

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

FILED/ACCEPTED

MAR 17 2008

Federal Communications Commission
Office of the Secretary

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

To: Richard L. Sippel
Chief Administrative Law Judge

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

1. On March 10, 2008, Kurtis J. Kintzel, Keanan Kintzel, and all entities by which they do business (collectively, "Defendants"), filed a pleading entitled, "Motion to Compel Answers to Defendants' Second Set of Interrogatories, and Motion for Remedy for Enforcement Bureau's Second Failure to Submit Interrogatory Responses Under Oath ("Motion"). The Enforcement Bureau hereby requests that the Presiding Judge deny the Motion on the merits. In support whereof, the following is shown.

2. In order to divert the Presiding Judge's attention from the Motion's lack of merit, Defendants lead off the Motion with a baseless allegation that the Bureau failed to comply with the Commission's rules regarding providing interrogatory responses under oath. This allegation is made in bad faith, as the Bureau in fact provided an appropriate affirmation in support of its Objections and Responses to Defendants' Second Set of Interrogatories. The remainder of the Motion, while arguably not made in bad faith, is without merit. The interrogatories at issue are improper, and Defendants are not entitled to the information sought.

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ARGUMENT¹

I. THE BUREAU DID NOT FAIL TO PROVIDE AN AFFIRMATION IN SUPPORT OF ITS INTERROGATORY RESPONSES

A. Defendants Engage in Bad Faith by Accusing the Bureau of Failing to Submit Its Interrogatory Responses Under Oath

3. Defendants accuse the Bureau of failing to submit its Objections and Responses to Defendants' Second Set of Interrogatories ("Responses") under oath. This argument is made in bad faith. The Responses were due by Tuesday, March 4, 2008. Counsel for the Bureau was home with a sick child March 3 and 4, but worked diligently to ensure that the Responses would be ready for filing and service on March 4. To that end, counsel for the Bureau worked with one of the Bureau's paralegals to ensure the filing and service of the Responses on March 4, with the paralegal signing counsel's name.² On Wednesday, March 5, 2008, when back in the office, counsel for the Bureau advised counsel for Defendants via e-mail that she had been home with a sick child, that this was why there was no affirmation with the Responses that were filed and served on March 4, and that the affirmation would be provided that same week.³ On Friday, March 7, 2008, the Bureau filed and served a Notice of Filing with an attached affirmation supporting the Responses. The Bureau provided a courtesy copy to Defendants via e-mail that

¹ For the sake of brevity, the Bureau has not responded to each and every argument raised in the Motion, nor has the Bureau attempted to point out and correct each and every factual inaccuracy contained in the Motion. In doing so, the Bureau does not (1) waive any of its objections to Defendants' Second Set of Interrogatories, (2) concede any of the arguments raised in the Motion, or (3) admit any of the inaccurate facts contained in the Motion.

² Counsel did not feel it appropriate to have someone else sign her name to an affirmation.

³ A copy of the March 5, 2008 e-mail from Michele Berlove to Catherine Park is attached hereto as Exhibit 1.

same day at 11:32 a.m.⁴ The Bureau received a copy of this Motion via e-mail on Monday, March 10, 2008.

4. The Bureau requests that the Presiding Judge caution Defendants regarding the assertion of frivolous arguments in this proceeding.

B. Defendants Mischaracterize the Bureau's Consistent Position on the Maximum Available Penalty for Failure to Fully and Completely Respond to a Commission Inquiry

5. As they did in their 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 again speciously argue that the proposed forfeiture in the Order to Show Cause for Defendants' failure to fully and completely respond to a Commission inquiry is based on Kurtis Kintzels' failure to include an affirmation in support of Defendants' response to the Commission's December 20, 2006 letter of inquiry ("LOI").⁵ The Order to Show Cause contains no such allegation. Rather, the Order to Show Cause sets forth numerous ways in which Defendants failed to fully and completely respond to the Commission's December 20, 2006 letter of inquiry – *i.e.*, Defendants' failure to provide verification tapes associated with slamming complaints received by the Commission, a list of complaints received by Buzz from May of 2006 to the date of the Commission's inquiry letter, and any verification tapes associated with such complaints.⁶

⁴ A copy of the e-mail from Michele Berlove to Catherine forwarding the Notice of Filing is attached as Exhibit 2 hereto.

