

Hon. Richard A. Jones
Noted For Hearing: November 13, 2006
Without oral argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

BAXTER AIR, INC., and all others
similarly situated,

Plaintiffs,

v.

NOS COMMUNICATIONS, INC., and
AFFINITY NETWORK, INC.,

Defendants.

NO. 05-2-37411-0SEA

CLASS ACTION

~~PROPOSED~~
ORDER GRANTING
PLAINTIFF'S MOTION FOR
CLASS CERTIFICATION

THIS MATTER having come on before the Honorable Richard A. Jones
of the above entitled Court, and the Court having considered the Plaintiffs
Motion for Class certification and all materials filed in support and opposition,
the Court hereby orders as follows:

Plaintiff's Motion for Class Certification is GRANTED. The Court
hereby certifies the following class for Plaintiff's claim under the Washington
Consumer Protection Act:

~~PROPOSED~~ ORDER GRANTING
PLAINTIFF'S MOTION FOR CLASS
CERTIFICATION - 1

595305.2/025750.00001

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ORIGINAL

1 All Washington State customers of the Defendants who, at any
2 time on or after November 16, 2001, purchased defendants'
3 interstate, intrastate, and/or international long distance
4 telecommunications services for which Defendants billed in "cents
5 per call unit."

6 This class is certified for purposes of adjudicating the liability elements of
7 Plaintiff's claim, i.e., whether Defendants engaged in an unfair or deceptive act
8 or practice in trade or commerce which affected the public interest. Issues of
9 causation and damage will be addressed by further order of the Court, as
10 provided in *Sitton v. State Farm Mut. Auto. Ins. Co.*, 116 Wn. App. 245, 256
11 (2003).

12 The Court finds that Plaintiff's claim raises common issues of law and
13 fact suitable for class certification, and that the Plaintiff's claim is typical and
14 representative of the claims of the class because Plaintiff alleges and has
15 proffered substantial evidence that the practices upon which it bases its claim
16 were standard practices used by Defendants to sell services to the public. The
17 Court finds that the class likely numbers in the hundreds or thousands, and is
18 therefore too numerous to join individually, and that Plaintiff and its counsel are
19 capable of adequately representing the interests of absent class members.

20 The Court also finds that common questions of law and fact will
21 predominate over any individual questions. The questions concerning the
22 Defendants' solicitation practices and billing methodology are substantial and
23 common, as are many of Defendants' purported defenses, while causation and
24 damages are not certified for class-wide adjudication at this time. The claims of
individual class members are likely valued at a few hundred or thousand dollars

[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR CLASS
CERTIFICATION - 2

595305.2/025750.00001

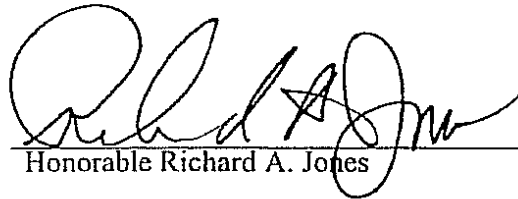
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1 each, and class adjudication of common issues is therefore superior, indeed
2 likely the only realistic method of resolving the claims.

3 Pursuant to CR 23(c)(2), the notice shall be sent to all class members in
4 the most effective manner possible. Accordingly, Defendants shall provide
5 Plaintiff with the names and last known address and phone numbers of all
6 customers who fit within the definition of the class above, within two weeks of
7 this Order. Plaintiffs may send the attached notice, which the Court approves
8 and signs, to all such persons as soon as practicable. Additional methods of
9 notice may be addressed thereafter if necessary.

10 IT IS SO ORDERED. DONE IN OPEN COURT this 30th day of

11 November, 2006.

12 
13 _____
14 Honorable Richard A. Jones

15 Presented by:

16 SHORT CRESSMAN & BURGESS PLLC

17 By 

18 David E. Breskin, WSBA No. 10607
19 Daniel F. Johnson, WSBA No. 27848
20 Attorneys for Plaintiff

21 [PROPOSED] ORDER GRANTING
22 PLAINTIFF'S MOTION FOR CLASS
23 CERTIFICATION - 3

24 595305.2/025750.00001

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