

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
NOS COMMUNICATIONS, INC.	)	File No. EB-05-TC-055
	)	
Compliance with the Commission's	)	NAL/Acct. No. 200832170004
Rules and Regulations Governing	)	FRN: 0004321006
the National Do-Not-Call Registry	)	
	)	
	)	

**ORDER**

**Adopted: November 7, 2007**

**Released: November 9, 2007**

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau of the Federal Communications Commission ("FCC" or "Commission") and NOS Communications, Inc. ("NOS").<sup>1</sup> The Consent Decree terminates an investigation initiated by the Enforcement Bureau regarding potential non-compliance by NOS with the National Do-Not-Call Requirements contained in Section 227 of the Communications Act of 1934, as amended (the "Act") and Section 64.1200 of the Commission's rules.<sup>2</sup>

2. The Enforcement Bureau and NOS have negotiated the terms of a Consent Decree that would resolve this matter and terminate the investigation. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. Accordingly, **IT IS ORDERED**, pursuant to Section 4(i) of the Communications Act of

<sup>1</sup> NOS Communications, Inc. is a Maryland Corporation that provides local and long distance telephone service, including international and calling card services, to both business and residential customers throughout the United States. NOS also conducts business under other names, including: International Plus, 011 Communications, INETBA, iVantage Network Solutions, and Blue Ridge Telecom Systems. Mr. Joseph Koppy serves as the company's Chief Executive Officer. The headquarters for NOS Communications, Inc. is located at 4380 Boulder Highway, Las Vegas, Nevada 89121.

<sup>2</sup> 47 U.S.C. § 227; 47 C.F.R. § 64.1200.

1934, as amended,<sup>3</sup> and the authority delegated by sections 0.111 and 0.311 of the Commission's rules,<sup>4</sup> that the attached Consent Decree **IS ADOPTED**.

5. NOS shall make its voluntary contribution to the United States Treasury by mailing payment by check or money order to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 358340, Pittsburgh, Pennsylvania 15251. Payment by overnight mail may be sent to Mellon Client Service Center, 500 Ross Street, Room 670, Pittsburgh, Pennsylvania 15262-0001, Attn: FCC Module Supervisor. Payment by wire transfer may be made to: ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6229. Include your NAL/Acct. No. with your wire transfer remittance.

6. **IT IS FURTHER ORDERED** that the above-captioned Commission investigation into the matters described herein is terminated.

FEDERAL COMMUNICATIONS COMMISSION

Kris A. Monteith  
Chief, Enforcement Bureau

---

<sup>3</sup> 47 U.S.C. § 154(i).

<sup>4</sup> 47 C.F.R. §§ 0.111, 0.311.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of )
)
)
NOS COMMUNICATIONS, INC. ) File No. EB-05-TC-055
)
)
Compliance with the Commission's ) NAL/Acct. No. 200832170004
Rules and Regulations Governing ) FRN: 0004321006
the National Do-Not-Call Registry )
)

CONSENT DECREE

I. INTRODUCTION

1. The Enforcement Bureau ("Bureau") of the Federal Communications Commission (the "FCC" or "Commission") and NOS Communications, Inc. ("NOS"),<sup>1</sup> by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation into possible noncompliance by NOS with the requirements of Section 227 of the Communications Act of 1934, as amended (the "Act") and Section 64.1200(c) of the Commission's Rules.<sup>2</sup>

2. The Telephone Consumer Protection Act ("TCPA") was enacted in 1991 as Section 227 of the Communications Act of 1934, as amended ("the Act"), to restrict certain telemarketing practices. The TCPA requires the Commission to adopt rules governing such practices, including the delivery of telephone solicitations to residential telephone lines.<sup>3</sup> Consistent with this statutory mandate, the Commission first adopted rules to implement the TCPA in 1992, establishing a company-specific do-not-call regime whereby residential telephone consumers may register do-not-call requests to companies

<sup>1</sup> NOS Communications, Inc. is a Maryland Corporation that provides local and long distance telephone service, including international and calling card services, to both business and residential customers throughout the United States. NOS also conducts business under other names, including: International Plus, 011 Communications, INETBA, iVantage Network Solutions, and Blue Ridge Telecom Systems. Mr. Joseph Koppy serves as the company's Chief Executive Officer. The headquarters for NOS Communications, Inc. is located at 4380 Boulder Highway, Las Vegas, Nevada 89121.

