enabling statutes under which such Commission rules were promulgated);

d. The legal authority relied upon for imposing such penalties *in the amounts proposed*, for each alleged instance of a violation (with citations to Commission rules, and citations to the enabling statutes under which such Commission rules were promulgated, with respect to the *amounts* of the proposed penalties);

e. Identify each individual consulted in answering this Interrogatory.

4. Calculate the penalties proposed in Interrogatory No. 3, and if the penalties do not add up to $50 million, explain Your legal justification for proposing penalties of $50 million against Defendants in the instant proceeding (as described in the Order to Show Cause, FCC 07-165). Identify each individual consulted in answering this Interrogatory. Identify the individual(s) who actually prepared the Answer to this Interrogatory.

5. Disclose all documents, data compilations, including emails, and all other tangible things (whether or not they are in Your possession, custody, or control—and specify who has or may have possession, custody, or control) related to the negotiation and drafting of the 2004 Consent Decree described in the Order to Show Cause, FCC 07-165.

6. Was the 2004 Consent Decree negotiated and drafted in accordance with 47 C.F.R. § 1.93 and § 1.94?

7. 47 C.F.R. § 1.93 and § 1.94, by their terms, permit Consent Orders to be negotiated only between the Commission and *parties* to proceedings. Since Buzz Telecom Corp., U.S. Bell/Link Technologies Corp., and Avatar Enterprises, Inc., were not *parties* in the proceeding that was ended through negotiation of the 2004 Consent Decree, describe Your legal rationale and/or the legal authority relied upon for attempting to bind Buzz Telecom Corp., U.S. Bell/Link Technologies Corp., and Avatar Enterprises, Inc., to the 2004 Consent Decree.

8. The first paragraph of the 2004 Consent Decree does not mention Buzz Telecom Corp., U.S. Bell/Link Technologies Corp., or Avatar Enterprises, Inc. The first paragraph of the 2004 Consent Decree states that the Consent Decree is entered into between the Commission and Business Options, Inc., which was the only party in that proceeding. Why are the other companies (Buzz Telecom Corp., U.S. Bell/Link Technologies Corp., and Avatar Enterprises, Inc.) not mentioned in the first paragraph as contracting parties?

9. Do you believe that drafting errors were made in the 2004 Consent Decree? If so, what were the errors? Are You seeking reformation?

10. Identify each individual involved in negotiating and drafting the 2004 Consent Decree. Describe the nature of the work performed by each individual, and whether their work was instrumental to the negotiation and drafting of the Consent Decree, or peripheral, or minimal, or extensive, or supervisory, etc.

11. As to any Commission lawyers identified in the Answer to Interrogatory No. 10, describe the extent of their contract drafting experience. Specifically, the following information is requested of each Commission lawyer identified in the Answer to Interrogatory No. 10:

a. How many contracts have they drafted in their legal careers?

b. How many contracts have they drafted for organizations or entities other than the Commission during their legal careers?

c. What types of contracts have they drafted (e.g., commercial, bilateral treaties, real estate, etc.), and how many of each?

d. Each Commission lawyer identified in the Answer to Interrogatory No. 10 is requested to provide an opinion as to whether, if he/she applied for a job at a law firm as a transactional lawyer to draft contracts, based on the contract

drafting experience cited in the Answers to Interrogatories No. 10(a) through 10(c), does he/she believe that he/she could be hired. The Commission lawyer is asked to justify his/her Answer.

e. Each Commission lawyer identified in the Answer to Interrogatory No. 10 is requested to provide an opinion as to whether, in his/her estimation, he/she has drafted more or fewer contracts than a second-year transactional associate at a law firm.

f. Each Commission lawyer identified in the Answer to Interrogatory No. 10 is requested to provide an opinion as to whether, if he/she applied for a job at a law firm as a transactional lawyer to draft contracts, based on the contract drafting experience cited in the Answers to Interrogatories No. 10(a) through 10(c), does he/she believe that he/she could be hired at any level above that of a second-year transactional associate. The Commission lawyer is asked to justify his/her Answer.

Respectfully Submitted,

Catherine Park

Catherine Park (DC Bar # 492812)
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2300 M Street, NW, Suite 800
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Phone: (202) 973-6479
Fax: (866) 747-7566
Email: contact@cparklaw.com

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent for filing on this 6th day of February 2008, by hand delivery, to the following:

Marlene H. Dortch
Secretary
Federal Communications Commission
236 Massachusetts Avenue, NE
Suite 110
Washington, D.C. 20002

And served by U.S. Mail, First Class, on the following:

Kris Monteith, Chief
Enforcement Bureau
Federal Communications Commission
445 12th Street, SW, Room 7-C723
Washington, D.C. 20554

Richard L. Sippel, Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, SW, Room 1-C861
Washington, D.C. 20554

Hillary DeNigro, Chief
Michele Levy Berlove, Attorney
Investigations & Hearings Division, Enforcement Bureau
Federal Communications Commission
445 12th Street, SW, Room 4-C330
Washington, D.C. 20554

