

K7

TC03-067

DOCKET NO. _____

In the Matter of _____ IN THE MATTER OF AN ORDER TO
 _____ SHOW CAUSE AS TO WHY OCMC, INC.
 _____ SHOULD NOT BE FOUND TO BE IN
 _____ VIOLATION OF THE LAWS AND
 _____ REGULATIONS OF THE STATE OF
 _____ SOUTH DAKOTA

Public Utilities Commission of the State of South Dakota

DATE	MEMORANDA
4/16 03	<i>Filed and Docketed;</i>
4/17 03	<i>Weekly Filing;</i>
8/28 03	<i>Order Approving Scheduling of a Hearing;</i>
9/15 03	<i>Settlement Agreement;</i>
11/13 03	<i>Order Approving Settlement Agreement;</i>
3/10 04	<i>Docket Closed.</i>

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF STAFF'S)	
MOTION FOR THE COMMISSION)	
TO ISSUE AN ORDER TO SHOW)	MOTION FOR ORDER
CAUSE TO OCMC, INC.)	TO SHOW CAUSE
)	

Comes now staff, pursuant to SDCL, 49-13-1, 49-13-1.1, 49-13-4, 49-13-13, 49-31-3, 49-31-7.1, ARSD 20:10:24:04.02 and 20:10:01:45 and hereby moves that the South Dakota Public Utilities Commission (Commission) issue an ORDER TO SHOW CAUSE. Staff is seeking to have the Commission schedule a hearing to determine whether to suspend or revoke the certificate of authority of OCMC, Inc. d/b/a One Call Communications, Inc., OPTICOM, AdvantTel, LiveTel, SuperTel, RegionalTel, and 1-800-MAX-SAVE (Opticom). Staff is here requesting that the Commission issue an ORDER TO SHOW CAUSE to hear arguments from staff and the company on whether the Commission shall commence proceedings in accordance with ARSD 20:10:24:04.04.

1. ARSD 20:10:24:04.02 states that the “(failure) of any provider of interexchange service to comply with applicable requirements set forth in this chapter, other terms and conditions imposed on its certification by the commission, or applicable rules and laws, *or for other good cause may result in the suspension or revocation of the provider's certificate of authority to provide interexchange services.*” (Emphasis added).
2. Staff hereby asserts that good cause exists for the Commission to suspend or revoke the certificate of authority of Opticom based on the following facts.
3. On August 29, 2002, in Docket TC02-046 the Commission approved the transfer of the certificate of authority from One Call Communications, Inc. to Opticom. A copy of the Order Granting Transfer of Certificate of Authority is hereby attached and incorporated by reference as Exhibit A.
4. On May 14, 2002, Opticom submitted a tariff to the Commission. Page 41 of that tariff states, “Dual branding is provided with all operator assisted calls. *Rates will be provided on request.*” (Italics added). A copy of page 41 is attached. The entire tariff is on file with the Commission and is hereby incorporated by reference as Exhibit B.
5. On June 14, 2002, Page 3, paragraph 13, Opticom filed a letter with the Commission certifying that it was in compliance with all federal requirements established under the Telephone Operator Consumer Services Improvement Act of 1990, 47 U.S.C. 226. A copy of that letter is hereby attached and incorporated by reference as Exhibit C.
6. On September 23, 2002, the FCC released a Notice Of Apparent Liability For Forfeiture against Opticom in the amount of \$5,120,000 for apparent wide spread violations of the Communications Act of 1934, citing 26 separate violations of 47 CFR §§ 64.703(a)(3)(I) and/or (a)(4) (Failure to Provide Rate Information at Termination Point). A copy of the Notice is hereby attached as Exhibit D and incorporated by reference. In paragraphs 9 and 10 the FCC made the following statements which staff feels are of significant import in this docket:

“We believe that Opticom’s practices are particularly egregious for several reasons. First, it appears that Opticom has willfully and deliberately devised a scheme repeated on numerous access numbers intended to mislead unwitting consumers into using their operator services while the consumer is attempting to dial another OSP. For example, if a consumer trying to dial 1-800-CALLATT misdials by one number, that consumer will reach Opticom instead of AT&T. ...The consumer is even further left in the dark by not being able to obtain rate information that is essential for consumers who wish to make informed choices in a competitive telecommunications market. This is particularly egregious in light of the fact that the rates Opticom charges are significantly higher than the industry average. ...Therefore, it appears that Opticom’s only customers are those who make a mistake in attempting to dial another OSP’s access code.”

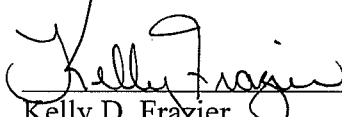
7. On approximately February 13, 2003, staff received a complaint from Debra Hennings regarding collect phone calls connected through Opticom. According to the complaint, she was charged approximately \$8.00 per minute, was not given the opportunity to determine rates in advance of accepting the call and was told that credits would not be allowed for collect calls using this number. She thought the collect phone call was coming through 1-800-CALLATT. The call was connected through 1-800-CALLAAT. A copy of her complaint letter and phone bill are attached as Exhibit E.
8. On Approximately March 11, 2003, staff received a complaint from Timothy Schuster regarding collect phone calls connected through One Call Communications, a division of Opticom. According to the complaint, he was charged approximately \$8.00 per minute and was not given the opportunity to determine rates in advance of accepting the call, and was told that credits would not be allowed for collect calls using this number. Staff believes that Opticom has now implemented a four minute minimum to its calls, which amounts to a charge of \$31.03 for a one minute call. Mr. Schuster also alleges that customer service refused to allow him to speak with a manager or supervisor regarding the billing. A copy of his complaint and bill are attached as Exhibit F.
9. Opticom has at least two 800 numbers which it uses to connect collect phone calls: 1-800- CALL-AAT and 1-800-COOLECT. On February 24, 2003 staff used these numbers to record two intrastate collect phone calls. In neither instance was the rate available at the termination point. On March 10, 2003, staff used these numbers to record two interstate collect phone calls. In neither instance was the rate available at the termination point. In one instance, the collect phone call was connected through an operator who refused to give the rate on the basis she was not the rate operator in charge of that. A copy of the intrastate and interstate collect phone call recordings are attached as Exhibit G. A copy of the Affidavits prepared by staff for the FCC are attached as Exhibit H.
10. In compliance with ARSD 20:10:24:04.03, staff has sent a certified letter to Opticom before initiating this Motion. A copy of the certified letter and signed receipt of service are attached and incorporated by reference as Exhibit I. A copy of the Opticom’s reply is attached as Exhibit J.
11. Staff asserts the Commission has jurisdiction over this matter pursuant to the following:
 - A. Failure to provide rate information upon request in violation of Opticom’s tariff provisions stating that it would provide rate information when requested. This is true for both intrastate and interstate calls.

- B. Failure to maintain on file with the Commission all current tariffs and rates in violation of SDCL 49-31-38, ARSD 20:10:24:04.03 and as required by the Order Granting Transfer of Certificate of Authority in TC02-046. Staff argues that Opticom's policy not to provide rate information on request is a change in the tariff and Opticom was required to file the changes with the Commission.
- C. Failure to abide by federal law as the company certified in its application, as evidenced by a proposed \$5.1 million penalty by the FCC.
- D. For good cause pursuant to ARSD 20:10:24:04.02, in that Opticom has:
1. Engaged in a willful and deliberate attempt to "bill by ambush," evidenced by the selection of 800 connect phone numbers intentionally selected to take advantage of mistakes by consumers and charging rates that are patently offensive when that mistake is made.
 2. Refused to connect with consumers who call into customer service to dispute rates or practices with a manager or supervisor.
 3. Taken a blanket approach that credit will not be given to customers who unwittingly receive collect phone calls through their service.

WHEREFORE, Commission staff hereby request that the Commission:

1. Issue an Order To Show Cause in accordance with ARSD 20:10:01:45.
2. File a notice of hearing for suspension or revocation of a certificate of authority in accordance with ARSD 20:10:24:04.04 for violations as outlined in this motion.
3. Consider penalties in accordance with SDCL 49-31-38, if the Commission finds that Opticom's policy not to provide rate information upon request constitutes a failure to comply with the Order Granting Transfer Of Certificate Of Authority, ordering Opticom to file informational copies of tariff changes with the Commission.
4. Any other remedy or relief which the Commission finds fair and reasonable.

Signed and dated this 28th day of March, 2003.



Kelly D. Frazier
Staff Attorney
Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
(605) 773-3201
(605) 773-3809 fax

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE FILING FOR)
APPROVAL OF TRANSFER OF CERTIFICATE)
OF AUTHORITY FROM ONE CALL)
COMMUNICATIONS, INC. TO OCMC, INC.)

ORDER GRANTING
TRANSFER OF CERTIFICATE
OF AUTHORITY
TC02-046

On May 14, 2002, the Public Utilities Commission (Commission), in accordance with SDCL 49-31-3 and ARSD 20:10:24:04.01 and 20:10:24:04.02, received an application for the transfer of a certificate of authority from One Call Communications, Inc. (One Call), to OCMC, Inc. (OCMC), d/b/a One Call Communications, Inc., OPTICOM, AdvantTel, LiveTel, SuperTel, RegionalTel, and 1-800-MAX-SAVE.

OCMC proposes to provide interexchange telecommunications services and operator services in South Dakota.