<sup>2</sup> 47 U.S.C. § 227; 47 C.F.R. § 64.1200(c).

<sup>3</sup> Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), codified at 47 U.S.C. § 227. The TCPA amended Title II of the Communications Act of 1934, 47 U.S.C. § 201 et seq. Section 227(c)(1) requires the Commission to conduct a rulemaking proceeding "concerning the need to protect residential telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object."

whose telephone solicitations they do not want to receive.<sup>4</sup> Following considerable changes in the telemarketing industry,<sup>5</sup> and further statutory requirements,<sup>6</sup> the FCC amended its TCPA rules in 2003.<sup>7</sup> While retaining the company-specific do-not-call option to prevent telemarketing calls from particular entities, the amended rules, *inter alia*, expand this system to establish a National Do-Not-Call Registry that provides residential consumers with a one-step option to prohibit unwanted telephone solicitations.

## II. BACKGROUND

3. NOS is a nationwide telecommunications service provider offering domestic and international voice services to businesses, residential customers, and other carriers.<sup>8</sup> NOS provides all of its services by reselling services of other telecommunications carriers. NOS holds authorizations to provide telecommunications services from both the FCC and state public utility commissions. As a matter of company policy, NOS authorizes telemarketing to potential customers directly through both an in-house marketing staff and outside third party telemarketing companies.<sup>9</sup> In November 2003, NOS hired a third party telemarketing company, Beyond Media Ventures, to conduct telemarketing on its behalf, which in turn, subcontracted its call center function to an affiliated outsource provider of telemarketing services, Ameco Tech, in Cairo, Egypt.<sup>10</sup> In July, NOS terminated its contract with Beyond Media Ventures. Since that time, NOS has maintained only a small, in-house telemarketing operation focused primarily on offering facilities-based, carrier-to-carrier wholesale service.<sup>11</sup>

---

<sup>4</sup> See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 7 FCC Rcd 8752 (1992) (*1992 TCPA Order*); see also 47 C.F.R. § 64.1200. Pursuant to petitions for reconsideration, the Commission adopted amendments to the TCPA rules in 1995 and 1997. *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Memorandum Opinion and Order, 10 FCC Rcd 12391 (1995) (*1995 TCPA Reconsideration Order*); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Order on Further Reconsideration, 12 FCC Rcd 4609 (1997) (*1997 TCPA Reconsideration Order*).

<sup>5</sup> See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014, 14021-22 (2003) (*2003 TCPA Order*) (describing expansion of telemarketing industry since 1992).

<sup>6</sup> Do-Not-Call Implementation Act, Pub. L. No. 108-10, 117 Stat. 557 (2003), *codified at* 15 U.S.C. § 6101 (*Do-Not-Call Act*). The Do-Not-Call Act, *inter alia*, directs the FCC to adopt rules that maximize consistency with those of the Federal Trade Commission (“FTC”). In 2003, the FTC had also amended its telemarketing rule, 16 C.F.R. § 310 *et seq.*, to include a National Do-Not-Call Registry.

<sup>7</sup> *2003 TCPA Order*, 18 FCC Rcd at 14014.

<sup>8</sup> Letter from Danny E. Adams and Joseph Price, Counsel for NOS Communications, Inc., to Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, dated May 15, 2006 (“NOS’ May 15, 2006 Response”), attachment at 2-6.

<sup>9</sup> NOS’ May 15, 2006 Response,” attachment at 3-6.

<sup>10</sup> NOS’ May 15, 2006 Response at 2, and attachment at 3-4. Neither NOS, or its affiliated companies, nor its officers, directors or shareholders, have any ownership or other interest in either BMV or Ameco Tech.

<sup>11</sup> NOS’ May 15, 2006 Response, attachment at 3-6.

