

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

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

CONSENT DECREE

1. The Enforcement Bureau (the “Bureau”) of the Federal Communications Commission (“FCC” or “Commission”) and Business Options, Inc. (“BOI”) hereby enter into this Consent Decree for the purpose of terminating the above captioned proceeding (the “Proceeding”) initiated by an Order to Show Cause and Notice of Opportunity for Hearing (“Order to Show Cause”) issued by the Commission on April 7, 2003.¹

2. For purposes of this Consent Decree, the following definitions shall apply.

- (a) “Affiliates” means any entity owned, directed or controlled by either Kurtis J. Kintzel, and/or Keanan Kintzel, which provides or markets long distance telephone service.
- (b) “AVATAR” means Avatar Enterprises, Inc., all d/b/a entities, and any entity owned, directed or controlled by AVATAR or its principals, Kurtis J. and Keanan Kintzel, including all subsidiaries, commonly-owned affiliates, successors, and assigns that provide or market long distance telephone service.
- (c) “BOI” means Business Options, Inc., all d/b/a and related entities that provide or market the sale of long distance telephone service, including U.S. Bell, Inc., Link Technologies, Buzz Telecom Corporation, and any entity owned, directed or controlled by the company or its principals, Kurtis J. Kintzel and Keanan Kintzel, including all subsidiaries, commonly-owned affiliates, successors, and assigns that are engaged in the business of providing or marketing long distance telephone service.
- (d) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.

¹ See *Order to Show Cause and Notice of Opportunity for Hearing*, 18 FCC Rcd 6881 (2003).

- (e) “BUZZ” means Buzz Telecom Corporation, all d/b/a entities, and any entity owned, directed or controlled by BUZZ or its principals, Kurtis J. Kintzel and Keanan Kintzel, including all subsidiaries, commonly-owned affiliates, successors, and assigns that are engaged in the business of providing or marketing long distance telephone service.
- (f) The “Companies” means BOI, U.S. Bell/LINK, BUZZ, and AVATAR.
- (g) “Customer” means a consumer (a natural person, individual, governmental agency or entity, partnership, corporation, limited liability company or corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized) offered, receiving, or previously receiving inter-exchange services from the Companies.
- (h) “Discontinuance Application” means the application that must be filed by a domestic carrier before it discontinues, reduces or impairs service as prescribed in 47 C.F.R. § 63.71 (2002).
- (i) “Effective Date” means the date on which the Order becomes a Final Order.
- (j) “FCC” or the “Commission” means the Federal Communications Commission and all of its bureaus and offices.
- (k) “Final Order” means an order that is no longer subject to administrative or judicial reconsideration, review, appeal, or stay.
- (l) “Independent Third Party Verifier” means, in addition to the qualifications set forth in 47 C.F.R. § 64.1120(c)(3), an entity (i) whose employees are not paid directly by the Companies, (ii) whose owners are not employed by the Companies in any way, and (iii) whose employees and/or owners are not related by blood or marriage to Kurtis or Keanan Kintzel.
- (m) “Misleading” means a misrepresentation, omission, or other practice that is intended or could reasonably be expected to deceive, confuse or misinform a reasonable consumer acting reasonably under the circumstances.
- (n) “Order” means the order of the presiding officer adopting the terms of this Consent Decree without change, addition, or modification.
- (o) “Order to Show Cause” means the Order to Show Cause and Notice of Opportunity for Hearing, 18 FCC Rcd 6881 (2003).

- (p) The “Parties” means the Companies and the Bureau.
- (q) The “Proceeding” means the evidentiary hearing initiated by the Order to Show Cause.
- (r) “Registration” means the filing of the information set forth in 47 C.F.R. § 64.1195 (2002).
- (s) “Re-provisioning” means the practice of changing a former customer’s long distance telephone service back to the Companies without obtaining authorization or verification of any authorization from that customer for the change.
- (t) “Sales Call” means a telephone solicitation for the purpose of obtaining or re-obtaining a customer for the Companies’ long distance telephone service.
- (u) “Sales Representative” means a person working for or on behalf of the Companies, whose job involves soliciting potential customers for the Companies’ long distance telephone service.
- (v) “Slamming” means the changing of a telephone owner’s long distance carrier without following the procedures set forth in 47 C.F.R. § 64.1120 (2002).
- (w) “U.S. Bell/LINK” means U.S. Bell, Inc. and its successor, Link Technologies, including all subsidiaries, commonly-owned affiliates, successors, and assigns.