On May 16, 2002, the Commission electronically transmitted notice of the filing and the intervention deadline of May 31, 2002, to interested individuals and entities. No petitions to intervene or comments were filed and at its August 15, 2002, meeting, the Commission considered the request for transfer of certificate of authority. Commission Staff recommended transferring the certificate of authority from One Call to OCMC, subject to a continuous \$25,000 surety bond.

The Commission finds that it has jurisdiction over this matter pursuant to Chapter 49-31, specifically 49-31-3 and ARSD 20:10:24:04.01 and 20:10:24:04.02. The Commission finds that OCMC has met the legal requirements established for the granting of a certificate of authority. OCMC has, in accordance with SDCL 49-31-3, demonstrated sufficient technical, financial and managerial capabilities to offer telecommunications services in South Dakota. The Commission approves the application for transfer of certificate of authority from One Call to OCMC, subject to a continuous \$25,000 surety bond. As the Commission's final decision in this matter, it is therefore

ORDERED, that the application for transfer of certificate of authority from One Call to OCMC is hereby granted, subject to a continuous \$25,000 surety bond. It is

FURTHER ORDERED, that OCMC shall file informational copies of tariff changes with the Commission as the changes occur.

Dated at Pierre, South Dakota, this 29th day of August, 2002.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.
By: <u>Tina Douglas</u>
Date: <u>8-29-02</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Robert K. Sahr
ROBERT K. SAHR, Commissioner

ky J...

EXHIBIT
A

South Dakota Public Utilities Commission Tariff NO.1

SECTION III-SPECIAL CONDITIONS GOVERNING OPERATOR SERVICES
(Continued)

4. Branding

.01 Dual branding is provided with all operator assisted calls. Branding is identifying the carrier the caller is using. Rates will be provided on request.

ISSUED:

EFFECTIVE:

BY: Laura Clore, Regulatory Manager
OCMC, Inc.
801 Congressional Boulevard
Carmel, IN 46032

ENGAD-Bayonne, N. J.
EXHIBIT
B

LAW OFFICES
MAY, ADAM, GERDES & THOMPSON LLP

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June 13, 2002

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ROBERT B. ANDERSON
BRENT A. WILBUR
TIMOTHY M. ENGEL
MICHAEL F. SHAW
NEIL FULTON
BOBBI J. BENSON
BRETT KOENECKE

RECEIVED

JUN 14 2002

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

Michele M. Farris, P.E.
Utility Analyst
Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501

RE: APPLICATION OF OCMC, INC., FOR A CERTIFICATE OF AUTHORITY
Our file: 3939
Docket: TC02-046

Dear Michele:

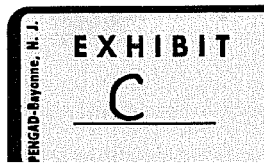
This is in response to your data request of May 30, 2002, and supplementary to my prior letter of June 11 which also responded to your data request. Inasmuch as this information is intended to amend the applicant's certificate of authority, an original and ten copies of this letter is being filed with the Commission.

Your data request number 4 requests that the applicant amend its application to include a response to ARSD 20:10:24:05, and this letter is intended to fulfill that request.

1. This filing amends the application for certificate of authority to additionally request a certificate of authority for the provision of alternative operator services under ARSD 20:10:24:05.

2. The applicant has filed intrastate tariffs containing rates, charges and rules for operator services, as well as for any associated intrastate long distance resale services with its application.

3. The applicant utilizes auditable service quality standards, including call processing time requirements.



Michele Farris
June 13, 2002
Page 2

Operators are to answer immediately upon receiving a zip tone. Operators process 60 calls per hour, and the average call is less than one minute.

4. Applicant agrees to comply with ARSD 20:10:24:05(4) with respect to the posting of the telephone notice provided therein and to require its customers to do likewise. See Exhibit A, paragraph 10.

5. Applicant requires its operators to clearly identify the alternative operator service.

6. Applicant prohibits call blocking and takes steps to ensure that it does not occur by its contracting entities. See Exhibit A, paragraph 10.

7. Applicant agrees to immediately transfer emergency calls, 911 calls, or, if 911 service is unavailable in the calling area, local operator calls, to the local exchange company or to the applicable local emergency agency.

8. Applicant agrees for billing purposes to itemize, identify and rate calls from the point of origin to the point of termination. Applicant also agrees that no call may be transferred by an operator service provider to another carrier, which cannot or will not complete the call unless the call can be billed in accordance with the Commission's rules.

9. Applicant will not charge for incompleting calls.

10. Applicant will bill for its services only and at the rates contained in its filed tariffs.

11. Applicant will disclose its name, address and telephone number on any bill that includes charges for services it has provided.

12. Exhibit A details how customers subscribing to operator services are compensated.

Michele Farris
June 13, 2002
Page 3

13. Applicant certifies that the Company is complying with all federal requirements established under the Telephone Operator Consumer Services Improvement Act of 1990, 47 U.S.C. 226 (October 27, 1992).

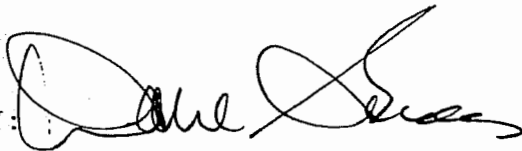
Attached hereto as Exhibit A is applicant's Operator Services Agreement. Exhibit A is filed as confidential, proprietary information.

If you have any further questions concerning the application, please do not hesitate to contact me.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY:

A handwritten signature in black ink, appearing to read "Michele Farris", written over a horizontal line.

DAG:mw

Enclosures

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

In the matter of)
)
One Call Communications, Inc.)
d/b/a Opticom) File No. EB-02-TC-003
) NAL/Acct. No. 200232170005
) FRN: 0003772910
)
)
)

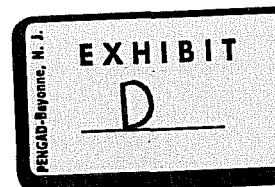
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 17, 2002 Released: September 23, 2002

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we propose to assess a forfeiture in the amount of \$5,120,000 against One Call Communications, Inc. d/b/a Opticom ('`Opticom''),¹ for apparent widespread violations of the Communications Act of 1934, as amended (the ``Act''), and the Commission's rules governing operator service providers ('`OSPs'').² These violations appear to be particularly egregious because they appear to have occurred as part of a



deliberate plan to mislead consumers.

II. BACKGROUND

2. Opticom provides operator services that can be accessed through aggregator telephones across the United States. 3 These include hotel and motel room phones, as well as payphones located in airports, train stations, shopping malls, gas stations, and other locations where they serve the public or transient users. As an OSP, Commission rules require Opticom to identify itself audibly and distinctly at the beginning of each call, before the consumer incurs any charge; to permit the consumer to terminate the call at no charge before it is connected; to provide its rates to consumers upon request; and to provide instructions to the consumer on how to obtain the total cost of the call, which must be available either by dialing no more than two digits or by remaining on the line. 4

3. Over the last several months, the Commission has received complaints from consumers who were connected to Opticom and billed for charges substantially higher than expected. For instance, one consumer filed a complaint alleging that Opticom failed to identify itself before she accepted a collect call, for which she was billed \$61.74 for 24 minutes.⁵ The consumer assumed she would be billed by AT&T, her OSP of choice, and would not have accepted the call if she had known that she was being billed by Opticom.⁶ Another consumer complained that Opticom failed to identify itself before a collect call she placed to her home, for which she was charged \$31.94 for 4 minutes.⁷ On the second collect call she made, she was asked by the operator which long distance carrier she preferred.⁸ She requested AT&T, but was billed \$45.67 by Opticom for a 16-minute call.⁹ This pattern of complaints suggested that consumers' dialing errors (for instance, dialing 1-800-COOLECT instead of 1-800-COLLECT) were connecting them to Opticom, rather than the desired carrier, and that Opticom's failure to identify itself as required caused these errors to go unnoticed. The Enforcement Bureau initiated an investigation into Opticom's practices to determine whether Opticom was in compliance with the requirements for OSPs. As set forth in detail below, that investigation showed apparent widespread violation of the Commission's rules, which appears to be part of a deliberate scheme to take advantage of consumers' dialing errors.

III. DISCUSSION

III.A. Legal Requirements

4. Pursuant to Section 226(b)(1)(A) of the Act and Section 64.703(a)(1) of the rules, each provider of operator services must identify itself, audibly and distinctly, to the consumer at the beginning of each telephone call and before the consumer incurs any charge for the call.¹⁰ This practice is known as "branding." The purpose of branding is to ensure that the consumer knows who is carrying the call, in time to request rate information, and to decide whether to use that carrier's services. The branding requirement is intended to reduce the opportunity for carriers to impose excessive charges on uninformed consumers. In collect calling arrangements handled by a provider of operator services, both the party on the

originating end of the call and the party on the terminating end of the call are considered ``consumers.''11 Therefore, to ensure that both parties are fully informed when making decisions regarding whether to initiate or accept a collect call, an OSP is required to brand on both ends of such calls.