Catherine Park

Catherine Park

Exhibit B

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

FILED/ACCEPTED
FEB 2 0 2008
Federal Communications Commission
Office of the Secretary

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

To: Kurtis J. Kintzel, Keanan Kintzel, and all Entities by which they do business before the Federal Communications Commission

ENFORCEMENT BUREAU'S OBJECTIONS AND RESPONSES TO DEFENDANTS' FIRST SET OF INTERROGATORIES

On February 6, 2008, Defendants Kurtis J. Kintzel, Keanan Kintzel, and all Entities by which they do business before the Federal Communications Commission ("Defendants"), filed their First Set of Interrogatories ("Interrogatories") in the above-captioned proceeding. The Enforcement Bureau ("Bureau"), pursuant to Section 1.323(b) of the Commission's rules, 47 C.F.R. § 1.323(b), hereby submits its objections and responses to the Interrogatories. The responses were drafted by counsel of record for the Bureau, in consultation with Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission.

The Bureau notes that discovery in this proceeding has only just commenced. The Bureau reserves the right to supplement its responses to the Interrogatories based upon information obtained during the course of discovery.

Objections

1. By the subject Interrogatories, Defendants seek information from the Bureau

that is neither relevant to any issue designated in the captioned proceeding nor is reasonably calculated to lead to the discovery of admissible evidence.

2. By the subject Interrogatories, Defendants seek discovery from the Bureau that is outside the purview of permissible discovery under Section 1.311(b)(4) of the Commission's rules, 47 C.F.R. § 1.311(b)(4).

3. By the subject Interrogatories, Defendants improperly seek to have the Bureau engage in legal argument and provide characterization of evidence.

Responses

1. Identify each individual likely to have discoverable information that You may use to support Your allegations and claims against the Defendants, and identify the subject matter of the discoverable information and how such discoverable information is relevant to Your allegations and claims. Identify each individual consulted in answering this Interrogatory, and the bases of the individuals' knowledge.

> **Response:** The Bureau objects to Interrogatory No. 1 to the extent it calls for a legal conclusion. The Bureau further objects to Interrogatory No. 1 to the extent the information sought is outside the purview of permissible discovery against Commission personnel under 47 C.F.R. § 1.311(b)(4). The Bureau also objects to Interrogatory No. 1 to the extent that discovery in this proceeding has only just begun. Moreover, the Bureau has not yet decided which individuals it intends to call as witnesses at the hearing in this proceeding. Notwithstanding and subject to the foregoing objections, the Bureau states that the following individuals are likely to have relevant information regarding the allegations and claims in the Order to Show Cause in the above-captioned proceeding (the "Order to Show Cause"):
>
> 1. Kurtis Kintzel. Mr. Kintzel is likely to have information regarding each of the violations alleged in the Order to Show Cause, the business practices of each of Business Options, Inc. ("BOI"), Buzz Telecom Corp. ("Buzz"), Avatar Enterprises ("Avatar") and US Bell, Inc. ("US Bell") (collectively, the "Companies"), and the relationships between and among the Companies.
>
> 2. Keanan Kintzel. Mr. Kintzel is likely to have information regarding each of the violations alleged in the Order to Show Cause, the business

practices of each of the Companies and the relationships between and among the Companies.

3. Elizabeth Ontiveros-Rosas. Address and telephone number unknown. On information and belief, Ms. Ontiveros-Rosas is likely to have information regarding the Companies' business practices, consumer complaints against the Companies, the Companies' compliance with Commission rules regarding changes to consumers preferred long distance service providers, the discontinuance of service to the Companies' customers in November 2006 and the relationships between and among the Companies.

4. Current and/or former employees of the Companies. Such individuals are likely to have information regarding various of the violations alleged in the Order to Show Cause, the relationships between and among the Companies, and the Companies' business practices generally.

5. Steve Hansen, Qwest Communications Corp., 1801 California Street, Suite 2400, Denver, Colorado 80202. Mr. Hansen is likely to have information regarding the Companies' relationship with Qwest Communications Corp. ("Qwest"), the discontinuance of service to the Companies' customers in November 2006, the reasons for such discontinuance and the transfer of the Companies' customers to UMCC Holdings, Inc. ("UMCC").

6. Cindy Ebell, Qwest Communications Corp. , 1801 California Street, Suite 2400, Denver, Colorado 80202. Ms. Ebell is likely to have information regarding the Companies' relationship with Qwest, the discontinuance of service to the Companies' customers in November 2006, the reasons for such discontinuance and the transfer of the Companies' customers to UMCC.

7. Cindy Bell, Qwest Communications Corp., 1801 California Street, Suite 2400, Denver, Colorado 80202. Ms. Ebell is likely to have information regarding the Companies' relationship with Qwest, the discontinuance of service to the Companies' customers in November 2006, the reasons for such discontinuance and the transfer of the Companies' customers to UMCC.

