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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
Federal Communications Commission
Office of the Secretary

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

To: Honorable Arthur I. Steinberg
Administrative Law Judge

ENFORCEMENT BUREAU'S
MOTION TO COMPEL PRODUCTION OF DOCUMENTS

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August 5, 2003

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Summary

From the outset of this proceeding, NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership (collectively, the “Companies”) have erected barrier upon barrier to the attempts by Enforcement Bureau (the “Bureau”) to engage in legitimate discovery in order to create a full and complete record by which the Presiding Judge may resolve the designated issues. With the discovery completion deadline of September 26, 2003 quickly approaching, and the Bureau’s depositions imminent, the Companies have now refused to produce large categories of documents involving some of the most potentially important evidence sought. As a result of the Companies’ dilatory tactics, the Bureau has been presented with the Hobson’s choice of either proceeding with its depositions without the necessary facts or suspending its current deposition schedule in order to compel compliance by the Companies with their obligations under the Commission’s discovery rules.

Most notably, the Companies have refused to produce audio tapes of their winback representatives engaged in telephone calls with customers or former customers. Despite the obvious importance of these conversations to the designated issues in this case, the Companies now, on the eve of the Bureau’s depositions, maintain that the production of the tapes requested is a laborious project too burdensome for them to undertake, and have informed counsel for the Bureau that, over a month after the Bureau’s request, they have not **even commenced** the task of gathering these significant materials in their possession and control.

The relevance of the tapes cannot be gainsaid. The Companies stand accused of orchestrating a fraudulent scheme to improperly induce former customers to authorize

switches of their telephone service back to the Companies. The *Order to Show Cause and Notice of Opportunity for Hearing* (“*Show Cause Order*”) in this proceeding alleges that the Companies perpetrated this scheme upon the public via misleading telemarketing calls. What more relevant evidence could exist than actual audio recordings from the Companies’ own files of their employees engaged in the fraudulent campaign? The Companies’ claim that production of that evidence within the discovery schedule is too much trouble should be summarily rejected and they should be directed to produce this obviously relevant documentary evidence without further delay.

Similarly, the Presiding Judge should reject the Companies’ refusal to produce other requested categories of documents, including tax returns, evidence of criminal convictions of their principals, documents reflecting their plans to relocate their place of business, and complaints and indictments from other proceedings in which they were alleged to have engaged in fraudulent marketing practices. The Companies’ bare claim that these requests are not reasonably calculated to lead to the discovery of admissible evidence is nonsense: this evidence is central to the matters raised in the *Show Cause Order* and relevant to the issues designated therein.

Simply stated, the Bureau has a right to all of the information that it has requested. Accordingly, the Companies should be ordered to produce it forthwith, within sufficient time to permit the Bureau to review it and conduct its earlier scheduled depositions and other discovery within the Presiding Judge’s hearing schedule.

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To Administrative Law Judge
Arthur I Steinberg

ENFORCEMENT BUREAU'S
MOTION TO COMPEL PRODUCTION OF DOCUMENTS

1 The Enforcement Bureau (the "Bureau"), pursuant to Section 1.325(a)(2) of the Commission's rules,¹ hereby requests the Presiding Judge to direct NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership (collectively, the "Companies") to produce the categories of documents discussed below, of which the Bureau requested production over a month ago, on July 3. The Companies' refusal to produce these materials by the extended deadline of July 29 has forced the Bureau to delay its depositions of five of the Companies' employees and principals previously scheduled for next week. Any further delay in the production would have the very real potential of adversely affecting the hearing schedule that the Presiding Judge has established in this proceeding. For these reasons, the Bureau requests that the Presiding Judge immediately order the Companies to fully comply with its document request, as outlined herein, by August 12, 2003.

