

NOS/ANI is warranted and, if so, the amount of the forfeiture.

**DATES:** Effective April 21, 2003.

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**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's document regarding EB Docket No. 03-96, released on April 7, 2003. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW., CY-A257, Washington, DC, 20554, and also may be purchased from the Commission's copy contractor, Qualex International, 445 12th SW., CY-B402, Washington, DC, 20554, (202) 863-2893. It is also available on the Commission's Web site at [http://www.fcc.gov/Daily\\_Releases/Daily\\_Business/2003/db0407/FCC-03-68A1.pdf](http://www.fcc.gov/Daily_Releases/Daily_Business/2003/db0407/FCC-03-68A1.pdf).

## Synopsis

### A. Background

1. NOS/ANI are switchless resellers of MCI long distance service. Their customers are primarily small and medium-sized companies. NOS/ANI operates as a common carrier subject to Title II of the Communications Act of 1934, as amended (the "Act"). Specifically, NOS/ANI currently provides or has provided resale interstate long distance telecommunications services to consumers in numerous states. Under the regulatory scheme established by the Act and the Commission's rules, NOS/ANI is classified as a nondominant interexchange carrier. As such, it is considered to have "blanket" authority to operate domestic common carrier facilities within the meaning of section 214 of the Act.

2. It appears that NOS/ANI may have willfully or repeatedly violated sections 201(b) of the Act, by conducting a misleading marketing campaign (the "Winback Campaign") apparently designed to improperly induce former customers into authorizing switches back to NOS/ANI. These improper inducements apparently included the Companies contacting their former customers and describing "problems" that the customers' chosen carriers were allegedly having in completing the customers' requests to establish new service. NOS/ANI apparently threatened their former customers with loss of service unless they agreed to retain NOS/ANI services as a "temporary measure." Under coercion, some of these customers signed Letters of

Agency ("LOAs") that authorized the Companies to be their preferred carriers, believing that doing so was necessary to keep receiving service while their new preferred carriers completed their switches. The representations of NOS/ANI to their former customers appear to be knowingly false. In reality, the consumers had already been switched to their new preferred carriers and the Companies' marketing campaign was an apparently misleading scheme to trick consumers into returning to the Companies' services.

3. The Enforcement Bureau (the "Bureau") initiated this investigation against NOS/ANI after receiving information about the Companies' marketing campaign from Mr. Robert Faulkner, a former NOS/ANI employee. Based upon the information provided by Mr. Faulkner, the Bureau contacted numerous consumers to investigate the allegations. All of the consumers who form the basis of this Order have signed declarations under penalty of perjury stating that NOS/ANI contacted them after they switched to new carriers and told them that their new carriers had not picked up all of their lines, and that as result, their lines were still billing with NOS/ANI. The consumers also state that they were threatened with service disruption if they did not sign new LOAs, which they were told were temporary, but necessary to keep their service running. Some of the consumers were induced into signing the LOAs with the assurance that it was only temporary, while others refused to sign.

4. The Companies' Winback Campaign apparently began in December 2001. As alleged by the consumers, and reflected in audiotapes, the conversations between consumers and NOS/ANI representatives followed a similar script, during which NOS/ANI apparently made numerous false representations to the consumers to induce them to switch their services back to NOS/ANI. NOS/ANI representatives also represented to these consumers that their lines were still billing with the Companies because their new carrier had not yet switched over the services. During the calls made in this marketing campaign, NOS/ANI representatives also advised the consumers that they needed to execute new LOAs until the consumers' new carriers picked up their lines, to ensure continuity of service. Consumers were incorrectly informed that once they signed an LOA with another company to switch their services from NOS/ANI, even though their lines were still being billed by NOS/ANI, NOS/ANI did not "have authorization to carry the traffic anymore." NOS/ANI representatives

apparently told consumers that once they signed the Companies' allegedly standard, FCC-approved LOA, with a notation to "See attached addendum," the consumers' service would continue, and all ties with NOS/ANI would be severed as soon as the new carriers picked up their lines.

5. The apparent pattern of these conversations NOS/ANI had with former customers bears a remarkable similarity to a "Winback Script" provided by Mr. Faulkner, who attested that the Companies originated the script in December 2001, with top management handing down the script to branch managers and sales representatives in the Winback/Quality Assurance Department. Under the script, the LOA is described as providing temporary authority for NOS/ANI to keep their former customers' service running "til the new carrier picks them up."

### B. Discussion

6. The consumer complaints and information from a former company executive all suggest a continuous telemarketing campaign, apparently intended for the sole purpose of tricking and threatening former customers into signing new LOAs to switch their services back to NOS/ANI. This practice depicts a callous disregard for the requirements of the Communications Act and section 201(b) in particular. Section 201(b) of the Act, states, in pertinent part, that "[a]ll charges, practices, 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." Based upon our review of the evidence before us, we find that NOS/ANI's apparent telemarketing campaign evidences apparently willful or repeated violations of section 201(b) of the Act. The Companies' apparent Winback Campaign involving misleading representations to consumers regarding the switch status of their services and threats of service disruption to scare consumers into signing LOAs appears to constitute an "unjust and unreasonable practice" within the meaning of section 201(b).

7. Further, there is nothing in the Act or in our rules which supports NOS/ANI's statements to consumers that NOS/ANI would lose authority to carry a consumer's lines once the consumer signs a new LOA with another carrier. In fact, this interpretation of our rules would provide absurd results, as it often is the case that a preferred carrier