

Before the {PRIVATE }  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D. C. 20554

In the Matter of	)	
	)	File No. EB-00-TC-005
NOS Communications, Inc. and	)	
Affinity Network Incorporated	)	
	)	
Apparent Liability for Forfeiture	)	NAL/Acct. No. 200132170011

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: March 28, 2001

Released: April 2, 2001

By the Commission: Commissioner Furchtgott-Roth dissenting and issuing a statement.

**I. INTRODUCTION**

1. By this Notice of Apparent Liability for Forfeiture ("NAL"), we find that NOS Communications, Inc. ("NOS") and Affinity Network Incorporated ("ANI")<sup>1</sup> have apparently willfully or repeatedly violated section 201(b) of the Communications Act of 1934, as amended ("Act"),<sup>2</sup> by engaging in unjust and unreasonable practices in connection with their provision of interstate communication services. As discussed more fully below, we find that NOS and ANI have apparently engaged in deceptive marketing of their interstate communication services by failing to disclose clearly and conspicuously material facts regarding their promotional plan offerings and pricing methodology.

2. The Commission received almost 900 consumer complaints against NOS and ANI. Based upon our review of the facts and surrounding circumstances, we find that NOS Communications, Inc. and Affinity Network Incorporated are apparently liable for proposed forfeitures in the amount of \$500,000 each, resulting in a total proposed forfeiture amount of \$1,000,000.

<sup>1</sup> NOS is a Maryland corporation, whose principal address is 4380 Boulder Highway, Las Vegas, NV 89121. NOS also conducts business under the following business names: International Plus, O11, INETBA (or Internet Business Association), and I-Vantage. ANI is a California corporation, whose principal address is 3660 Wilshire Boulevard, Suite 400, Los Angeles, CA 90010. ANI also conducts business under the business names HorizonOne Communications ("HorizonOne") and QuantumLink Communications ("QuantumLink"). All of the entities identified herein have in common either the same principals or officers. For purposes of this NAL, the term "NOS" or the term "ANI" (collectively "companies") includes all of NOS's and ANI's respective identified entities, including any of their respective successors or assigns.

<sup>2</sup> 47 U.S.C. § 201(b).



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## II. BACKGROUND

3. NOS and ANI are long distance service resellers that primarily market to small and medium-sized companies. NOS and ANI solicit new customers through telemarketing calls. As described more fully below, NOS and ANI employ what they term a "call unit rate structure" for their long distance pricing methodology. Under that pricing methodology, which appears to be unique to these companies, rates are billed not in terms of cents per minute, but in cents per call unit ("CPCUs").<sup>3</sup> The call unit is made up of usage and non-usage charges, and generally does not equal a minute.<sup>4</sup> Thus, determining total per call charges requires a conversion calculation. NOS and ANI state that, during telemarketing calls, they provide potential customers with both verbal<sup>5</sup> and written disclosures explaining their plan offerings and charges. They also state that in addition to information conveyed by their telemarketing representatives, they routinely fax prospective customers two written disclosures, a "rate sheet" and an enrollment form or Letter of Agency ("LOA") to explain their service and pricing.

4. Despite the purported pricing explanations by NOS and ANI, consumers have filed almost 900 complaints with the Commission against the companies since 1997. These complaints suggest widespread consumer confusion regarding the companies' plan offerings and charges. Common themes in these complaints are that NOS and ANI misrepresent their rates, resulting in rates charged that are substantially higher than what the companies promised. Consumers also complain that NOS's and ANI's call unit pricing methodology is complicated and confusing and appears designed for the purpose of cheating the public.<sup>6</sup> Complainants allege

<sup>3</sup> According to NOS and ANI, the limited residential plans, sold under the International Plus and O11 company names, do not employ the call unit rate structure but are sold, tariffed, and billed as cents per minute offerings. For this reason, the International Plus and O11 service plans will not be addressed in this NAL. See NOS and ANI's September 14, 2000 joint response to our September 28, 2000 letter of inquiry, Attachment B, page 1 ("Response").