¹ 47 C.F.R. § 1.325(a)(2)

I. STATEMENT OF FACTS

2 On July 3, 2003, the Bureau served a First Request for Production of Documents upon the Companies (the "Document Request," each such request contained therein a "Request"), which sought the production of 41 categories of documents. Pursuant to Section 1.325(a)(2) of the Commission's rules, the Companies were required to respond to the Document Request within ten days, by Monday, July 14. Instead, three business days before the production deadline, their counsel called Bureau counsel to seek consent to a month-long extension of the production deadline, to August 8. Because an extension of that length would have severely impacted the Bureau's ability to timely review the documents and complete discovery by the September 26 deadline, Bureau counsel advised the Companies it would only agree to extend the date to July 29, more than doubling the time permitted to the Companies to produce the documents under the rules. On July 9, the Companies filed a Joint Motion for Extension of Time, representing therein, *inter alia*, that they would "simply not [be] able to respond" within the ten-day period contemplated by the rules because they have "limited resources."² The Companies did not disclose on July 9, either in their discussions with Bureau counsel to obtain the Bureau's consent to the extension or to the Presiding Judge in the Extension Motion, that they actually planned to refuse to produce many of the requested documents by the July 29 deadline that they were seeking.³

Joint Motion for Extension of Time to Respond to First Request for Production of Documents, at 2, (July 9, 2003) (the "Extension Motion")

On July 23, the Presiding Judge, relying on the Companies' representations and the Bureau's consent, granted the Extension Motion and extended the production deadline to July 29. *See Order*, FCC 03M-29 (ALJ, released July 23, 2003)

3 On July 29, the Companies filed their Joint Objections and Responses to Enforcement Bureau's First Request for Production of Documents (the "Objections").⁴ With respect to the Bureau's request for production of audio recordings of the Companies' winback representatives on telemarketing calls with customers or former customers (Request No. 20), the Companies failed to produce any of the tapes, claiming that to do so would be unduly burdensome. They also refused, on a claim of lack of relevance, to comply with requests for their tax returns (Request No. 10), documents evidencing any criminal convictions of their principals (Request No. 9), and documents reflecting the Companies' intention to move their principal place of business (Request No. 41). Finally, although the Companies responded, and did not object, to Request Nos. 35-38, which sought copies of all complaints and indictments from other proceedings in which the Companies were alleged to have engaged in fraudulent marketing practices, they did so by unilaterally reforming the requests to narrow their scope and then responding that no such responsive documents fitting their narrowed versions of the requests were known to exist.⁵

4 The Bureau, pursuant to the Presiding Judge's directive at the Prehearing Conference,⁶ hereby certifies that, as described more fully below, it has engaged in lengthy conferences with counsel for the Companies in a good faith, but unsuccessful, attempt to come to an agreed-upon solution to the discovery matters that are the subject of this Motion

⁴ The Companies failed to meet even the July 29 production deadline with respect to several other categories of requested documents. *See, e.g.* Objections Nos. 1, 2, 3, 6, 7, 8, 14, and 32. These materials, which the Companies did not produce until August 1, accounted for approximately 25% of the total number of documents produced by the Companies and included the privilege log.

⁵ *See* Objections Nos. 35-38.

⁶ LR 21 (JUDGE STEINBERG: "[A]ny request for a ruling on a discovery matter must include a certification that counsel for the parties involved made a good faith attempt to resolve the dispute, but could not do it.")

to Compel. Fully aware of his admonition, it submits this Motion with great reluctance and only as a last resort.

II. DISCUSSION

5 Under the Commission's rules, the Bureau has the procedural right to request and inspect any documents in the custody or control of any party to a hearing case that are "relevant to the hearing issues."⁷ The rules specifically provide that an assertion that the information sought may not be admissible as evidence does not justify its non-production: the materials sought must only appear reasonably calculated to lead to the discovery of admissible evidence.⁸ The documents and tapes at issue here satisfy that standard and are in the possession of, and readily available to the Companies. Whatever burden the requests may impose on the Companies has been tempered by the generous amount of additional time to respond to which the Bureau has consented and the Presiding Judge has provided them. They cannot now, having taken full advantage of this extension to run the discovery clock closer to its September 26 expiration, properly claim, on the eve of the Bureau's scheduled depositions, that they should be relieved of their obligation to produce the documents and tapes at issue, which contain evidence vital to the resolution of the designated issues.

A. The Companies Should Be Directed to Produce Audio Tapes of Their Winback-Related Telemarketing Calls

6 In Request No. 20, the Bureau asked the Companies to produce "All documents (including audiotapes and electronic recordings or files of any kind) relating to NOS, Affinity, and/or NOSVA winback-related calls from Marsha Gibbs and Tim Slingerland to

⁷ 47 C.F.R. §§ 1.311(b), 1.325.

