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

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

ORDER TO SHOW CAUSE AND NOTICE OF OPPORTUNITY FOR HEARING

Adopted: March 26, 2003 **Released: April 7, 2003**

By the Commission:

I. INTRODUCTION

1. In this Order to Show Cause and Notice of Opportunity for Hearing, we commence an evidentiary hearing to determine whether: (1) the Commission should revoke the operating authority of Business Options, Inc. (BOI);[1] (2) BOI and its principals should be ordered to cease and desist from any future provision of interstate common carrier services without the prior consent of the Commission; and (3) a forfeiture against BOI is warranted and, if so, the amount of the forfeiture.

2. As set forth in detail below, it appears that BOI may have engaged in misrepresentation or lack of candor in responses submitted to the Commission staff to inquiries that were central to an investigation of possible slamming violations by BOI[2] and in its application to the Commission for authority to discontinue its domestic interstate access and interstate long distance service in Vermont.[3] These apparent instances of misrepresentation or lack of candor, as well as related rule violations, raise

[1] For purposes of this order, "BOI" refers to BOI, Buzz Telecom, and US Bell, including any affiliates, successors or assigns.

[2] Letter from Colleen K. Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC, to Legal Department, BOI (Nov. 1, 2002) (Letter of Inquiry). "Slamming" is the submission or execution of an unauthorized change in a subscriber's selection of a provider of telecommunications service. *See generally* 47 U.S.C. § 258; 47 C.F.R. §§ 64.1100-64.1195.

[3] BOI Section 63.71 Application (Dec. 20, 2002) (BOI Discontinuance Application).

serious questions regarding whether BOI and its principals are qualified to be certified to provide interstate telecommunications services. The hearing will address these questions, as well as whether a forfeiture should be issued to BOI for violations of Commission rules relating to slamming, discontinuance of service, and carrier registration.

II. BACKGROUND

3. BOI is a reseller of long distance telephone service, located in Merrillville, Indiana.[4] BOI operates as a common carrier subject to Title II of the Act. Specifically, BOI currently provides or has provided resale interstate long distance telecommunications services to consumers in 46 states.[5] Under the regulatory scheme established by the Act and the Commission's rules, BOI is classified as a nondominant interexchange carrier.[6] As such, it is considered to have "blanket" authority to operate domestic common carrier facilities within the meaning of Section 214 of the Act.[7]

4. After receiving a high number of consumer complaints against BOI, the Enforcement Bureau, in cooperation with the Maine Public Utilities Commission, launched an investigation into the consumers' allegations of slamming. The Maine Public Utilities Commission, which has chosen to administer the Commission's informal slamming complaint rules,[8] forwarded information on BOI's activities to the Enforcement Bureau. On November 1, 2002, Enforcement Bureau staff sent a Letter of Inquiry to BOI seeking, among other things, BOI's response to specific consumer allegations.[9] Some of the consumer complaints against BOI that we received related to allegedly unauthorized changes in the complainants' preferred carrier to BOI which, after these complainants objected to these changes and the numbers were restored to their previous carriers, apparently were again changed to BOI without the complainants' authorization. The Letter of Inquiry that our staff sent to BOI and this Order related to these later changes.

5. On September 12, 2002, BOI signed a stipulation with the Vermont Department of Public Service to settle a proceeding in which a Vermont Public Service Board Hearing Officer concluded that BOI had violated Vermont regulations by (1) offering services without an approved tariff; (2) filing

[4] BOI's principal place of business is 8380 Louisiana Street, Merrillville Indiana 46410. It is an Illinois corporation, 98% owned by Kurtis Kintzel and Keanan Kintzel. Letter from Shannon Dennie, BOI, to Peter Wolfe, FCC (Dec. 9, 2002)(BOI Response). It also appears that both Kurtis Kintzel and Keanan Kintzel are or have been officers in US Bell Corporation and Buzz Telecom Corporation, which entities have the same address as BOI. BOI Response; LexisNexis Business Summary Report, U.S. Bell Comm. (Feb. 24, 2003); Lexis/Nexis Personal Report on Kurtis Kintzel and Keanan Kintzel (Feb. 24, 2003). For purposes of this NAL, the term "BOI" refers to BOI, Buzz Telecom and US Bell, including any affiliates, successors or assigns.

[5] BOI Discontinuance Application.

[6] *See CCN, Inc., et al*., Order to Show Cause and Notice of Opportunity for Hearing, 12 FCC Rcd 8547 (1997)(*CCN).*

[7] *Id.*

[8] *See Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, First Order on Reconsideration, 15 FCC Rcd 8158, 8169-79 (2000) (establishing guidelines for state administration of the informal slamming complaint rules).

[9] Letter of Inquiry.

misleading corporate registration reports; (3) engaging in deceptive business practices; (4) failing to provide customers with a toll free number; (5) failing to file a discontinuance notice; (6) failing to provide consumers with an accurate written summary of their service order; and (7) changing consumers' telecommunications carrier without their authorization.[10] Among other things, the stipulation required that BOI initiate the procedure outlined in 47 C.F.R. § 63.71 for terminating service to Vermont customers who currently were being served by BOI.[11] On December 20, 2002, BOI mailed an application to the Commission for authorization to discontinue its provision of resold interstate long distance service in Vermont on December 21, 2002 pursuant to section 214(a) of the Act and section 63.71 of the Commission's rules.[12] BOI simultaneously filed a request for waiver of the customer notification requirements set forth in Section 63.71(a) of the Commission's rules.