NOS and ANI requested confidential treatment of certain information they submitted in response to written requests from the Enforcement Bureau. On November 3, 2000, the Bureau released an Order denying the request for failing to comply with the standards set forth in section 0.459(b) of the Commission's rules. *NOS Communications, Inc.*, DA 00-2479 (Enf. Bur., Nov. 3, 2000), citing 47 C.F.R. § 0.459(b). On November 9, 2000, NOS and ANI filed an Application for Review of the Order. Because, in this NAL, we use only materials submitted by complainants and make no specific reference to information provided by NOS and Affinity under their request for confidential treatment, we decline to address the merits of the pending Application for Review. The Application for Review will be addressed separately.

<sup>4</sup> The call unit may equal a minute under very limited circumstances, such as for facsimile calls and during certain limited promotional periods.

<sup>5</sup> See footnote 29, *infra*.

<sup>6</sup> See e.g., Informal Complaint No. G2000010809, filed December 8, 1999; Informal Complaint No. P-20826, filed June 6, 2000; Informal Complaint No. G2000017422, filed February 23, 2000; Informal Complaint No. G2000099619, filed December 3, 1999; Informal Complaint No. 00-G6806, filed August 22, 2000; Informal Complaint No. G2000015040, filed February 2, 2000; and Informal Complaint No.

that when they complain directly to the companies, the companies are unresponsive or claim ignorance or error, often promising credits and discounts which never materialize.<sup>7</sup> Many complainants also allege that when they refused to pay disputed bill amounts, they were threatened with collection or legal action, or their toll-free numbers were "held hostage" by the companies.<sup>8</sup> Additionally, complainants state that when they attempted to discontinue service with NOS or ANI, they experienced undue delays or difficulties switching carriers, or continued to be billed for services by the companies after the switch was complete.<sup>9</sup>

5. In addition to complaints filed with the Commission, NOS and ANI have received complaints directly from consumers, but have requested confidential treatment of the number of such complaints as well as the number of requested cancellations of service that they receive.<sup>10</sup> Hence, this information will not be revealed here.

### III. DISCUSSION

6. Section 201(b) of the Act, states, in pertinent part, that "[a]ll charges, practices,

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G2000010163, filed December 17, 1999.

<sup>7</sup> See e.g., Informal Complaint No. G2000016345, filed February 1, 2000 ("I am at my wits end. I cannot take trying to communicate with these people. I believe they are trained to lie and deceive."); Informal Complaint No. 00-G6806, filed August 22, 2000 ("Affinity always said they couldn't figure out how the rate kept going up. It was always the same song and dance. A credit was issued after many phone calls to clarify the problem and after months had gone by. Sometimes they would offer us a discounted rate if we would excuse their errors."); Informal Complaint No. G2000009619, filed December 3, 1999; and Informal Complaint No. 00-G6806, filed August 22, 2000.

<sup>8</sup> See e.g., Informal Complaint No. G2000005500, filed November 12, 1999 ("They are virtually holding my toll free numbers hostage. My only choice seems to be to pay the disputed invoice at these exorbitant rates or lose my toll free numbers that I have had for so many years."); Informal Complaint No. 00-G943, filed May 24, 2000 ("I was also told my 800 number has been taken over by NOS. They will not allow me to have MCI World Com take over until I pay the entire bill."); Informal Complaint No. G200000524, filed November 15, 1999 ("I had made several attempts with MCI to have all our lines switched to MCI but somehow Affinity would not let go of our 800 numbers."); Informal Complaint No. P5493, filed January 18, 2000 ("They have sent me a letter threatening legal action since I only paid 75% of my Nov. 18, 1999 invoice as told to do by their customer service representative."); and Informal Complaint No. G2000016345, filed February 1, 2000 ("I then received my first threatening letter from NOS . . . telling me they would shut off my service if I did not pay . . . and send me to collections. The frustrating thing is that everyone I spoke to in the company directed me NOT to pay the bill until the credit was applied.")