5. Each provider of operator services must also disclose immediately to the consumer, upon request and at no charge, a quotation of its rates or charges for the call.12 For collect calls, OSPs must provide this rate information to both the called party and the calling party. 13 In addition, each provider of operator services must disclose audibly and distinctly to the consumer, at no charge and before connecting any call, instructions on how to obtain the total cost of the call or the maximum possible total cost of the call, before providing further oral advice to the consumer on how to proceed to make the call.14 This oral disclosure must instruct consumers that they may obtain applicable rate quotations either, at the option of the provider of operator services, by dialing no more than two digits or by remaining on the line.15

III.B. The Investigation

6. As part of our investigation, Commission staff went to several aggregator locations and placed multiple calls, including collect calls, via Opticom from 43 different payphones. Commission staff was also on the receiving end of some of these collect calls to determine whether Opticom identified itself to the called party as well. The staff placed the calls from payphones in locations that are heavily used by consumers and travellers in the Washington, D.C. area, such as Reagan National Airport, Union Station, and L'Enfant Plaza Shopping Mall, as well as the Commission's own lobby. To determine whether Opticom was handling calls that were likely the result of misdialed access codes, the staff placed calls using 26 different toll free numbers that are similar to well known operator service access numbers, such as MCI's 1-800-COLLECT, AT&T's 1-800-CALLATT, and Verizon's 1-800-CALLGTE.16 The numbers were called multiple times, at different locations and times, to determine whether there was a pattern of misconduct, and to preclude the possibility that any lack of compliance was an anomaly.

7. Our investigation revealed that Opticom failed to brand at the origination point of the telephone call on 25 of the 26 telephone numbers dialed, and failed to brand at the termination point on 13 of the 26 telephone numbers.17 Our investigation also revealed that Opticom failed to provide rates or charges, or failed to provide instructions on how to obtain rates or charges, on all 26 telephone numbers.18 Based on these facts, we find that Opticom is apparently liable for 38 separate violations of the branding requirement of Section 226(b)(1)(A) of the Act and Section 64.703(a)(1) of the Commission's rules; and for 26 separate violations of the rate disclosure requirements of ~~Section 226(b)(1)(A) of the Act~~ and Section 64.703(a)(3)(i) and 64.703(a)(4) of the Commission's rules. We note that although we have only proposed forfeitures for the first of each type of violation associated with each access number for a total of 64 violations, the calls made during our investigation revealed numerous (54) additional violations that are not the subject of this NAL.

OSP:
Rates
Must be
Given

IV. FORFEITURE AMOUNT

8. Pursuant to the Commission's Forfeiture Policy Statement, the base amount for violations of the operator services requirements is \$7,000.¹⁹ The maximum potential forfeiture is \$120,000 for each violation.²⁰ Based on the criteria in Section 503(b)(2)(D) of the Act and the upward adjustment criteria in the Forfeiture Policy Statement,²¹ however, we find that a substantial upward adjustment of the base forfeiture amount of \$7,000 appears to be warranted because the violations here appear to be egregious and repeated, because Opticom appears to have realized substantial economic gain from its misconduct, and because substantial consumer harm appears to have resulted from Opticom's pattern of misconduct.

9. We believe that Opticom's practices are particularly egregious for several reasons. First, it appears that Opticom has willfully and deliberately devised a scheme repeated on numerous access numbers intended to mislead unwitting consumers into using their operator services while the consumer is attempting to dial another OSP. For example, if a consumer trying to dial 1-800-CALLATT misdials by one number, that customer will reach Opticom instead of AT&T. The consumer remains unaware that he or she has misdialed because Opticom fails to identify itself. We believe that in using such deceptive means to obtain the consumer's business, Opticom's practices are analogous to slamming and should be penalized accordingly.²² The consumer is even further left in the dark by not being able to obtain rate information that is essential for consumers who wish to make informed choices in a competitive telecommunications market. This is particularly egregious in light of the fact that the rates Opticom charges are significantly higher than the industry average. We believe, therefore, that Opticom realizes a substantial economic gain from these practices. Moreover, it appears that these misdialed numbers, such as 1-800-COLECT or 1-800-FONCALT, are not advertised as a means of reaching Opticom. Therefore, it appears that Opticom's only customers are those who make a mistake in attempting to dial another OSP's access code.

10. Furthermore, while both parties to a collect call are involved in making choices regarding whether to use an OSP's services, we believe that it is particularly troubling that the called party, the party that ultimately incurs the charges for the call, is not able to obtain the rates before accepting the call. Many consumers, reluctant to refuse a call from a relative or loved one for fear of an emergency, are therefore forced to enter unwittingly into an agreement to pay significantly higher rates than they would otherwise pay by accepting such a collect call, and Opticom reaps the benefits of such higher rates.

11. Accordingly, after applying the Forfeiture Policy Statement and statutory factors to the facts before us, we conclude that an \$80,000 forfeiture is apparently warranted for each of the 64 violations of Sections 226(b)(1)(A) and (b)(1)(C)(i) of the Act and Sections 64.703(a)(1), 64.703(a)(3)(i), and 64.703(a)(4) of the rules, resulting in a total proposed forfeiture amount of \$5,120,000.

V. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, One Call Communications, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of \$5,120,000 for willful or repeated violations of Sections 226(b)(1)(A) and (b)(1)(C)(i) of the Act, 47 U.S.C. §§ 226(b)(1)(A), (b)(1)(C)(i), and Sections 64.703(a)(1), 64.703(a)(3)(i), and 64.703(a)(4) of the Commission's rules, 47 C.F.R. §§ 64.703(a)(1), 64.703(a)(3)(i), 64.703(a)(4). The amount specified was determined after consideration of the factors set forth in Section 503(b)(2)(D) of the Act, 47 U.S.C. § 503(b)(2)(D), and the guidelines enumerated in the Forfeiture Policy Statement.

13. IT IS FURTHER ORDERED, pursuant to Sections 1.80(f)(3) and 1.80(h) of the Commission's Rules, that One Call Communications, Inc., within thirty days of the date of release of this Notice of Apparent Liability, SHALL PAY the full amount of the proposed forfeiture²³ OR SHALL FILE a written response showing why the proposed forfeiture should be reduced or not imposed.²⁴

14. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture SHALL BE SENT by certified mail, return receipt requested, to One Call Communications, Inc d/b/a Opticom at 801 Congressional Blvd., Carmel, IN 46032.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

□ APPENDIX

OPTICOM OSP VIOLATIONS - 2002

1 (800) CALLL - ATT

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30 (2X)*

Violation of 47 CFR §§ 64.703(a)(3)(i) and/or(a)(4) (Failure to Provide Rate Information at Termination Point): 6/4, 6/6

1 (800) COLLETC

Violation of 47 CFR §§ 64.703(a)(3)(i) and/or(a)(4) (Failure to Provide Rate Information at Termination Point): 6/4, 6/6

1 (800) BELLOSUTH

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30 (2X)

Violation of 47 CFR §§ 64.703(a)(3)(i) and/or(a)(4) (Failure to Provide Rate Information at Termination Point): 6/4, 6/6

1 (800) CAALL - ATT

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30 (2X)

Violation of 47 CFR §§ 64.703(a)(3)(i) and/or(a)(4) (Failure to Provide Rate Information at Termination Point): 6/4, 6/6

1 (800) BBELLSOUTH

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30 (2X)

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Termination Point): 6/4, 6/6

Violation of 47 CFR §§ 64.703(a)(3)(i) and/or(a)(4) (Failure to Provide Rate Information at Termination Point): 6/4, 6/6

1 (800) YOU - SAVV

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30 (2X)

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Termination Point): 6/4, 6/6

Violation of 47 CFR §§ 64.703(a)(3)(i) and/or(a)(4) (Failure to Provide Rate Information at Termination Point): 6/4, 6/6

1 (800) CALL - ATL

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30 (2X)

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Termination Point): 6/4

Violation of 47 CFR §§ 64.703(a)(3)(i) and/or(a)(4) (Failure to Provide Rate Information at Termination Point): 6/4, 6/6

1 (800) COLLECT

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30 (2X)

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Termination Point): 6/4, 6/6

Violation of 47 CFR §§ 64.703(a)(3)(i) and/or(a)(4) (Failure to Provide Rate Information at Termination Point): 6/4, 6/6

1 (800) BELLSOUTH

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30 (2X)

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Termination Point): 6/6

Violation of 47 CFR §§ 64.703(a)(3)(i) and/or(a)(4) (Failure to Provide Rate Information at Termination Point): 6/4, 6/6

1 (800) CLLL - ATT

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30 (2X)

Violation of 47 CFR §§ 64.703(a)(3)(i) and/or(a)(4) (Failure to Provide Rate Information at Termination Point): 6/4, 6/6

1 (800) ONE-DIMM

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30 (2X)

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Termination Point): 6/4, 6/6

Violation of 47 CFR §§ 64.703(a)(3)(i) and/or(a)(4) (Failure to Provide Rate Information at Termination Point): 6/4, 6/6

* Denotes two violations on that particular date.

