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BRIAN C. McNEIL  
EXECUTIVE SECRETARY

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ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION  
DOCUMENT CONTROL

DATE: JULY 29, 2002  
DOCKET NO: T-04041A-01-0599  
TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Philip Dion. The recommendation has been filed in the form of an Order on:

OPTICAL TELEPHONE CORPORATON  
(CC&N/RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

AUGUST 7, 2002

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

AUGUST 20, 2002 and AUGUST 21, 2002

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

Arizona Corporation Commission

DOCKETED

JUL 29 2002

DOCKETED BY	
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BRIAN C. McNEIL  
EXECUTIVE SECRETARY

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER

IN THE MATTER OF THE APPLICATION OF  
OPTICAL TELEPHONE CORPORATION FOR A  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE COMPETITIVE  
RESOLD INTEREXCHANGE  
TELECOMMUNICATIONS SERVICES, EXCEPT  
LOCAL EXCHANGE SERVICES.

DOCKET NO. T-04041A-01-0599

DECISION NO. \_\_\_\_\_

**ORDER**

Open Meeting  
August 20 and 21, 2002  
Phoenix, Arizona

**BY THE COMMISSION:**

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

**FINDINGS OF FACT**

1. On July 27, 2001, Optical Telephone Corporation ("Applicant" or "Optical") filed with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide competitive resold interexchange telecommunications services, except local exchange services, within the State of Arizona.

2. Applicant is a switchless reseller that purchases telecommunications services from a variety of carriers for resale to its customers.

3. In Decision No. 58926 (December 22, 1994), the Commission found that resold telecommunications providers ("resellers") are public service corporations subject to the jurisdiction of the Commission.

4. Optical has authority to transact business in the State of Arizona.

5. On November 27, 2001, Optical filed an Affidavit of Publication indicating compliance with the Commission's notice requirements.

1           6.       On February 20, 2002, the Commission's Utilities Division Staff ("Staff") filed a Staff  
2 Report in this matter recommending approval of the application subject to certain conditions, and  
3 making other recommendations.

4           7.       In its Staff Report, Staff stated that based on information obtained from the Applicant,  
5 it has determined Optical's fair value rate base is zero, and is too small to be useful in setting rates.  
6 Staff further stated that in general, rates for competitive services are not set according to rate of return  
7 regulation, but are heavily influenced by the market. Staff recommended that the Commission not set  
8 rates for Optical based on the fair value of its rate base.

9           8.       Staff believes that Optical has no market power and that the reasonableness of its rates  
10 will be evaluated in a market with numerous competitors. In light of the competitive market in which  
11 the Applicant will be providing its services, Staff believes that the rates in Applicant's proposed  
12 tariffs for its competitive services will be just and reasonable, and recommends that the Commission  
13 approve them.

14           9.       Staff recommended approval of Optical's application subject to the following:

15                   (a)     The Applicant should be ordered to comply with all Commission rules, orders,  
16                   and other requirements relevant to the provision of intrastate telecommunications  
17                   service;

18                   (b)     The Applicant should be ordered to maintain its accounts and records as  
19                   required by the Commission;

20                   (c)     The Applicant should be ordered to file with the Commission all financial and  
21                   other reports that the Commission may require, and in a form and at such times as the  
22                   Commission may designate;

23                   (d)     The Applicant should be ordered to maintain on file with the Commission all  
24                   current tariffs and rates, and any service standards that the Commission may require;

25                   (e)     The Applicant should be ordered to comply with the Commission's rules and  
26                   modify its tariffs to conform to these rules if it is determined that there is a conflict  
27                   between the Applicant's tariffs and the Commission's rules;

28                   (f)     The Applicant should be ordered to cooperate with Commission investigations  
                    of customer complaints;

                    (g)     The Applicant should be ordered to participate in and contribute to a universal  
                    service fund, as required by the Commission;

1 (h) The Applicant should be ordered to notify the Commission immediately upon  
2 changes to the Applicant's address or telephone number;

3 (i) If at some future date, the Applicant wants to collect from its customers an  
4 advance, deposit or prepayment, it must file information with the Commission for  
5 Staff review. Upon receipt of such filing, Staff will review the information and  
6 forward its recommendation to the Commission;