<sup>9</sup> See e.g., Informal Complaint No. 00-G372, filed May 24, 2000 ("NOS refused to switch me back to my previous long distance provider . . . and local toll provider . . . when I was not satisfied with its services."); Informal Complaint No. G2000016321, filed February 1, 2000 ("I have asked repeatedly to have my long distance service terminated, but to date they have not terminated my service. I can't find a way to get away from the company.").

<sup>10</sup> See footnote 3, *supra*.

classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful."<sup>11</sup> The FCC has found that unfair and deceptive marketing practices by interstate common carriers may constitute unjust and unreasonable practices under section 201(b).<sup>12</sup>

A. Calculating the Rate

7. Understanding how NOS and ANI calculate their charges is central to any discussion of whether the companies have unjustly and unreasonably marketed their services. Although the companies assert that calculation is not difficult, we disagree, finding the process both complicated and confusing.<sup>13</sup>

8. To illustrate, we borrow from materials that ANI provided to a customer. The example concerns a nine-minute, interstate call at 14.9 cents per call unit.<sup>14</sup> The first step in calculating total charges under the call unit rate structure is to identify the call duration in seconds. A nine-minute call equals 540 seconds (9 x 60). Next, to determine the usage charges, the minimum call unit (MCU) and any additional call unit increments (ICUs) must be determined. For interstate calls the MCU is 30 seconds, which is described as being the same as 5 ICUs. Additional ICUs are added in increments of 5 for each additional 30 seconds. Thus, at

<sup>11</sup> 47 U.S.C. § 201(b).

<sup>12</sup> *Business Discount Plan, Inc.*, Order of Forfeiture, 15 FCC Rcd 14461 (2000) ("BDP"), recon. granted in part and denied in part, FCC 00-424 (2000); *AT&T Corp.*, 71 RR2d 775 (1992); *Telecommunications Research and Action Center and Consumer Action*, 4 FCC Rcd 2157 (Com.Car.Bur. 1989); see also *Joint FCC/FTC Policy Statement For the Advertising of Dial-Around And Other Long-Distance Services To Consumers*, 15 FCC Rcd 8654 (2000).

<sup>13</sup> This opinion is reflected in many of the consumer complaints received by the Commission. One complainant writes: "It took me about 2 hours to simplify their 'magic formula' (I am a software engineer with a strong math background). I didn't like it, because it looked to me as a good way for confusing and cheating customers." Informal Complaint No. 00-G372, filed May 24, 2000. Another complainant writes that NOS's call unit rate structure "turns out to be a convoluted formula constructed to gouge customers." Informal Complaint No. G2000017422, filed February 23, 2000. Another writes, "[T]he Total Calling Unit, which doesn't easily translate to cost per minute charges but serves to confuse the customer into thinking that costs are less than they are." Informal Complaint No. P13117, filed March 20, 2000. Still, another complains: "Upon review we noticed we were not being billed in minutes, but in 'TCU's'. What's that? Who can calculate it?" Informal Complaint No. G2000009309, filed December 8, 1999.

<sup>14</sup> Although NOS and ANI represent that they widely disseminate documents similar to this one to customers and prospective customers, they have requested that we afford confidential treatment to those they have submitted in response to our requests. See *supra*, footnote 3. Since we obtained this document not from NOS or ANI, but from a consumer complaint file, the companies' request for confidentiality does not pertain to this document. See Informal Complaint No. G2000007824, filed November 26, 1999.