A. BOI Responses to Commission Inquiries

6. The Letter of Inquiry to BOI of November 1, 2002 asked a number of questions concerning (1) BOI's corporate structure, (2) its compliance with Commission registration requirements under 47 C.F.R. § 64.1195, (3) whether it or its affiliates, subsidiaries, or agents changed the preferred carriers of listed complainants after April 1, 2002, and (4) its telemarketing practices. Among other things, the Letter of Inquiry asked in Paragraph 3:

> [d]uring the period from April 1, 2002 to the present, has BOI or any of its subsidiaries, affiliates, or any other entity acting under BOI's control or as its agent, submitted or executed an order to change the preferred carrier as specified in the complaints in Attachment A? If so:
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> …
>
> b. For each affirmative response to Paragraph 3 above, state who authorized the change in service and the manner in which the authorization was made and provide all documents and information related to the authorization.
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> c. For each affirmative response to Paragraph 3 above, describe in detail all steps taken to verify the consumer's request to change his or her preferred carrier….[13]

BOI sent a partial response to the staff's Letter of Inquiry on December 9, 2002.[14]

7. In its response to the Letter of Inquiry, BOI asserted that "[d]uring this period no one representing BOI has changed the preferred carrier as specified in the complaints in Attachment A…." It therefore did not provide any documents, including verification tapes or other proof of authorization related to the complaints. BOI also stated that in only one instance was it aware of actions of its telemarketers such as are described by the complainants cited above. Further, BOI did not answer several of the inquiries, including (1) an inquiry that BOI provide evidence that it had complied with the

[10] Letter from Sarah Hofmann, Vermont Department of Public Service, to Marlene H. Dortch, Secretary, FCC (Jan. 3, 2003) (Vermont Letter).

[11] *Id.*

[12] BOI Discontinuance Application. The application was stamped received by the Commission's Mail Room on December 27, 2002.

[13] Letter of Inquiry.

[14] BOI Response.

registration requirements pursuant to 47 C.F.R. § 64.1195, and (2) an inquiry whether BOI or its agents found any instances since April 1, 2002, in which BOI telemarketing employees had changed a consumer's preferred carrier without asking the consumer whether he or she wanted to change the preferred carrier and without mentioning the name of Business Options.[15] BOI did state that all of its telemarketers were BOI employees.[16] In addition, in response to the inquiry requesting "BOI's corporate structure, including a description of each affiliate of each subsidiary or affiliate..and a list of the officers and directors of each affiliated entity," BOI did not list any affiliates or their officers or directors.[17]

B. Other Responses to Commission Inquiries

8. Enforcement Bureau staff sent Letters of Inquiry to the local exchange carriers (LECs) that serve the eight complainants listed in Appendix A,[18] requesting information about whether there had been any preferred carrier changes since April 1, 2002 for these complainants.[19] The responses to the LEC Letters of Inquiry indicate that preferred carrier changes were submitted for all of these complainants by Qwest Corporation[20] after April 1, 2002, and that subsequently the complainants received bills on behalf of BOI.[21] These responses indicate that while preferred carrier changes to BOI may have been submitted before April 1, 2002 for several of the complainants, they were subsequently changed back to their prior carrier, but then changed again to BOI after April 1.

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[15] BOI Response.

[16] BOI Response.

[17] BOI Response.

[18] Appendix A contains a list of complainants who have signed declarations under penalty of perjury.

[19] Letter from Colleen K. Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC, to Toni Acton, SBC Communications, Inc. (Nov. 20, 2002); Letter from Colleen K. Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC, to Suzanne Carmel, Manager, Regulatory Affairs, Verizon (Nov. 20, 2002); Letter from Colleen K. Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC, to Joyce Walker, Sprint Corporation (Nov. 20, 2002); Letter from Colleen K. Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC, to Chad Young, Hampden Telephone Company (Nov. 21, 2002)(LEC Letters of Inquiry).

[20] See infra fn. 36 and accompanying text. Qwest Corporation has confirmed that these preferred carrier changes were submitted on behalf of Business Options, doing business as US Bell. Letter from Richard Denny, Qwest Communications, to Sharon D. Lee, FCC (Feb. 19, 2003) (Qwest Letter). The Letter of Inquiry sought information concerning "Business Options, Inc., any affiliate, d/b/a, parent companies, any wholly or partially owned subsidiary, or other affiliated companies or businesses, and all directors, officers, employees, or agents, including consultants and any other persons working for or on behalf of the foregoing at any time during the period covered by this letter."