1 (800) CA66 - ATT

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30 (2X)

Violation of 47 CFR §§ 64.703(a)(3)(i) and/or(a)(4) (Failure to Provide Rate Information at Termination Point): 6/4, 6/6

1 (800) 3ALL - ATT

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30 (2X)

Violation of 47 CFR §§ 64.703(a)(3)(i) and/or(a)(4) (Failure to Provide Rate Information at Termination Point): 6/4, 6/6

1 (800) CAALLGTE

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30 (2X)

Violation of 47 CFR §§ 64.703(a)(3)(i) and/or(a)(4) (Failure to Provide Rate Information at Termination Point): 6/4, 6/6

1 (800) CALO - ATT

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30 (2X), 6/4

Violation of 47 CFR §§ 64.703(a)(3)(i) and/or(a)(4) (Failure to Provide Rate Information at Termination Point): 6/4, 6/6

1 (800) FAIRCLL

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30 (2X)

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Termination Point): 6/4, 6/6

Violation of 47 CFR §§ 64.703(a)(3)(i) and/or(a)(4) (Failure to Provide Rate Information at Termination Point): 6/6

1 (800) CALL - AOT

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Termination Point): 6/4

Violation of 47 CFR §§ 64.703(a)(3)(i) and/or(a)(4) (Failure to Provide Rate Information at Termination Point): 6/6

1 (800) CALL - ATO

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30

Violation of 47 CFR §§ 64.703(a)(3)(i) and/or(a)(4) (Failure to Provide Rate Information at Termination Point): 6/4, 6/6

1 (800) COLLEET

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30 (2X)

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Termination Point): 6/4, 6/6

Violation of 47 CFR §§ 64.703(a)(3)(i) and/or(a)(4) (Failure to Provide Rate Information at Termination Point): 6/4, 6/6

1 (800) FAIRRCALL

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30 (2X)

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Termination Point): 6/6

Violation of 47 CFR §§ 64.703(a)(3)(i) and/or(a)(4) (Failure to Provide Rate Information at Termination Point): 6/4, 6/6

1 (800) CLAA - ATT

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30 (2X)

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Termination Point): 6/4

Violation of 47 CFR §§ 64.703(a)(3)(i) and/or(a)(4) (Failure to Provide Rate Information at Termination Point): 6/4, 6/6

1 (800) C1LL - ATT

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30 (2X)

Violation of 47 CFR §§ 64.703(a)(3)(i) and/or(a)(4) (Failure to Provide Rate Information at Termination Point): 6/4, 6/6

1 (800) FONCALT

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30 (2X)

Violation of 47 CFR §§ 64.703(a)(3)(i) and/or(a)(4) (Failure to Provide Rate Information at Termination Point): 6/4, 6/6

1 (800) COILECT

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30 (2X)

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Termination Point): 6/6

Violation of 47 CFR §§ 64.703(a)(3)(i) and/or(a)(4) (Failure to Provide Rate Information at Termination Point): 6/6

1 (800) FFAIRCALL

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30 (2X), 6/4

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Termination Point): 6/4, 6/6

Violation of 47 CFR §§ 64.703(a)(3)(i) and/or(a)(4) (Failure to Provide Rate Information at Termination Point): 6/4, 6/6

1 (800) CALA - ATT

Violation of 47 CFR § 64.703(a)(1) (Failure to Brand at Origination Point): 5/30 (2X)

Violation of 47 CFR §§ 64.703(a)(3)(i) and/or(a)(4) (Failure to Provide Rate Information at Termination Point): 6/6

1 Opticom is located at 801 Congressional Boulevard, Carmel, IN 46032.

2 47 U.S.C. §§ 226(b)(1)(A), (b)(1)(C)(i); 47 C.F.R. §§ 64.703(a)(1), (a)(3)(i), (a)(4). Our action in this Notice of Apparent Liability ('`NAL'') does not preclude further

enforcement action. The staff is continuing to investigate Opticom's practices to determine whether they violate the Act and our rules in other respects.

3 ``Operator services'' are defined by the Act and the Commission's rules as ``any interstate telecommunications service initiated from an aggregator location that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an interstate telephone call through a method other than: (1) automatic completion with billing to the telephone from which the call originated; or (2) completion through an access code used by the consumer, with billing to an account previously established with the carrier by the consumer.'' 47 U.S.C. § 226(a)(7)(A)-(B); 47 C.F.R. §§ 64.708(i)(1)-(2), (1). An ``aggregator'' is ``any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services.'' 47 U.S.C. § 226(a)(2); 47 C.F.R. § 64.708(b).

4 47 U.S.C. §§ 226(b)(1)(A), (b)(1)(C)(i); 47 C.F.R. §§ 64.703(a)(1), (a)(3)(i), (a)(4).

5 Complaint No. IC-02-G31616, dated January 11, 2002, from Brenda Jackson.

6 Id.

7 Complaint No. IC-02-N70174, dated March 22, 2002, from Cheryle Creech.

8 Id.

9 Id.

10 47 U.S.C. § 226(b)(1)(A); 47 C.F.R. § 64.703(a)(1).

11 47 C.F.R. § 64.708(f).

12 47 C.F.R. § 64.703(a)(3)(i).

13 See 47 C.F.R. §§ 64.703(a)(3)(i), 64.708(f); Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators, Report and Order and Further Notice of Proposed Rule Making, 11 FCC Rcd 4532, 4541 (1996).

14 47 C.F.R. § 64.703(a)(4).

15 Id.

16 See Appendix.

17 Id.

18 Id.

19 Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate Forfeiture Guidelines, Report and Order, 12 FCC Rcd 17087, 17097 (1997) (Forfeiture Policy Statement).

20 Section 503(b)(2)(B) provides for forfeitures up to \$100,000 for each violation or a maximum of \$1,000,000 for each continuing violation by common carriers or an applicant for any common carrier license, permit, certificate or similar instrument. 47 U.S.C. § 503(b)(2)(B). The Debt Collection Improvement Act of 1996 (DCIA) requires, however, that civil monetary penalties assessed by the federal government be adjusted for inflation based on the formula outlined in the DCIA. See Pub L. No. 104-134, § 31001, 110 Stat. 1321 (1996). The current statutory maxima pursuant to Section 503(b)(2)(B) are \$120,000 and \$1,200,000 for individual violations and continuing violations, respectively. See 47 U.S.C. § 503(b)(2)(B); 47 C.F.R. § 1.80(b)(2), (5); see also Amendment of Section 1.80(b) of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation, Order, 15 FCC Rcd 18221 (2000).

21 47 U.S.C. § 503(b)(2)(D); 47 C.F.R. § 1.80(b)(4); see also Forfeiture Policy Statement, 12 FCC Rcd at 17100-01.

22 Slamming is the unauthorized change of a subscriber's preferred carrier. Section 258 of the Act, as amended by the Telecommunications Act of 1996, states that "[n]o telecommunications carrier shall submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe." 47 U.S.C. § 258. The Commission has used a base amount of \$80,000 per violation for slamming involving forged letters of agency, a deceptive practice analogous to that at issue in this case. See, e.g., Amer-I-Net Services Corporation, Order of Forfeiture, 15 FCC Rcd 3118 (2000); see also Brittan Communications International Corp., Order of Forfeiture, 15 FCC Rcd 4852 (2000).

23 The forfeiture amount should be paid by check or money order drawn to the order of the Federal Communications Commission. Opticom should include the reference "NAL/Acct. No. 200232170005" on its check or money order. Such remittance must be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554. See 47 C.F.R. § 1.1914.

24 47 C.F.R. §§ 1.80(f)(3), (h). Send or mail any written responses regarding the reasons why the forfeiture should be reduced or not imposed to Federal Communications Commission, Enforcement Bureau, Telecommunications Consumers Division, 445 12th Street, S.W., Washington, D.C., 20554, ATTN: NAL/Acct. No. 200232170005. Any written response should focus on the mitigating factors outlined in the Forfeiture Policy Statement and Section 503(b)(2)(D) of the Act.

RECEIVED

FEB 13 2003

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

January 23, 2003

To whom it may concern:

I am enclosing copies of my phone bills.

Our son was in Springfield and his calls were coming through Qwest. We were told you gave approval for the phone system for the inmates to be switched to Opticom. It was suppose to have been cheaper. You can see by the bills that it was not.

I just received my new bill and we accepted collect calls from 2 of our other children that were AT&T collect calls. One lives in Vermillion and the other in Wakonda. I checked with them and they dialed 1-800-CALLATT. On the bill they are not listed as from AT&T they are listed from Opticom---I did not accept calls from Opticom--and I was charged enormus rates. I have not paid that portion of the bill because I am disputing it to you.

When I contacted the number listed for them for questions about my charges they claim I could have asked the operator for charges when the call was received. There was nobody there to ask for charges. Who are these people? All I heard when answering the phone was the recording "You have an AT&T collect call from _____! Will you accept the charges? When we accepted by saying "YES" they said "Thank you for using AT&T. At no time was there anyway to ask for charges as We BELIEVED them to be from AT&T. I have AT&T as my long distance carrier and Qwest as my in state long distance carrier.

I called AT&T and they claim Qwest is the one who made the charges. When I called Qwest they did not and have no control over what AT&T does. They said since the call was to 1-800-CALLATT, charges should be from AT&T NOT Opticom. I do not know how Opticom got AT&T calls.

It seems to me somebody is trying to commit phone robbery- \$22.00 for a six minute call-- I think not. I don't care if there is phone deregulation or not. No call should cost that much unless it might be from TimBuckTo. Opticom should not be able to pick up calls that were intened for AT&T.

I was told the PUC is the one to contact since you are the ones who let this Opticom company come into our state and make unsuspecting calls at outrageous rates. Something needs to be done about this. When you make a call through one phone company, another one should not be able to apply there rates without the person making the call or accepting the call knowing that it is being done.