I. BACKGROUND

3. On April 7, 2003, the Commission released the Order to Show Cause, initiating an evidentiary hearing to determine whether BOI had (1) made misrepresentations or engaged in lack of candor, (2) changed consumers’ preferred carrier without their authorization in willful or repeated violation of section 258 of the Act² and sections 64.1100-1190 of the Commission’s rules,³ (3) failed to file FCC Form 499-A in willful or repeated violation of section 64.1195 of the Commission’s rules,⁴ and (4) discontinued service without Commission authorization in willful or repeated violation of section 214 of the Act⁵ and sections 63.71 and 63.505 of the Commission’s

² 47 U.S.C. § 258.

³ 47 C.F.R. §§ 64.1100-1190 (2002).

⁴ 47 C.F.R. § 64.1195 (2002).

⁵ 47 U.S.C. § 214.

rules.⁶ The Commission ordered BOI to show cause why BOI's operating authority under section 214 of the Act⁷ should not be revoked and why BOI's principals should not be ordered to cease and desist from the provision of any interstate common carrier services without the prior consent of the Commission. The Order to Show Cause put BOI on notice that the Commission could order a forfeiture of as much as \$80,000 for each unauthorized conversion of named complainants' long distance service, \$3,000 for the failure to file a sworn statement or Registration Statement, and \$120,000 for the unauthorized discontinuance of service. The Bureau was made a party to the Proceeding.

4. On August 20, 2003, the presiding officer issued a Memorandum Opinion and Order⁸ expanding the hearing to determine whether: 1) BOI, BUZZ and/or U.S. Bell/LINK had failed to make required contributions to federal universal service support programs in violation of section 254(d) of the Act⁹ and section 54.706 of the Commission's rules;¹⁰ 2) BOI, BUZZ and/or U.S. Bell/LINK had failed to make required contributions to the Telecommunications Relay Services ("TRS") Fund, in violation of section 64.604(c)(5)(iii)(A) of the Commission's rules;¹¹ and 3) BOI, BUZZ, U.S. Bell/LINK had failed to file Telecommunications Reporting Worksheets in violation of sections 54.711, 54.713 and 64.604(c)(iii)(B) of the Commission's rules.¹² The presiding officer also put BOI, BUZZ and/or U.S. Bell/LINK on notice that the Commission could order a forfeiture for the failure to make required universal service contributions and a forfeiture of as much as \$10,000 for each failure to file required TRS contributions and for each failure to file Telecommunications Reporting Worksheets.¹³

5. On December 9, 2003, the presiding officer granted the Bureau's first motion for partial summary decision, finding that BOI had changed consumers' long distance telephone service on sixteen occasions without following Commission verification procedures in violation of section 258 of the Act¹⁴ and section 64.1120(c) of the Commission's rules,¹⁵ had willfully failed to file its FCC Form 499-A in violation of

⁶ 47 C.F.R. §§ 63.71 and 63.505 (2002).

⁷ 47 U.S.C. § 214.

⁸ *Memorandum Opinion and Order*, FCC 03M-33 (Aug. 20, 2003).

⁹ 47 U.S.C. § 254(d).

¹⁰ 47 C.F.R. § 54.706 (2002).

¹¹ 47 C.F.R. § 64.604(c)(5)(iii)(A) (2002).

¹² 47 C.F.R. §§ 54.711, 54.713 and 64.604(c)(iii)(B) (2002).

¹³ *Memorandum Opinion and Order*, FCC 03M-33 (Aug. 20, 2003).

¹⁴ 47 U.S.C. § 258.

¹⁵ 47 C.F.R. § 64.1120(c) (2002). BOI's violations included failures to elicit required information, failures to obtain authorization of any kind, failures to use independent third party verifiers and failures to obtain verification for each service switched. Of the sixteen violations, nine occurred within one year of the release date of the Order to Show Cause,

section 64.1195 of the Commission's rules,¹⁶ and had discontinued service to customers in Vermont without Commission authorization in violation of section 214 of the Act¹⁷ and section 63.71 of the Commission's rules.¹⁸

6. On December 24, 2003, the presiding officer granted the Bureau's second motion for partial summary decision, finding that BOI had willfully and repeatedly failed to make required contributions to federal universal service support programs in violation of section 254(d) of the Act¹⁹ and section 54.706 of the Commission's rules,²⁰ had willfully and repeatedly failed to make TRS Fund contributions in violation of section 64.604(c)(5)(iii)(A) of the Commission's rules,²¹ and had willfully and repeatedly failed to file Telecommunications Reporting Worksheets in a timely manner in violation of sections 54.711 of the Commission's rules.²²

7. On January 28, 2004, pursuant to section 1.94(a) of the Commission's Rules,²³ the Bureau informed the presiding officer of the initiation of the negotiations that lead to this Consent Decree. Pursuant to section 1.93(b) of the Commission's rules,²⁴ the Bureau negotiated this Consent Decree to secure future compliance with sections 214, 254, and 258 of the Act²⁵ and related Commission rules in exchange for prompt disposition of the issues raised in the Order to Show Cause, other than the issues already adjudicated by the presiding officer.