⁵ Motion at 2.

⁶ *See* Order to Show Cause, ¶ 15. *See also* Memorandum Opinion and Order, FCC 08M-18, released March 14, 2008, at 2; Enforcement Bureau's Opposition to Defendants' 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 at 2-3.

6. The Bureau takes issue with Defendants' characterization of the Bureau as "[c]hastened by its own failings" with respect to its position regarding the potential maximum forfeiture available for Defendants' apparent violation of Sections 218 and 403 of the Communications Act of 1934, as amended. The Bureau is not "chastened," because it has not "failed." Indeed, the Bureau has never contended that each of the failures to respond fully and completely to the LOI described in the preceding paragraph constitutes a separate violation for which the maximum forfeiture should be imposed. One need only examine the Bureau's response to Interrogatory No. 3 in Defendants' First Set of Interrogatories, which sought information "on each alleged instance of a violation of a statute, rule, or other law. . . ." That response speaks in terms of a "violation," not multiple violations.⁷

7. Defendants are correct that "[n]owhere in the Bureau's Responses to Defendants' First Set of Interrogatories did the Bureau contend that it was not entitled to impose \$130,000 for each day that the alleged omission of the sworn statement by Kurtis J. Kintzel was deemed to be continuing. . . ."⁸ That is because: (1) as discussed in paragraph 5, *supra*, the Bureau is not seeking to impose a forfeiture for Defendants' failure to provide an affirmation in support of their response to the LOI; and, more importantly, (2) it is the Bureau's position that it *is* entitled to seek a forfeiture of \$130,000 for each day that Defendants failed to provide all of the information described above in response to the LOI. This is consistent with the Order to Show Cause, which sets forth the maximum available forfeiture for this violation.⁹

⁷ See Enforcement Bureau's Objections and Responses to Defendants First Set of Interrogatories, excerpts of which are attached hereto as Exhibit 3, at 12-13.

⁸ Motion at 3.

⁹ See Order to Show Cause, ¶ 19.

8. Because the Bureau did not fail to provide an affirmation in support of its Responses, as argued by Defendants in bad faith, there is no basis for the Presiding Judge to grant Defendants' request to dismiss the issue in the Order to Show Cause regarding Defendants' failure to fully and completely respond to a Commission inquiry.

II. THE BUREAU HAS SUFFICIENTLY RESPONDED TO INTERROGATORY NO. 1 TO THE EXTENT THAT INTERROGATORY IS NOT OBJECTIONABLE

A. Interrogatory No. 1 Is Unduly Vague

9. Interrogatory No. 1 is unduly vague to the extent that, in addition to requesting specific information, it requests "any other details available about the [10] slamming complaint[s]." Defendants argue that "[t]here is nothing vague about" such a request.¹⁰ However, "any other details" excludes the possibility of delimiting factors such that Interrogatory No. 1 could arguably call for a lengthy narrative as to each and every slamming complaint at issue in this proceeding. To the extent information regarding the slamming complaints is available via documents, Defendants are free to make requests under the Freedom of Information Act.¹¹ Defendants have not yet availed themselves of this procedure.¹²

B. The Bureau Responded to Interrogatory No. 1 to the Extent It Is Not Unduly Vague

10. The Bureau previously provided to Defendants copies of the ten slamming complaints referred to in the Order to Show Cause.¹³ The Bureau cannot be faulted for Defendants' failure to maintain those copies. However, as a matter of courtesy, the Bureau will

¹⁰ Motion at 6.

