

Hon. Harry J. McCarthy

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KING COUNTY CLERK
SUPERIOR COURT
SEATTLE WA

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.,
NOSVA LIMITED PARTNERSHIP,
AFFINITY NETWORK, INC., ROBERT
A. LICHTENSTEIN, and JOSEPH T.
KOPPY,

Defendants.

NO. 05-2-37411-0SEA

THIRD AMENDED
CLASS ACTION COMPLAINT

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K.C. SUPERIOR COURT
JUDGE'S MAIL ROOM

I. INTRODUCTION

1. Plaintiff Baxter Air, Inc., brings this class action on behalf of all similarly situated Washington State consumers against NOS Communications, Inc., NOSVA Limited Partnership, and Affinity Network, Inc., as well as Robert A. Lichtenstein and Joseph T. Kopy, for deceptive and unfair trade practices in the marketing and sale of telecommunications services.

2. Defendants induce consumers to purchase their services by

THIRD AMENDED CLASS ACTION
COMPLAINT - 1

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YVES COLLIER LLP

I. INTRODUCTION

1. Plaintiff Baxter Air, Inc., brings this class action on behalf of all similarly situated Washington State consumers against NOS Communications, Inc., NOSVA Limited Partnership, and Affinity Network, Inc., as well as Robert A. Lichtenstein and Joseph T. Kopy, for deceptive and unfair trade practices in the marketing and sale of telecommunications services.

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1 uniformly and affirmatively misrepresenting the costs of their services in written
2 solicitation materials, by providing misleading and incomplete disclosures of
3 their rates and billing practices, by utilizing a billing system and billing practices
4 that are deliberately difficult to comprehend, and by resisting any efforts by
5 consumers to understand their practices and/or to cancel their services.

6 II. PARTIES

7 3. Plaintiff Baxter Air, Inc., is a Washington corporation with its
8 principal place of business in Woodinville, Washington.

9 4. Defendant NOS Communications, Inc., is a Maryland corporation
10 with its principle place of business at 4380 Boulder Highway, Las Vegas,
11 Nevada.

12 5. NOS is licensed to do business in Washington State and has used
13 the name Quantum Link Communications.

14 6. NOSVA Limited Partnership is an affiliate of NOS
15 Communications, Inc. NOSVA is a Maryland partnership with its principle
16 place of business at 4380 Boulder Highway, Las Vegas, Nevada.

17 7. NOSVA is registered to do business in Washington State and has
18 used the name Quantum Link Communications.

19 8. Defendant Affinity Network, Inc., is an affiliate of NOS
20 Communications, Inc. and NOSVA Limited Partnership. Affinity is a California
21 corporation with the same principal place of business as NOS, i.e., 4380 Boulder
22 Highway, Las Vegas, Nevada.

23 9. Affinity is licensed to do business in Washington State and has
24 used the name Quantum Link Communications.

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1 10. Robert A. Lichtenstein is an individual believed to reside in
2 California.

3 11. From 2001 to 2006, Lichtenstein was a principal shareholder and
4 officer of NOS and ANI, and a principal owner and partner in NOSVA.

5 12. Joseph T. Kopyy is an individual believed to reside in Nevada.

6 13. From 2001 to present, Kopyy was an officer of NOS and ANI, and
7 employed to serve in those capacities by NOSVA.

8 14. NOS, NOSVA, and Affinity have the same or substantially
9 overlapping ownership.

10 15. NOS, NOSVA, and Affinity have the same or substantially
11 overlapping officers and directors.

12 16. NOS, NOSVA, and Affinity conduct joint business and marketing
13 operations.

14 17. NOS, NOSVA, and Affinity use substantially identical marketing
15 materials.

16 18. NOS, NOSVA, and Affinity market substantially the same
17 services.

18 19. NOS, NOSVA, and Affinity jointly devised the "call unit" billing
19 method described below.

20 20. NOS, NOSVA, and Affinity are the only telecommunications
21 companies that use the "call unit" billing method.

22 21. NOS, NOSVA, and Affinity conduct business under the same or
23 substantially overlapping trade names.