I have made calls before and have been told "you are switching to Global Crossing" and an operator comes on. Not with these Opticom people.

I need to know what can be done about this? According to Opticom we can block there calls from our line. If we do that, Our son, who is in the state pen, will not be able to call home since we were told Opticom has that account. We have not put that block on. Evidently they are having lots of problems with this company according to the Asst. Warden at the state pen. And these calls should not be over \$4.00-\$8.00 coming from a state correction faciliy. So I guess we will

EXHIBIT

E

see when it comes to these calls if the system is ever fixed so he can call home.
WHAT ARE WE TO DO ABOUT THE OTHER CHARGES? I would gladly pay
the AT&T rate as it is very little (only cents per minute and not dollars.

How many other people are being caught in this trap?

Thank you for your attention to this matter.

Sincerely yours,

Deb Hennings

819 West Sixth St.

Sioux Falls, SD 57104-2903

605-332-5651

EMAIL: debhennings@msn.com



12-28-2002

DEB HENNINGS
Account No: 605 332-5651 490
For questions, call 1-888-511-0734
<http://www.bllview.com/zpdf/>

ITEMIZED CALLS

NO.	TIME	PLACE	AREA-NUMBER	TYPE	MIN	
THE FOLLOWING TRANSACTION IS BILLED ON BEHALF OF:						
OPTICOM - DIVISION OF ONE CALL COMM						
NOV 27	1.	533PM	FR VERMILLION SD	605 624-9943	EF	6.0 21.00
NOV 29	2.	205PM	FR VERMILLION SD	605 624-9943	DF	3.0 17.10
DEC 4	3.	1052AM	FR SIOUX FLS SD	605 335-9700	DF	2.0 19.60
DEC 4	4.	1057AM	FR SIOUX FLS SD	605 335-9700	DF	2.0 15.60
DEC 4	5.	435PM	FR WAKONDA SD	605 267-2673	DF	4.0 18.40
DEC 17	6.	757PM	FR VERMILLION SD	605 624-9943	FF	7.0 22.30
(TOTAL FOR 605 332-5651					110.40)

Type of Long Distance Calls:
DF-DAY COLLECT EF-EVENING COLLECT

TOTAL ITEMIZED CALLS 110.40
TAX- FED 3.3% ST/LOC 6.62 9.93

TOTAL ZERO PLUS DIALING INC CHARGES (INCL TAX) 120.33

THIS PORTION OF YOUR BILL IS PROVIDED AS A SERVICE TO ZERO PLUS DIALING INC.
THERE IS NO CONNECTION BETWEEN QWEST AND ZERO PLUS DIALING INC.

According to Opticom
These calls
Came from:
1-800-2255288
CALLATT

Disputing
these
calls

these call
come from
AT&T
recording

March 11, 2003

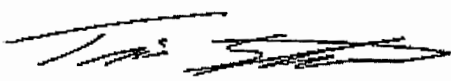
Dear Public Utilities Commission:

I would like to make a formal complaint against Opti Com. I was charged approximately \$8.00 a minute for collect calls from Fargo ND. I have contacted 800-788-4562 and spoke to Heath on March 11, 2003. He was unable to help or provide me with a supervisor or manager. He stated that he didn't have that information to give. Heath also advised that the rates are going up and through the phone number 800-collect there is no reimbursement for these charges.

I believe that this is an outrageous amount to charge for a collect call. I don't understand how a long distance carrier can charge these amounts. I feel that this is an injustice to the public user. I know that collect calls are higher but this is highway robbery.

I'm also faxing with the letter copies of the phone bill showing a flat rate charge of time per call. As you can see this is ridiculous.

Thanks



Tim Schuster
506 Trail Drive
Box Elder, SD 57719
(605) 923-5460—Home
(605) 342-5579—Work

EXHIBIT

F



Account Number
Statement Date

703240201
March 04, 2003

Effective April 1, 2003, late fee charges for all customers will change from \$3.00 to \$3.50 per month.

TELEPHONE SERVICES

605-923-5460

Local Phone Service

03/01 - 03/31	ESSENTIALS PLUS FEATURE PACKAGE	\$13.66
03/01 - 03/31	VOICE MAIL W/STUTTER TONE	\$4.95
03/01 - 03/31	MAIN RESIDENTIAL LINE	\$16.00
	Subtotal	\$34.61

Other Telephone Charges

03/02	Directory Assistance LD IntraState	\$1.25
03/02	Pass-Thru Charges-Interstate	\$327.28
	Subtotal	\$328.53

PAULA
6:30pm 3-7-03

As of April 1, the local government access station will move from channel 2 to channel 98. It is our hope that the new location will provide Midcontinent customers with better reception and less local interference.

605-923-5460

Other Telephone Charges

205-5228

TAVED

3-6-03 5:35 A.M

Catch all the games and take advantage of Major League Baseball Extra Innings Free Preview week on IN DEMAND March 31st - April 6th.

DONNA

3-7-03 8:37 A.M

Date	Start Time	Duration Min/Sec	Destination Number	Location City	State	Amount
12/19	10:40 pm	12:00	605-923-5460	RAPID CITY	SD	38.92
12/22	11:54 am	12:00	605-923-5460	RAPID CITY	SD	38.92
01/26	6:40 pm	04:00	605-923-5460	RAPID CITY	SD	31.03
01/26	6:56 pm	04:00	605-923-5460	RAPID CITY	SD	31.03
01/29	7:05 pm	04:00	605-923-5460	RAPID CITY	SD	31.03
01/30	2:57 pm	01:00	605-555-1212	DIR ASST	SD	1.25
02/01	10:15 pm	04:00	605-923-5460	RAPID CITY	SD	31.03
02/01	10:22 pm	04:00	605-923-5460	RAPID CITY	SD	31.03
02/03	4:00 pm	04:00	605-923-5460	RAPID CITY	SD	31.03
02/03	6:27 pm	04:00	605-923-5460	RAPID CITY	SD	31.03
02/06	7:54 pm	04:00	605-923-5460	RAPID CITY	SD	32.23
	Subtotal	57:00				\$328.53

Long Distance Phone Service

Date	Start Time	Duration Min/Sec	Destination Number	Location City	State	Amount
02/01	12:07 pm	24:30	701-579-4309	NEWENGLAND	ND	1.94
02/03	1:54 pm	00:36	701-239-7150	FARGO	ND	0.05
02/03	1:56 pm	00:18	701-282-0244	WEST FARGO	ND	0.02
02/03	1:57 pm	01:18	701-241-5765	FARGO	ND	0.10
02/03	2:12 pm	00:54	701-239-7150	FARGO	ND	0.07
02/03	2:12 pm	00:06	701-282-0244	WEST FARGO	ND	0.01

~~PAULA~~
- US long distance carrier #

Aut - 210-525-6603
toll free

1111



Account Number

703240201

Statement Date

March 04, 2003

02/03	2:21 pm	00:24	701-282-0244	WEST FARGO ND	0.03	
02/03	2:29 pm	17:48	850-487-3857	TALLAHASSE FL	1.41	
02/03	2:52 pm	01:00	701-356-2050	WEST FARGO ND	0.08	
02/03	3:18 pm	00:42	701-241-5765	FARGO ND	0.06	
02/03	3:35 pm	00:12	701-282-0244	WEST FARGO ND	0.02	
02/03	4:00 pm	32:54	701-282-0244	WEST FARGO ND	2.60	
02/03	4:38 pm	00:24	701-239-7150	FARGO ND	0.03	
02/03	4:43 pm	01:30	701-239-7150	FARGO ND	0.12	
02/03	6:03 pm	22:18	701-282-0244	WEST FARGO ND	1.76	
02/07	2:24 pm	00:18	701-239-6827	FARGO ND	0.02	
02/11	5:43 pm	04:24	701-282-9234	WEST FARGO ND	0.35	
02/11	7:11 pm	01:00	701-282-9234	WEST FARGO ND	0.08	
02/11	7:16 pm	29:06	701-282-9234	WEST FARGO ND	2.30	
Subtotal					139:42	\$11.05

Total Telephone Services \$374.19

P=Payphone originated calls with \$.26 surcharge included.