4. In a letter of inquiry (“LOI”) to NOS dated March 8, 2006, the Bureau commenced an investigation concerning NOS’ telemarketing practices to residential consumers in connection with calls reportedly made on behalf of the company to consumers who had registered their telephone numbers on the National Do-Not-Call Registry.<sup>12</sup>

5. During the course of the Investigation, NOS filed written responses to the LOI.<sup>13</sup> NOS represents that it had developed and implemented an internal system consistent with the TCPA designed to ensure that no telemarketing calls would be placed to consumers who had placed their names on the National Do-Not-Call Registry, and it submitted a description of its internal system and procedures for implementing the National Do-Not-Call requirements. Further, NOS established that it had paid for and properly accessed the National Do-Not-Call Registry database as soon as it became available.

### III. DEFINITIONS

6. For purposes of this Consent Decree, the following definitions shall apply:
- a. “Act” means the Communications Act of 1934, as amended.
  - b. “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
  - c. “Commission” means the Federal Communications Commission.
  - d. “Effective date” means the date on which the Bureau releases the Adopting Order.
  - e. “Inbound marketing” means marketing performed during inbound calls received by employees of NOS or Third Party Telemarketing Companies for the purpose of encouraging the purchase, or rental of, or investment in, property, goods, or services.
  - f. “Investigation” means this investigation and any related proceedings commenced by the Bureau’s Letter of Inquiry, dated March 8, 2006, to NOS regarding possible noncompliance by NOS with the requirements contained in Section 227 of the Act and Section 64.1200(c) of the Commission’s Rules during the period of May 2005 through November 2005, which shall include, for purposes of this Consent Decree,

---

<sup>12</sup> During the period from May 2005 through November 2005, the Commission and the FTC together received numerous complaints from consumers who allegedly received telephone solicitation calls from NOS. *See* Letter from Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, to NOS Communications, Inc., dated March 8, 2006.

<sup>13</sup> Letter from Danny E. Adams and Joseph Price, Counsel for NOS Communications, Inc., to Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, dated May 15, 2006; Letter from Danny E. Adams and Joseph Price, Counsel for NOS Communications, Inc., to Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, dated July 11, 2006; Letter from Danny E. Adams and Joseph Price, Counsel for NOS Communications, Inc., to Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, dated September 6, 2006.

all complaints that were or could have been made against NOS for telemarketing calls made during the same period.

- g. “Order” or “Adopting Order” means an Order of the Bureau adopting the terms and conditions of this Consent Decree without change, addition, or modification, and formally terminating the above-captioned Investigation.
- h. “Parties” means NOS and the Bureau.
- i. “NOS” means NOS Communications, Inc. and any telecommunications carrier subsidiary, successor, or telecommunications carrier controlled by NOS Communications, Inc.
- j. “Telemarketing” means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.<sup>14</sup>
- k. “Telephone solicitation”<sup>15</sup> means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message:
  - i. To any person with that person’s prior express invitation or permission;<sup>16</sup>
  - ii. To any person with whom the caller has an established business relationship<sup>17</sup>; or
  - iii. By or on behalf of a tax-exempt nonprofit organization.<sup>18</sup>

---

<sup>14</sup> 47 U.S.C § 227(a)(3); *see also* 47 C.F.R. § 64.1200(f)(10).

<sup>15</sup> 47 U.S.C § 227(a)(3); *see also* 47 C.F.R. § 64.1200(f)(12).

<sup>16</sup> Section 64.1200(c)(2)(ii) of the Commission’s rules requires that prior express invitation or permission “must be evidenced by a signed, written agreement between the consumer and seller which states that the consumer agrees to be contacted by this seller and includes the telephone number to which the calls may be placed.” 47 C.F.R. § 64.1200(c)(2)(ii).

<sup>17</sup> For do-not-call purposes, the term “established business relationship” means “a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber’s purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber’s inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, which relationship has not been previously terminated by either party.” 47 C.F.R. § 64.1200(f)(4).

<sup>18</sup> 47 U.S.C § 227(a)(3).

- k. "Third Party Telemarketing Company" means any third party telemarketing company employed by, or otherwise engaged on behalf of, NOS, to conduct outbound telemarketing on NOS' behalf, including outside call center vendors handling internal call center operations that conduct telemarketing campaigns on NOS' behalf.

#### IV. AGREEMENT

7. NOS agrees that the Bureau, by delegated authority of the Commission,<sup>19</sup> has jurisdiction over it and the subject matter contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

8. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement of the Investigation between NOS and the Bureau. In express reliance on the covenants and representations contained herein, the Bureau agrees to terminate the Investigation. In consideration for the termination of this Investigation and in accordance with the terms of this Consent Decree, NOS agrees to the terms, conditions and procedures contained herein.

9. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance by NOS with the requirements of the Act or the Commission's rules or orders. The Parties agree that this Consent Decree is for settlement purposes only, and that by agreeing to this Consent Decree, NOS does not admit or deny any noncompliance, violation, or liability associated with or arising from its actions or omissions involving the Act or the Commission's rules that are the subject of this Consent Decree.

10. In consideration for the termination of the Investigation in accordance with the terms of this Consent Decree, NOS agrees to voluntarily implement a Compliance Program consisting of the components delineated below.

- a. Not later than thirty (30) days after the Effective Date, NOS will adopt written policies and procedures for, at minimum: complying with the requirements of the National Do-Not-Call Registry rules; maintaining NOS' internal Do-Not-Call list; managing outbound telemarketing campaigns; and creating, approving, and distributing to both its in-house marketing staff and Third Party Telemarketing Companies engaged by NOS, lists of potential customers and telephone numbers ("Call Lists"). NOS' written policies and procedures shall be available upon request, and will be memorialized in a Telemarketing Compliance Manual, which will include the following requirements:
  - i. All Call Lists shall be scrubbed against a version of the National Do-Not-Call Registry that has been obtained from the administrator of

---

<sup>19</sup> See 47 C.F.R. §§ 0.111, 0.311.

the Registry not more than thirty-one (31) days prior to the date of any call made on NOS' behalf and a version of NOS' in-house do-not-call list ("NOS Do-Not-Call List") that has been updated by NOS not more than thirty (30) days prior to the date of any call made on NOS' behalf;

- ii. No outbound telemarketing campaign may be initiated on NOS' behalf without prior written authorization from NOS confirming that the Call Lists have been scrubbed against the National Do-Not-Call Registry and the NOS Do-Not-Call List;
  - iii. The Third Party Telemarketing Company shall generate and transmit to NOS on a daily basis compliance reports containing data on all Do-Not-Call complaints and requests received by such vendor; and
  - iv. Each outbound telemarketing campaign shall be monitored for compliance by NOS through the audit procedures described in Para. 10(h), below.
- b. Not later than thirty (30) days after the Effective Date, NOS will commence the training of all employees of NOS involved in telemarketing or inbound marketing and all employees of Third Party Telemarketing Companies involved in telemarketing or inbound marketing on behalf of NOS. NOS will require such employees to acknowledge in writing that they have read, understand, and will abide by the policies and procedures in the Telemarketing Compliance Manual.
- c. Before employees of NOS involved in telemarketing or inbound marketing or employees of Third Party Telemarketing Companies involved in telemarketing or inbound marketing on behalf of NOS make telephone solicitations to residential telephone subscribers, the representative will receive thorough Do-Not-Call training. Such training will include educating the representative concerning federal and state Do-Not-Call rules, including, at a minimum, the requirements of the TCPA and associated federal rules currently in effect and as revised in the future.
- d. Not later than thirty (30) days after the Effective Date, NOS will commence the training of all employees of NOS involved in telemarketing or inbound marketing and all employees of Third Party Telemarketing Companies involved in telemarketing or inbound marketing on behalf of NOS. Not later than sixty (60) days after the Effective Date, NOS will complete the training of all employees of NOS involved in telemarketing or inbound marketing and all employees of Third Party Telemarketing Companies involved in telemarketing or inbound marketing on behalf



of NOS. The training for all such employees will include the following components:

- i. Distribution to employees of written training materials, including but not limited to: NOS' Telemarketing Compliance Manual; a "FAQs" document providing answers to frequently asked questions about the National Do-Not-Call Registry rules and the NOS Do-Not-Call List; flow charts depicting the process employees of NOS involved in telemarketing or inbound marketing and employees of Third Party Telemarketing Companies involved in telemarketing or inbound marketing on behalf of NOS are required to follow when receiving a Do-Not-Call request or complaint; and a copy of NOS' written policy for complying with National Do-Not-Call rules and maintaining the NOS Do-Not-Call List.
  - ii. A training session given by the NOS Do-Not-Call Team (which consists of NOS' Vice President for Customer Care, Systems Administrator, Marketing Manager, and Regulatory Attorney), which will explain NOS' policies and procedures for telemarketing compliance and permit its employees to ask questions about the policies and procedures. NOS will require all employees in attendance to acknowledge in writing that they have attended the training session and understand and will abide by NOS' policies and procedures.
  - iii. NOS will require all new employees involved in telemarketing or inbound marketing and all employees of Third Party Telemarketing Companies involved in telemarketing or inbound marketing on behalf of NOS to complete such training within the first week of employment. NOS will require all such employees to attend refresher training at least once a year.
- e. NOS will develop and implement a certification process for all in-house telemarketing agents and employees of Third Party Telemarketing Companies who perform telemarketing or inbound marketing on behalf of NOS. NOS will require its own principal(s) and principals of Third Party Telemarketing Companies to certify on an annual basis that they acknowledge, understand, and abide by all NOS policies concerning telemarketing. Such principals will also certify that all sales managers, their supervisors, and staff have received copies of all NOS' policies concerning telemarketing within five (5) business days of the certification, and have been trained with respect to NOS' policies.

- f. Not later than thirty (30) days after the Effective Date, NOS will prepare and distribute an Escalation Alert document that will identify the criteria by which NOS will evaluate Third Party Telemarketing Company Reports or Customer Care Reports (see Para. 10(h) below), and, if such criteria are met, will trigger escalation of the report to the next level of telemarketing compliance management. The Escalation Alert document will identify for each level of escalation the NOS manager (and an alternate) to whom such report shall be forwarded and the maximum timeframe within which notification shall be made. The Escalation Alert document will identify a clear path of successive levels of escalation, to ensure that NOS can promptly identify and respond to data indicating a failure or potential failure of telemarketing compliance. The Escalation Alert process will be administered by NOS.
- g. NOS' contracts with Third Party Telemarketing Companies will provide that:
- i. The Third Party Telemarketing Company shall comply with all applicable federal and state telemarketing laws, rules and requirements, including the requirement that the Third Party Telemarketing Company use a process to prevent unauthorized use of the National Do-Not-Call database and refrain from participating in cost-sharing arrangements;
  - ii. The Third Party Telemarketing Company shall comply with NOS' policies and procedures set forth in NOS' Telemarketing Compliance Manual, including the requirement that the Third Party Telemarketing Company maintain and preserve all reports and records required by law, and all supplemental instructions from NOS;
  - iii. The Third Party Telemarketing Company shall transmit to NOS, on a daily basis, reports that identify and provide data for each complaint or request relating to Do-Not-Call and other telemarketing issues ("Third Party Telemarketing Company Reports");
  - iv. The Third Party Telemarketing Company shall not utilize telemarketing equipment that permits a residential phone number database field to be edited without authorization from a management level employee responsible for compliance with applicable federal and state telemarketing laws and requirements; and,
  - v. NOS will take appropriate action in the event that any Third Party Telemarketing Company Report, or any other source, establishes that a Third Party Telemarketing Company has failed to follow its legal

obligations or NOS' policies with respect to the Commission's Do-Not-Call rules. Violation of such legal obligations and NOS' policies shall be grounds for termination of the Third Party Telemarketing Company's contract with NOS.

- h. Not later than sixty (60) days after the Effective Date, NOS will implement procedures to audit compliance with the Commission's Do-Not-Call rules, through the following procedures and additional measures to be determined by NOS:
  - i. Third Party Telemarketing Company Reports. NOS will require its Third Party Telemarketing Companies to provide the NOS Do-Not-Call Team a daily written report containing data for each and every complaint or request relating to do-not-call and other telemarketing issues received by the Third Party Telemarketing Company.
  - ii. Customer Care Reports. NOS will require a management-level employee to provide the NOS Do-Not-Call Team a weekly report containing data for each and every Do-Not-Call complaint and request to be placed on the NOS Do-Not-Call List received by NOS' customer service representatives.
  - iii. Telemarketing Campaign Management Reports. NOS will require its NOS Do-Not-Call Team to issue to the Legal Department a weekly report summarizing the status of compliance for each active telemarketing campaign, which report shall be based upon the daily Third Party Telemarketing Company Reports and weekly Customer Care Reports.
  - iv. "Failsafe" mechanisms designed to prevent noncompliance due to human error. These mechanisms may include, but not be limited to, "seeding" Call Lists with names of NOS representatives who are registered on the National Do-Not-Call Registry and/or the NOS Do-Not-Call List; the testing/auditing of the Third Party Telemarketing Company's response to verbal requests by NOS employees not to be called again and to be placed on NOS' Do-Not-Call list; and monitoring of the Third Party Telemarketing Company's responses to questions about the Do-Not-Call requirements.
- i. Not later than thirty (30) days after the Effective Date, NOS will create a register that contains, in an orderly manner, all compliance reports and telemarketing agreements