24

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1 22. NOS has conducted business under multiple trade names,
2 including Quantum Link Communications, HorizonOne Communications,
3 International Plus, 011, INETBA (or Internet Business Association), I-Vantage
4 Network Solutions, and Cierracom Systems.

5 23. Affinity has conducted business under multiple trade names,
6 including Quantum Link Communications, HorizonOne Communications,
7 International Plus, 011, INETBA (or Internet Business Association), I-Vantage
8 Network Solutions, and Cierracom Systems.

9 24. NOSVA has conducted business under multiple trade names,
10 including Quantum Link Communications, HorizonOne Communications,
11 International Plus, 011, INETBA (or Internet Business Association), I-Vantage
12 Network Solutions, and Cierracom Systems.

13 III. JURISDICTION AND VENUE

14 25. The Court has jurisdiction over this action under RCW 19.86.090.

15 26. Venue is proper in King County under RCW 4.12.025.

16 IV. FACTUAL ALLEGATIONS

17 27. Plaintiff Baxter Air is a consumer of telecommunications services.

18 28. In January 2003, defendants, through their employees or
19 authorized agents, solicited plaintiff Baxter Air to purchase interstate,
20 international, and intrastate long distance telecommunications services from
21 them.

22 29. Defendants used unfair and deceptive acts or practices to solicit
23 Baxter Air.
24

1 30. Defendants used printed marketing materials to solicit Baxter Air,
2 copies of which are attached hereto.

3 31. Defendants misled Baxter Air regarding the costs of their services,
4 their billing practices, and the terms and conditions of their services.

5 32. Defendants' marketing and billing practices have the potential to
6 deceive substantial portions of the public.

7 33. Defendants Lichtenstein and Kopyy personally participated in
8 formulating the sales and marketing policies and practices of NOS, NOSVA,
9 and ANI, and personally oversaw their sales and marketing activities.

10 34. Lichtenstein and Kopyy sanctioned or approved of the deceptive
11 marketing and billing practices alleged herein.

12 35. Plaintiff has been injured in its business or property as a result of
13 defendants' marketing and billing practices.

14 36. Effective in 2001, the Federal Communications Commission
15 ("FCC") ordered telecommunications carriers to "de-tariff."

16 37. Defendants ceased filing federal tariffs concerning their interstate
17 and international long distance service in August 2001.

18 38. The services Defendants sold to Plaintiff were not governed by a
19 federal filed tariff.

20 39. The federal filed tariff doctrine does not apply to this case.

21 40. Defendants ceased filing state tariffs concerning their intrastate
22 long distance service in Washington prior to 2001.

23 41. The services Defendants sold to Plaintiff were not governed by a
24 state filed tariff.

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1 V. CLASS ACTION ALLEGATIONS

2 42. Plaintiff brings this action as a class action under CR 23(a) and (b)
3 on behalf of itself and all others similarly situated. Plaintiff proposes
4 certification of the following class:

5 All Washington State customers of the defendants who were solicited to
6 purchase defendants' interstate, intrastate, and/or international long
7 distance telecommunications services at any time on or after November
8 16, 2001, with marketing materials which did not describe or explain the
9 defendants' "call unit" billing method, and who have been billed by
10 defendants by means of defendants' "call unit" billing method.

11 43. The proposed class consists of at least 1,000 members, and joinder
12 would be impracticable.

13 44. Defendants, in their own names or through trade names, solicit
14 customers in the State of Washington to switch from their existing
15 telecommunications carriers to the Defendants for their intrastate, interstate and
16 international long distance phone service.

17 45. Defendants offer prospective customers "lower rates" for these
18 services than their competitors.

19 46. Defendants offer prospective customers specific rates in "cents per
20 call unit," or "cpcu."

21 47. A "call unit" is a measure of time that Defendants created.

22 48. Defendants' competitors do not bill for calls in "call units."

23 49. Defendants' competitors bill for calls in minutes, i.e., the measure
24 of time people use every day.

1 50. A "call unit" is not equivalent to a minute, nor a second, nor any
2 other widely used increment of time.

3 51. The duration of a call unit varies with how long a call lasts.

4 52. For calls under 20 minutes, a call unit is less than a minute.

