

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF THE COMPLAINT FILED )</b>	<b>FINDINGS OF FACT AND</b>
<b>BY PAUL JANSSEN ON BEHALF OF )</b>	<b>CONCLUSIONS OF LAW;</b>
<b>ENTERPRISE AUTO REPAIR, MADISON, )</b>	<b>NOTICE OF ENTRY OF</b>
<b>SOUTH DAKOTA, AGAINST BUSINESS )</b>	<b>ORDER</b>
<b>OPTIONS, INC. REGARDING UNAUTHORIZED )</b>	
<b>SWITCHING OF SERVICES )</b>	<b>CT00-070</b>

On May 3, 2000, the Public Utilities Commission (Commission) received a complaint filed by Paul Janssen on behalf of Enterprise Auto Repair, Madison, South Dakota (Complainant), against Business Options, Inc. (Business Options) regarding unauthorized switching of services.

On May 3, 2000, the complaint was faxed to Business Options. Pursuant to ARSD 20:10:01:09, Business Options was notified that it must satisfy the complaint or file an answer in writing with the Commission by May 23, 2000. The Commission has not received an answer from Business Options to this complaint.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 49-13, including 49-13-1 through 49-13-14, inclusive, and SDCL Chapter 49-31, including 49-31-3, 49-31-7, 49-31-7.1, 49-31-7.2, 49-31-7.3, 49-31-7.4, 49-31-10, 49-31-11, 49-31-38, 49-31-38.1, 49-31-38.2, 49-31-38.3, 49-31-89 through 49-31-97, inclusive, and ARSD Chapters 20:10:01 and 20:10:34.

A hearing was held as scheduled on June 20, 2000, beginning at 8:30 o'clock A.M., in Room 412 of the State Capitol Building, 500 E. Capitol, Pierre, South Dakota. The issue at the hearing was whether Business Options committed an unlawful or unreasonable act, rate, practice or omission and, if so, what relief would be appropriate. No representative of Business Options appeared at the hearing.

At the close of the hearing, the Commission voted unanimously to order Business Options to pay the Complainant \$1,000.00, to issue the Complainant an additional credit or payment of \$15.48 for charges paid by the Complainant, and to pay the Complainant's out-of-pocket expenses of \$524.50.

Based on the evidence of record, the Commission makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. On May 3, 2000, the Commission received a complaint filed by the Complainant against Business Options regarding unauthorized switching of services.
2. On May 3, 2000, the complaint was faxed to Business Options. Pursuant to ARSD 20:10:01:09, Business Options was notified that it must satisfy the complaint or file an answer in writing with the Commission by May 23, 2000. Business Options failed to file an answer or satisfy the complaint.
3. A hearing was held as scheduled. No representative of Business Options appeared at the hearing. Tr. at 4. The Order For and Notice of Hearing was mailed to Business Options on June 6, 2000. Tr. at 11. The order was not returned to the Commission as undeliverable. Tr. at 12.

4. The Complainant testified that his long distance carrier for his business was switched to Business Options without his authorization. Tr. at 5-7. He requested reimbursement for his expenses incurred to attend the hearing. Tr. at 6. He calculated his mileage at \$.35 per mile for 470 miles for a total of \$164.50 and eight hours of his time at \$45.00 per hour for a total of \$360.00. Exhibit 1.

5. LaNiece Healy, Director of Consumer Affairs for the Commission, testified that the Complainant was switched to Business Options. Tr. at 19. Ms. Healy stated that Business Options was unable to provide a verification tape to demonstrate that the Complainant had requested the change in his carrier. Tr. at 20. Ms. Healy outlined the charges assessed to the Complainant related to the unauthorized switch of his carrier and the credits issued by U S WEST and Business Options. Tr. at 21-22; Exhibit 7. She concluded that the Complainant was not refunded a total of \$15.48. *Id.*

6. The Commission finds that the Complainant did not authorize Business Options as his long distance carrier for his business, Enterprise Auto Repair. Tr. at 5-7.

7. The Commission finds that Business Options changed the Complainant's telecommunications carrier for his business without his authorization. The Commission finds Business Options committed unlawful acts. The Commission finds that Business Options shall pay the Complainant \$1000.00 as prescribed by SDCL 49-31-93. The Commission further finds that Business Options shall issue credits or payment to the customer in the amount of \$15.48 pursuant to SDCL 49-31-93. The Commission further finds that the Complainant incurred expenses of \$524.50 to attend the hearing and these expenses shall be reimbursed by Business Options.

#### CONCLUSIONS OF LAW

1. The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 49-13, including 49-13-1 through 49-13-14, inclusive, and SDCL Chapter 49-31, including 49-31-3, 49-31-7, 49-31-7.1, 49-31-7.2, 49-31-7.3, 49-31-7.4, 49-31-10, 49-31-11, 49-31-38, 49-31-38.1, 49-31-38.2, 49-31-38.3, 49-31-89 through 49-31-97, inclusive, and ARSD Chapters 20:10:01 and 20:10:34.

2. SDCL 49-31-93 provides as follows:

A subscriber is not liable for any charges imposed by a telecommunications company that initiates a telecommunications carrier change without authorization from the subscriber or for the billing of unauthorized products or services. In addition, the telecommunications company that initiates the unauthorized change or the billing of unauthorized products or services shall pay to the subscriber one thousand dollars.

3. The Commission finds Business Options initiated a telecommunications carrier change without authorization from the Complainant. The Commission finds that Business Options shall pay the Complainant the \$1000.00 as prescribed by SDCL 49-31-93. The Commission further finds that Business Options shall issue credits or payment to the customer in the amount of \$15.48 pursuant to SDCL 49-31-93. The Commission finds the Complainant incurred expenses of \$524.50 to attend the hearing and that these expenses shall also be paid by Business Options.

It is therefore

ORDERED, that Business Options shall pay the Complainant the \$1000.00 as prescribed by SDCL 49-31-93; and it is

FURTHER ORDERED, that Business Options shall issue credits or payment to the Complainant in the amount of \$15.48 pursuant to SDCL 49-31-93; and it is

FURTHER ORDERED, that Business Options shall pay the Complainant \$524.50 for expenses incurred in attending the hearing.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 17<sup>th</sup> day of July, 2000. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 17<sup>th</sup> day of July, 2000.

<b>CERTIFICATE OF SERVICE</b>	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u>Helsinki Kelso</u>
Date:	<u>7/18/00</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

James A. Burg  
JAMES A. BURG, Chairman

Pam Nelson  
PAM NELSON, Commissioner

Laska Schoenfelder  
LASKA SCHOENFELDER, Commissioner