

TENNESSEE REGULATORY AUTHORITY

Sara Kyle, Chairman
Deborah Taylor Tate, Director
Pat Miller, Director
Ron Jones, Director




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TN REGULATORY AUTHORITY
DOCKET ROOM

460 James Robertson Parkway
Nashville, Tennessee 37243-0505

MEMORANDUM

TO: Chairman Sara Kyle
Director Pat Miller
Director Ron Jones

FROM: Eddie Roberson 
Chief, Consumer Services Division

Randal Gilliam, Counsel 

DATE: December 5, 2002

SUBJECT: Business Options International, Inc. settlement (Docket No. 02-01244)

On March 26, 2002, the Tennessee Regulatory Authority ("TRA" or "Authority") revoked the certificate of Business Options International, Inc. ("Business Options") for failure to provide the TRA with the statutorily mandated security bond or letter of credit. Business Options, nevertheless, continued, in violation of a TRA order, to provide telecommunications services in Tennessee. Qwest Communications informed Business Options that it would cease providing the company network services on October 4, 2002 unless it obtained the proper authority from the TRA to operate in the state. Qwest Communications provides Business Options with network services in Tennessee.

Faced with the immediate threat of disconnection of its approximately 1,603 Tennessee customers by Qwest Communications, Business Options filed a petition with the Authority requesting re-certification on October 4, 2002. The Authority acted on the petition at its regularly scheduled conference on October 7, 2002. The Authority panel of Chairman Sara Kyle, Directors Deborah Taylor Tate and Pat Miller granted Business Options a temporary certificate (Docket No. 02-01094) until December 9, 2002. Due to delays by Business Options in submitting all the necessary information to renew its certificate, the Authority granted at its December 2, 2002 Conference the company an extension of its temporary certificate until December 16, 2002. It is our understanding that the necessary information has been received by the Authority's Telecommunications Division and that this Division will recommend at the December 16th Conference to grant Business Options a permanent certificate.

Since the time the Authority granted the company a temporary certificate, the Staff has been working with Business Options to ensure that the company is compliant and that all violations are addressed. We are satisfied that these conditions have been met. The attached settlement addresses the violations. In addition to operating without a certificate in violation of a lawful order of the Authority, this Settlement also addresses three (3) Do Not Call Complaints filed against Business Options. The terms of the settlement require Business Options to pay the Authority \$13,650 no later than thirty (30) days after Authority approval of the Settlement as well as comply with all provisions of Tennessee law and Authority rules. A representative for Business Options will participate telephonically at the conference when the settlement is considered. Staff requests that this settlement be considered at the December 16th Conference.

cc: Director Deborah Taylor Tate
Kurtis Kintzel, President for Business Options
Richard Collier

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE:)
STAFF INVESTIGATION OF)
BUSINESS OPTIONS, INC.)
FOR ALLEGED VIOLATIONS OF)
TENN. CODE ANN. § 65-4-125(j),)
§ 65-4-201, § 65-4-404, § 65-4-405,)
AND TENN. COMP. R. & REGS.)
1220-4-2-.57(2), 1220-4-11.04, AND)
1220-4-11.07.)

DOCKET NO. 02-01244

SETTLEMENT AGREEMENT

This Settlement Agreement, which has been voluntarily entered into between the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("TRA" or "Authority") and Business Options International, Inc. ("Business Options" or the "Company"), resolves all issues presented by Business Options' alleged noncompliance with Tenn. Code Ann. § 65-4-125 (i.e., failure to provide a surety bond), Tenn. Code Ann § 65-4-201 (i.e., operating without a certificate of public convenience and necessity), Tenn. Code Ann § 65-4-404 (i.e., calling to persons objecting to solicitation), Tenn. Code Ann. § 65-4-405 (i.e., failure to register as a telephone solicitor), Tenn. Comp. R. & Regs. 1220-4-2-.57(2) (i.e., operating without a certificate), Tenn. Comp. R. & Regs. 1220-4-11.04 (i.e., failure to register as a telephone solicitor), and 1220-4-11.07 (i.e., violation of the Do-Not-Call Register) through the date of the execution of this Settlement Agreement. This Settlement Agreement pertains to any and all causes of action arising up to and including the date of approval of this Settlement which allege that Business Options violated Tenn. Code Ann. §§ 65-4-125(j), 65-4-201, 65-4-404, and 65-4-405 as well as their concomitant regulations, Tenn. Comp. R. & Regs. 1220-4-2-.57(2), 1220-4-11.04, and 1220-4-11.07 ("alleged violations").

This Settlement Agreement is subject to the approval of the Directors of the TRA. Upon

approval by the Directors of the TRA, and upon full payment of the Settlement Payment in accordance with Section 1 hereof and compliance with the terms of this Settlement Agreement, this Settlement Agreement shall be deemed a full settlement, release, accord and satisfaction of all liability for the alleged violations.