[21] Letter from Terri L. Hoskins, SBC, to Peter G. Wolfe, FCC (Dec. 9, 2002); Letter from Marie T. Breslin, Director, Federal Regulatory, Verizon, to Peter G. Wolfe, FCC (Dec. 9, 2002); Letter from Mary turner, Vice President, Service Operations, Sprint, to Peter G. Wolfe, FCC (Dec. 4, 2002); Letter from Chad t. Young, General Manager-Sales & Service, Hampden, Warren, the Islands, Maine, TDS Telecom, to Peter G. Wolfe, FCC (Dec. 2, 2002)(LEC Responses). SBC requested confidential treatment of the customer information contained in its response, but subsequently withdrew its confidentiality request to the extent the response related to the date of the preferred carrier change, and filed a redacted response, containing only that information. Letter from Jackie Flemming, SBC, to Peter G. Wolfe, FCC, dated January 31, 2002.

C. Evidence Concerning Discontinuance

9. In its Discontinuance Application, BOI stated that it provides resold service to approximately 200 business customers in Vermont, and that it has "reevaluated its long distance business plan and has concluded that it is in the Company's best interest, at this time, to streamline its service in Vermont."[22] It attached a Notice to Customers, which, it states, its customers received on December 10, 2002, and has all the information requested by the State of Vermont. BOI states that it "did not know of FCC requirements to send the letter out pursuant to 63.71."[23] It also stated that it gave customers "15 days from the day they received our notification letter to choose another long distance provider and protest our request for discontinuance."[24] In fact, the letter does not provide any notice to customers of their right to protest the discontinuance, or any of the other requirements contained in section 63.71. Rather, BOI asked for a waiver of those requirements.[25]

10. The Vermont Department of Public Service filed a letter in response to the BOI filings.[26] In the letter, Vermont attaches the Stipulation referred to above, which requires BOI to "initiate the procedure outlined in 47 CFR § 63.71 for terminating service to Vermont customers who currently are being served by BOI."[27] Vermont states that BOI's application is inaccurate. First, Vermont contends that "[i]t is stretching credibility to assert that being told that you can no longer do business in a state is a strategic business decision." Second, it states that BOI did know of the FCC's section 63.71 requirements because the Stipulation that BOI signed required that BOI initiate the procedure outlined in section 63.71. Third, Vermont contends that BOI's Notice did not comply with the information required by Vermont because the Stipulation required BOI to follow the Commission's section 63.71 requirements and to send a notice that differed from the notice that BOI sent to its customers. Finally, Vermont points out that BOI states its notice was received by its customers on December 10, providing a notice period of 11 days before termination on December 21, not 15 days.[28] Vermont subsequently provided a letter from BOI stating, among other things, that all customers were disconnected on December 21, 2002.[29]

D. The Slamming Complaints and Verification Tapes

11. All of the consumers who filed the complaints discussed in this Order (see Appendix A) maintain that they never authorized BOI to change their preferred carriers. For illustrative purposes, we will profile two complaints that appear to be representative of BOI's marketing and verification practices.

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[22] BOI Discontinuance Application.

[23] *Id.*

[24] *Id.*

[25] BOI Request for Waiver (December 20, 2002).

[26] Vermont Letter.

[27] *Id.*

[28] *Id.*

[29] Letter from Shannon Dennie, BOI, to Sarah Hoffman, Vermont Department of Public Service (Jan. 8, 2003) ((BOI Letter to Vermont). This letter states that it sent the letter to customers on December 6, 2002.

12. On May 16, 2002, Fred and Caroline Michaelis filed a complaint with the Commission alleging that BOI changed their preferred long distance carrier from AT&T to BOI without their authorization.[30] In support of that complaint, Mr. and Mrs. Michaelis also filed a declaration, which stated in part:

> In April 2002, I (Caroline) received a telephone call from a telemarketer inquiring about Southwestern Bell's long distance calling plan. The telemarketer offered me lower rates and consolidation of my telephone bills. I assumed that this telemarketer was calling from Southwestern Bell since he did not identify himself; therefore, I agreed to switch to lower rates and to the consolidation of my telephone bills.
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> Later, AT&T contacted me to inquire about the switching of my long distance service from them to Business Options, Inc. I told AT&T that I had not authorized Business Options, Inc. to be my long distance service provider.
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> When I received my residential telephone bill for May 2002, I was shocked to discover $81 in charges from Business Options, Inc., who is not my preferred long distance carrier. My normal monthly bill from AT&T is $18.66. [31]

13. In June 2002, Laurie Hart filed a complaint with the Maine Public Utilities Commission alleging that BOI had switched her preferred long distance carrier from AT&T to BOI without her authorization. In support of that complaint, Ms. Hart filed a declaration that stated that she was contacted by a telemarketer who claimed to be an AT&T representative. Ms. Hart further stated as follows:

> The telemarketer stated that AT&T was going to change my long distance service plan. The telemarketer asked me if this was okay with me. I told the AT&T telemarketer that this was okay with me. I was told by the telemarketer that someone would contact me later in the day to verify my approval to the new long distance service plan. Later on that day, someone did contact me to verify my conversation with the telemarketer.
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> After receiving this telephone call, I received a letter from AT&T later in the week. AT&T wanted to know why I had changed my long distance service to Business Options, Inc. I contacted AT&T regarding this matter. I told AT&T about the conversation about the telemarketer. I also told AT&T that I agreed only to change my long distance plan, but I never agreed to switch my long distance service from them. I requested AT&T to switch my long distance service back to them. [32]

14. The Maine Public Utilities Commission sent us third party verification tapes that had been sent to that agency by BOI. In these recordings, the verifier identified himself or herself, said "you

[30] Complaint dated May 16, 2002, from Fred and Caroline Michaelis, filed with the FCC.