II. AGREEMENT

8. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties of the Proceeding and the Order to Show Cause. In consideration for the termination of this Proceeding in accordance with the

and only those nine would be considered in determining a forfeiture penalty. *See Memorandum Opinion and Order*, FCC 03M-54 at 8, n. 12 (Dec. 9, 2003).

¹⁶ 47 C.F.R. § 64.1195 (2002).

¹⁷ 47 U.S.C. § 214.

¹⁸ 47 C.F.R. § 63.71 (2002). *Memorandum Opinion and Order*, FCC 03M-54 (Dec. 9, 2003).

¹⁹ 47 U.S.C. § 254(d).

²⁰ 47 C.F.R. § 54.706 (2002).

²¹ 47 C.F.R. § 64.604(c)(5)(iii)(A) (2002).

²² 47 C.F.R. § 54.711 (2002). *Memorandum Opinion and Order*, FCC 03M-58 (Dec. 24, 2003).

²³ 47 C.F.R. § 1.94(a).

²⁴ 47 C.F.R. § 1.93(b).

²⁵ 47 U.S.C. §§ 214, 254 and 258.

terms of this Consent Decree, the Parties agree to the terms, conditions, and procedures contained herein.

9. The Companies admit that they operate as resellers of interstate telecommunications services and that the FCC has jurisdiction over them and the subject matter of this Proceeding for the purposes of this Consent Decree. The Companies represent and warrant that they are the properly named parties to this Consent Decree and are solvent and have sufficient funds available to meet fully all financial and other obligations set forth herein. The Companies further represent and warrant that they have caused this Consent Decree to be executed by their authorized representative, Kurtis J. Kintzel, as a true act and deed, as of the date affixed next to said representative's signature. Kurtis J. Kintzel and the Companies respectively affirm and warrant that he is acting in his capacity and within his authority as a corporate officer of the Companies, and on behalf of the Companies, and that by his signature Kurtis J. Kintzel is binding the Companies to the terms and conditions of this Consent Decree. The Companies and their principals, Kurtis J. Kintzel and Keanan Kintzel, also represent that they have been represented by counsel of their choice in connection with this Consent Decree and are fully satisfied with the representation of counsel.

10. The Parties waive their right to a hearing on the issues not already adjudicated which are designated in the Show Cause Order, including all of the usual procedures for preparation and review of an initial decision. The 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. The Companies also waive whatever rights they may have to contest the validity of the presiding officer's summary decisions discussed in paragraphs 5 and 6, above.

11. The Parties agree that the Show Cause Order may be used in construing this Consent Decree.

12. The Parties agree that this Consent Decree is for settlement purposes only and that signing does not constitute an admission by the Companies, or their principals, of any violation of law, rules or policy associated with or arising from its actions or omissions as described in the Order to Show Cause.

13. The Bureau agrees that, in the absence of material new evidence relating to issues described in the Order to Show Cause that the Bureau did not obtain through discovery in this Proceeding or is not otherwise currently in the Commission's possession, the Bureau and the Commission will not use the facts developed in this Proceeding, or the existence of this Consent Decree, to institute, on its own motion, any new proceedings, formal or informal, or to make any actions on its own motion against the Companies, or their principals, concerning the matters that were the subject of the Order to Show Cause. Consistent with the foregoing, nothing in this Consent Decree limits, *inter alia*, the Commission's authority to consider and adjudicate any formal

complaint that may be filed pursuant to section 208 of the Communications Act, as amended, and to take any action in response to such formal complaint.

14. For purposes of settling the matters set forth herein, the Companies and their Affiliates agree to take the actions described below.