Tenn. Code Ann. § 65-4-125(j), requires telephone service providers, except owners or operators of public telephone service who pay annual inspection and supervision fees pursuant to Tenn. Code Ann. § 65-4-301(b) or telecommunications service providers that own and operate equipment facilities in Tennessee with a value of more than five million dollars, to file with the Authority a surety bond or letter of credit in the amount of twenty thousand dollars (\$20,000). On March 28, 2002 the Authority entered an order revoking the Company's authority to operate in Tennessee for failure to comply with Tennessee Code Annotated § 65-4-125. Business Options was not in compliance with Tenn. Code Ann. 65-4-125 from September 1, 2000 through September 30, 2002.

Tennessee Code Annotated § 65-4-201(b), prohibits individuals and entities from offering or providing telecommunications services without first obtaining from the Authority a certificate of convenience and necessity. Authority Rule 1220-4-2-.57(2) provides that resellers shall not provide intrastate telecommunications services in Tennessee without a certificate of convenience and necessity awarded by the Authority. Business Options operated without a certificate from March 28, 2002 through October 6, 2002 in violation of Tenn. Code Ann. § 65-4-201 and TRA Rule 1220-4-2.57(2).

On October 1, 2002 Business Options filed an application to resell telecommunications services in Tennessee--that application is currently pending a decision before the Authority. On October 4, 2002, the Company filed a Petition seeking a temporary certificate to operate in Tennessee pending Authority approval of a formal application so as prevent disconnection of its customers while Business Options took the steps necessary to comply with Tennessee law and Authority rules. At a regularly scheduled conference held on October 7, 2002, the Authority granted Business Options a temporary certificate which expires on December 9, 2002.

A current investigation by Authority Staff indicates that Business Options has failed to properly register with the Authority prior to engaging in the solicitation of Tennessee residential telephone subscribers in violation of Tenn. Code Ann. § 65-4-405 and TRA Rule 1220-4-11.04. Business Options is also the subject of three (3) complaints¹ regarding violations of Tenn. Code Ann. § 65-4-404 and TRA Rule 1220-4-11.07 (i.e., "Do Not Call Violations").

In negotiating this Settlement Agreement, CSD relied upon the factors stated in Tenn. Code Ann. § 65-4-116(b), including the Company's size, financial status, good faith, and the gravity of the violations.

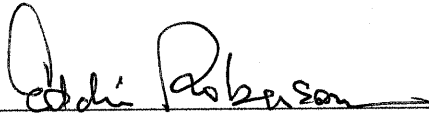
In an effort to resolve all alleged violations noted in this Settlement Agreement CSD and Business Options agree to settle this matter based upon the following acknowledgements and terms, subject to approval by the Directors of the TRA:

1. Business Options agrees to pay the TRA thirteen thousand six hundred fifty dollars (\$13,650.00) (the "Settlement Payment") in settlement of all alleged violations included in this Settlement Agreement. Business Options shall remit the Settlement Payment to the Office of the Chairman of the TRA no later than thirty days after TRA approval of this Settlement Agreement. Upon completion of the Settlement Payment and compliance with the other terms and conditions of this Settlement Agreement, Business Options shall be excused from further proceedings in this matter.
2. In the event that Business Options merges or consolidates with or transfers its assets to another firm, corporation or entity, Business Options or its successor shall remain responsible for fully complying with the terms and conditions of the Settlement Agreement. Business Options shall so notify the CSD no later than ten (10) days prior to the completion of such transaction.
3. Business Options agrees to comply with all provisions of the Tennessee laws and Authority rules requiring a certificate of public convenience and necessity and the filing of a surety bond or letter of credit with the Authority.
4. Business Options agrees that a company representative will attend the Authority Conference during which the Directors consider this

¹ The complaints were registered by Sherry Huff (CSD file no. 01-0470), Lillian Lang (CSD file no. 01-00506) and Gail Rice (CSD file no. 01-00539).

Settlement Agreement. Such attendance may be by telephone.

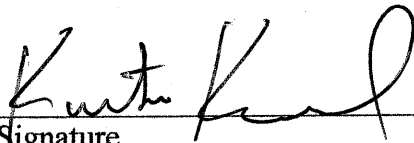
5. In the event that Business Options fails to comply with the terms and conditions of this Settlement Agreement, the Authority reserves the right to re-open this docket.
6. If the Tennessee Regulatory Authority does not rescind Business Options revocation of its Certificate of Public Necessity and Convenience and/or reinstate Business Options Certificate of Public Necessity and Convenience upon Business Options updating its application to resell telecommunications services and securing a \$20,000 Letter of Credit within the TRA guidelines, Business Options shall not be liable for the Settlement Payment.



Eddie Roberson
Chief, Consumer Services Division
Tennessee Regulatory Authority

12-5-02

Date



Signature

Kurks Kintzel

Print Name

President

Print Title

11-27-2002

Date