[31] Declaration of Fred and Caroline Michaelis, dated Oct. 11, 2002.

[32] Declaration of Laurie Hart, dated January 13, 2003. One other complainant, Barbara Beeson, alleged that the telemarketer led her to believe that she was calling on behalf of Verizon, the complainant's preferred local and long distance telephone service provider. Declaration of Barbara Beeson, dated November 25, 2002.

are authorized and give permission to Business Options to change the long distance phone service, is that correct?", asked the consumer if he or she understood that the rates would be $4.90 per month and 7 cents per minute, and asked the consumer to verify the name and address, and to provide the consumer's date of birth. Some of the tapes, but not all, specify the telephone number to be changed, and some state that BOI is not the local phone company.[33]

III. DISCUSSION

A. Whether BOI Engaged in Misrepresentations or Lack of Candor to the Commission

15. The duty of absolute truth and candor is a fundamental requirement for those appearing before the Commission. Our decisions rely heavily on the completeness and accuracy of parties' submissions because we do not have the resources to verify every representation made in the thousands of pages submitted to us each day.[34] For this reason, we are very disturbed by BOI's apparent misrepresentations or lack of candor. Despite the fact that BOI's Director of Corporate Affairs declared that BOI's submissions were "complete" and "true and correct," there were significant material omissions and erroneous statements in them. Further, there were significant erroneous statements in BOI's Application for Discontinuance. The facts suggest that, in making these statements, BOI intentionally sought to deceive the Commission.[35]

16. It appears that BOI intentionally provided incorrect or misleading information to the Commission when it stated in its response to the most central inquiry in the Letter of Inquiry that, since April 1, 2002, "*no one representing BOI …changed the preferred carrier as specified in the complaints* in Attachment A."[36] The initial inquiry asked whether *any* preferred carrier changes for the complainants listed in Attachment A to the Letter of Inquiry were made, not whether *unauthorized* changes were made. Indeed, the letter specifically asked for additional information about how any authorized changes had been authorized and verified.[37] In response, BOI denied that BOI or its agents had ever "changed the preferred carrier as specified in the complaints," and BOI did not respond to the inquiries about whether changes were authorized and verified. Thus, it appears that BOI's response should be read as a denial that BOI or its agents had made *any* preferred carrier changes. The responses from the local exchange carriers of the consumers in question appear to show that Qwest Corporation did change the preferred carrier of

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[33] See tapes of Paul Brackett, Laura Crowley, Ida Guptil, Laurie Hart, Beatrice Violette.

[34] *See, e.g., Swan Creek Communications v. FCC,* 39 F. 3d 1217, 1222 (D.C.Cir 1994); *RKO General, Inc. v. FCC,* 670 F.2d 215, 232 (D.C.Cir 1981), *cert. denied,* 456 U.S. 927 and 457 U.S. 1119 (1982).

[35] Intent to deceive is an essential element of misrepresentation or lack of candor. *See, e.g., Swan Creek,* 39 F. 3d at 1222; *Garden State Broadcasting Ltd. P'ship v. FCC,* 996 F. 2d 386, 393 (D.C. Cir. 1993); *Policy Regarding Character Qualifications In Broadcast Licensing and Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees,*102 FCC 2d 1179, 1196 (1986); *Fox River Broadcasting Company, Inc.,* 93 FCC 2d 127, 129 (1983).

[36] BOI Response.

[37] Paragraph 3 of the Letter of Inquiry required that if BOI answered the initial inquiry by acknowledging that it had made the preferred carrier changes specified in the complaints, it should then say *how the carrier changes were authorized and verified*. *See* para. 6, *supra.*

these consumers after April 1, 2002, and that these consumers were subsequently billed for BOI charges.[38] The fact that the changes were electronically submitted by Qwest, rather than directly by BOI, is of no consequence here; the consumer was billed for BOI service, and Qwest, the carrier whose services BOI was reselling, was apparently acting as BOI's agent in transmitting the preferred carrier change to the local exchange carrier.[39] Indeed, Qwest has confirmed that it made these changes on behalf of BOI. The evidence provided by four LECs and Qwest, who have no stake in this dispute, supported by bills and other documentary evidence, appears more credible than that of BOI, which, as explained below, had an interest in denying that it had changed consumers' preferred carriers without their authorization. Based on this evidence, it appears that BOI gave incorrect information when it stated that neither it nor its representative made these carrier changes after April 1, 2002. Further, it appears that BOI further lacked candor by not providing a response to Enforcement Bureau inquiries as to whether BOI had complied with the common carrier registration requirements pursuant to 47 C.F.R. § 64.1195, whether BOI or its agents found any instances since April 1, 2002 in which BOI telemarketing employees changed a consumer's preferred carrier without asking the consumer whether he or she wanted to change the preferred carrier and without mentioning the name of BOI, and whether BOI had any affiliates or subsidiaries.[40]

