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BEFORE THE ARIZONA CORPORATION

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Arizona Corporation Commission

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IN THE MATTER OF THE APPLICATION OF
OCMC, INC. TO OBTAIN A CERTIFICATE OF
CONVENIENCE AND NECESSITY FROM ONE
CALL COMMUNICATIONS, INC. DBA OPTICOM
TO PROVIDE TELECOMMUNICATIONS
SERVICES AS A PROVIDER OF RESOLD
INTEREXCHANGE SERVICES AND
ALTERNATIVE OPERATOR SERVICES WITHIN
THE STATE OF ARIZONA

DOCKET NO. T-04103A-02-0274
T-02565A-02-0274

STAFF'S MOTION TO VACATE
HEARING

On February 24, 2004, Staff filed its Amended Staff Report in this docket. On March 15, 2004, the Hearing Division issued a Procedural Order setting this matter for hearing. The Procedural Order notes that the Amended Staff Report states that the transaction is not subject to A.R.S. § 40-285, but later recommends that the sale of assets be retroactively approved. The latter part, concerning retroactive approval, was included in error. Staff apologizes for any confusion.

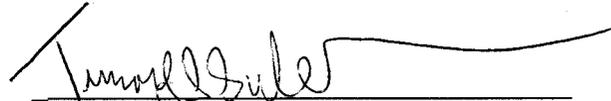
There are no physical assets in Arizona. The only Arizona assets in question are the "customer base" of Opticom. Staff's long-held view is that sale of a company's "customer base" does not require approval under A.R.S. § 40-285. Approval under A.R.S. § 40-285 is only required for sale of a "railroad, line, plant, or system necessary or useful in the performance of its duties to the public." Terms such as "plant" and "system" clearly refer to physical assets necessary to provide service, and do not extend to the customer base. Approval is also required for transfers of "any franchise or permit or any right thereunder." A.R.S. § 40-285(A). This case does not concern any such transfer. Therefore, Staff does not believe that A.R.S. § 40-285 approval is necessary in this case.

This is not to say that the transfer of a customer base should not cause concern. Indeed, Staff

1 believes that such a transfer should be subject to Commission review and approval. Staff notes that
2 the proposed Slamming and Cramming rules would require express Commission approval for such a
3 transaction. Unfortunately, these rules are not yet in effect. The FCC's slamming rules also contain
4 provisions regulating the transfer of a company's customer base. See 47 C.F.R. § 64.1120(A).

5 The Procedural Order states that this matter should be set for hearing to determine whether
6 A.R.S. § 40-285 applies. Staff believes that this issue can be resolved without a hearing because it is
7 a purely legal issue. Staff believes that the legal analysis in this motion should resolve the matter.
8 Accordingly, Staff moves that the hearing scheduled in this matter be vacated.

9 **RESPECTFULLY SUBMITTED** this 23rd day of March 2004.

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19 The original and thirteen (13) copies of the foregoing
20 were filed this 23rd day of March 2004 with:

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26 23rd day of March 2004 to:

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