- (a) Beginning on the Effective Date, no Sales Representative will make a Sales Call that is Misleading in any material respect or that represents, suggests or implies that:
 - (i) the Sales Call is a courtesy call;
 - (ii) the Companies, or any one of them, are taking or have taken over for another entity that provides long distance telephone service including, but not limited to, AT&T, Sprint, MCI or any former Bell operating company such as Verizon, SBC, or Qwest, unless such is actually the case;
 - (iii) the only service being sold is state-to-state unless such is actually the case; or
 - (iv) the Companies have a tariff on file with the FCC.
- (b) Beginning on the Effective Date, the Companies will verify any and all new and/or former customers only by using the procedures authorized by the Commission and/or applicable state public utility commissions, including those currently set forth in 47 C.F.R. § 64.1120(c). Any Independent Third Party Verifier used by the Companies shall not be located in the same building as any of the Companies.
- (c) Beginning on the Effective Date, for any telecommunications carrier that is providing or will provide interstate telecommunications service and that is owned, managed or controlled by Kurtis J. Kintzel and/or Keanan Kintzel, such telecommunications carrier shall comply with any Commission registration requirements, including those currently set forth in 47 C.F.R. § 64.1195.
- (d) Beginning on the Effective Date, none of the Companies will discontinue long distance telephone service to customers in any State unless it first receives authorization from the Commission and/or applicable state public utility commissions, including such authorization that is currently required by the FCC in accordance with 47 C.F.R. § 63.71.
- (e) Beginning on the Effective Date, the Companies will file their quarterly and annual Telecommunications Reporting Worksheets by the due dates specified thereon.
- (f) Beginning on the Effective Date, the Companies will make their current federal universal service contributions by the due date specified on each

invoice sent to them by the Universal Service Administrative Company (“USAC”).

- (g) Beginning on the Effective Date, the Companies will make their TRS contributions by the due date specified on each invoice sent to them by the National Exchange Carrier Association (“NECA”).
- (h) Beginning on the Effective Date, the Companies will pay (if they have not already done so) their past due TRS contributions as billed by the National Exchange Carrier Association (“NECA”).
- (i) The Companies will pay their remaining past due federal universal service obligations of \$772,659.56 in 24 monthly payments of \$35,298.75 each, in accordance with the documents signed by the Companies and their representatives on February **[to be filled in]**, 2004.
- (j) Prior to any sale, dissolution, reorganization, assignment, merger, acquisition or other action that would result in a successor or assign for provision of the Companies’ interstate communications services, the Companies will furnish a copy of this Consent Decree to such prospective successors or assigns and advise same of their duties and obligations under this Order.
- (k) The Companies will be responsible for making the substantive requirements and procedures set forth in this Consent Decree known to their respective directors and officers, and to managers, employees, agents, and persons associated with the Companies who are responsible for implementing the obligations set forth in this Consent Decree. The Companies will, within thirty (30) days of the Effective Date, deliver to each of their current directors and officers, and to all Sales Representatives, written instructions as to their respective responsibilities in connection with the Companies’ compliance and obligations under this Consent Decree. The Companies will distribute said instructions to all of their future directors and officers wherever located, and to all future Sales Representatives, on the date such individuals are appointed or hired to such positions.
- (l) The Companies will establish a Sales Representative Code of Conduct (the “Code”), which will conform to this Consent Decree and be reviewed and signed by all current Sales Representatives. As part of their initial training, each new Sales Representative will also sign the Code. All Sales Representatives will reaffirm semi-annually, in writing that they have recently reviewed, and fully understand, the Code. The Code will establish a strict quality standard, to which all Sales Representatives will be required to adhere. The Code will establish, *inter alia*, that all Sales Representatives will make representations consistent with the restrictions specified in paragraph 14(a) above.

- (m) Beginning on the Effective Date, the Companies will inform all Sales Representatives that violation of the provisions of paragraph 14(a) will result in mandatory penalties and increasingly severe measures for repeat offenders, including employee re-training, compensation reduction, suspension from work, and termination.
- (n) Beginning on the Effective Date, the Companies will promptly and in good faith address and resolve all complaints in a reasonable manner consistent with this Consent Decree. In all cases where the Companies conclude that Misleading statements were made by a Sales Representative, the Companies will contact the Customer and provide appropriate remedies.
- (o) Within 60 days from the Effective Date, the Companies will provide a formal report to the Bureau. The Companies will provide additional reports every twelve (12) months thereafter, with a final report due fifty (50) months from the Effective Date. Each report will include the following: (a) evidence of payment of the Companies' past due universal service obligations, the last of which is expected to occur no later than March 1, 2006; (b) evidence of payment of the Companies' most recent invoice from the Universal Service Administrative Company; (c) evidence of payment of the Companies' most recent invoice from NECA concerning TRS; (d) a copy of the Companies' Telecommunications Reporting Worksheets filed since the previous report; (e) the name(s) and address(es) of all Independent Third Party Verifiers used by the Companies since the previous report; and (f) information since the last report relating to all customer complaints based on alleged Misleading statements from Sales Representatives, including, the name and address of the customer, the name of the Sales Representative, a brief summary of the alleged Misleading statement, the disciplinary action taken, if any, against the Sales Representative, and the resolution of the complaint. If, by the date of the report, the Companies are still investigating one or more such complaints and/or have not yet acted on any such complaint(s), the report should so state.