¹¹ See 47 C.F.R. § 1.311(b)(3).

¹² See Motion at 10.

¹³ See January 30, 2007 e-mail from Brian Hendricks, Attorney Advisor, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, to Kurtis Kintzel, attached hereto as Exhibit 4. See also Motion at 6-7.

re-forward those complaints to Defendants.¹⁴ To the extent the Bureau has documents in addition to those complaints, information from those documents was set forth in the Bureau's response to Interrogatory No. 1.¹⁵

III. DEFENDANTS ARE NOT ENTITLED TO RESPONSES TO INTERROGATORY NOS. 8-11

A. Defendants Are Not Entitled to the Information Sought by Interrogatory No. 8

11. Interrogatory No. 8 seeks information regarding the intent of the Consent Decree with respect to the potential insolvency of Business Options, Inc. As pointed out in the Bureau's Opposition to Defendants' First Motion to Compel, the Consent Decree is unambiguous.¹⁶ Indeed, Defendants have not identified any ambiguities in the Consent Decree. Thus, the construction of that contract should be based upon a comprehensive reading of its provisions, without the use of parol evidence.¹⁷

12. Moreover, as Defendants point out in the Motion, "the Consent Decree was negotiated between the Commission and Business Options, Inc."¹⁸ Any communications between the Bureau and counsel for Business Options are equally available to Defendants as they are to the Bureau.

¹⁴ The Bureau notes that this is not a waiver of Section 1.311(b)(3) of the Commission's rules. Rather, it is a courtesy to Defendants with respect to a document that was previously provided to them in connection with the LOI.

¹⁵ See Responses at 2-3.

¹⁶ See Enforcement Bureau's Opposition to 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, at 7.

¹⁷ See *id.*

¹⁸ This is not technically accurate. The parties to the negotiations included the *Bureau*, not the Commission. Moreover, Buzz Telecom Corporation, U.S. Bell/Link Technologies and Avatar Enterprises were involved in those negotiations in addition to Business Options.

B. Interrogatory Nos. 9-11 Are Improper

13. By Interrogatory Nos. 9-11, Defendants seek comprehensive information regarding each and every investigation by the Bureau of carrier failures to contribute to the Universal Service Fund (“USF”) and the Telecommunications Relay Service fund (“TRS”). Such information is neither relevant nor reasonably likely to lead to the discovery of admissible evidence. Assuming that there is even marginal relevance, that relevance is outweighed by the burden of compiling such information. To the extent the information is publicly available, it is available to Defendants. Finally, Defendants are not entitled to receive non-public information regarding investigations conducted by the Bureau.

1. Information Regarding Other USF and TRS Contribution Cases Is Neither Relevant Nor Likely to Lead to the Discovery of Admissible Evidence

14. Information regarding investigations of other carriers for USF and TRS contribution violations is not relevant to whether or not the Defendants are liable for the apparent violations that are the subject of the Order to Show Cause or to what the appropriate forfeiture amount is for such violations. Every case is different. The egregiousness of the acts or omissions at issue will vary from case to case, as will the respective carriers’ history of compliance. Indeed, the Commission’s rules provide for individualized treatment in setting forfeiture amounts by requiring the Commission to “take into account the nature, circumstances, extent and gravity of the violations and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹⁹ For this same reason, whether allegations of failure to contribute to USF or TRS are “commonplace, relatively

¹⁹ 47 C.F.R. § 1.80(b)(4)

commonplace, or not commonplace,”²⁰ is neither relevant nor reasonably likely to lead to the discovery of admissible evidence.