8. Scott Wilson, UMCC Holdings, Inc., 484 East Carmel Drive, #290, Carmel, IN 46032. Mr. Wilson is likely to have information regarding the Asset Purchase Agreement entered into between Buzz Telecom, Business Options, Inc. and UMCC.

9. Margary Anderson, 12509 60th Street, SE, Snohomish, WA 98290, (360) 568-6810. Ms. Anderson is likely to have information regarding the alleged unauthorized change of her preferred long distance service

provider by Buzz.

10. Alesia Cummings, 715 Brookfield Drive, Pembroke, NC 28372, (910) 521-6266. Ms. Cummings is likely to have information regarding the alleged unauthorized change of her preferred long distance service provider by Buzz.

11. Rita Harvey, 136 Timber Lane, Madison Heights, VA 24572, (434) 929-6721. Ms. Harvey is likely to have information regarding the alleged unauthorized change of her preferred long distance service provider by Buzz.

12. Derry Hewett, P.O. Box 6, Ty Ty, GA 31795, (229) 402-0566. Mr. Hewett is likely to have information regarding the alleged unauthorized change of his elderly mother's (Betty Nolan) preferred long distance service provider by Buzz.

13. Martin Houseman, 1605 Louisa Street, Burlington, IA 52601, (319) 752-3582. Mr. Houseman is likely to have information regarding the alleged unauthorized change of his preferred long distance service provider by Buzz.

14. Gary Ingram, 2248 Blackburn Avenue, Ashland, KY 41101, (606) 325-7946. Mr. Ingram is likely to have information regarding the alleged unauthorized change of his preferred long distance service provider by Buzz.

15. Norbert Kleitsch, 121 Forest Street, Fairbank, IA 50629, (319) 635-2692 Mr. Kleitsch is likely to have information regarding the alleged unauthorized change of his preferred long distance service provider by Buzz.

16. Roy Morris, 2223 Endrow, Canton, OH 44705, (330) 455-8349. Mr. Morris is likely to have information regarding the alleged unauthorized change of his preferred long distance service provider by Buzz.

17. Irene Mowan, c/o Gail Perry, , 416 NE 42nd Street, Pendleton, OR 97801, (541) 276-9135. Ms. Mowan is likely to have information regarding the alleged unauthorized change of her preferred long distance service provider by Buzz.

18. Betty Nolan, 524 South Elm Street, Adel, Georgia, 31620, (229) 896-3302. Ms. Nolan is likely to have information regarding the alleged unauthorized change of her preferred long distance service provider by Buzz.

19. Gail Perry, 416 NE 42nd Street, Pendleton, OR 97801, (541) 276-1629. Ms. Perry is likely to have information regarding the alleged

unauthorized change of her elderly mother's (Irene Mowan) preferred long distance service provider by Buzz.

20. Mindy Stoltzfus, 219 Elm Street, Storm Lake, IA 50588, (712) 732-0991. Ms. Stoltzfus is likely to have information regarding the alleged unauthorized change of her preferred long distance service provider by Buzz.

21. Consumers whose preferred long distance service provider may have been changed by the Companies in violation of Section 258 of the Act and Section 64.1120 of the Commission's rules.

22. Employees of the Federal Communications Commission, Office of the Managing Director, 445 12th Street, S.W., Washington, D.C. 20554. Such individuals are likely to have information regarding the Companies' violations of Paragraphs 14(f), 14(g) and 15 of the consent decree entered into between the Commission and BOI on or about February 11, 2004 in connection with a proceeding under EB Docket No. 03-85 (the "Consent Decree") and Sections 1.95, 54.706, 64.604(c)(5)(iii)(A) of the Commission's rules.

23. Employees of the Universal Service Administrative Company, 2000 L Street, N.W., Suite 200, Washington, D.C. 20036, (202) 776-0200. Such individuals are likely to have information regarding the Companies' alleged violations of Paragraph 14(f) of the Consent Decree and Section 54.706 of the Commission's rules.

24. Employees of the National Exchange Carriers Association, 80 South Jefferson Road, Whippany, NJ 07981, (973-884-8334). Such individuals are likely to have information regarding the Companies' alleged violations of Paragraph 14(g) of the Consent Decree and Section 64.604(c)(5)(iii)(A) of the Commission's rules.

2. Disclose by description and location all documents, data compilations, emails, and all other tangible things (whether or not in Your possession, custody, or control—and specify who has or may have possession, custody, or control) that You may use to support Your allegations and claims. Identify each individual consulted in answering this Interrogatory, and the bases of the individuals' knowledge.