15. The Companies will make a voluntary contribution (not a fine or a penalty) in the amount of \$510,000 in installments over a forty-eight (48) month period, with the first payment due May 15, 2004, and each successive payment due on the 15th day of the following month. The first forty-seven payments shall be in the amount of \$10,700; the forty-eighth and last payment shall be in the amount of \$7,100. The Companies may prepay this amount, and are encouraged to do so, without penalty. The Companies must make these payments by check, wire transfer or money order drawn to the order of the Federal Communications Commission, and the check, or money order must refer to NAL Acct. No. 200332170002 and FRN No. 0007179054. See 47 C.F.R. § 1.80(h). The Companies must mail the check or money order to: Forfeiture Collection

Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

16. In express reliance on the covenants and representations contained herein, the Bureau agrees to terminate this Proceeding and resolve the Show Cause Order.

17. The Companies represent and warrant that they shall not, for the purpose of circumventing any part of this Consent Decree, effect any change in their form of doing business or their organizational identity or participate directly or indirectly in any activity to form a separate entity or corporation which engages in acts prohibited in this Consent Decree or for any other purpose which would otherwise circumvent any part of this Consent Decree or the obligations of this Consent Decree. Nothing in the foregoing sentence shall be construed to prohibit the Companies from effecting any change in their form of doing business or their organizational identity, or participating directly or indirectly in any activity to form a separate entity or corporation, where such change does not have the effect of circumventing any part of this Consent Decree.

18. The Companies' and the Bureau's decision to enter into this Consent Decree is expressly contingent upon the signing of the Order by the presiding officer and the Order becoming a Final Order without revision, change, addition, or modification of this Consent Decree. The Parties agree that either the Bureau or the Companies may withdraw from this Consent Decree if any revision, change, addition, or modification is made to its terms.

19. The Parties agree that this Consent Decree shall become part of the record of this Proceeding only on its Effective Date.

20. If the Commission, or the United States on behalf of the Commission, brings a judicial action to enforce the terms of this Consent Decree, the Parties will not contest the validity of the Consent Decree, and the Companies and their Affiliates will waive any statutory right to a trial *de novo*. The Companies and their Affiliates do not waive any statutory right to a trial *de novo* to determine whether they violated this Consent Decree.

21. The Companies and their principals waive any rights they may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*

22. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

23. Any material violation of the Consent Decree, including the non-payment of any part of the forfeiture, will constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order. The Commission agrees that before it takes any formal action in connection with any alleged or suspected violation of this Consent

Decree, the Companies or their Affiliates will be notified of the alleged or suspected violation and be given a reasonable opportunity to respond.

24. The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission, where compliance with the provision would result in a violation, (except an order specifically intended to revise the terms of this Consent Decree to which the Companies and their principals do not consent) that provision will be superseded by such Commission rule or order.

25. By this Consent Decree, the Companies do not waive or alter their right to assert and seek protection from disclosure of any privileged or otherwise confidential and protected documents and information, or to seek appropriate safe guards of confidentiality for any competitively sensitive or proprietary information. The status of materials prepared for, reviews made and discussions held in the preparation for and implementation of the Companies' compliance efforts under this Consent Decree, which would otherwise be privileged or confidential, are not altered by the execution or implementation of the terms of this Order and no waiver of such privileges is made by this Consent Decree.

26. The Parties agree that, within five (5) business days after the date of this Consent Decree, they will file with the presiding officer a joint motion and draft order requesting that the presiding officer sign the draft order, accept Consent Decree, and close the record. The Parties will take such other actions as may be necessary to effectuate the objectives of this Consent Decree.

27. This Consent Decree may be signed in counterparts.

For the Enforcement Bureau,
Federal Communications Commission

For Business Options, Inc.
U.S. Bell, Inc./Link Technologies
Buzz Telecom Corporation
Avatar Enterprises, Inc.

David H. Solomon
Chief

Kurtis J. Kintzel
Chief Executive Officer

Date

Date