14.9 cents, the MCU equals \$0.745 ( $\$0.149 \times 5$  ICUs).<sup>15</sup> After adjusting for the 30-second MCU (540 seconds – 30 seconds), the remaining seconds are divided by 30 seconds to determine the additional ICUs ( $510 \text{ seconds} \div 30 \text{ seconds} = 17$ ). At 14.9 cents, the additional ICUs equal \$12.665 ( $\$0.149 \times 5$  ICUs  $\times 17$  or  $\$0.149 \times 85$  ICUs).<sup>16</sup> To determine non-usage charges, the equivalent call units (ECUs), must be determined. ECUs are provided by a table, and are based upon call duration. For 540 seconds, the table states that the total ECUs are 95. At 14.9 cents, the ECUs equal \$14.155 ( $\$0.149 \times 95$ ).<sup>17</sup> The sum of the charges for the MCU, ICUs, and ECUs equal \$27.565.<sup>18</sup> This amount is then rounded to \$27.6 and divided by 10 to get the final bill amount ( $\$27.6 \div 10 = \$2.76$ ).<sup>19</sup> If we take this example one step further and divide the total charge of \$2.76 by 9 minutes (the duration of the call), the result is an actual per call rate of 30.6 cents per minute, as compared to 14.9 cents per call unit.

9. We believe the foregoing example demonstrates the complexity of the call unit pricing methodology, which employs MCUs, ICUs, and ECUs to determine usage and non-usage charges. To determine the total charge of a call under call unit based rates, the customer must have detailed information regarding each of the aforementioned call unit components, as well as instructions on conversion calculation.<sup>20</sup> Based upon the foregoing, NOS's and ANI's use of the call unit rate structure would almost certainly be misleading to consumers in the absence of clear and conspicuous disclosure regarding the nature and components of the rate structure, as well as clear and conspicuous disclosure on how to calculate the total cost of a call.

#### B. Plan Disclosures

<sup>15</sup> The example states "5 ICUs/1 MCU = \$0.0754." It appears that the sum of the product has been divided by 10 and that certain numbers have been transposed in error, as  $\$0.149 \times 5$  ICUs equals \$0.745 and not \$0.0754.

<sup>16</sup> The example states "85 ICUs = \$1.2665." Again, the sum of the product appears to have been divided by 10 to arrive at \$1.2665, instead of \$12.665.

<sup>17</sup> The example states "95 ECUs = \$1.4155." Once again, the sum of the product appears to have been divided by 10 to arrive at \$1.4155, instead of \$14.155.

<sup>18</sup> The example states that the sum of the charges ( $\$0.0754 + \$1.2665 + \$1.4155$ ) equals \$2.7574.

<sup>19</sup> We divided by 10 to bring our calculation in conformity with the example.

<sup>20</sup> NOS's and ANI's customer invoices detail the duration of each call, not in minutes, but in total call units. From the foregoing example, the call duration in minutes is a necessary component for performing the conversion calculation. Thus, without the call duration in minutes, the customer is unable to perform the conversion calculation and unable to verify the accuracy of the amount, or determine the cent per minute rate, being billed per call. One complainant writes that "[s]ince the invoice does not indicate the amount of time utilized on each call it is not possible to calculate the precise charge." Informal Complaint No. P-16219, filed April 10, 2000. Yet another complains that "[t]he billing was not understandable in a clear and simple manner because it was based on 'call units', and not minutes." Informal Complaint No. P-20826, filed June 6, 2000.

10. Until recently,<sup>21</sup> NOS and ANI used promotional plan offerings as their primary vehicle for marketing their communication services to customers. These promotional plan offerings were not expressly denominated as promotional, however. The companies marketed and sold these plans in terms of cents per minute. Then, following the second billing period, the companies calculated the charges based on the call unit rate structure. According to NOS and ANI, the companies calculated the cents-per-minute rate by waiving non-usage charges for peak domestic calls during the first two invoices. After the second invoice, non-usage charges did apply.