⁸ *Id.*

NOS, Affinity, and/or NOSVA current and/or former customers between April 20 and 30, 2002 and between March 20 and 30, 2003.”⁹ On July 29, the Companies failed to produce these materials, instead objecting as follows

Overbroad and burdensome Retrieving calls made by the two employees identified for the twenty day period requested is an overly broad and burdensome task, which will not result in material reasonably calculated to lead to the discovery of admissible evidence. During the time period identified the Companies do not believe that Marsha Gibbs and Tim Slingerland were limited to a single phone extension within the Companies. The Companies would, therefore have to retrieve from storage and review twenty days of calls from all Winback Sales Representatives in order to discover arguably responsive material.

The Companies have advised Bureau counsel of its [sic] inability to timely respond to this Request and are currently attempting to reach a compromise solution¹⁰

7 The Companies’ eleventh-hour refusal to produce the audio recordings underlines the hollowness of their claim that production would be burdensome. The tapes are incontrovertibly relevant to the facts at issue in this proceeding. The Companies do not dispute that the requested tapes exist or do they seriously dispute their relevance, only that it will be time consuming for them to produce the recordings. Significantly, the Companies did not “advise Bureau counsel of its inability to timely respond” until July 28, one day before the already-extended deadline for production and twenty-five days after the Bureau had requested the recordings. Even more remarkably, counsel for the Companies advised Bureau counsel that the Companies have not even begun to gather these significant materials in their possession and control, a decision they obviously had made some time before. Indeed as of July 28, when counsel for the Companies chose to inform Bureau counsel they would not produce the recordings by the deadline the following day, the Companies had

⁹ Document Request No. 20

¹⁰ Objection No. 20

done so little in response to the Bureau's request that their counsel was unable to state with certainty whether the requested recordings for the April 20-30, 2002, period existed or estimate how long it would take to provide the tapes of them¹¹

8 The information contained on the requested audio tapes is not just potentially relevant, it is central to the facts and issues of this case. The underlying premise of the *Order to Show Cause and Notice of Opportunity for Hearing*, 18 FCC Rcd 6952 (2003) ("*Show Cause Order*") is that the Companies appear to have engaged in a misleading winback campaign designed to improperly induce former customers to authorize switches back to the Companies,¹² conducted via telephone marketing calls to those customers and former customers.¹³ The evidence referred to in the *Show Cause Order* includes audio tapes of the Companies' winback representatives, Marsha Gibbs and Tim Slingerland, engaging in these misleading marketing activities.¹⁴ The Companies have both acknowledged the authenticity of these recordings in the Commission's possession¹⁵ and the fact that the Companies have maintained a telephone monitoring system called NICE that they utilized to record such conversations.¹⁶

¹¹ At that time, counsel for the Companies did disclose that no tapes for the March 2003 time period existed because the Companies did not employ Tim Slingerland, and Marsha Gibbs during that time period. The Bureau notes that, based on these representations, the Companies' written objection to Request No. 20, filed July 29, the day after their counsel so stated to the Bureau, clearly exaggerates any purported burden to the Companies because it states that a review of twenty days worth of calls is mandated when the Companies had already informed the Bureau that there are no such calls for the March 2003 time period. Thus, the Companies' search for tapes would only cover a period of only ten days.

¹² See *Show Cause Order*, at 6953, ¶ 2.

¹³ See *id.* at 6953-54, n. 4, 6955-56, n. 15, 6968-69, Appendix A, Affidavit of Robert Faulkner, ¶¶ 4, 9.

¹⁴ See *id.* at 6969, Appendix A Affidavit of Robert Faulkner, ¶¶ 11, 6973-88, Appendix C, Tideland Electric Transcript, 6989-94, Appendix D, Nelson Engineering Transcript.

¹⁵ See *Objections and Responses to Enforcement Bureau's Request for Admission of Facts and Genuineness of Documents*, nos. 177-90 (filed July 11, 2003) ("*NOS Admissions*") (stating that "it is the Companies' belief" that the attached tapes are "materially accurate recording[s]" and the attached transcripts are "materially accurate transcript[s]").

¹⁶ *NOS Admissions Nos. 52-54*.