15. Defendants’ argument in support of the relevance of the information sought by Interrogatory No. 11 is confusing, at best. According to that argument, the requested information is relevant because it relates to “the intent of the parties, the meaning of various provisions, whether the drafters were conscious that non-parties were included in the Consent Decree in contravention of 47 C.F.R. § 1.93 and § 1.94, etc.”²¹ However, Interrogatory No. 11 asks the Bureau to “[d]isclose whether any long-distance provider or reseller has ever become insolvent and/or filed for bankruptcy with a balance due and owing on any FCC-mandated obligation, and describe all actions taken against them by the Commission and what resolution was reached.”²² This has nothing to do with the drafting and/or validity of the Consent Decree.

2. The Bureau Is Not Required to Provide Publicly Available Information

16. Defendants contend that they should not be required to do their own searches for publicly available information responsive to Interrogatory Nos. 9-11 because access to the FCC Record database is prohibitively expensive.²³ The Bureau is not sure what FCC Record database Defendants refer to, although it might be a database available on either Westlaw or Lexis. Surely Defendants do not contend that the Bureau should be required to run Westlaw or Lexis searches, download all the results of those searches and then forward those results to Defendants. Indeed, Defendants cite no cases to support the position that they can transfer their research burden to

²⁰ Motion at 9. And what constitutes “commonplace, relatively commonplace, or not commonplace?” The Motion does not make this clear.

²¹ *Id.* at 11.

²² *See* Exhibit A to the Motion.

²³ *Id.*

another party and avoid the costs of litigation simply because it is too costly for them. The possible costs associated with litigation are a cost of doing business, particularly in a highly-regulated field. Regardless, Defendants have free access to the Commission's website and may avail themselves of that site's search engine. Additionally, the Bureau has a webpage on that site that contains links to USF cases. Defendants can read through each of the cases listed there to obtain the publicly-available information they seek. The Bureau should not have to read each of those items and then boil the information about those cases down into one neat little package for Defendants' ease of consumption.

17. Moreover, as noted above, the information sought by Interrogatory Nos. 9-11 is neither relevant nor reasonably likely to lead to the discovery of admissible evidence. However, even if the information sought is marginally relevant (which it is not),²⁴ that relevance is outweighed by the burden on the Bureau of compiling the information. Limiting the time period at issue to ten years, as offered by Defendants, would not tip the balance in Defendants' favor in that regard.²⁵

3. Defendants Are Not Entitled to Non-Public Information

18. If the Commission has investigated a carrier for failure to contribute to the USF and there is no public record of an action by the Commission in connection with that investigation, that is because either: (1) the investigation is ongoing; or (2) the investigation was closed

²⁴ Defendants contend that the Bureau has admitted that the information sought by Interrogatory No. 11 is relevant. *See* Motion at 10. This incorrectly characterizes the Bureau's response to Interrogatory No. 11. What the Bureau said was: "To the extent the information sought is not publicly available, however, the Bureau objects to Interrogatory No. 11 because what minimal relevance the requested information may have (*of which the Bureau believes there is none*) is outweighed by the burden of gathering and conveying this information." *See* Enforcement Bureau's Objections and Responses to Defendants Second Set of Interrogatories, Exhibit B to the Motion (emphasis supplied).

without entry or issuance of an enforcement order. In either event, the Bureau is not at liberty to disclose information regarding those investigations.

19. The public disclosure of information regarding an ongoing investigation could have two potentially serious effects. First, the Bureau's efforts in connection with that investigation could be compromised. Second, the target of the investigation could be prejudiced by the disclosure, particularly if the Bureau ultimately determines that there in fact is no violation.

20. Information regarding investigations that the Bureau may have closed without entering into a Consent Decree or issuing either a Notice of Liability or a Forfeiture Order is neither relevant nor reasonably likely to lead to the discovery of admissible evidence. There are a variety of reasons why the Bureau might decide to close an investigation without taking any of those actions, including that the investigation resulted in a determination that there was, in fact, no violation.