11. We believe that consumers would likely view the limited duration of NOS's and ANI's promotional rates as significant qualifications. NOS's and ANI's promotional plan offerings, although marketed in cents per minute, are really equal to a call unit based rate with non-usage charges waived for the first two invoices only. As can be seen from the example of the 9-minute, interstate call, non-usage charges make up a significant portion of the total cost of a call (almost half, in the example). Thus, the application of non-usage charges to a call after a customer's second invoice could result in double the cost of that call as compared to a similar call made during the promotional period. Therefore, although NOS and ANI clearly disclosed the cents-per-minute rate, we must determine whether they clearly and conspicuously disclosed the limited duration of that rate and the rates to be charged thereafter.

a. "Rate Sheet"

12. During sales calls, NOS and ANI appear to have faxed prospective customers a "rate sheet" which sets forth the companies' rates and plan offerings. The rate sheet states the rate in cents per minute in bold letters at the very top of the page.<sup>22</sup> Nowhere does the rate sheet expressly state that the advertised per minute price is a "promotional" or "introductory" rate. Near the bottom of the rate sheet, under a heading entitled "No Contracts or Term Plans," the sheet states that "[s]tandard tariffs on file with the FCC apply to all calls after the first two invoices and, during the first two invoices, to all calls except peak interstate & peak intrastate calls." The rate sheet further states that "[n]on-transport/usage charges apply per carrier's tariff" and that "[p]romotion terms per tariff on file."

13. We believe these purported qualifications on the rates expressly set forth in NOS's and ANI's rate sheets lack clarity and understandability. Rather than provide clear and conspicuous disclosure of the promotional nature of their cents-per-minute offering and of the rates that will apply after that period, the language serves only to obfuscate and to confuse. The language does

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<sup>21</sup> We are continuing to review NOS's and ANI's current plan offerings for compliance with section 201(b) and will not hesitate to take further action if deemed necessary.

<sup>22</sup> Although NOS and ANI represent that they widely disseminate documents similar to this one to customers and prospective customers, they have requested that we afford confidential treatment to the ones they have submitted in response to our requests. *See supra*, footnote 3. Since we obtained this document not from the companies, but from a consumer complaint file, their request for confidentiality does not pertain to this document. *See* Informal Complaint No. G2000014881, filed February 1, 2000.

not clearly indicate to the consumer that the advertised cent-per-minute rates are of limited duration, particularly given the unrelated heading. We believe that a reasonable consumer would not gather that the quoted rates are promotional.

14. Additionally, we believe the reasonable consumer would not understand that the companies would use anything other than the widely used and understood cents-per-minute pricing methodology. First, there is no clear language on the rate sheets indicating otherwise. Second, the only quoted rates are set forth in cents per minute. Third, only vague references regarding the call unit rate structure are provided. While the term "non-transport/non-usage charges" is used, it is not defined or explained. In short, nothing in the rate sheets notify the customer that the call unit pricing methodology would be used after the undefined promotion, or what that pricing methodology entails.<sup>23</sup>

15. In light of the foregoing, and our review of the confidential materials submitted by the companies, we believe that the rate sheets distributed by NOS and ANI mislead consumers about the fact that the quoted rate is a promotional rate, fail to inform consumers that a different pricing plan will apply after that period, and fail to inform consumers how the non-promotional pricing plan will operate.<sup>24</sup> Therefore, by widely distributing the rate sheet to consumers in the marketing of its long distance plans, we find that NOS and ANI have apparently engaged in unjust or unreasonable marketing practices in violation of section 201(b) of the Act.

b. Letters of Agency (LOAs)

16. NOS and ANI fax what they refer to as an LOA to prospective customers together with the rate sheet.<sup>25</sup> The ostensible purpose of this document is to secure the customer's written consent to have its interexchange carrier switched to NOS or ANI. However, the document contains additional information beyond what is allowed by our LOA rules.<sup>26</sup> Therefore, as an LOA, the document is invalid.<sup>27</sup> A valid LOA may contain only certain authorizing language as

<sup>23</sup> In other examples of the rate sheet submitted by NOS and ANI, the purportedly limiting or qualifying information directs the consumer to a "Welcome Package" for additional information. We believe that the fact that additional information might be available elsewhere is insufficient to form the required disclosure.