9 In order to fully develop the facts of the winback campaign, Request No. 20 seeks production of additional recordings of similar winback-related calls. These recordings could provide evidence of the nature and breadth of the winback campaign at issue and the content of telemarketing calls by which the Company imposed the campaign on the public. The tapes are reasonably calculated to lead to the discovery of admissible evidence. Indeed, particularly in light of the length to which the Companies have gone to avoid producing these recordings, it is likely they will disclose that the winback campaign described in the *Show Cause Order* went far beyond the customers cited therein by the Commission.

10 Not only does Request No. 20 seek highly relevant documents, but it is narrowly tailored to encompass a limited scope of recordings, involving only calls made by Marsha Gibbs and Tim Slingerland, the representatives implicated in the calls already contained in the record, and only during two brief time periods, April 20-30, 2002, and March 20-30, 2003.¹⁷ There is therefore no merit to the Companies' bald claim of overbreadth, which is belied by the face of the request itself.

11 Counsel for the Companies has suggested an alternative to Request No. 20 that might be faster and easier for the Companies to satisfy because of the manner by which the Companies store the information. This proposed alternative would be for the Companies to provide recordings of calls to designated customers, rather than those made by specified winback representatives of the Companies. Counsel for the Companies has further suggested that the Companies could search for recordings of calls to the customers identified in the documents provided to the Bureau as having made complaints concerning the Companies' winback activities. In a good faith effort to move the proceeding forward,

¹⁷ See id.

Bureau counsel agreed to this compromise, provided that the Companies would specify a date certain for the production of the recordings. All too predictably, the Companies' counsel responded that the Bureau had misunderstood the alternative proposal and that he did not yet know whether the Companies would even agree to provide their tapes, and if so, when they would do so.

12. As gleaned from these discussions, it is the understanding of the Bureau that counsel for the Companies believes that their production of the recordings of telemarketing calls made to particular customers can be accomplished more easily than of calls made by particular winback representatives. In order to facilitate the production of some of the tapes, the Bureau is willing to agree that, as an alternative to the production requested in Request No. 20, it will accept production of all documents (including audio tapes and electronic recordings or files of any kind) relating to winback-related calls made on behalf of the Companies to the customers identified in the Companies' document production as having made complaints concerning the Companies' winback practices.¹⁸ The Companies, however, cannot be permitted to continue to frustrate the Bureau's preparation of its case and development of the record by delay. Accordingly, the Bureau requests that the Presiding Judge order the Companies to accomplish this production by August 12. Any further delay will severely hinder the Bureau's ability to proceed with discovery and to present its case at the hearing.

¹⁸ The following customers are identified in the Companies' produced documents as having made such complaints: Taylor & O'Neil, Van Riper Sales, Mongoose Trailer/Don A. Chirnon, Cost Less Carpet Tri-Cities, Inc., Southline Engineering, Isle Inn Tours, Luteka Springs Hospital, West Texas Lee Co., Russlink Energy Corp., American Brokerage, Southeast Insulation Supply, Inc., South Florida Shutter and Window, Safari Plastics, Dick and Caseys Gourmet, Penn Village, Mirai Associates, Habersham Land Company, Inc., Grain Journal, Cow Fran, Inc., Robert Kennard, Bryan Container Company, Community Home Health and Hospice, Ophthalmic Group, Inc., International Gateway, British Wire Wheel, Genuine Gems Corp., Admiral Wine, and customers referenced in the Companies' emails at Bates Nos. 1003104 and 1003088-89.

B. The Requests for Documents Which the Companies Claim to Be Irrelevant Are Proper and Should Be Satisfied

13 The Bureau also requested that the Companies produce (a) “All documents relating to federal or state tax returns filed by or on behalf of NOS, Affinity, and/or NOSVA,”¹⁹ (b) “All documents relating to the criminal conviction of any individual who is or ever has been an officer, director, partner (general or limited) or shareholder of NOS, Affinity, and/or NOSVA, regardless of the date of conviction;”²⁰ and (c) “All documents relating to the relocation or proposed, planned and/or contemplated relocation of any or all NOS, Affinity and/or NOSVA facilities, offices, and/or operations to Nevada or to a location or locations elsewhere.”²¹ On July 29, the Companies interposed the same boilerplate objection to each such request “such documents are not relevant nor [sic] reasonably calculated to lead to the discovery of admissible evidence.”²² The Companies articulated no further specific justification for these objections. For the following reasons, the Bureau’s requests for production of these materials are appropriate and the Companies should be ordered to produce them at once.

