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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D C. 20554

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Federal Communications Commission
Office of the Secretary

In the Matter of	)	EB DOCKET NO. 03-96
	)	
NOS COMMUNICATIONS, INC., AFFINITY NETWORK INCORPORATED and NOSVA LIMITED PARTNERSHIP	)	File No. EB-02-TC-119
	)	NAL/Acct. No. 200332170003
	)	
Order to Show Cause and Notice of Opportunity for Hearing	)	FRN: 0004942538

To: Administrative Law Judge
Arthur I. Steinberg

ENFORCEMENT BUREAU'S OPPOSITION TO JOINT MOTION FOR CONFIDENTIAL TREATMENT

1. The Enforcement Bureau (the "Bureau"), pursuant to section 1.294 of the Commission's rules,[1] hereby submits its Opposition to the July 29, 2003, "Joint Motion for Confidential Treatment of Response to Enforcement Bureau's First and Second Requests for Production of Documents," of NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership (collectively, the "Companies") (the "Motion"). For the following reasons, the Presiding Judge should dismiss the Motion.

2. In their Motion, the Companies make a blanket request for confidential treatment of their "response to Enforcement Bureau's First and Second Requests for Production of Documents."[2] To date, the Companies have produced eight boxes of materials to the Bureau, objecting to a number of the Bureau's requests. On August 5, the Bureau will file with the Presiding Judge a Motion to Compel production of those

[1] 47 C.F.R. § 1.294

[2] Motion at 1.

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documents yet to be produced by the Companies. Accordingly, the Motion would appear to seek such treatment for all documents already produced or yet to be produced in response to the First and Second Requests for Production. In support of their blanket request, the Companies simply state that the information produced includes "personnel information" and "commercially sensitive information."[3]

3. The Commission's rules do not contemplate the granting of such blanket requests for confidential treatment Instead, section 0.459(b) of the Commission's rules expressly requires that a request for confidential treatment must identify, among other things, the "*specific information* for which confidential treatment is sought"[4] and contain a specific showing of the reasons the request should be granted, including the degree to which the specific information for which confidential treatment is sought contains commercial, financial or trade secret information.[5] Section 0.459(c) of the Commission's rules provides for the appropriate disposition of requests that do not contain such specific information: "Casual requests which do not comply with the requirements of paragraphs (a) and (b) of this section will not be considered."[6]

4 The Companies' Motion does not comply with section 0.459(b). It neither identifies the specific pieces of information and produced documents for which the Companies seek confidential treatment nor provides the requisite showing of a basis for such treatment for each such piece of information. The Companies' general assertions that some of the documents may contain "personnel" or "commercially sensitive" information

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[3] Motion at 1-2

[4] 47 C F R § 0 459(b) (emphasis added)

[5] *Id*

[6] 47 C F R §0 459(c)

are clearly inadequate. Because the Companies have not provided the Presiding Judge with the information sufficient to support their request, the Motion should be dismissed pursuant to section 0.459(c) of the rules.

5. As a final matter, in the Motion, the Companies state that "the Bureau's counsel does not object to the granting of this motion. (Movants and counsel for the Enforcement Bureau agree that granting of this motion will not affect the ability of any party to appropriately use documents at Hearing.)"[7] The statement is incomplete. When counsel for the Companies advised Bureau counsel of his intention to seek confidential treatment of certain produced documents, Bureau counsel agreed that it would not object to a request for confidential treatment of *some* of the information in the document production.[8] The Bureau, however, also stated that it might not agree with counsel for the Companies about the confidential nature of particular documents in the production. Because the Companies have failed to specifically designate the information for which they seek confidential treatment and the specific basis for each such request, as required by section 0.459(b), the Bureau is unable to consent to the Companies' request. Should the Companies choose to refile their Motion with the necessary specificity, the Bureau will respond accordingly.

6. In light of the foregoing, the Presiding Judge should dismiss the Companies'

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[7] Motion at 1

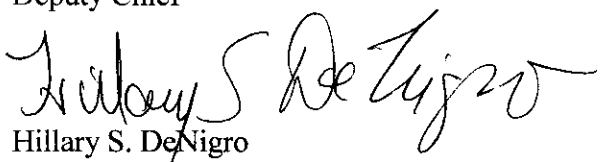
[8] For instance, information from the Companies' personnel files, including the addresses of individuals employed by the Companies, might potentially be properly designated as confidential. Publicly available information contained in the produced documents, however, such as the articles of incorporation of the Companies filed with the California Secretary of State (*see* Bates nos 1009329 *et seq.*) would not be properly designated as confidential

Motion.

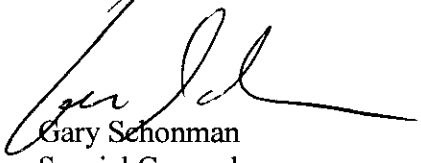
Respectfully submitted,

Maureen F. Del Duca,
Chief

William D. Freedman
Deputy Chief



Hillary S. DeNigro
Assistant Chief



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August 4, 2003

CERTIFICATE OF SERVICE

I, Alicia Smothers Mccannon, an industry analyst in the Investigations & Hearings Division of the Enforcement Bureau, Federal Communications Commission, do hereby certify that, on August 4, 2003, a copy of the foregoing "Enforcement Bureau's Opposition to Joint Motion for Confidential Treatment" to:

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