<sup>24</sup> The materials submitted by NOS and ANI under a confidentiality request include additional rate sheets. Those rate sheets appear similarly to mislead consumers.

<sup>25</sup> Although NOS and ANI represent that they widely disseminate documents similar to this one to customers and prospective customers, they have requested that we afford confidential treatment to the ones they have submitted in response to our requests. See *supra*, footnote 3. Since we obtained this document, not from the companies, but from a consumer complaint file, their request for confidentiality does not pertain to this document. See Informal Complaint No. G2000016321, filed February 1, 2000.

<sup>26</sup> 47 CFR § 64.1160.

<sup>27</sup> *Id.* at (a).

set forth in our rules.<sup>28</sup> While we do not mean to suggest that a carrier may cure a misrepresentation that violates section 201(b) with a violation of our LOA rules, we reviewed the document to see if NOS and ANI made any attempts to clarify the terms of their promotional plan offering and the nature of their rate structure for the consumer. The document states, near the end of a fairly lengthy paragraph, that "[s]tandard tariff rates on file with the FCC and state commissions apply to all calls." It also states that "[n]on-usage charges apply per carrier's tariff," and that "[p]romotion terms per tariff on file." This language suffers from the same lack of clarity and understandability as the rate sheets. Further, the language does not alert the consumer that anything other than the cents-per-minute pricing methodology is applicable, and makes only vague references to the call unit rate structure. Here again, the term "non-usage charges" is used, but not defined or explained. Thus, as with the rate sheet, the language does not provide the consumer with enough information to determine total per call charges after the expiration of the promotional period.<sup>29</sup>

### C. Forfeiture Authority

17. Section 503(b)(1) of the Act states that any person that willfully or repeatedly fails to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.<sup>30</sup> Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$100,000 for each violation, or each day of a continuing violation, up to a statutory maximum of \$1,000,000 for a single act or failure to act.<sup>31</sup> In determining the appropriate forfeiture amount, we consider the factors enumerated in section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent and

<sup>28</sup> *Id.* at (b).

<sup>29</sup> We also find that NOS and ANI did not cure the apparent violations of section 201(b) by verbal disclosures. Although NOS and ANI, in their Response, allege that sales representatives make required verbal disclosures during telemarketing calls that the pricing offered is in cents per call unit, such disclosures appear only relevant to the companies' current plan offerings, which do not include a cents-per-minute rate. Additionally, consumer complaints further suggest that verbal disclosures did not cure the apparent defects. *See e.g.* Informal Complaint No. G2000009619, filed December 19, 1999 ("I do not recall ever being told by anyone at ANI that this was a promotional rate, which would last for 2 months only. . . I also do not recall anyone telling me about ANI's policy of automatically converting 'minutes' to 'total call units' (TCU's) on the third month."); Informal Complaint No. G2000010809, filed December 8, 1999 ("My decision to switch to ANI was based on their advertised rate. This was further supported during phone conversations. . . during which the 7.9 cents per minute rate was confirmed. . ."); and Informal Complaint No. G2000006122, filed November 17, 1999 ("From my first conversation with NOS, the cost per minute for long-distance has been discussed. . . Always I received a response with no correction as to the 'per minute' term.").

<sup>30</sup> 47 U.S.C. §503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(2).

<sup>31</sup> 47 U.S.C. § 503(b)(2)(B); *see also* 47 C.F.R. § 1.80(b)(2) (*Amendment of Section 1.80 of the Commission's Rules*, Order, 12 FCC Rcd 1038 (1997)(inflation adjustment to \$100,000/\$1,100,000); *Amendment of Section 1.80(b) of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18,221 (2000)(inflation adjustment to \$120,000/\$1,200,000)).