associated with each NOS telemarketing campaign. NOS will designate a register manager, who will be responsible for maintaining and updating the register.

- j. NOS will continue to monitor do-not-call complaints, and will promptly investigate any unusual patterns in those activations that suggest unauthorized telemarketing may be occurring.
- k. NOS will formally establish an internal process to promptly investigate and resolve inquiries and informal complaints alleging unauthorized telemarketing, as follows:
  - i. All written complaints forwarded by a government agency will be investigated by or under the supervision of NOS' Legal Department.
  - ii. In all cases, except where not practicable, investigation will be completed within thirty (30) days of NOS' receipt of the complaint.
  - iii. Investigation results for written complaints forwarded by a government agency, to the extent those are requested, will be included in a response to the agency at the close of the investigation (typically within thirty (30) days from receipt of complaint).
  - iv. NOS will ensure that at least one member of NOS' in-house Legal Department is specifically trained and responsible for handling telemarketing complaints as those matters arise from both in-house telemarketing and telemarketing conducted on its behalf by Third Party Telemarketing Companies, including up to one hundred percent (100%) of this person's time as warranted. Should one person be unable to handle such complaints within thirty (30) days, NOS will add additional responsible staff as necessary.
  - v. All written complaints that NOS receives directly from consumers will be screened by NOS' customer care staff and those complaints that do not appear to involve collections activity will be forwarded to NOS' Legal Department.
- l. NOS will implement a communications program regarding compliance with federal Do-Not Call regulations directed toward both in-house marketing staff and Third Party Telemarketing Companies with which it contracts. This program will include regular reminders of its Do-Not-Call policies.

- m. NOS will reach out to consumers about how they can take steps to prevent unauthorized telemarketing by including information on its web site on how to report telemarketing complaints.
- n. NOS will implement a Quality Control Monitoring Program for its Telemarketing Program, memorialized in its Telemarketing Compliance Manual.
  - i. For at least two (2) years from the Effective Date, NOS will perform quality control monitoring of the compliance by its telemarketing representatives and those of NOS' Third Party Telemarketing Companies with the obligation to accept Do-Not-Call requests by residential customers and appropriately transmit them for implementation on the NOS Do-Not-Call list.
  - ii. In connection with paragraph (n)(i), NOS will monitor, on a random basis across all in-house and Third Party Telemarketing operations, at least seven percent (7%) of telemarketing calls per month, which number shall increase or decrease proportionately to the extent that NOS' number of monthly telemarketing calls increases or decreases from its current monthly telemarketing volume, and in response to data received as part of the audit and compliance procedures herein.
  - iii. NOS will retain the results and all documents related to its quality control monitoring, and any remedial action taken, for at least four (4) years from the Effective Date, and shall make such results and all related documents available to the Commission within twenty (20) days after the Commission submits a request for such results to NOS.
- o. To the extent that such quality control monitoring may disclose that NOS' telemarketing representatives (or those of its Third Party Telemarketing Companies) have failed accurately to record and/or appropriately to transmit for implementation a Do-Not-Call request made by any customer, NOS will promptly correct its Do-Not-Call list to reflect that request.
- p. NOS will take appropriate disciplinary action and/or require supplemental training in the event that its quality control monitoring or any other source establishes that any telemarketing representative has failed to follow legal obligations or NOS policies and procedures with respect to Do-Not-Call requests. In the case of a knowing and intentional failure by a telemarketing representative employed by one of its Third Party Telemarketing Companies, NOS will direct its Third Party Telemarketing Company to ensure that the representative no longer performs telemarketing on NOS'

behalf. In the case of a knowing and intentional failure by an NOS employee, NOS will take such disciplinary action to the extent permitted under collective bargaining agreements and applicable law.

