

change is not executed until days after the consumer has requested the change and the request has been submitted to the local carrier and executed. Under NOS/ANI's theory, every carrier would be providing service without authorization if it did not immediately obtain "transitional" or "temporary" LOAs from consumers switching from their service to another carrier the moment those consumers requested the change or signed new LOAs with the other carriers. Further, administration in such an event would be nearly impossible, as most consumers do not even contact the old carrier when requesting a change to a different carrier. They simply give authorization to the new carrier. Given that carriers are only notified of lost accounts from the local carriers after the switches have been complete, the old carriers would have no way of knowing from whom to request these temporary LOAs.

8. It necessarily follows, therefore, that an old carrier loses authorization when the carrier change has been completed, and not when the consumer signs a new LOA or otherwise requests a carrier change. That said, NOS/ANI's statements to consumers that new LOAs are needed because consumers' new carriers did not pick up all of their lines are apparently false and misleading and not based upon any reasonable interpretation of the Act or our rules. In the unlikely event that a new carrier does not pick up all of a consumer's lines, NOS/ANI would continue to be the authorized carrier until the lines were switched over notwithstanding the Companies' dubious policy against partial accounts.

9. It appears that NOS/ANI engaged in an unjust and unreasonable marketing practice in apparent violation of the Act. It thus appears that the continued operation of NOS/ANI as a common carrier may not serve the public convenience and necessity within the meaning of section 214 of the Act. We therefore direct the ALJ to determine whether the NOS/ANI blanket section 214 authorization should be revoked. Further, in light of the egregious nature of NOS/ANI's apparently unlawful activities, we direct the ALJ to determine whether specific Commission authorization should be required for NOS/ANI, or the principal or principals of NOS/ANI, to provide any interstate common carrier services in the future.

C. Conclusion

10. In light of the totality of the information now before us, an evidentiary hearing is warranted to determine whether the continued operation of NOS/ANI as a common

carrier would serve the public convenience and necessity within the meaning of section 214 of the Act. Further, due to the egregious nature of NOS/ANI's apparently unlawful activities, NOS/ANI will be required to show cause why an order to cease and desist from the provision of any interstate common carrier services without the prior consent of the Commission should not be issued. In addition, consistent with our practice in revocation proceedings, the hearing will also address whether a forfeiture should be levied against NOS/ANI for willful and repeated violation of section 201(b) of the Act.

Ordering Clauses

11. Pursuant to sections 4(i) and 214 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 214, the principal or principals of NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership *are directed to show cause* why the operating authority bestowed on NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership pursuant to section 214 of the Communications Act of 1934, as amended, should not be revoked.

12. Pursuant to section 312(b) of the Communications Act of 1934, as amended, 47 U.S.C. 312(b), the principal or principals of NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership *are directed to show cause* why an order directing them to cease and desist from the provision of any interstate common carrier services without the prior consent of the Commission should not be issued.

13. The hearing shall be held at a time and location to be specified by the Chief Administrative Law Judge in a subsequent order. The ALJ shall apply the conclusions of law set forth in this Order to the findings that he makes in that hearing, upon the following issues:

(a) To determine whether NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership engaged in a misleading and continuous telemarketing campaign in apparent willful and repeated violation of section 201(b) of the Act's prohibition against unjust and unreasonable practices;

(b) To determine, in light of all the foregoing, whether NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership authorization pursuant to section 214 of the Act to operate as common carriers should be revoked;

(c) To determine whether, in light of all the foregoing, NOS Communications,

Inc., Affinity Network Incorporated, and NOSVA Limited Partnership and/or their principals should be ordered to cease and desist from the provision of any interstate common carrier services without the prior consent of the Commission.

14. The Chief, Enforcement Bureau, shall be a party to the designated hearing. Pursuant to section 312(d) of the Communications Act of 1934, as amended, both the burden of proceeding and the burden of proof shall be upon the Enforcement Bureau as to issues (a) through (c) inclusive.

15. To avail themselves of the opportunity to be heard, the principal or principals of NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership, pursuant to section 1.91(c) of the Commission's rules, *shall file* with the Commission within 30 days of the mailing of this Order to Show Cause and Notice of Opportunity for Hearing a *written appearance* stating that a principal or other legal representative from NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership will appear at the hearing and present evidence on the matters specified in the Show Cause Order. If NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership fail to file a written appearance within the time specified, NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership's right to a hearing *shall be deemed to be waived*. In the event that the right to a hearing is waived, the Presiding Judge, or the Chief, Administrative Law Judge if no Presiding Judge has been designated, *shall terminate* the hearing proceeding as to that entity and *certify* this case to the Commission in the regular course of business, and an appropriate order shall be entered.

16. If it is determined that NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership have willfully or repeatedly violated any provision of the Act or the Commission's rules cited in this Order to Show Cause and Notice of Opportunity for Hearing, it shall be further determined whether an Order for Forfeiture shall be issued pursuant to section 503(b) of the Communications Act of 1934, as amended, for the maximum forfeiture amount of \$120,000 per day for more than ten (10) days up to the statutory maximum of \$1,200,000.

17. This document constitutes a *notice of opportunity for hearing* pursuant to section 503(b)(3)(A) of the Communications Act of 1934, as amended, 47 U.S.C. 503(b)(A), for the