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."

18. NOS's and ANI's failure to make clear and conspicuous disclosures in their rate sheets appear to demonstrate conscious disregard for section 201(b)'s prohibition against unfair and unreasonable marketing practices. The rate sheets support a conclusion that the companies intentionally employed "bait and switch" marketing techniques and withheld information regarding their promotional offerings and call unit rate structure from consumers. And the number of consumer complaints filed with the FCC against NOS and ANI, along with the number of complaints and service cancellations reported by the companies, further suggest widespread consumer confusion.

19. Each rate sheet sent to consumers constitutes a separate violation of section 201(b). In *Business Discount Plan, Inc.*,<sup>32</sup> the Commission assessed a forfeiture amount of \$40,000 for each instance in which the carrier engaged in an unjust and unreasonable telemarketing practice in violation of section 201(b). In light of the *BDP* precedent, and weighing the facts before us, we find that a total forfeiture amount of \$500,000 per company is appropriate. Although a straightforward application of a \$40,000 base forfeiture amount would likely produce a proposed forfeiture in the millions of dollars, we believe that a forfeiture of \$500,000 per company is sufficient to protect the interests of consumers and to deter future violations of the Act.<sup>33</sup> In the event the companies continue to violate section 201(b)'s prohibition against unjust and unreasonable marketing practices, such violations could result in future NALs proposing substantially greater forfeitures, or could result in issuance of a show cause order to revoke their operating authority.<sup>34</sup> NOS and ANI shall have the opportunity to submit facts and arguments in response to this NAL to show that no forfeiture should be imposed or that some lesser amount should be assessed.

#### IV. CONCLUSION AND ORDERING CLAUSES

20. We have determined that NOS and ANI have apparently violated section 201(b) of the Act and the Commission's rules and orders as identified above. We have further determined NOS Communications, Inc. and Affinity Network Incorporated are apparently liable for forfeitures in the amount of \$500,000 each.

21. Accordingly, IT IS ORDERED, pursuant to section 503(b) of the Act, as amended, 47 U.S.C. § 503(b)(5), section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that NOS Communications, Inc. and Affinity Network Incorporated ARE HEREBY NOTIFIED of an

<sup>32</sup> 15 FCC Rcd 14461 at 14471-72.

<sup>33</sup> The total volume of rate sheets submitted by the companies appears to number in the hundreds. At the total proposed forfeiture amount of \$500,000 per company, this would equal just 12.5 violations per company if the Commission were to impose a forfeiture of \$40,000 per violation.

<sup>34</sup> See *CCN, Inc. et al.*, 12 FCC Rcd 8547 (1997).

Apparent Liability for Forfeiture in the amount of \$500,000 each, for willful or repeated violations of section 201(b) of the Act and the Commission's rules and orders in the paragraphs described above.

22. IT IS FURTHER ORDERED, pursuant to section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that within thirty (30) days of the release of this Notice, NOS Communications, Inc. and Affinity Network Incorporated SHALL PAY the full amount of the proposed forfeiture OR SHALL FILE a response showing why the proposed forfeiture should not be imposed or should be reduced.<sup>35</sup>

23. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability SHALL BE SENT by Certified Mail/Return Receipt Requested to:

NOS Communications, Inc.  
4380 Boulder Highway  
Las Vegas, NV 89121

Affinity Network, Inc.  
3660 Wilshire Boulevard, Suite 400  
Los Angeles, CA 90010

FEDERAL COMMUNICATIONS COMMISSION

<sup>35</sup> Payment of the forfeiture amount may be made by mailing a check or similar instrument payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the "NAL/ Acct. No." referenced above. The response, if any, must be mailed to Catherine W. Seidel, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street S.W., Room 3-C365, Washington, D.C., 20554, and must include the "NAL/Acct. No." referenced above.

Magalie Roman Salas  
Secretary