17. BOI's Application for Discontinuance also appears to contain other misrepresentations or instances of lack of candor. First, its statement that it was requesting authority to discontinue because it had reevaluated its business plan appears flatly inconsistent with its Stipulation that it was obligated to seek discontinuance authorization to settle the proceeding that had been brought against BOI by the Vermont Department of Public Service.[41] Second, its statement that it did not know of the requirements of section 63.71 appears inconsistent with its agreement to a Stipulation that expressly required it to initiate the procedure under section 63.71.[42] Third, its statement that its Notice provided all the information that was required by Vermont also appears inconsistent with the Stipulation that specifically required BOI to comply with section 63.71 procedures and to send the Notice that was attached to the Stipulation.[43] Fourth, its statement that it had given "its customers 15 days from the day they received our notification letter to choose another long distance provider and protest our request for discontinuance" appears inconsistent with its assertions that the customers received the Notice on December 10 and that BOI would terminate service on December 21.[44] That statement also appears inconsistent with the Notice, which did not inform customers of their right to protest, as is required by the notice provisions of

[38] LEC Responses.

[39] *See Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, 14 FCC Rcd 1508, 1564-65 (1998) (finding that a reseller which is responsible for the submission of unauthorized carrier change requests has the obligations of the submitting carrier where the underlying carrier submits the request on the reseller's behalf).

[40] BOI Response. In addition, a search of Commission files by our staff does not show that any FCC Form 499-A required by Section 64.1195 was ever filed by BOI. *See also* n. 4.

[41] *See* BOI Discontinuance Application; Vermont Letter.

[42] *See* BOI Discontinuance Application; Vermont Letter.

[43] *See* BOI Discontinuance Application; Vermont Letter.

[44] BOI Discontinuance Application.

section 63.71.

18. It appears that these statements and omissions constitute misrepresentations or lack of candor, aimed at deceiving the Commission into believing BOI did not violate the Act and/or Commission rules. With regard to the apparent misrepresentation or lack of candor in the response to the Letter of Inquiry, the evidence provided by the LECs and Qwest (as well as complainants) appears to show that a truthful answer by BOI would have contained an admission that it changed the consumers' preferred carriers, and BOI would have had to prove that such changes were authorized, which presumably it could not do. By instead stating that "no one representing BOI …changed the preferred carrier as specified in the complaints in Attachment A" after April 1, 2002, BOI apparently intended to convey that it was in compliance with Section 258 and our related rules, in an apparent attempt to lead the staff to terminate the investigation without enforcement action. With regard to the omissions of required information in BOI's response to the Letter of Inquiry, it appears that they too were designed to deceive the staff by hiding inculpatory evidence regarding slamming, failure to file the required registration statement, and hiding any illegal acts performed in the names of other companies in which BOI's principals were officers. With respect to the apparent misrepresentations in the Application for Discontinuance, motives to deceive also appear to exist. First, BOI's statement in the Application for Discontinuance that it was seeking discontinuance for business reasons appears to be an attempt to hide the fact that it had been charged with serious violations by the Vermont Department of Public Service, some of which, such as slamming, were under investigation by the Commission. The other misstatements in the application appear to have been aimed at attempting to excuse BOI's late filing of the Application and its failure to comply with the notice requirements of the Commission's rules.

19. We therefore direct the ALJ to determine whether BOI has made misrepresentations or engaged in lack of candor.

B. Whether BOI Violated Section 258 and the Commission's Slamming Rules

20. Section 258 of the Act makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe."[45] Section 64.1120(a)(1) of the Commission's rules prescribes that no submitting carrier "shall submit a change on the behalf of a subscriber . . . prior to obtaining: (i) Authorization from the subscriber, and (ii) Verification of that authorization in accordance with the procedures prescribed in this section."[46] The Commission's rules thus expressly bar telecommunications carriers from changing a consumer's preferred carrier without first obtaining the consumer's consent, and then verifying that consent.

21. The Commission's rules provide some latitude in the methods carriers can use to verify carrier change requests. The carrier can elect to verify that authorization through one of three options: obtaining the consumer's written or electronically signed authorization; setting up a toll free number for the consumer to call for verification; or obtaining verification through an independent third party.[47] There is no latitude, however, in the requirement that carriers obtain both authorization and verification prior to

[45] 47 U.S.C. § 258.

[46] 47 C.F.R. § 64.1120(a)(1).