21. The fact that Defendants "have merely asked for factual information that is within the Bureau's possession, custody, and/or control"²⁶ does not save these interrogatories. The proper channel for obtaining the requested information is a Freedom of Information Act request that would permit appropriate vetting under that statute's guidelines, as well as the guidelines set forth in the Commission's rules.²⁷ Defendants can then review those documents to cull the irrelevant information they seek to the extent it is determined that the documents sought are subject to disclosure under the Freedom of Information Act.

²⁵ Indeed, the USF did not come into existence until 1997, the Bureau did not come into existence until 1999, and the USF cases listed on the Bureau's webpage only go back to 2000.

²⁶ Motion at 10.

²⁷ See 47 C.F.R. §§ 0.451-0.467.

CONCLUSION

22. For the foregoing reasons, the Bureau respectfully requests that the Presiding Judge deny the Kintzels' Motion to Compel Answers to Defendants' Second Set of Interrogatories, and Motion for Remedy for Enforcement Bureau's Second Failure to Submit Interrogatory Responses Under Oath in its entirety.

Respectfully submitted,
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
March 17, 2008

EXHIBIT 1

Michele Berlove

From: Michele Berlove
Sent: Wednesday, March 05, 2008 9:25 AM
To: 'Catherine Park'
Cc: Judy Lancaster
Subject: Kintzels, et al. -- EB Objections and Responses to Defendants' Second Set of Interrogatories

Catherine:

I had a paralegal file and serve the Bureau's Objections and Responses to Defendants' Second Set of Interrogatories yesterday. Because I was home with a sick child, I was unable to include the necessary affirmation. I will be getting that to you this week.

Regards,

Michele

Michele Levy Berlove
Federal Communications Commission
Enforcement Bureau
Investigations & Hearings Division
445 12th Street, N.W.
Washington, D.C. 20554
(202) 418-1477
Michele.Berlove@fcc.gov

EXHIBIT 2

Elizabeth Mumaw

From: Michele Berlove
Sent: Friday, March 07, 2008 11:32 AM
To: 'Catherine Park'
Cc: Judy Lancaster
Subject: Kintzels, et al., EB No. 07-197 -- Opposition to Motion to Compel; Notices of Filing Affirmations for both sets of interrogatories from Defendants
Attachments: EB Opposition to Motion to Compel Answers to Defendants' First Set of Interrogatories and Motion for Remedy...3.7.08.pdf; Notice of Filing - Affirmation in connection with Obj and Resp. to Dedfendeants' First Set of Interrogatories 3.7.08.pdf; Notice of Filing - Affirmation in connection with Obj and Resp. to Dedfendeants' Second Set of Interrogatories 3.7.08.pdf

Catherine:

Attached are courtesy copies of the following documents:

- Enforcement Bureau's Opposition to 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
- Notice of Filing (affirmation for Objections and Responses to Defendants' First Set of Interrogatories)
- Notice of Filing (affirmation for Objections and Responses to Defendants' Second Set of Interrogatories)

Regards,

-- Michele
Michele Levy Berlove
Federal Communications Commission
Enforcement Bureau
Investigations & Hearings Division
445 12th Street, N.W.
Washington, D.C. 20554
(202) 418-1477
Michele.Berlove@fcc.gov

EXHIBIT 3

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

FILED/ACCEPTED

FEB 20 2008

Federal Communications Commission
Office of the Secretary

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

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 Antonio, 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 Antonio, 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 inquiry 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,

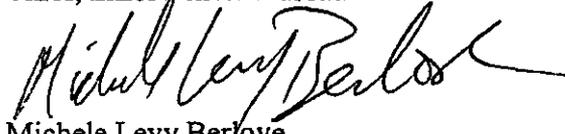
completely and timely to a Commission inquiry is a violation by omission. Thus, the Bureau cannot state a date on which this violation occurred. However, the Commission inquiry to which the Companies failed to respond fully, completely and timely is the December 20, 2006 letter from Trent B. Harkrader, 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).

