

Communications Act of 1934 ("the Act"). Under the regulatory scheme established by the Act and the Commission's rules, BOI is classified as a nondominant interexchange carrier. As such, it is considered to have "blanket" authority to operate domestic common carrier facilities within the meaning of section 214 of the Act.

2. 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. 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.

3. 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 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. Among other things, the stipulation required that BOI initiate the procedure outlined in section 63.71 of the Commission's rules for terminating service to Vermont customers who currently were being served by BOI. 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. BOI simultaneously filed a request for waiver of the customer notification requirements set forth in section 63.71(a) of the Commission's rules.

4. 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 section 64.1195 of the Commission's regulations, (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 whether during the period from April 1,

2002 to the present, 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 listed in Attachment A to the Letter. If so, BOI was directed to 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 and to describe in detail all steps taken to verify the consumer's request to change his or her preferred carrier.

5. 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. Further, BOI did not answer several of the inquiries, including (1) an inquiry that BOI provide evidence that it had complied with the registration requirements pursuant to section 64.1195 of the Commission's rules, 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. BOI did state that all of its telemarketers were BOI employees. 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.

6. Enforcement Bureau staff sent Letters of Inquiry to the local exchange carriers (LECs) that serve the eight complainants listed in Appendix A of the Order to Show Cause and Notice of Opportunity for Hearing, requesting information about whether there had been any preferred carrier changes since April 1, 2002 for these complainants. The responses to the LEC Letters of Inquiry indicate that preferred carrier changes were submitted for all of these complainants by Qwest Corporation after April 1, 2002, and that subsequently the complainants received bills on behalf of BOI. 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. In response to a separate inquiry from the Enforcement Bureau staff, Qwest Corporation confirmed that all of these preferred carrier changes were made on behalf of BOI.

7. 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." It attached a Notice to Customers, which, it stated, 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." 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." 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 of the Commission's rules. Rather, BOI asked for a waiver of those requirements.

8. The Vermont Department of Public Service filed a letter in response to the BOI filings. In the letter, Vermont attached 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." Vermont stated that BOI's application was inaccurate. First, Vermont contended 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 stated that BOI did know of the requirements of § 63.71 of the Commission's rules because the Stipulation that BOI signed required that BOI initiate the procedure outlined in § 63.71. Third, Vermont contended that BOI's Notice did not comply with the information required by Vermont because the Stipulation required BOI to follow the requirements of § 63.71 of the Commission's rules and to send a notice that differed from the notice that BOI sent to its customers. Finally, Vermont pointed out that BOI stated 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. Vermont subsequently provided a letter from BOI stating, among other things, that all customers were disconnected on December 21, 2002.