[47] *Id.* § 64.1120(c).

submitting a carrier change request. For those carriers who use an independent third party for verification, our rules require that the verification method confirm at least six things:

> the identity of the subscriber; confirmation that the person on the call is authorized to make the carrier change; confirmation that the person on the call wants to make the change; the names of the carriers affected by the change; the telephone numbers to be switched; and the types of service involved.[48]

Our rules also require that carriers keep audio records of the verification for a minimum of two years after obtaining such verification.[49] Finally, the Commission's rules require that where a carrier "is selling more than one type of telecommunications service … that carrier must obtain separate authorization from the subscriber for each service sold…. Each authorization must be verified separately from any other authorizations obtained in the same solicitation."[50]

22. BOI did not submit any evidence of authorization or verification regarding the consumer complaints cited in our Letter of Inquiry. Instead, it stated that "no one representing BOI has changed the preferred carrier as specified in the complaints" after April 1, 2002.[51] Based on the LEC and Qwest Responses, it appears that preferred carrier changes were made on behalf of BOI after April 1, 2002, for each of the customers listed in Appendix A.[52] Moreover, all of BOI telemarketers who apparently initiated these changes were BOI employees.[53]Further, each of the consumers complains that they did not authorize any of the preferred carrier changes to BOI.[54]

23. It appears that BOI has therefore apparently failed to meet its burden to rebut complainants' assertions that BOI changed their preferred carriers in violation of the Act and the Commission's rules. In this record, BOI appears to have provided no evidence to justify the preferred carrier changes it apparently made. There is no need to refer to the tapes BOI provided to the Maine Public Utilities Commission, since BOI did not provide these tapes to our staff as justification for their changes of the consumers' preferred carriers. Even if we consider the five tapes BOI submitted to the Maine Public Utilities Commission, however, these tapes show that BOI does not gather the critical information that our rules require. For example, the tapes discussed above[55] do not confirm in an acceptable manner that the person is authorized to make the change and, most significantly, do not confirm the switch of the authorized carrier. First, the tapes do not verify the names of the consumers' prior carriers which were affected by the change, as required under our rules, nor do the tapes of Paul Brackett, Beatrice Violette, and Laura Crowley verify the telephone number to be switched. Second, the statement in the tapes by the third party verifier that "You are

[48] *Id.* § 64.1120(c)(3)(iii).

[49] *Id.* § 64.1120(c)(3)(iv).

[50] *Id.* § 64.1120(b).

[51] BOI Response.

[52] LEC Responses; Qwest Letter.

[53] BOI Response.

[54] *See, e.g.,* Verizon Response dated December 9, 2002.

[55] See fn. 31, *supra.*

authorized and giving permission to Business Options to change the long distance phone service, correct?" confusingly combines questions as to whether the person is the authorized decisionmaker and whether the person is choosing BOI as his or her preferred carrier.[56] We do not see how the consumers can know which question they are answering.[57] Finally, in two instances, Paul Brackett and Laura Crowley, it appears that the consumer did not understand what the verifier was saying. Paul Brackett only respond ed "Uh-huh" to all of the verifier's questions.[58] It appears that such an answer was not sufficient to permit the verifier to know whether Mr. Brackett agreed to change service providers. Laura Crowley asked the verifier whether there would be a change to her phone bill, and the verifier only replied that she was just verifying what the telemarketer had told the consumer.[59] It appears from this colloquy that Ms. Crowley believed that her service was not going to change. It appears that in neither case were the consumer's answers clear enough to verify that they indeed wanted BOI's service.

24. The above examples appear to show a pattern of verification that falls egregiously short of the requirements in our rules, either because they omit certain requirements or because they pose questions in such a way that the consumer is confused and the consumer's intent cannot be verified. Accordingly, the tapes that BOI submitted to the Maine Public Utilities Commission do not appear to be sufficient to rebut the allegations in the complaints that BOI changed the preferred carriers of the five consumers without proper authorization.

25. For the remaining three complaints that were filed with the FCC, BOI failed to provide a tape or any other evidence, beyond its denial that "no one representing BOI has changed the preferred carrier as specified in the complaints" after April 1, to rebut the allegations in the complaints. Based on this failure, it appears that BOI is liable for changing the preferred carriers of those consumers without authorization.[60] As we discussed above, our rules require carriers to keep audio records of third-party verification for a minimum of two years after obtaining the verification. [61] BOI has not produced evidence to show that it used third-party verification or any of the other verification methods that our rules allow.[62] Furthermore, based on the evidence of its practices shown by the several "verification" tapes discussed above, it is reasonable to assume that any verification BOI might have obtained would

[56] It is especially important for the verification procedure to be clear where, as here, consumers have alleged that they have been misled by the telemarketers. These unrebutted allegations were made by Laurie Hart, who stated that the telemarketer claimed to be a representative of AT&T; Caroline Michaelis, who stated that the telemarketer led her to believe that the telemarketer was calling from Southwestern Bell; and Barbara Beeson, who alleged that the telemarketer led her to believe that the telemarketer was calling on behalf of Verizon. Declarations of Laurie Hart, Fred and Caroline Michaelis, and Barbara Beeson.

[57] See WebNet Communications, Inc., 17 FCC Rcd 13874 (2002).

[58] See Tape of Paul Brackett.

[59] *See* Tape of Laura Crowley.

[60] *See Vista Services Corporation*, Order of Forfeiture, 15 FCC Rcd 20646, 20649 (2000), *recon. denied*, 16 FCC Rcd 8289 (2001).

[61] 47 C.F.R. § 64.1120(c)(3)(iv).