1. The Companies’ Tax Returns

14 Contrary to the Companies’ contention, the tax-related documents are clearly calculated to lead to the discovery of admissible evidence. The *Show Cause Order* directed the Presiding Judge to determine whether a forfeiture order should be issued against the Companies in an amount not to exceed \$1,200,000.²³ Pursuant to Section 503(b)(2)(D) of the Communications Act of 1934, as amended, in determining the amount of a forfeiture,

¹⁹ See Document Request No. 10.

²⁰ See Document Request No. 9.

²¹ See Document Request No. 41.

²² See Response Nos. 9, 10 and 41.

the Presiding Judge may take into account, "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, *ability to pay*, and such other matters as justice may require."²⁴ These documents sought by the Bureau are necessary for this determination by the Presiding Judge because they contain information regarding the financial condition of the Companies and their collective ability to pay such a monetary forfeiture. In addition, the tax returns contain fundamental information about the organization and relationships of the Companies, the identity of the Companies' officers, shareholders, and partners, and the nature of the businesses in which the Companies are engaged. This information plainly is calculated to lead to the discovery of admissible evidence. Accordingly, the Presiding Judge should direct the Companies to produce the documents sought in Request No. 10 at once.

2. Documents Reflecting Criminal Convictions of the Companies' Principals

15 The designated issues also direct the Presiding Judge to determine whether the Companies' Section 214 authorization to operate as common carriers should be revoked.²⁵ As such, the basic qualifications of the Companies, *including those of the individuals who own and control their operation*, are very much in question. Clearly, whether any of these individuals has been convicted of a felony -- particularly any involving fraud or dishonesty that occurred within the last ten years -- is a matter that is directly and inextricably linked to the issue of whether the Companies, and their principals, possess the requisite qualifications to retain their Commission authorization.²⁶ Certainly, documents relating to such

²⁴ *Show Cause Order*, at 6966 ¶ 30.

²⁵ 47 U.S.C. §503(b)(2)(D) (emphasis added); see also *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Red 17087-17100 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Red 303 (1999), 47 C.F.R. § 1.80(b).

²⁶ *Show Cause Order*, at 6965, ¶ 27, Issue B.

²⁶ See *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1209-10.

convictions could reasonably lead to the discovery of admissible evidence. Accordingly, the Presiding Judge should also direct the Companies to produce the documents sought in Request No. 9.

3. Documents Reflecting Potential Relocation of the Companies' Businesses

16. Another designated issue calls for the determination of whether the Companies and/or their principals should be ordered to cease and desist from providing interstate common carrier service without the prior consent of the Commission.²⁷ In the *Show Cause Order*, the Commission specifically observed that the Companies appear to conduct operations utilizing a series of interrelated entities to victimize the public in fraudulent marketing efforts and that the Companies operate under various business names and, from time to time, from offices registered to operate in various locations and states.²⁸ The Bureau seeks these documents to determine exactly what corporate structures are involved in this operation and exactly where they can be found. Documents relating to whether the Companies are planning to relocate their operations could reveal the intention of the Companies' principals to create additional entities that would provide the same or similar service elsewhere, using the same improper and illegal tactics. Because the production of such documents again relates directly and inextricably to a specific issue in this proceeding, the production of such documents is reasonably calculated to lead the discovery of admissible evidence. Accordingly, the Presiding Judge should also direct the Companies to produce the documents sought in Request No. 41.

(1986), modified, 5 FCC Rcd 3252 (1990) *recon. granted in part*, 6 FCC Rcd 3448 (1991), modified in part, 7 FCC Rcd 6564 (1992) ("Character Policy Statement")

²⁷ *Show Cause Order*, at 6965, ¶ 27, Issue C.

²⁸ See *Show Cause Order*, at 6952, n. 1, 6953-54, n. 4.

