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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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2004 MAY 24 P 1:49
AZ CORP COMMISSION
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MAY 24 2004

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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

PROCEDURAL ORDER

BY THE COMMISSION:

On July 15, 2002, OCMC, Inc. ("OCMC" or "Applicant") submitted to the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("Certificate") to provide resold interexchange services and alternative operator services in the State of Arizona ("Application").¹ Specifically, OCMC seeks to transfer the existing Certificate of One Call Communications, Inc. dba Opticom ("Opticom") based on its purchase of Opticom's assets.

On June 24, 2002, OCMC published notice of its Application in *The Arizona Republic* notifying any interested parties of their right to intervene.

On September 20, 2002, the Commission's Utilities Division ("Staff") filed its Staff Report.

On September 24, 2002, Staff filed a Motion for Stay of Proceedings based on the Federal Communications Commission's ("FCC") issuance of a "Notice of Apparent Liability for Forfeiture" ("NAL").

By Procedural Order dated October 15, 2002, Staff's Motion for Stay was granted and the time clock provisions of A.A.C. R14-2-510(E) were stayed to permit Staff additional time to conduct further discover.

¹ OCMC's original application filed on April 9, 2002 was amended on July 15, 2002 to include provision of AOS services.

1 On January 8, 2004, OCMC filed a Motion to Lift Stay and Notice of Substitution of Counsel,
2 which indicated that OCMC had entered into a Consent Decree with the FCC the terms of which
3 terminate the FCC's investigation.

4 By Procedural Order dated January 26, 2004, OCMC's Motion was granted, and Staff was
5 ordered to submit an Amended Staff Report, which provides its recommendation with regard to: (1)
6 approval of OCMC's Application in light of the information submitted in conjunction with OCMC's
7 Motion; (2) whether the transfer of assets from Opticom to OCMC is subject to the provisions of
8 A.R.S. § 40-285; and (3) if the transfer is subject to that statutory provision, whether the transfer
9 should receive retroactive approval.

10 On February 25, 2004, Staff submitted its Amended Staff Report, which indicates that the sale
11 and transfer of assets from Opticom to OCMC is not subject to the provisions of A.R.S. § 40-285 as
12 no physical assets were transferred, yet Staff recommended retroactive approval of the sale and
13 transfer of assets for the same transaction.

14 On March 15, 2004, a Procedural Order was issued setting this matter for hearing to clarify
15 the extent to which the underlying transaction is subject to the provisions of A.R.S. § 40-285.

16 On or about March 16, 2004, a conference call with Michael Hallam, Timothy Sabo, and the
17 undersigned administrative law judge was held during which Mr. Hallam, as counsel for Applicant,
18 indicated that OCMC intends to pursue a waiver of the Commission's requirement with regard to
19 zero minus calls. Based on the fact that this matter had been set for hearing, Mr. Hallam indicated
20 that OCMC would address the issue at the hearing scheduled for April 6, 2004.

21 On March 23, 2004, Staff filed a Motion to Vacate Hearing, which indicates that Staff's
22 recommendation for retroactive approval was included in error and that A.R.S. § 40-285 approval is
23 not necessary given the lack of physical assets.

24 By Procedural Order dated March 26, 2004, the hearing set for April 6, 2004 was vacated, and
25 OCMC was ordered to file either a request for a waiver pursuant to A.A.C. R14-2-1006 or an
26 indication that it no longer intends to pursue such waiver. Additionally, Staff was ordered to file a
27 response to OCMC's filing.

28 On March 29, 2004, OCMC filed its Verified Amendment to Application, which seeks a

1 waiver pursuant to A.A.C. R14-2-1006 to allow OCMC to complete zero-minus calls, including
2 emergency calls, over OCMC's telecommunications network. In conjunction with its waiver
3 request, OCMC provided a description of its facilities and its zero minus call completion procedures.

4 On April 26, 2004, Staff filed its Amended Staff Report, which continues to recommend
5 approval of OCMC's Application. Staff did not, however, recommend approval of OCMC's request
6 for a waiver pursuant to A.A.C. R14-2-1006. Specifically, Staff concluded that although OCMC has
7 the capability to process zero-minus calls quickly and accurately, it failed to provide information
8 required by the rule relating to the manner in which the local exchange carrier ("LEC") processes
9 such calls.

10 On May 13, 2004, OCMC filed its Verified Response to Staff Report arguing that OCMC has
11 provided sufficient information for the Commission to grant a waiver pursuant to A.A.C. R14-2-
12 1006. OCMC argues that should it be determined, however, that OCMC has failed to provide
13 requisite data relating to the LEC's processing of such calls, a waiver of such a requirement is in the
14 public interest pursuant to A.A.C. R14-2-1014. Finally, OCMC argues that if additional information
15 relating to the LEC is required and that a waiver of such requirement is not in the public interest, it
16 should be granted the opportunity to work with Commission Staff to provide the necessary
17 information to support its request for a waiver pursuant to A.A.C. R14-2-1006.

18 Staff has not indicated its position with regard to OCMC's May 13, 2004 filing.

19 A.A.C. R14-2-1006.B permits the Commission to grant a waiver of the requirements set forth
20 in A.A.C. R14-2-1006.A if the alternative operator services ("AOS") provider clearly and
21 convincingly demonstrates that it has the capability to process such calls "with equal quickness and
22 accuracy as provided by the LEC." Absent any information relating to the manner in which the LEC
23 provides zero-minus calls, it is unclear whether OCMC has the capability to process such calls with
24 equal quickness and accuracy as provided by the LEC. Consequently, the requirements of the rule
25 have not been met, and OCMC should provide supplementary information to demonstrate the manner
26 in which the LEC provides zero-minus calls.

27 IT IS THEREFORE ORDERED that OCMC shall continue to work with Staff to gather and
28 provide the requisite information required pursuant to A.A.C. R14-2-1006.B relating to the manner in

1 which the LEC provides zero-minus calls.

2 IT IS FURTHER ORDERED that OCMC shall have 60 days to comply with the requirements
3 set forth in A.A.C. R14-2-1006.B. At that time, Staff shall file an Amended Staff Report indicating
4 its recommendation with regard to approval of OCMC's waiver request as set forth in its Amended
5 Application.

6 IT IS FURTHER ORDERED that the time clock provisions of A.A.C. R14-20510(E) are
7 stayed from May 24, 2004 until July 23, 2004.

8 DATED this 24th day of May, 2004.

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10 
11 AMANDA POPE
ADMINISTRATIVE LAW JUDGE

12 Copies of the foregoing mailed/delivered
13 this 24 day of May, 2004 to:

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