[62] As we discuss above, our rules allow carriers to verify carrier change authorization in one of three ways: obtaining the consumer's written or electronically signed authorization; setting up a toll free number for the consumer to call for verification; or obtaining authorization through an independent third party. *See* 47 C.F.R. § 64.1120(c).

likely fall egregiously short of the requirements in our rules. Therefore, even if BOI used a third-party verifier, BOI still would not likely have sufficient evidence to rebut the allegations in the complaints that it changed the preferred carriers of the remaining three consumers without prior authorization.

26. We thus direct the ALJ to determine whether BOI has willfully or repeatedly violated section 258 of the Act and the related Commission rules by changing consumer's preferred carriers without their authorization.

C. Whether BOI Failed to File Registration Statement

27. Section 64.1195 of our rules requires that any telecommunications carrier providing interstate telecommunications service on or after the effective date of the rule (March 1, 2001) shall submit an FCC Form 499-A.[63] BOI was a telecommunications carrier on or after the effective date of the rule. BOI failed to respond to a request to provide evidence that it had submitted this report.[64] Nor do the Commission's files contain any evidence that BOI has filed this report. We therefore find that BOI has apparently failed to file FCC Form 499-A, in violation of section 64.1195. Section 64.1195 specifically provides for revocation of operating authority for failure to comply with its provisions.

28. We therefore direct the ALJ to determine whether BOI willfully or repeatedly failed to file a Registration Statement in violation of section 64.1195.

D. Whether BOI Violated Section 214 of the Act and the Commission's Related Rules

29. BOI's application for authorization appears to show that BOI did not meet its obligations as a common carrier to adequately notify its customers of the discontinuance or seek Commission approval before it discontinued service, in apparent violation of section 214(a) of the Act and sections 63.71, and 63.505 of the Commission's rules. Section 214(a) has an essential role in the Commission's efforts to protect consumers. Unless the Commission has the ability to determine whether a discontinuance of service is in the public interest, it cannot protect customers from having essential services cut off without adequate warning, or ensure that these customers have other viable alternatives.[65]

30. Under the Act and our rules, it is clear that a telecommunications carrier must receive Commission authorization and provide the required notice to its customers before it may discontinue service to those customers.[66] The service of approximately 200 BOI customers in Vermont was apparently terminated by December 21, 2002.[67] It appears that BOI did not file any application until the day before its discontinuance, and never gave customers notice of their right to protest. Further, as stated

[63] 47 C.F.R. § 64.1195.

[64] See Letter of Inquiry; BOI Response.

[65] *See Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996 and Petition for Forbearance of the Independent Telephone & Telecommunications Alliance*, Report and Order in CC Docket No. 97-11 and Second Memorandum Opinion and Order in AAD File No. 98-43, 14 FCC Rcd 11364, 11380-81 (1999).

[66] 47 U.S.C. § 214(a); 47 C.F.R. §§ 63.71, 63.505.

[67] BOI Letter to Vermont. According to BOI, after receiving the notice, approximately 100 of these customers had called to inquire about the notice or to seek immediate disconnection.

above, it appears that the reasons that BOI gave for its failure to comply with Commission rules, *i.e.,* its ignorance of such rules and its compliance with requirements of the State of Vermont, were not true. The Stipulation BOI signed with Vermont was executed in September 2002.[68] Therefore, it appears that at that time BOI knew or should have known that in the near future, it would have to file an application for discontinuance and provide notice to its customers. In view of the foregoing facts, it appears that BOI willfully or repeatedly discontinued service without Commission authorization in violation of section 214(a) of the Act and sections 63.71 and 63.505 of the Commission's rules.

31. We therefore direct the ALJ to determine whether BOI willfully or repeatedly discontinued service without Commission authorization.

E. Whether BOI Should Remain Authorized to Act as a Common Carrier

32. It appears that BOI engaged in a pervasive pattern of misrepresentations or lack of candor to the Commission as well as violations of the Commission's rules regarding slamming, discontinuance of service and carrier registration. It thus appears that the continued operation of BOI as a common carrier may not serve the public convenience and necessity within the meaning of Section 214 of the Act. We therefore direct the ALJ to determine whether the BOI's blanket Section 214 authorization should be revoked. Further, in light of the egregious nature of BOI's apparently unlawful activities, we direct the ALJ to determine whether specific Commission authorization should be required for BOI, or the principal or principals of BOI, to provide any interstate common carrier services in the future.[69]

IV. CONCLUSION

33. In light of the totality of the information now before us, an evidentiary hearing is warranted to determine whether the continued operation of BOI as a common carrier would serve the public convenience and necessity within the meaning of Section 214 of the Act. Further, due to the egregious nature of BOI's apparently unlawful activities, BOI will be required to show cause why an order to cease and desist from the provision of any interstate common carrier services without the prior consent of the Commission should not be issued. In addition, consistent with our practice in revocation proceedings, the hearing will also address whether a forfeiture should be levied against BOI.