C. The Companies Should Be Directed to Produce All Documents Reflecting Their Fraudulent Marketing Practices

17 Finally, in its Request Nos. 35, 36, 37, and 38, the Bureau sought documents relating to past or ongoing county, state and federal court, and public utility commission proceedings involving allegations of fraudulent marketing practices by the Companies. In its response, the Companies did not object to any of these requests. Rather, they stated that they are “not aware of any [such documents] relating to Winback practices as identified in the Show Cause Order.”²⁹

18 The Bureau did not restrict the scope of the documents it was seeking to those “relating to Winback practices as identified in the Show Cause Order.” The Companies should not be permitted to unilaterally limit the scope in a manner that is plainly calculated to avoid the production of unquestionably relevant documents. The Presiding Judge should direct the Companies to immediately produce all documents responsive to the Bureau’s request, as propounded on July 3.

III. CONCLUSION

19 From the date of the Commission’s release of the *Show Cause Order*, the Companies have engaged in a strategy to frustrate the Bureau’s creation of an evidentiary record with which the Presiding Judge and, ultimately, the Commission, must resolve the designated issues. Although the Bureau respects the desire of counsel to aggressively represent the interests of the Companies, their continued strategy of delay here borders on an abuse of process which the Presiding Judge should not tolerate. The Commission has encouraged its presiding officers to “use the tools that are available to assure the continued

²⁹ See Companies’ Response Nos. 35-38.

vitality, integrity, and usefulness of the discovery procedures³⁰ In cases in which there has been severe dereliction related to the discovery process, the Commission has imposed severe sanctions³¹ While the Bureau does not at this time request that such sanctions be imposed, in order to preserve the existing procedural schedule and allow the creation of a hearing record that is both complete and accurate, the time has come for the Presiding Judge to grant this Motion to Compel, issue an order compelling the Companies to produce the requested documents no later than August 12, 2003 In that manner, discovery can be completed within the time designated by the Presiding judge and the designated issues can be resolved meaningfully The Bureau requests that the Presiding Judge so act at once, so

³⁰ *Amendment of Part 1, Rules of Practice and Procedure to Provide for Certain Changes in the Commission's Discovery Procedures in Adjudicatory Hearings*, 91 FCC 2d 527-532-33 (1982)

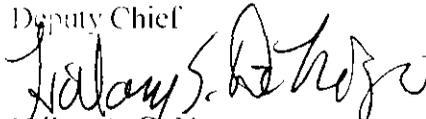
³¹ *See, e.g., Faith Center, Inc.*, 82 FCC 2d 1 (1980); *Carroll Carroll, & Rowland*, 4 FCC Rcd 7149 (Rev Bd 1989), *aff'd* 5 FCC Rcd 2430 (1990); *I O B Incorporated*, 4 FCC Rcd 6753 (Rev Bd 1989); *Mad River Broadcasting Co.*, 97 FCC 2d 679, 680-81 (1984); and *Tue-Metrics, Inc.*, 69 FCC 2d 1049 (1978)

that, notwithstanding the Companies' maneuvering, the Bureau may fully meet its responsibilities to the public, allowing him to ultimately do the same.

Respectfully submitted,

for 
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August 5, 2003

CERTIFICATE OF SERVICE

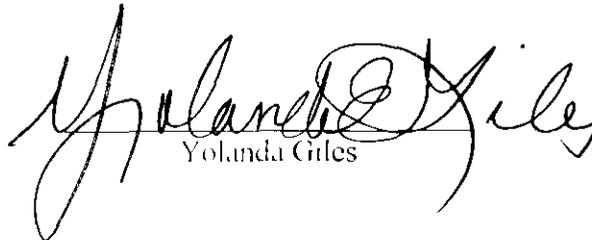
I, Yolanda Giles, a staff assistant in the Investigations & Hearings Division of the Enforcement Bureau, Federal Communications Commission, do hereby certify that, on August 5, 2003, I sent by first class United States mail copies of the forgoing "Enforcement Bureau's Motion to Compel Production of Documents" to:

*Honorable Arthur I. Steinberg
Administrative Law Judge
Federal Communications Commission
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Washington, DC 20554

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Yolanda Giles

* Hand Delivered

Attachment A
Document Requests

b. The term "Affinity" means Affinity Network Incorporated, its subsidiaries and affiliates.