Response: The Bureau objects to Interrogatory No. 2 as unduly burdensome. The Bureau further objects to Interrogatory No. 2 to the extent that discovery in this proceeding has only just begun. The Bureau will be seeking discovery of many types of documents, including the categories of

documents set forth in the Bureau's First Request for Production of Documents to All Defendants. Moreover, the Bureau has not yet decided on which documents it intends to rely in supporting its allegations and claims. Notwithstanding and subject to the foregoing objections, the Bureau states that the following documents and categories of documents may be relevant to the allegations and claims in the Order to Show Cause:

1. Documents relating to the 2003 hearing proceeding, including but not limited to the Consent Decree, depositions, responses to interrogatories, responses to requests for admissions, Memorandum Opinions and Orders. Such documents are publicly available on the Commission's Electronic Comments Filing System ("ECFS"). A copy of the docket listing from ECFS is attached hereto as Attachment A.

2. Defendants' responses to requests for admissions and discovery requests propounded in the current hearing proceeding. These documents are in the Defendants' possession, custody or control. These documents are also located in the files of counsel for the Bureau.

3. The December 20, 2006 letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, to Keanan Kintzel, Business Options, Inc. This document is in the Defendants' possession, custody or control. These documents are also located in the files of counsel for the Bureau.

4. Documents provided to the Commission by BOI and/or Buzz in connection with the January 17, 2007 response to the December 20, 2006 letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission. to Keanan Kintzel, Business Options, Inc. These documents are in the Defendants' possession. custody or control. These documents are also located in the files of counsel for the Bureau.

5. Documents attached as exhibits to the Bureau's Requests for Admission of Facts and Genuineness of Documents to the Defendants. These documents are in the Defendants' possession, custody or control. These documents are also located in the files of counsel for the Bureau.

6. Communications between the Commission, or any Bureau or Division thereof, and any of the Defendants. These documents are in the Defendants' possession, custody or control. Certain of these documents are also located in the files of counsel for the Bureau.

7. Annual reports required under the terms of the Consent Decree. These documents are in the Defendants' possession, custody or control. These documents are also located in the files of counsel for the Bureau.

8. Invoices from the Commission to BOI and Buzz. These documents are in the Defendants' possession, custody or control. These documents are also located in the files of counsel for the Bureau and in the files of the Commission's Office of the Managing Director.

9. Documents relevant to the Companies' violation of Paragraph 14(f) of the Consent Decree, Section 254 of the Act and Section 54.706 of the Commission's rules, including but not limited to invoices issued by the Universal Service Administrative Company ("USAC") to the Companies and records of payments of those invoices by the Companies. These documents are located in the files of counsel for the Bureau. They are also located in the files of USAC.

10. Documents relevant to the Companies' violation of Paragraph 14(g) of the Consent Decree, Section 254 of the Act and Section 64.604 of the Commission's rules, including but not limited to invoices issued by the National Exchange Carriers Association ("NECA") to the Companies and records of payments of those invoices by the Companies. These documents are located in the files of counsel for the Bureau. They are also located in the files of NECA.

11. Complaints from consumers received by the Commission regarding the purported unauthorized change of such consumers' preferred long distance service provider. These documents are located in the files of counsel for the Bureau.

12. Documents relating to Defendants' compliance with Section 258 of the Act and Section 64.1120 of the Commission's rules, including but not limited to verification tapes maintained by independent third-party verification companies. The Bureau does not yet have any such documents.

13. Communications between any of the Defendants and Qwest. These documents are in the Defendants' possession, custody or control. The Bureau does not yet have any such documents.

14. Communications between any of the Defendants and UMCC. These documents are in the Defendants' possession, custody or control. The Bureau does not yet have any such documents.

15. Contracts between Defendants and Qwest, independent third party verifiers, independent telemarketers and independent billing agents. These documents are in the Defendants' possession, custody or control. The Bureau does not yet have all such documents.

16. January 22, 2007 deposition of Kurtis Kintzel in the matter captioned *Matter of the Commission Staff's Investigation into the Alleged MTSS Violations of Buzz Telecom*, Case No. 06-1443-TP-UNC, before the Public Utilities Commission of Ohio. A copy of this document is located in the files of counsel for the Bureau. It is also located in the files of the Public Utilities Commission of Ohio.

17. February 26, 2007 deposition of Steve Hansen, on behalf of Qwest Communications Corp., in the matter captioned *Rule Nisi Proceeding in the Matter of Buzz Telecom, Business Options, Inc., UMCC Holdings, Inc., and Ultimate Medium Communications Corporation: Allegation of Violation(s) of Georgia Public Service Commission Rules and the Telecommunications Marketing Act of 1998*, Docket No. 15968-U. A copy of this document is located in the files of counsel for the Bureau. It is also located in the files of the Georgia Public Service Commission.

18. February 28, 2007 hearing transcript in the matter captioned *Rule Nisi Proceeding in the Matter of Buzz Telecom, Business Options, Inc., UMCC Holdings, Inc., and Ultimate Medium Communications Corporation: Allegation of Violation(s) of Georgia Public Service Commission Rules and the Telecommunications Marketing Act of 1998*, Docket No. 15968-U. A copy of this document is located in the files of counsel for the Bureau. It is also located in the files of the Georgia Public Service Commission.