V. ORDERING CLAUSES

34. ACCORDINGLY, IT IS ORDERED that, pursuant to Sections 4(i) and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 214, the principal or principals of Business Options, Inc. ARE DIRECTED TO SHOW CAUSE why the operating authority bestowed on Business Options, Inc. pursuant to Section 214 of the Communications Act of 1934, as amended, should not be REVOKED.

35. IT IS FURTHER ORDERED that, pursuant to Section 312(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 312(b), the principal or principals of Business Options, Inc. ARE DIRECTED TO SHOW CAUSE why an order directing them TO CEASE AND DESIST FROM THE

[68] *See* Vermont Letter.

[69] *See CCN,* 12 FCC Rcd 8547.

PROVISION OF ANY INTERSTATE COMMON CARRIER SERVICES without the prior consent of the Commission should not be issued.

36. IT IS FURTHER ORDERED that the hearing shall be held at a time and location to be specified by the Chief Administrative Law Judge in a subsequent order. The ALJ shall apply the conclusions of law set forth in this Order to the findings that he makes in that hearing, upon the following issues:

(a) to determine whether Business Options, Inc. made misrepresentations or engaged in lack of candor;

(b) to determine whether Business Options, Inc. changed consumers' preferred carrier without their authorization in willful or repeated violation of section 258 of the Act and sections 64.1100-1190 of the Commission's rules;

(c) to determine whether Business Options, Inc. failed to file Form FCC 499-A in willful or repeated violation of section 64.1195 of the Commission's rules;

(d) to determine whether Business Options, Inc. discontinued service without Commission authorization in willful or repeated violation of section 214 of the Act and sections 63.71 and 63.505 of the Commission's rules;

(e) to determine, in light of all the foregoing, whether Business Options, Inc.'s authorization pursuant to section 214 of the Act to operate as a common carrier should be revoked;

(f) to determine whether, in light of all the foregoing, Business Options, Inc., and/or its principals should be ordered to cease and desist from the provision of any interstate common carrier services without the prior consent of the Commission;

37. IT IS FURTHER ORDERED that the Chief, Enforcement Bureau, shall be a party to the designated hearing. Both the burden of proceeding and the burden of proof shall be upon the Enforcement Bureau as to issues (a) through (f) inclusive.

38. IT IS FURTHER ORDERED that, to avail themselves of the opportunity to be heard, the principal or principals of Business Options, Inc., pursuant to Section 1.91(c) of the Commission's rules, SHALL FILE with the Commission within 30 days of the mailing of this Order to Show Cause and Notice of Opportunity for Hearing a WRITTEN APPEARANCE stating that a principal or other legal representative from Business Options, Inc. will appear at the hearing and present evidence on the matters specified in the Show Cause Order. If Business Options, Inc. fail to file a written appearance within the time specified, Business Options, Inc.'s right to a hearing SHALL BE DEEMED TO BE WAIVED. In the event that the right to a hearing a hearing is waived, the Presiding Judge, or the Chief, Administrative Law Judge if no Presiding Judge has been designated, SHALL TERMINATE the hearing proceeding as to that entity and CERTIFY this case to the Commission in the regular course of business, and an appropriate order shall be entered.

39. IT IS FURTHER ORDERED that, if it is determined that BOI has willfully or repeatedly violated any provision of the Act or the Commission's rules cited in this Order to Show Cause and Notice

of Opportunity for Hearing, it shall be further determined whether an Order for Forfeiture shall be issued pursuant to Section 503(b) of the Communications Act of 1934, as amended,[70] in the amount of no more than: (a) $80,000 for each unauthorized conversion of complainants' long distance service in violation of 47 U.S.C. § 258 and 47 C.F.R. § 64.1120; (b) $3,000 for the failure to file a sworn statement or a Registration Statement in violation of a Commission directive and 47 C.F.R. § 64.1195; and (c) $120,000 for the unauthorized discontinuance of service to a community in violation of 47 U.S.C. § 214 and 47 C.F.R. §§ 63.71 and 63.505.

40. IT IS FURTHER ORDERED that this document constitutes a NOTICE OF OPPORTUNITY FOR HEARING pursuant to Section 503(b)(3)(A) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b)(A), for the potential forfeiture liability outlined above.

41. IT IS FURTHER ORDERED that a copy of this ORDER TO SHOW CAUSE AND NOTICE OF OPPORTUNITY FOR HEARING shall be sent by certified mail, return receipt requested, to Kurtis Kintzel, President and Chairman of the Board of Business Options, Inc., 8380 Louisiana Street, Merrillville, Indiana 46410-6312.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[70] 47 U.S.C. § 503(b).

APPENDIX A

Complainants	Telephone Number	Date of Change of Preferred Carrier
Barbara Beeson	217-932-5584	4/23/02
Paul Brackett c/o Bruce Brackett	207-474-2170	5/22/02
Norman Crowley	207-375-8155	4/8/02
Ida Guptill	207-698-1850	4/8/02
Bessie Goodbrake c/o Sylvia Jane Stack	660-885-3139	4/17/02
Laurie Hart	207-862-6202	5/9/02
Fred and Caroline Michaelis	636-479-4324	4/24/02
Beatrice Violette	207-564-2478	4/22/02