c. The term "NOSVA" means NOSVA Limited Partnership, its subsidiaries and affiliates

d. The term "Document" shall mean the complete original (or in lieu thereof, exact copies of the original) and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any taped, recorded, transcribed, written, typed, printed, filmed, videotaped, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated, or made, including but not limited to any book, pamphlet, periodical, contract, agreement, correspondence, letter, facsimile, e-mail, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, photograph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minutes, marketing plan, research paper, personnel file, personnel folder, preliminary drafts, or versions of all of the above, and computer material (print-outs, cards, magnetic or electronic tapes, disks and such codes or instructions as will transform such computer materials into easily understandable form) in the possession, custody, or control of NOS.

e. The terms "relate to" and "relating to" mean constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or in any way is pertinent to the specified subject, including documents concerning the preparation of the documents.

f. The term "winback" means a common carrier's attempt to regain the business of a customer who was once a customer of that common carrier but has since chosen another common carrier as the customer's telephone service provider.

g. The term "winback call" means a common carrier's telephone solicitation of a former customer for the purpose of winning back that customer.

h. The term "winback department" means NOS's department, section, branch, division, unit or office, by whatever name, in which NOS conducts or conducted winback-related efforts, call and/or activities.

i. The term "customer" means any person or business entity who is or may be required to pay for goods or services.

j. The term "LOA" means letter of agency.

k. The term "discharge" means to leave the employ of NOS for any reason, voluntarily, involuntarily, or otherwise.

l. The term "any" shall be construed to include the word "all," and the word "all" shall be construed to include the word "any."

m. The term "or" shall be construed to include the word "and," and the word "and" shall be construed to include the word "or."

n. The term "each" shall be construed to include the word "every" and "all" and the terms "every" and "all" shall be construed to include the word "each."

o. The term "identify," when used with reference to a person or persons, shall mean to state his or her full legal name, current last known business address, current or last known business telephone number, current or last known home address, current or last known home telephone number, dates of employment or of association with NOS,

titles held in NOS, positions held in NOS , descriptions of such positions, and, if applicable, reasons for no longer being employed or associated with NOS.

p Each document produced shall be identified by the number of the document request to which it is responsive.

q Each document shall be produced in its entirety, even if only a portion of that document is responsive to a request herein. This means that the document shall not be edited, cut, or expunged, and shall include all appendices, tables, or other attachments, and all other documents referred to in the document or attachments. All written materials necessary to understand any document responsive to these inquiries must also be produced.

r If a document responsive to any request herein existed but is no longer or not presently available, or if NOS is unable for any reason to produce a document responsive to any request, each such document shall be identified by author, recipient, date, title, and specific subject matter, and a full explanation shall be provided why the document is no longer available or why NOS is otherwise unable to produce it

s If any document produced in response to any request herein is not dated, the date on which the document was prepared shall be provided. If any document does not identify its author(s) or recipient(s), the name(s) of the author(s) or recipient(s) of the document shall be provided

t This request is continuing in nature, requiring immediate production if a further or different document responsive to any request herein comes into the possession, custody, or control of NOS during the pendency of this proceeding.

u. If production of any document responsive to any request herein called for by this request is refused pursuant to a claim of privilege, the document shall be identified by reference to its author, recipient(s) (including any person receiving a copy, regardless of whether that recipient is listed on the document), date, and subject matter. The basis for the privilege claimed for such document shall be specified with sufficient precision to permit assessment of the applicability of the privilege involved.

v. Unless otherwise requested, the period of time covered by this Request is December 1, 2001, to the present.

Documents Requested

1 All documents relating to the articles of incorporation and by-laws of NOS and/or Affinity since their respective incorporations.

2. All documents relating to the partnership agreement of NOSVA since its formation.

3 All documents relating to the minutes of all board of directors meetings of NOS and/or Affinity since the incorporation of each entity

4. All documents relating to the interrelationship, if any, between or among NOS, Affinity and/or NOSVA and/or any other business entities

5. All documents relating to any ownership interest of any kind whatsoever that NOS, Affinity, and/or NOSVA have, or have had, in any other business entity.

6 All documents relating to any ownership interest of any kind whatsoever that any individual or entity has, or has had, in NOS, Affinity, and/or NOSVA.

7 All documents identifying the officers, directors, and shareholders of NOS and Affinity