19. Orders Granting Motion for Default Judgment, Assessing Civil Penalties, and Prohibiting All Carriers from Serving or Billing for Respondent, in the matter captioned *In re Office of Consumer Advocate vs. Buzz Telecom, Corp.*, Docket No. FCU-06-55. Copies of these documents are located in the files of counsel for the Bureau. They are also located in the files of Iowa's Office of Consumer Advocate and/or the Iowa Department of Commerce Utilities Board.

20. News articles, press releases and other publicly available documents relating to state regulatory proceedings against the Companies regarding telecommunications violations, including slamming. These documents are publicly available.

Moreover, the following entities and individuals are likely to have documents relevant to the alleged violations in the Order to Show Cause:

1. Federal Communications Commission, Office of the Managing Director ("OMD"), 445 12th Street, S.W., Washington, D.C. 20554. OMD is likely to have documents relevant to the Companies' violations of Paragraphs 14(f), 14(g) and 15 of the Consent Decree and Sections 1.95, 54.706, 64.604(c)(5)(iii)(A) of the Commission's rules, including but not limited to invoices issued by the Commission to the Companies, records of payments of those invoices by the Companies and records of payments of the voluntary contribution amounts by the Companies.

2. Universal Service Administrative Company, 2000 L Street, N.W., Suite 200, Washington, D.C. 20036, (202) 776-0200. USAC is likely to have documents relevant to the Companies' violation of Paragraph 14(f) of the Consent Decree, Section 254 of the Act and Section 54.706 of the Commission's rules, including but not limited to invoices issued by USAC to the Companies and records of payments of those invoices by the Companies.

3. National Exchange Carriers Association, 80 South Jefferson Road, Whippany, NJ 07981, (973-884-8334). NECA is likely to have documents relevant to the Companies' violation of Paragraph 14(g) of the Consent Decree, Section 254 of the Act and Section 64.604(c)(5)(iii)(A) of the Commission's rules, including but not limited to invoices issued by NECA to the Companies and records of payments of those invoices by the Companies.

4. Qwest Communications Corporation ("Qwest"), 1801 California Street, Suite 2400, Denver, Colorado 80202. Qwest is likely to have documents relevant to the Companies' violations of Paragraph 14(d) of the Consent Decree and Section 63.71 of the Commission's rules.

5. The Verification Company ("TVC"), 1059 Broadway, Suite G, Dunedin, FL 34698. TVC is likely to have documents relevant to the Companies' violations of Section 258 of the Act and Section 64.1120 of the Commission's rules.

6. VoiceLog, LLC, 18927 Premiere Ct., Gaithersburg, MD 20879. VoiceLog is likely to have documents relevant to the Companies' violations of Section 258 of the Act and Section 64.1120 of the Commission's rules.

7. Telecommunications on Demand, Inc. ("TOD"), 1001 Village Road, Orwigsurg, PA 17961. TOD is likely to have documents

relevant to the Companies' violations of Section 258 of the Act and Section 64.1120 of the Commission's rules.

8. Billing Concepts, 7411 John Smith Drive, Suite 200, San Atonio, TX 78229. Billing Concepts is likely to have documents relevant to the Companies' violations of Section 258 of the Act and Sections 63.71 and 64.1120 of the Commission's rules.

9. USBI, , 7411 John Smith Drive, Suite 200, San Atonio, TX 78229. USBI is likely to have documents relevant to the Companies' violations of Section 258 of the Act and Sections 63.71 and 64.1120 of the Commission's rules.

10. Various state regulatory authorities responsible for enforcing regulations regarding the provision of telecommunications services.

11. The individuals listed in paragraphs 9-20 in the response to Interrogatory No. 1, *supra*. Documents relating to complaints from consumers received by the Commission regarding the purported unauthorized change of such consumers' preferred long distance service provider.

3. Provide information on each alleged instance of a violation of a statute, rule, or other law for which Defendants have been called before the Commission pursuant to the Order to Show Cause, FCC 07-165. The following information is requested:

a. The dates on which each alleged instance of a violation is alleged to have occurred;

b. The amount of penalty proposed for each alleged instance of a violation;

c. The legal authority relied upon for imposing such penalty for each alleged instance of a violation (with citations to Commission rules, and citations to the enabling statutes under which such Commission rules were promulgated);

d. The legal authority relied upon for imposing such penalties *in the amounts proposed*, for each alleged instance of a violation (with citations to Commission rules, and citations to the enabling statutes under which such

Commission rules were promulgated, with respect to the *amounts* of the proposed penalties);

e. Identify each individual consulted in answering this Interrogatory.