5 53. Accordingly, a rate in "cents per call unit" results in a higher cost
6 per call than if that same rate were charged "per minute."

7 54. For any call lasting 20 minutes or less, calculating the charge on a
8 "cents per call unit" basis results in roughly double what the charge would be for
9 the same call, at the same rate, if the charge were calculated in "cents per
10 minute."

11 55. Defendants use printed solicitation materials throughout the state
12 of Washington, such as those attached hereto.

13 56. Defendants' printed solicitation materials do not describe or
14 explain the call unit method of billing to prospective customers.

15 57. Defendants' "cents per call unit" billing method is complex.

16 58. Defendants' "cents per call unit" billing method is difficult to
17 understand.

18 59. Defendants' "cents per call unit" billing method is difficult to
19 compare to competitors' prices.

20 60. Thousands of consumers have filed complaints with governmental
21 agencies about defendants' marketing and billing practices, including the failure
22 to disclose and explain their call unit billing method.

23 61. Defendants have been investigated by multiple state and federal
24 regulatory agencies, including the Federal Communications Commission (FCC).

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1 62. Several state and federal agencies, including the FCC, have
2 concluded that defendants' marketing practices, specifically its use of and/or
3 failure to adequately disclose the call unit billing method, are deceptive,
4 deliberately misleading, and/or unfair.

5 63. In 2001, the FCC proposed a fine or "forfeiture" of \$1 million
6 against defendants as a result of their unfair, deceptive, and misleading
7 marketing practices.

8 64. Defendants paid \$1 million to the FCC as a result of its order.

9 65. No consumer was reimbursed for its losses out of this payment.

10 66. Plaintiff Baxter Air's claims are typical of the claims of the
11 proposed class, and Baxter Air would adequately represent the interests of the
12 class.

13 67. Defendants follow a policy and practice of providing consumers
14 throughout the State of Washington with false, misleading, and/or deceptive
15 information regarding the costs of their services, their billing practices, and the
16 terms and conditions of their services.

17 68. Common issues of law and fact predominate over any individual
18 issues, including but not limited to:

19 a. Whether the defendants' marketing materials are unfair or
20 deceptive under Washington law.

21 b. Whether the defendants' terms and conditions of service are
22 unfair or deceptive under Washington law.

23 c. Whether the defendants' billing practices are unfair or
24 deceptive under Washington law.

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1 d. Whether the defendants' marketing and billing practices
2 affect the public interest.

3 e. Whether the individual defendants sanctioned or approved
4 of the marketing and billing practices alleged herein.

5 69. There are no other class actions currently pending in any state or
6 federal trial courts against the defendants based upon the same subject matter as
7 this case.

8 VI. CLAIM

9 70. Unfair Business Practices. Defendants have engaged and continue
10 to engage in deceptive and/or unfair trade practices, in violation of RCW 19.86.

11 VII. DAMAGES

12 71. As a result of the foregoing, the Plaintiffs have been damaged as
13 follows:

- 14 a. Economic loss;
- 15 b. Damage to business and reputation;
- 16 c. Out-of-pocket expenses and other consequential damages.

17 VIII. REQUEST FOR RELIEF

18 72. Plaintiff requests the following relief:

- 19 a. Certification of a statewide class;
- 20 b. Judgment against defendants for plaintiff's damages stated
21 above and damages of all classmembers in an amount to be proven at trial;
- 22 c. An award of treble damages to plaintiff and the class;
- 23 d. An award of prejudgment and post-judgment interest on
24 plaintiffs' damages;

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f. Such other and further relief, including injunctive relief, as
the Court deems just and equitable.

DATED this 8 day of March, 2007.

SHORT CRESSMAN & BURGESS PLLC

By 
David E. Breskin, WSBA No. 10607
Daniel F. Johnson, WSBA No. 27848
Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

The undersigned certifies that on this day she caused to be served in the manner noted below, a copy of the document to which this certificate is attached, on the following counsel of record:

Joseph A. Boyle
Paul L. Kattas
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 via hand delivery
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 via facsimile

John A. Tondini
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 via hand delivery
 via air courier
 via facsimile

DATED this 8th day of March, 2007.



Doreen Satt-Yun Tai

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