Kris Anne Monteith
Chief, Enforcement Bureau

A handwritten signature in black ink, appearing to read "Michele Levy Berlove". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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

EXHIBIT 4

RE Follow up to Commission's December 20 2006 Letter of Inquiry
From: Kurtis Kintzel [kjkintzel@hotmail.com]
Sent: Wednesday, January 31, 2007 12:10 PM
To: Brian Hendricks
Subject: RE: Follow up to Commission's December 20, 2006 Letter of Inquiry

Hi Mr. Hendricks,

I received your email and the attachment with the inquiries. We'll research the customers and provide you with the data that we have.

Also, I will get an affidavit put together and forwarded. It wasn't left out intentionally.

Take Care,
Kurtis Kintzel

>From: "Brian Hendricks" <Brian.Hendricks@fcc.gov>
>To: <kjkintzel@hotmail.com>
>Subject: Follow up to Commission's December 20, 2006 Letter of Inquiry
>Date: Tue, 30 Jan 2007 12:31:11 -0500
>
>Mr. Kintzel,
>
>We are in receipt of your response and attachments to our Letter of
>Inquiry of December 20, 2006. In your response you noted that the
>letter arrived without the attached complaints referenced in inquiry
>#10. I apologize if those complaints were mistakenly omitted.
>
>I have attached an electronic version of those 10 complaints, received
>by the Commission, and referenced in inquiry #10. To refresh your
>recollection, I have included an electronic copy of our December letter.
>
>Please provide a supplementary response providing the information in
>inquiry #10 within 15 days (by close of business Wednesday February 14,
>2007).
>
>Please note as well that your response to the December 20, 2006 Letter
>of Inquiry did not include an affidavit or declaration under penalty of
>perjury as directed. Specifically, the December 20, 2006 letter provides:
>
> we direct the Company to support its responses with an affidavit or
>declaration under penalty of perjury, signed and dated by an authorized
>officer of the Company with personal knowledge of the representations
>provided in the Company's response, verifying the truth and accuracy of
>the information therein and that all of the information and/or documents
>requested by this letter which are in the Company's possession, custody,
>control or knowledge have been produced. If multiple Company employees
>contribute to the response, in addition to such general affidavit or
> declaration of the authorized officer of the Company noted above, if such
>officer (or any other affiant or declarant) is relying on the personal
>knowledge of any other individual, rather than his or her own knowledge,
>provide separate affidavits or declarations of each such individual with
>personal knowledge that identify clearly to which responses the affiant or
>declarant with such personal knowledge is attesting. All such declarations
>provided must comply with section 1.16 of the Commission's rules, 47
>C.F.R. § 1.16, and be substantially in the form set forth therein.
>
>Provide a declaration (see attachment for requirements of 47 C.F.R.)
>for the information submitted with your response to the December 20

RE Follow up to Commission's December 20 2006 Letter of Inquiry
>letter and also an additional declaration for the responses that you
>provide to this follow-up. These must be signed and dated and include
>the language noted in the 47 C.F.R. 1.16 attachment at paragraph (2).

>
> I will follow this email with a phone call to confirm your receipt.

>
>Regards

>
>Brian M. Hendricks

>
> <<LOI-Dec 20_Final.doc>> <<Scan001.PDF>> <<47 C.F.R. 1.16.htm>>

>
>
>Brian M. Hendricks

>Attorney Advisor
>Federal Communications Commission
>Enforcement Bureau--Investigations & Hearings Division
>445 12th Street, S.W., Room 4-A327
>Washington, D.C. 20554
>(202)-418-1336- Direct Dial
>(202)-418-2080- Fax

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CERTIFICATE OF SERVICE

Rebecca Lockhart, a Paralegal Specialist in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has, on this 17th day of March, 2008, sent by first class United States mail copies of the foregoing **Enforcement Bureau's Opposition to Motion to Compel Answers to Defendants' Second Set of Interrogatories and Motion for Remedy for Enforcement Bureau's Second Failure to Submit Interrogatory Responses Under Oath** 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