Response: The Bureau objects to Interrogatory No. 3 to the extent it seeks to have the Bureau perform legal research on behalf of Defendants. Defendants are free to conduct legal research regarding Commission rules and their respective enabling statutes. The Bureau further objects to Interrogatory No. 3 to the extent the information sought is within the Defendants' knowledge. The Bureau notes that the proposed forfeiture amounts are just that – ***proposed amounts***. Indeed, in paragraphs 31-33 of the Order to Show Cause, the proposed forfeiture amounts are all prefaced by the phrase "in an amount not to exceed." The Bureau bears the burden of proving the alleged violations. The amount of forfeitures to be imposed for such violations, should the Bureau meet its burden of proof, will be set by the Presiding Officer, not the Bureau. Notwithstanding and subject to the foregoing objections, the Bureau states the following:

Paragraph 24(a) of the Order to Show Cause: In or around November 2006, service to all customers of the Companies was discontinued in numerous states. Discovery in this proceeding has only just begun, so the information available to the Bureau at this time is still incomplete. However, according to the Companies' response to the Bureau's letter of inquiry, Buzz had customers in 43 states, and service was discontinued to all customers in all states where Buzz provided service. The Companies' response to the Bureau's letter of inqury did not provide information regarding the states in which BOI had customers to whom service was discontinued. As noted in the Order to show cause, each violation of Paragraph 14(d) of the Consent Decree is subject to a maximum forfeiture amount of $130,000.

Paragraph 24(b) of the Order to Show Cause: Because of the Companies' failure to respond fully and completely to the Bureau's letter of inquiry, and because discovery in this proceeding has only just begun, the Bureau cannot yet say with precision on which dates the Companies violated Paragraph 14(f) of the Consent Decree. Each violation is continuing. As noted in the Order to Show Cause, each violation is subject to a potential forfeiture of $130,000 per violation or each day of a continuing violation, up to a maximum of $1,325,000 for any single act or failure to act.

Paragraph 24(c) of the Order to Show Cause: Because of the Companies' failure to respond fully and completely to the Bureau's letter of inquiry, and because discovery in this proceeding has only just begun, the Bureau cannot yet say with precision on which dates the Companies violated Paragraph

14(g) of the Consent Decree. Each violation is continuing. As noted in the Order to Show Cause, each violation is subject to a potential forfeiture of $130,000 per violation or each day of a continuing violation, up to a maximum of $1,325,000 for any single act or failure to act.

Paragraph 24(d) of the Order to Show Cause: Pursuant to Paragraph 15 of the 2004 Consent Decree, the Companies were required to make forty-eight (48) monthly payments, beginning May 15, 2004. Thus, payments were to run through April 2008. On information and belief, Defendants have not made payments for the following months: June 2005, August 2005 through April 2006, June 2006 through the present. Each monthly payment not made constitutes a separate and continuing violation. As noted in the Order to Show Cause, each violation is subject to a potential forfeiture of $130,000 per violation or each day of a continuing violation, up to a maximum of $1,325,000 for any single act or failure to act. In addition, as noted in the Order to Show Cause, Defendants are potentially liable for the entire, or some lesser range, of sanctions that could have been imposed in the earlier proceeding had all the issues been decided adversely to the Companies, in an amount not to exceed $1,538,533.52.

Paragraph 24(e) of the Order to Show Cause: In or around November 2006, service to customers of the Companies was discontinued in numerous states. Discovery in this proceeding has only just begun, and the Bureau does not yet know in how many states service to the Companies' customers was discontinued. As noted in the Order to Show Cause, each violation is subject to a maximum forfeiture amount of $130,000.

Paragraph 24(f) of the Order to Show Cause: Because of the Companies' failure to respond fully and completely to the Bureau's letter of inquiry, and because discovery in this proceeding has only just begun, the Bureau cannot yet say with precision on which dates the Companies violated Section 54.706 of the Commission's rules. Each violation is continuing. As noted in the Order to Show Cause, each violation is subject to a potential forfeiture of $130,000 per violation or each day of a continuing violation, up to a maximum of $1,325,000 for any single act or failure to act.

Paragraph 24(g) of the Order to Show Cause: Because of the Companies' failure to respond fully and completely to the Bureau's letter of inquiry, and because discovery in this proceeding has only just begun, the Bureau cannot yet say with precision on which dates the Companies violated Section 64.604(c)(5)(iii)(A) of the Commission's rules. Each violation is continuing. As noted in the Order to Show Cause, each violation is subject to a potential forfeiture of $130,000 per violation or each day of a continuing violation, up to a maximum of $1,325,000 for any single act or failure to act.

Paragraph 24(h) of the Order to Show Cause: Failure to respond fully,

completely and timely to a Commission inquiry is a violation by omission. Thus, the Bureau cannot state a date on which this violation occurred. However, the Commission inquiry to which the Companies failed to respond fully, completely and timely is the December 20, 2006 letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, to Keanan Kintzel, Business Options, Inc., as supplemented by follow-up e-mails from Brian Hendricks, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, to Kurtis Kintzel on January 30 and January 31, 2007.