7 (j) The Applicant's interexchange service offerings should be classified as  
8 competitive pursuant to A.A.C. R14-2-1108;

9 (k) The Applicant's maximum rates should be the maximum rates proposed by the  
10 Applicant in its proposed tariffs. The minimum rates for the Applicant's competitive  
11 services should be the Applicant's total service long run incremental costs of  
12 providing those services as set forth in A.A.C. R14-2-1109; and

13 (l) In the event that the Applicant states only one rate in its proposed tariff for a  
14 competitive service, the rate stated should be the effective (actual) price to be charged  
15 for the service as well as the service's maximum rate.

16 10. Staff further recommended that Optical's Certificate should be conditioned upon the  
17 Applicant filing conforming tariffs in accordance with this Decision within 365 days from the date of  
18 an Order in this matter, or 30 days prior to providing service, whichever comes first.

19 11. Optical's proposed tariff indicates that it does not intend to collect advances,  
20 prepayments or deposits from its customers.

21 12. Optical provided its unaudited financial statements for the period ending June 30,  
22 2001. The financial statements list assets of \$183,694, negative equity of \$44,450 and a net loss of  
23 \$44,450

24 13. Staff recommended that if the Applicant fails to meet the timeframes outlined in  
25 Findings of Fact. No. 10, then Optical's Certificate should become null and void without further  
26 Order of the Commission, and that no time extensions for compliance should be granted.

27 14. The rates proposed by this filing are for competitive services.

28 15. Staff's recommendations as set forth herein are reasonable.

16. Optical's fair value rate base is zero.

### CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the

1 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2 2. The Commission has jurisdiction over Applicant and the subject matter of the  
3 application.

4 3. Notice of the application was given in accordance with the law.

5 4. Applicant's provision of resold interexchange telecommunications services is in the  
6 public interest.

7 5. Applicant is a fit and proper entity to receive a Certificate as conditioned herein for  
8 providing competitive resold interexchange telecommunications services in Arizona.

9 6. Staff's recommendations in Findings of Fact Nos. 7, 8, 9, 10 and 13 should be  
10 adopted.

11 7. Optical's fair value rate base is not useful in determining just and reasonable rates for  
12 the competitive services it proposes to provide to Arizona customers.

13 8. Optical's rates, as they appear in its proposed tariffs, are just and reasonable and  
14 should be approved.

15 **ORDER**

16 IT IS THEREFORE ORDERED that the application of Optical Telephone Corporation for a  
17 Certificate of Convenience and Necessity for authority to provide competitive resold interexchange  
18 telecommunications services, except local exchange services, is hereby granted, conditioned upon its  
19 compliance with the conditions recommended by Staff as set forth in Findings of Fact No. 10 above.

20 IT IS FURTHER ORDERED that Staff's recommendations set forth in Findings of Fact Nos.  
21 7, 8, 9, 10 and 13 above are hereby adopted.

22 IT IS FURTHER ORDERED that Optical Telephone Corporation shall comply with the  
23 adopted Staff recommendations as set forth in Findings of Fact Nos. 9 and 10 above.

24 IT IS FURTHER ORDERED that if Optical Telephone Corporation fails to meet the  
25 timeframes outlined in Findings of Fact. No. 10 above, then the Certificate conditionally granted  
26 herein shall become null and void without further Order of the Commission.

27 ...

28 ...

1 IT IS FURTHER ORDERED that Optical Telephone Corporation shall not require its Arizona  
2 customers to pay advances, prepayments or deposits for any of its products or services.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
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7 CHAIRMAN

COMMISSIONER

COMMISSIONER

8 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
9 Secretary of the Arizona Corporation Commission, have  
10 hereunto set my hand and caused the official seal of the  
11 Commission to be affixed at the Capitol, in the City of Phoenix,  
12 this \_\_\_\_ day of \_\_\_\_\_, 2002.

13 \_\_\_\_\_  
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

14 DISSENT \_\_\_\_\_

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1 SERVICE LIST FOR: OPTICAL TELEPHONE CORPORATION.

2 DOCKET NO.: T-04041A-01-0599

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Vice President

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