TAXES AND FEES

Taxes

FCC FEE	\$0.04
FRANCHISE FEE	\$1.40
LOCAL SALES TAX	\$2.21
STATE SALES TAX	\$4.41
FEDERAL EXCISE TAX	\$11.00
Subtotal	\$19.06

Fees

UNIVERSAL SERVICE FEE	\$27.55
911 EMERGENCY SURCHARGE	\$0.75
TELECOM RELAY SERVICES	\$0.15
FEDERAL ACCESS - PRIMARY LINE	\$6.00
LOCAL NUMBER PORTABILITY	\$0.43
Subtotal	\$34.88

Total Taxes and Fees \$53.94

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

**IN THE MATTER OF THE SUSPENSION)
OF THE CERTIFICATE OF AUTHORITY)
OF OCMC, INC.)
)
)
)**

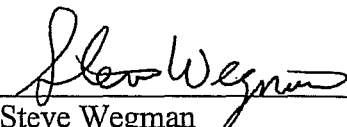
**Not Yet Docketed

AFFIDAVIT OF
STEVE WEGMAN,
PUC EMPLOYEE**

Steve Wegman, after being duly sworn upon his oath, hereby states and disposes as follows:

1. My name is Steve Wegman and I am an employee of the South Dakota Public Utilities Commission.
2. On the 24th day of February, 2003 I received two collect phone calls from Commission Employee James Mehlhaff, using OCMC, Inc., d/b/a: One Call Communications, Inc., Opticom, Advantel, LiveTel, SuperTel, RegionalTel, 1-800-MAX-SAVE.
3. James Mehlhaff and I agreed in advance of these calls that we would make two calls.
4. The first was through use of an automated system using 1-800-CALL-AAT.
5. The second was through use of an automated system using 1-800-COOLECT.
6. I have listened to the 2/24/03 tape recording provided with this affidavit and to the best of my recollection this recording represents a true and accurate recording of the calls that I received.
7. I was not given the opportunity to determine rates in advance had I chosen to accept the calls.
8. On the 3/10/03 I made arrangements with Robert Halvorson of Loretto, MN to receive interstate collect phone calls through the same numbers listed in paragraphs 4 & 5, respectively.
9. Three calls were made. The first two were connected using 1-800-CALL-AAT. The third was connected using 1-800-COOLECT.
10. I have listened to the 3/10/03 tape recording provided with this affidavit and to the best of my knowledge this recording represents a true and accurate recording of the calls that I received.
11. I was not given an opportunity to determine rates in advance had I chosen to accept the calls.

Further affiant sayeth not.



Steve Wegman
South Dakota Public Utilities Commission

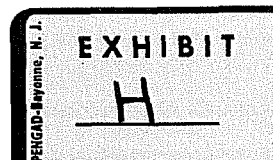
On this 10th day of March, 2003, came before me, a Notary Public in and for the State of South Dakota, Steve Wegman, well known to me or having proved his identity by means of sufficient proof, and being duly sworn, executed the foregoing "Affidavit" in my presence.

(SEAL) 

Notary Public

Notary Print Name:
My Commission Expires:

**TINA DOUGLAS
My Commission Expires
April 8, 2005**



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

**IN THE MATTER OF THE SUSPENSION)
OF THE CERTIFICATE OF AUTHORITY)
OF OCMC, INC.)
)
)
)**

Not Yet Docketed

**AFFIDAVIT OF
JAMES MEHLAFF,
CONSUMER AFFAIRS**

James Mehlhaff, after being duly sworn upon his oath, hereby states and desposes as follows:

1. My name is James Mehlhaff;
2. I am an employee of the South Dakota Public Utilities in the Consumer Affairs Division;
3. On the 24 day of Feb, 2003 I made two collect phone calls to Commission Employee Steve Wegman, using OCMC, Inc., d/b/a: One Call Communications, Inc., Opticom, Advantel, LiveTel, SuperTel, RegionalTel, 1-800-MAX-SAVE.
4. Steve Wegman and I agreed in advance of these calls that we would make two calls;
5. The first was through use of an automated system using 1-800-CALL-AAT;
6. The second was through use of an automated system using 1-800-COOLECT;
7. I have listened to the tape recording provided with this affidavit and to the best of my recollection this recording represents a true and accurate recording of the calls that I made.

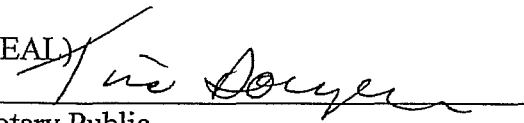
Further affiant sayeth not.



James Mehlhaff
South Dakota Public Utilities Commission

On this 7th day of March, 2003, came before me, a Notary Public in and for the State of South Dakota, James Mehlhaff, well known to me or having proved his identity by means of sufficient proof, and being duly sworn, executed the foregoing "Affidavit" in my presence.

(SEAL)



Notary Public

**TINA DOUGLAS
My Commission Expires
April 8, 2005**

Notary Print Name:

My Commission Expires:



South Dakota Public Utilities Commission



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

February 24, 2003

OCMC, Inc.
801 Congressional Boulevard
Carmel, IN 46032

RE: NOTICE PURSUANT TO ARSD 20:10:24:04:03 REGARDING
INTENT TO SEEK SUSPENSION OR REVOCATION OF
CERTIFICATE OF AUTHORITY

Capitol Office
Telephone (605)773-3201
FAX (605)773-3809

Transportation/
Warehouse Division
Telephone (605)773-5280
FAX (605)773-3225

Consumer Hotline
1-800-332-1782

TTY Through
Relay South Dakota
1-800-877-1113

Internet Website
www.state.sd.us/puc

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

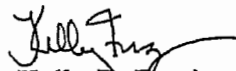
To OCMC, Inc.,

(d/b/a: One Call Communications, Inc., Opticom, Advantel, LiveTel, SuperTel,
RegionalTel, 1-800-MAX-SAVE)

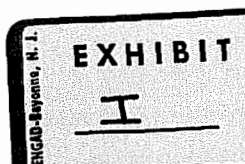
Pursuant to the above administrative rule this letter is intended as notice of staff's intent to seek a suspension or revocation of the certificate of authority of OCMC, Inc. The facts giving rise to this action are that staff has become aware that OCMC is not providing terminating customers the opportunity to determine in advance what they will be billed if accepting a collect phone call through your company. Staff has also become aware of a recent NOTICE OF APPARENT LIABILITY FOR FORFEITURE release on September 23, 2002 by the FCC against One Call Communications, Inc. d/b/a OPTICOM. In the process of applying for your certificate of authority, OCMC certified that it would be doing business in accordance with federal law. We believe this not to be true.

In accordance with our administrative rule staff hereby gives Opticom **15 days from receipt of this Notice** to show compliance with all lawful requirements for the retention of your certificate of authority. Thank you for your time and attention to this matter.

Sincerely,


Kelly D. Frazier
Staff Attorney

cc: Pam Bonrud, Executive Director, Public Utilities Commission



7002 2030 0004 5245 6037

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Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark Here

Sent To: OCMC, INC.
 Street, Apt. No., or PO Box No.: 801 Congressional Blvd
 City, State, ZIP+4: Carmel IN 46032

PS Form 3800, June 2002 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

1. Article Addressed to:
OCMC, INC.
801 Congressional Blvd
Carmel IN 46032

2. Article Number (Transfer from service label) 7002 2030 0004 5245 6037

3. Service Type
 Certified Mail
 Registered
 Insured Mail
 Express Mail
 Return Receipt for Merchandise
 C.O.D.

4. Restricted Delivery? (Extra Fee) Yes No

COMPLETE THIS SECTION ON DELIVERY

A. Signature Dee Phillips Agent Addressee
 B. Received by (Printed Name) Dee Phillips C. Date of Delivery 2-27-13
 D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

LAW OFFICES
MAY, ADAM, GERDES & THOMPSON LLP
503 SOUTH PIERRE STREET
P.O. BOX 160
PIERRE, SOUTH DAKOTA 57501-0160

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DAVID A. GERDES
CHARLES M. THOMPSON
ROBERT B. ANDERSON
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BOBBI J. BENSON
BRETT KOENECKE

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MAR 14 2003

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

OF COUNSEL
WARREN W. MAY

GLENN W. MARTENS 1881-1963
KARL GOLDSMITH 1885-1966

TELEPHONE
605 224-8803

TELECOPIER
605 224-6289

March 13, 2003

e-mail
koenecke@magt.com

Kelly D. Frazier
South Dakota Public Utilities Commission
500 E. Capitol
Pierre, SD 57501

RE: OCMC, Inc., Notice Regarding Intent to Seek Suspension or Revocation of Certificate of Authority
Our file: 3939

Dear Mr. Frazier:

OCMC, Inc., is in receipt of your February 24, 2003, letter regarding your intention to seek suspension or revocation of Certificate of Authority.

OCMC, Inc., denies that it has done anything to warrant the suspension or revocation of its Certificate of Authority. OCMC does business in accordance with Federal law, as a matter of course. Upon the following, OCMC hopes that you will withdraw your notice and proceed no further.

You have determined to seek suspension or revocation of OCMC's Certificate of Authority because you have apparently determined that

a) OCMC is not providing terminating customers the opportunity to determine in advance what they will be billed if accepting a collect phone call and

b) Months ago the FCC filed a notice of apparent liability for forfeiture (NAL).

Because the telecom industry and the FCC appear to be confused over the requirements of law regarding 47 CFR Section 64 as determined through actual observation of industry practice and the FCC's own pronouncements it is not appropriate to revoke OCMC's authority to operate in South Dakota. Further, because of the inconsistencies and inaccuracies contained in the FCC's NAL, the FCC has issued no order regarding the NAL and thus action by the South Dakota Public Utilities Commission is inappropriate.

EXHIBIT
J

OCMC's exit termination branding complies with the FCC's regulations. Section 64.703(a)(1) of the CFR requires that an OSP identify itself audibly and distinctly to the consumer at the beginning of each telephone call and before the consumer incurs any charge for the call. OCMC follows that requirement to the letter and has always done so in its exit termination branding to the called party to a collect call. Because a customer is not charged if he or she hangs up after hearing the brand on an OCMC automated collect call, OCMC's exit termination branding practice on automated collect calls meets this goal and conforms to the requirements of the FCC rules.