Paragraph 24(i) of the Order to Show Cause: Because Defendants failed to fully and completely respond to the December 20, 2006 letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, to Keanan Kintzel, Business Options, Inc., the Bureau is unable to specify the full extent to which Defendants may have changed subscribers' providers 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, nor can the Bureau say with specificity the dates on which each of the violations of Section 64.1120 occurred. The Bureau is specifically aware of the ten complaints it received directly from consumers Margary Anderson, Alesia Cummings, Rita Harvey, Martin Houseman, Gary Ingram, Norbert Kleitsch, Roy Morris, Irene Mowan (through her daughter), Betty Nolan and Mindy Stoltzfus. The Companies failed to provide all the information sought by the December 20, 2006 letter of inquiry with respect to these consumers' complaints, despite the representation made in the January 17, 2007 letter from Kurtis Kintzel responding to the Commission's letter of inquiry.

4. Calculate the penalties proposed in Interrogatory No. 3, and if the penalties do not add up to $50 million, explain Your legal justification for proposing penalties of $50 million against Defendants in the instant proceeding (as described in the Order to Show Cause, FCC 07-165). Identify each individual consulted in answering this Interrogatory. Identify the individual(s) who actually prepared the Answer to this Interrogatory.

Response: The Bureau objects to Interrogatory No. 4 as calling for a legal conclusion. The Bureau further objects to Interrogatory No. 4 as outside the purview of permissible discovery against Commission personnel under 47 C.F.R. § 1.311(b)(4).

5. Disclose all documents, data compilations, including emails, and all other tangible things (whether or not they are in Your possession, custody, or control—and specify who has or may have possession, custody, or control) related to the negotiation and drafting of the 2004 Consent Decree described in the Order to Show Cause, FCC 07-165.

> **Response:** The Bureau objects to Interrogatory No. 5 as seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. The Bureau directs Defendants to Section 10 of the 2004 Consent Decree, which provides that "[t]he Parties waive their right to judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order, provided the presiding officer issues the Order without change, addition, or modification of this Consent Decree."

6. Was the 2004 Consent Decree negotiated and drafted in accordance with 47 C.F.R. § 1.93 and § 1.94?

> **Response:** The Bureau objects to Interrogatory No. 6 as calling for a legal conclusion. The Bureau further objects to Interrogatory No. 6 as seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Finally, the Bureau directs Defendants to Section 10 of the 2004 Consent Decree, which provides that "[t]he Parties waive their right to judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order, provided the presiding officer issues the Order without change, addition, or modification of this Consent Decree."

7. 47 C.F.R. § 1.93 and § 1.94, by their terms, permit Consent Orders to be negotiated only between the Commission and *parties* to proceedings. Since Buzz Telecom Corp., U.S. Bell/Link Technologies Corp., and Avatar Enterprises, Inc., were not *parties* in the proceeding that was ended through negotiation of the 2004 Consent Decree, describe Your legal rationale and/or the legal authority relied upon for attempting to bind Buzz Telecom Corp., U.S. Bell/Link Technologies Corp., and Avatar Enterprises, Inc., to the 2004 Consent Decree.

> **Response:** The Bureau objects to Interrogatory No.7 as calling for a legal conclusion. The Bureau further objects to Interrogatory No. 7 as outside the

purview of permissible discovery against Commission personnel under 47 C.F.R. § 1.311(b)(4). Finally, the Bureau directs Defendants to Section 10 of the 2004 Consent Decree, which provides that "[t]he Parties waive their right to judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order, provided the presiding officer issues the Order without change, addition, or modification of this Consent Decree." Notwithstanding and subject to the foregoing objections, the Bureau states: By Memorandum Opinion & Order released August 20, 2003 in the hearing proceeding that led to the 2004 Consent Decree, the issues set for determination in that hearing proceeding were enlarged. As a result, Buzz Telecom Corp., U.S.Bell Inc. and/or Link Technologies were added as parties to the hearing proceeding. Moreover, the 2004 Consent Decree speaks for itself.

8. The first paragraph of the 2004 Consent Decree does not mention Buzz Telecom Corp., U.S. Bell/Link Technologies Corp., or Avatar Enterprises, Inc. The first paragraph of the 2004 Consent Decree states that the Consent Decree is entered into between the Commission and Business Options, Inc., which was the only party in that proceeding. Why are the other companies (Buzz Telecom Corp., U.S. Bell/Link Technologies Corp., and Avatar Enterprises, Inc.) not mentioned in the first paragraph as contracting parties?

Response: The Bureau objects to Interrogatory No.8 as calling for a legal conclusion. The Bureau further objects to Interrogatory No. 8 as outside the purview of permissible discovery against Commission personnel under 47 C.F.R. § 1.311(b)(4). Finally, the Bureau directs Defendants to Section 10 of the 2004 Consent Decree, which provides that "[t]he Parties waive their right to judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order, provided the presiding officer issues the Order without change, addition, or modification of this Consent Decree." Notwithstanding and subject to the foregoing objections, the Bureau states: The 2004 Consent Decree speaks for itself.