- q. NOS shall not perform telemarketing or allow telemarketing to be performed on its behalf until the Telemarketing Compliance Program has been implemented, as described herein.
- r. Nothing in this Compliance Plan shall alter NOS' obligation to otherwise comply with the Act and with the Commission's rules and orders.
- s. Not later than sixty (60) days after the Effective Date, and every one hundred eighty (180) days thereafter, NOS will submit a written report to the Bureau of its compliance with this Consent Decree, including in the first report, its progress in implementing its Compliance Program.
- t. NOS will maintain and make available to the Bureau, within fourteen (14) days of receipt of any specific request from the Bureau, business records documenting its compliance with the terms and provisions of this Consent Decree.
- u. Should NOS change its telemarketing policy, NOS will notify the Bureau in writing within thirty (30) days of any modification to its Telemarketing Compliance Program.
- v. NOS will give the Bureau thirty (30) days prior written notice of any change in its legal status, including a name change, a change of control, merger, reorganization, or dissolution.

11. NOS agrees to make a voluntary contribution to the United States Treasury, without further protest or recourse to a trial *de novo*, in the amount of \$500,000.00. Of this amount, \$100,000.00 will be paid within ten (10) business days after the Effective Date of the Adopting Order. Additional payments of \$50,000.00 will be made, in the manner described below, by the first day of each quarter, starting with the first full quarter following the Effective Date, until the full amount is paid. The payment must be made by check or money order and mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 358340, Pittsburgh, Pennsylvania 15251. Payment by overnight mail may be sent to Mellon Client Service Center, 500 Ross Street, Room 670, Pittsburgh, Pennsylvania 15262-0001, Attn: FCC Module Supervisor. Payment by wire transfer may be made to: ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6229. Include your NAL/Acct. No. with your wire transfer remittance.

12. The Bureau agrees that, in the absence of new material evidence, it will not use the facts developed in this Investigation through the Effective Date of the Consent Decree, or the existence of this

Consent Decree to initiate, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against NOS, concerning the matters that were the subject of the Investigation, provided that NOS satisfies all of its obligations under this Consent Decree. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in this Investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute, on its own motion, any proceeding, formal or informal, or take any action on its own motion against NOS with respect to NOS' basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier. Nothing in this Consent Decree will prevent the Bureau from instituting or recommending to the Commission any new investigation or enforcement proceeding against NOS in the event of any alleged future misconduct involving violation of this Consent Decree, or violation of the Act or the Commission's rules. Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to section 208 of the Act, 47 U.S.C. § 208, against NOS for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding.

13. NOS' decision to enter into this Consent Decree is expressly contingent upon the Bureau's issuance of an Order that is consistent with this Consent Decree, and which adopts the Consent Decree without change, addition or modification.

14. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither NOS nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and NOS and the Commission will waive any statutory right to a trial *de novo* with respect to the issuance of the Adopting Order and shall consent to a judgment incorporating the terms of this Consent Decree.

15. Provided that the Bureau issues an Order adopting the Consent Decree without change, addition or modification, NOS waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree.

16. In the event that this Consent Decree is rendered invalid by a court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

17. By this Consent Decree, NOS neither waives nor alters its right to assert and seek protection from disclosure of any privileged or otherwise confidential and protected documents and information, or to seek appropriate safeguards of confidentiality for any competitively sensitive or proprietary information.

18. NOS agrees that any violation of the Order or of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

19. The Parties agree that if any provision of this Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the

terms of this Consent Decree to which NOS does not consent), that provision will be superseded by such Commission rule or order.

20. The Parties agree that the requirements of this Consent Decree shall expire thirty-six (36) months from the Effective Date.

21. This Consent Decree may be signed in counterparts.

For: NOS Communications, Inc.

\_\_\_\_\_  
Date

\_\_\_\_\_  
NOS Communications, Inc.

For: Enforcement Bureau  
Federal Communications Commission

\_\_\_\_\_  
Date

\_\_\_\_\_  
Kris A. Monteith  
Chief, Enforcement Bureau