Further, any allegation regarding OCMC's alleged failure to provide rate information at termination point results from confusion arising from the similarity of two requirements which appears endemic to the entire telecom industry. One rule found at section 64.703(a)(3)(i) requires an OSP to provide the consumer an opportunity to request a rate quote. This is similar to and easily confused with the more narrow requirement found at section 64.703(a)(4) which is applicable only to non-access code calls, that the consumer be provided information as to how to obtain rate information. Because section 64.703(a)(4) applies only to non-access code operator service calls by definition, that provision could not possibly apply to any of the test calls listed in the NAL, all of which were made using toll free access codes. The FCC citation of that provision as an alternatively alleged violation reflects the industry's confusion as to the precise requirements of the section. In fact, a survey conducted by legal assistants with OCMC's national counsel found considerable variation within the OSP industry as to rate disclosure practices on collect calls made using toll free numbers. Two large carriers provide the called party an opportunity to obtain rate information before deciding whether to accept or deny a collect call. Two other large carriers do not provide an effective opportunity to obtain this information. Of four smaller OSPs that are OCMC's nearest competitors, three of them do not provide any opportunity to obtain this information. In light of the FCC staff's and the industry's apparent confusion over these requirements, it is not at all appropriate to revoke or suspend OCMC.

OCMC bought out an existing business on January 31, 2002. OCMC was formed by the former senior management team of One Call Communications, Inc, and is the successor to that company. Pending final regulatory approval, One Call and OCMC entered into a management agreement whereby OCMC would manage One Call's existing telecommunications business. In March 2002, OCMC also applied for and obtained its own international Section 214 authorization to permit it to undertake new business and/or serve new customers separate from the existing One Call business. Pursuant to this authorization (and domestic blanket authority) OCMC began to provide operator services to most of the toll free numbers listed in the appendix to the NAL in May and June 2002.

OCMC does not control any of the toll free phone numbers listed in the NAL. OCMC provides operator services for hundreds of toll free numbers that are controlled by unaffiliated independent third-party customers of OCMC. These customers contract with OSP's such as OCMC for services to the numbers they control. The toll free numbers listed in the appendix to the NAL were and are controlled by three customers, Unitec, Inc., Tek-Link Corporation, and Telecom Teleservices, LLC. All three are customers of OCMC and executed contracts with

March 13, 2003

Page 3

OCMC in May 2002 for the provision of operator services for long distance calls dialed by using specific toll free numbers that the customers controlled.

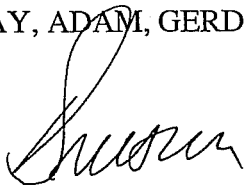
OCMC's call processing system has been designed to conform to and comply with the FCC's OSP regulations. OCMC's branding and other audio files have been designed in response to the FCC's OSP regulations found at 47 CFR Section 64.703 et sec. OCMC's branding policy, as to both live operator assisted and automated operator service calls, is to provide both origination branding (the branding that the caller hears after dialing a toll free number) and two termination brands (the branding that the called party to a collect call hears at the beginning of a call and before he/she incurs a charge). OCMC's branding policy provides more branding than the commission's rules require. In fact OCMC often faces objections to its branding practices from its own customers, particularly when the customers have previously used and OSP that does not brand calls or provides less rigorous branding than OCMC. In those instances, OCMC has imposed branding in spite of its customers' objections.

OCMC, given that background, has responded vigorously to the allegations of the FCC in the NAL. OCMC did not carry the traffic for some of the listed numbers on the date of the FCC's alleged violation as sited in the NAL. OCMC was not yet providing service for eight of the toll free numbers sited in the NAL appendix as having violated the origination branding requirement on May 30. Further the NAL strongly implies that OCMC chose and controlled the numbers for which the violations are alleged. However, OCMC did not choose any of the toll free numbers listed in the appendix to the NAL. OCMC's customers, unaffiliated independent third-parties, chose and obtained the use of these numbers.

Based upon these revelations, OCMC requests that staff withhold the filing of any petition to suspend or revoke OCMC's Certificate of Authority.

Very truly yours.

MAY, ADAM, GERDES & THOMPSON LLP



BRETT M. KOENECKE

BMK:njh

cc: Ann Bernard

Kolbo, Delaine

From: Frazier, Kelly
Sent: Wednesday, April 16, 2003 4:55 PM
To: Smith, John (PUC)
Cc: Kolbo, Delaine
Subject: RE: "Opening" a docket on Opticom

OK, I have a cc on this for Delaine to know to open it.

-----Original Message-----

From: Smith, John (PUC)
Sent: Wednesday, April 16, 2003 4:43 PM
To: Frazier, Kelly
Subject: RE: "Opening" a docket on Opticom

I hate to admit it, but the real motivation was just to get a file open to put my stuff in. I don't care, although since the commission has now voted to take action, I think it's time to open it up.

-----Original Message-----

From: Frazier, Kelly
Sent: Wednesday, April 16, 2003 11:18 AM
To: Smith, John (PUC)
Cc: Kolbo, Delaine
Subject: "Opening" a docket on Opticom

John,

Just some background on the Opticom docket. I was originally going to open the docket with my motion. I spoke with Rolayne about it and she suggested that I do not open a docket and file my motion requesting that the Commission open a docket on an Order To Show Cause. Poor Delaine has received different advise from both of us. I asked her to wait to open the docket until the order was signed and you asked her to open the docket on my motion. This, my friend, is why you get paid the **big bucks**, so obviously we will follow your lead. The fate of the world depends on this, so whichever you think is best. Thanks! KDF

South Dakota Public Utilities Commission
WEEKLY FILINGS
For the Period of April 10, 2003 through April 16, 2003

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact
Delaine Kolbo within five business days of this report. Phone: 605-773-3705

CONSUMER COMPLAINTS

CT03-009 **In the Matter of the Complaint filed by Robert Thomason, Selby, South Dakota, against Touch America, Inc. and WiTel Communications, LLC Regarding Unauthorized Switching of Services.**

Complainant alleges that one of the respondents changed his long distance service provider without authorization. Complainant seeks to be awarded \$1,000.00 as provided for in SDCL 49-31-93.

Staff Analyst: Jim Mehlhaff
Staff Attorney: Kelly Frazier
Date Docketed: 04/14/03
Intervention deadline: N/A

TELECOMMUNICATIONS

TC03-067 **In the Matter of an Order to Show Cause as to why OCMC, Inc. should not be found to be in Violation of the Laws and Regulations of the State of South Dakota.**

On March 28, 2003, staff filed a motion requesting that the Commission issue an Order To Show Cause to OCMC, Inc. d/b/a One Call Communications, Inc., OPTICOM, AdvantTel, LiveTel, SuperTel, RegionalTel, and 1-800-MAX-SAVE (Opticom). Staff requested that the Commission issue an Order To Show Cause to hear arguments from staff and the company on whether the Commission shall commence proceedings in accordance with ARSD 20:10:24:04.04. Staff is seeking a suspension or revocation of the certificate of authority transferred to Opticom in TC02-046. According to the motion, Opticom, inter alia, has failed to provide consumers the ability to determine rates in advance of accepting collect phone calls in violation of its tariff and failed to update its tariff pursuant to a Commission Order. The motion also alleges that Opticom, by using numbers such as 1-800-CALL-AAT and 1-800-COOLECT, is attempting to take advantage of mistakes by consumers attempting to use other collect phone call services and is billing rates that could exceed \$30 for a one-minute call. At the April 15, 2003, meeting the Commission considered the motion and voted unanimously to issue an order to show cause and to open a docket for consideration of the above issues.

Staff Attorney: Kelly Frazier
Date Docketed: 04/16/03
Initial Comments Due: NA

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You may subscribe or unsubscribe to the PUC mailing lists at <http://www.state.sd.us/puc>

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF AN ORDER TO SHOW)	ORDER APPROVING
CAUSE AS TO WHY TO OCMC, INC. SHOULD)	SCHEDULING OF A
NOT BE FOUND TO BE IN VIOLATION OF THE)	HEARING
LAWS AND REGULATIONS OF THE STATE)	
OF SOUTH DAKOTA)	TC03-067

On March 28, 2003, Staff filed a motion requesting that the Public Utilities Commission (Commission) issue an Order To Show Cause to OCMC, Inc. d/b/a One Call Communications, Inc., OPTICOM, AdvantTel, LiveTel, SuperTel, RegionalTel, and 1-800-MAX-SAVE (Opticom). Staff requested that the Commission issue an Order To Show Cause to hear arguments from Staff and the company on whether the Commission shall commence proceedings in accordance with ARSD 20:10:24:04.04. Staff is seeking a suspension or revocation of the certificate of authority transferred to Opticom in TC02-046. According to the motion, Opticom, inter alia, has failed to provide consumers the ability to determine rates in advance of accepting collect phone calls in violation of its tariff and failed to update its tariff pursuant to a Commission Order. The motion also alleges that Opticom, by using numbers such as 1-800-CALL-AAT and 1-800-COOLLECT, is attempting to take advantage of mistakes by consumers attempting to use other collect phone call services and is billing rates that could exceed \$30.00 for a one-minute call. At its April 15, 2003, meeting the Commission considered the motion and voted unanimously to issue an order to show cause and to open a docket for consideration of the above issues.

On April 17, 2003, the Commission electronically transmitted notice of the filing to interested individuals and entities. On August 19, 2003, Commission Staff recommended scheduling a hearing in this matter.