9. Do you believe that drafting errors were made in the 2004 Consent Decree? If so, what were the errors? Are You seeking reformation?

Response: The Bureau objects to Interrogatory No.8 as calling for a legal conclusion. The Bureau further objects to Interrogatory No. 11 as outside the purview of permissible discovery against Commission personnel under 47 C.F.R. § 1.311(b)(4). The Bureau also objects to Interrogatory No. 11 as seeking information that is neither relevant nor reasonably calculated to lead

to the discovery of admissible evidence. Finally, the Bureau directs Defendants to Section 10 of the 2004 Consent Decree, which provides that "[t]he Parties waive their right to judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order, provided the presiding officer issues the Order without change, addition, or modification of this Consent Decree."

10. Identify each individual involved in negotiating and drafting the 2004 Consent Decree. Describe the nature of the work performed by each individual, and whether their work was instrumental to the negotiation and drafting of the Consent Decree. or peripheral, or minimal, or extensive, or supervisory, etc.

Response: The Bureau objects to Interrogatory No. 10 as outside the purview of permissible discovery against Commission personnel under 47 C.F.R. § 1.311(b)(4). The Bureau further objects to Interrogatory No. 10 as seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Finally, the Bureau directs Defendants to Section 10 of the 2004 Consent Decree, which provides that "[t]he Parties waive their right to judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order, provided the presiding officer issues the Order without change, addition, or modification of this Consent Decree."

11. As to any Commission lawyers identified in the Answer to Interrogatory No. 10, describe the extent of their contract drafting experience. Specifically, the following information is requested of each Commission lawyer identified in the Answer to Interrogatory No. 10:

a. How many contracts have they drafted in their legal careers?

b. How many contracts have they drafted for organizations or entities other than the Commission during their legal careers?

c. What types of contracts have they drafted (e.g., commercial, bilateral treaties, real estate, etc.), and how many of each?

d. Each Commission lawyer identified in the Answer to Interrogatory No. 10 is requested to provide an opinion as to whether, if he/she applied for a

job at a law firm as a transactional lawyer to draft contracts, based on the contractdrafting experience cited in the Answers to Interrogatories No. 10(a) through 10(c), does he/she believe that he/she could be hired. The Commission lawyer is asked to justify his/her Answer.

e. Each Commission lawyer identified in the Answer to Interrogatory No. 10 is requested to provide an opinion as to whether, in his/her estimation, he/she has drafted more or fewer contracts than a second-year transactional associate at a law firm.

f. Each Commission lawyer identified in the Answer to Interrogatory No. 10 is requested to provide an opinion as to whether, if he/she applied for a job at a law firm as a transactional lawyer to draft contracts, based on the contract drafting experience cited in the Answers to Interrogatories No. 10(a) through 10(c), does he/she believe that he/she could be hired at any level above that of a second-year transactional associate. The Commission lawyer is asked to justify his/her Answer.

Response: The Bureau objects to Interrogatory No. 11 as outside the purview of permissible discovery against Commission personnel under 47 C.F.R. § 1.311(b)(4). The Bureau further objects to Interrogatory No. 11 as seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Finally, the Bureau directs Defendants to Section 10 of the 2004 Consent Decree, which provides that "[t]he Parties waive their right to judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order, provided the presiding officer issues the Order without change, addition, or modification of this Consent Decree."

Kris Anne Monteith
Chief, Enforcement Bureau

Michele Levy Berlove
Attorney, Investigations and Hearings Division

Federal Communications Commission
445 12th Street, S.W., Room 4-C330
Washington, D.C. 20554
(202) 418-1420

February 20, 2008

CERTIFICATE OF SERVICE

Rebecca Lockhart, a Paralegal Specialist in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has, on this 20th day of February, 2008, sent by first class United States mail copies of the foregoing **Enforcement Bureau's Objections and Responses to Defendants' First Set of Interrogatories** to:

Catherine Park, Esq.
2300 M Street, NW, Suite 800
Washington, D.C. 20037

Counsel for Kurtis J. Kintzel, Keanan Kintzel, Business Options, Inc., Buzz Telecom Corporation, US Bell, Inc., Link Technologies and Avatar Enterprises

A copy of the foregoing was also served via hand-delivery to:

Administrative Law Judge Richard L. Sippel
Federal Communications Commission
445 12th Street, S.W., Room 1-C861
Washington, D.C. 20054

Rebecca Lockhart

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent for filing on this 25th day of February 2008, by U.S. Mail, Express Mail, to the following:

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

And served the same day by U.S. Mail, First Class, on the following:

Richard L. Sippel, Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, SW, Room 1-C861
Washington, D.C. 20554

Kris Monteith, Chief
Enforcement Bureau
Federal Communications Commission
445 12th Street, SW, Room 7-C723
Washington, D.C. 20554

Hillary DeNigro, Chief
Michele Levy Berlove, Attorney
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Catherine Park

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