

9. All of the consumers who filed the complaints discussed in the Order to Show Cause and Notice of Opportunity for Hearing maintained that they never authorized BOI to change their preferred carriers. Several of them stated that the telemarketer represented telephone companies other than BOI.

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

B. Discussion

11. 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." The responses from the local exchange carriers of the consumers in question appear to show that Qwest Corporation did change the preferred carrier of these consumers after April 1, 2002, and that these consumers were subsequently billed for BOI charges. 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. Indeed, Qwest has confirmed that it made these changes on behalf of BOI. 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 section 64.1195 of the Commission's rules, 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.

12. 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. Second, its statement that it did not know of the requirements of section 63.71 of the Commission's rules appears inconsistent with its agreement to a Stipulation that expressly required it to initiate the procedure under section 63.71. 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. 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. 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 section 63.71.

13. 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.

14. 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." 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." 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.

15. 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. There is no latitude, however, in the requirement that carriers obtain both authorization and verification prior to