The Commission has jurisdiction over this matter pursuant to SDCL 49-13-1, 49-13-1.1, 49-13-4, 49-13-13, 49-31-3 and 49-31-7.1 and ARSD 20:10:24:04.02 and 20:10:01:45.

At a regularly scheduled August 19, 2003, meeting, the Commission considered this matter. The Commission voted unanimously to schedule a hearing in this docket. It is therefore

ORDERED, that a hearing shall be scheduled in this docket.

Dated at Pierre, South Dakota, this 28th day of August, 2003.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.
By: <u><i>Aldine Kalbo</i></u>
Date: <u><i>8/29/03</i></u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Robert K. Sahr

ROBERT K. SAHR, Chairman

Gary Hanson

GARY HANSON, Commissioner

James A. Burg

JAMES A. BURG, Commissioner

LAW OFFICES
MAY, ADAM, GERDES & THOMPSON LLP
503 SOUTH PIERRE STREET
P.O. BOX 160
PIERRE, SOUTH DAKOTA 57501-0160

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NEIL FULTON
BOBBI J. BENSON
BRETT KOENECKE

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OF COUNSEL
WARREN W. MAY

GLENN W. MARTENS 1881-1963
KARL GOLDSMITH 1885-1966

TELEPHONE
605 224-8803

TELECOPIER
605 224-6289

September 12, 2003

RECEIVED

e-mail
koenecke@magt.com

SEP 15 2003

SOUTH DAKOTA PUBLIC
UTILITY COMMISSION

Kelly D. Frazier
South Dakota Public Utilities Commission
500 E. Capitol
Pierre, SD 57501

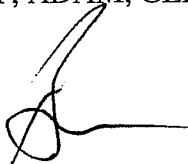
RE: In the Matter of the Suspension of the Certificate of Authority of OCMC, Inc.
Our file: 3939

Dear Kelly:

Enclosed please find a Settlement Agreement signed by Joseph A. Pence, President and CEO of OCMC, Inc. Please do docket this matter at your earliest convenience. Thank you for your consideration.

Very truly yours.

MAY, ADAM, GERDES & THOMPSON LLP



BRETT M. KOENECKE

BMK:njh

Enclosure

cc: Ann Bernard

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

IN THE MATTER OF THE SUSPENSION)
OF THE CERTIFICATE OF AUTHORITY)
OF OCMC, INC.)
)
)
)

TC03-067

SEP 15 2003

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION
SETTLEMENT
AGREEMENT

RECITALS

Whereas, the Commission staff was appraised of complaints regarding the billing and manner of providing rate information for "0 plus" collect access calls using the Respondent's services, and

Whereas, the Commission staff did investigate and file an Order to Show Cause, and

Whereas the Respondent did appear and contest the Order to Show Cause and the matter was set for hearing, and

Whereas the Respondent did, on May 10, 2003 alter the system by which it provides operator service so that the Commission staff's objections were resolved,

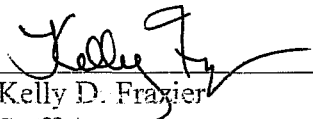
Now, Therefore, the parties do come together and agree as follows:

Comes now Kelly D. Frazier, Staff Attorney for the South Dakota Public Utilities Commission (Commission), and Joseph A. Pence, President and CEO (state position) on behalf of OCMC, Inc. d/b/a One Call Communications, Inc., OPTICOM, AdvantTel, LiveTel, SuperTel, RegionalTel, and 1-800-MAX-SAVE (Opticom) and enter into the following SETTLEMENT AGREEMENT in the above-docketed matter:

1. OCMC while not admitting liability or wrongdoing, wishes to make this settlement as the resolution of a contested matter, and Staff also wishes to settle this matter, the ultimate resolution of which was in doubt.
2. Respondent hereby agrees to submit a payment in the amount of \$316.41 to the Commission, which agrees to accept said payment on behalf of all consumers in the State of South Dakota for long distance collect calls originated in and received in South Dakota and connected through Opticom during the period from the grant of the Certificate of Authority to May 10, 2003.
3. Respondent also agrees to, and will pay upon the issuance of an Order by the Commission, the sum of \$316.41 to the Commission, which amount the Commission accepts as representing a refund of all tolls charged for services of the nature herein described during the period in question. The listing of the billings is attached hereto as Exhibit A.
4. OCMC also agrees to pay the Commission \$1000 dollars, upon the issuance of an Order by the Commission dismissing the matter with prejudice, in respect of time and effort expended by Staff

in investigation of the matters leading to the filing of the Motion for Order to Show Cause in the above captioned matter.

5. OCMC, by the signature of its officer below, affirms that the fifteen (15) numbers listed and billed as shown on exhibit A is a full and complete list of all phone numbers so charged during the time frame described above.
6. Staff, acting through Attorney Kelly D. Frazier agrees to recommend to the Commission that the above-entitled action be dismissed.
7. This agreement is subject to Commission approval. Should the Commission fail to approve it, this agreement shall be of no force or effect.



Kelly D. Frazier 9/8/03
Staff Attorney DATE
South Dakota Public Utilities Commission



X 9/11/03
POSITION RESIDENT AID CEO DATE
OPTICOM

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF AN ORDER TO SHOW))	ORDER APPROVING
CAUSE AS TO WHY TO OCMC, INC. SHOULD))	SETTLEMENT AGREEMENT
NOT BE FOUND TO BE IN VIOLATION OF THE))	
LAWS AND REGULATIONS OF THE STATE))	TC03-067
OF SOUTH DAKOTA))	

On March 28, 2003, Staff filed a motion requesting that the Public Utilities Commission (Commission) issue an Order To Show Cause to OCMC, Inc. d/b/a One Call Communications, Inc., OPTICOM, AdvantTel, LiveTel, SuperTel, RegionalTel, and 1-800-MAX-SAVE (Opticom). Staff requested that the Commission issue an Order To Show Cause to hear arguments from Staff and the company on whether the Commission shall commence proceedings in accordance with ARSD 20:10:24:04.04. Staff is seeking a suspension or revocation of the certificate of authority transferred to Opticom in TC02-046. According to the motion, Opticom, inter alia, has failed to provide consumers the ability to determine rates in advance of accepting collect phone calls in violation of its tariff and failed to update its tariff pursuant to a Commission Order. The motion also alleges that Opticom, by using numbers such as 1-800-CALL-AAT and 1-800-COOLECT, is attempting to take advantage of mistakes by consumers attempting to use other collect phone call services and is billing rates that could exceed \$30.00 for a one-minute call. At its April 15, 2003, meeting the Commission considered the motion and voted unanimously to issue an order to show cause and to open a docket for consideration of the above issues.

On April 17, 2003, the Commission electronically transmitted notice of the filing to interested individuals and entities. On August 19, 2003, Commission Staff recommended scheduling a hearing in this matter.

At a regularly scheduled August 19, 2003, meeting, the Commission considered this matter. The Commission voted unanimously to schedule a hearing in this docket.

On September 15, 2003, the Commission received a settlement agreement which had been signed by OCMC and Commission Staff.

The Commission has jurisdiction over this matter pursuant to SDCL 49-13-1, 49-13-1.1, 49-13-4, 49-13-13, 49-31-3 and 49-31-7.1 and ARSD 20:10:24:04.02 and 20:10:01:45.

At a regularly scheduled November 4, 2003, meeting, the Commission considered this matter. After discussion, staff and OCMC, through attorney Brett Koenecke, recommended that the Commission approve the agreement with the amendment that OCMC shall reimburse the consumers directly and not the Commission. The Commission voted unanimously to approve the settlement agreement with the amendment that OCMC shall reimburse the consumers the sum of \$316.41 directly and not through the Commission. It is therefore

ORDERED, that the settlement agreement shall be approved, as amended, and is incorporated in this order by reference.

Dated at Pierre, South Dakota, this 14th day of November, 2003.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.
By: <u>Melaine Kaelo</u>
Date: <u>11/14/03</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Robert K. Sahr
ROBERT K. SAHR, Chairman *dk*

Gary Hanson
GARY HANSON, Commissioner

James A. Burg
JAMES A. BURG, Commissioner

Frazier, Kelly

From: Frazier, Kelly
Sent: Thursday, February 26, 2004 10:23 AM
To: Wiest, Rolayne; Bonrud, Pam; 'csevold@qwest.com'; Kolbo, Delaine; Smith, John (PUC)
Cc: Brett Koenecke
Subject: TC03-067 CLOSURE PROBLEMS

We have received all checks and payments from Opticom. All checks have been sent to the consumers. One check for Marvin Havemann has been returned for insufficient address. The address I received from Qwest is PO Box 33, Valentine, NE.

Question: How do we close the docket when we cannot get a valid address for one of the consumers and are still sitting on that consumers check?

I will leave the check with Delaine and will attempt to get a valid address before I leave.

Sincerely,

Kelly D. Frazier
Staff Attorney
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501-5070
kelly.frazier@state.sd.us
(605) 773-3201
(605) 773-3809 fax

2/26

Please file in TC03-067. I cannot find this consumer. Rolayne or John will have to decide whether the Commission can / should close w/ an open check in the docket. I will continue my efforts to find this person.

Thanks. Kelly

Re-mailed check to Marvin Havemann on 2/26/04.