

JOHN R. HAMMOND, JR.  
 DEPUTY ATTORNEY GENERAL  
 IDAHO PUBLIC UTILITIES COMMISSION  
 PO BOX 83720  
 BOISE, ID 83720-0074  
 IDAHO BAR NO. 5470  
 Tele: (208) 334-0357  
 FAX: (208) 334-3762

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 IDAHO PUBLIC  
 UTILITIES COMMISSION

Attorney for the Staff of the Idaho Public Utilities Commission

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE STAFF'S PETITION )  
 TO INITIATE A COMMISSION INVESTIGATION ) CASE NO. GNR-T-04-4  
 TO DETERMINE IF OCMC, INC. VIOLATED )  
 THE TERMS OF ITS PRICE LIST AND THE ) STAFF'S PETITION TO  
 COMMISSION'S OPERATOR SERVICES AND ) INITIATE AN  
 PAY TELEPHONE RULE 104.04. ) INVESTIGATION  
 )**

COMES NOW the Staff of the Idaho Public Utilities Commission, pursuant to *Idaho Code* §§ 62-616 and 62-620, and recommends that the Commission initiate an investigation to resolve subscriber complaints, determine if OCMC is providing service in compliance with its Price List and to decide if OCMC, Inc. has violated the Commission's Operator Services and Pay Telephone Rules, IDAPA 31.51.01 *et. seq.* Staff alleges that OCMC, Inc., an operator services provider ("OSP"), operating in the State of Idaho as itself or under the assumed business names of OPTICOM, Inc., One Call Communications, Inc., AdvantTel, LiveTel, SuperTel, RegionTel or 1-800-MAX-SAVE (hereinafter "OCMC") has violated the Commission's Operator Services and Pay Telephone Rule 104.04 and the terms of its own Price List between the dates of March 15, 2002 until July 29, 2003. In particular, OCMC failed to provide the opportunity for customers to receive information about call charges on connected, intrastate collect calls.

**I.  
 JURISDICTION**

1. *Idaho Code* § 62-603 of the Telecommunications Act of 1988 provides that, "[t]he Commission shall administer these statutes with respect to telecommunications rates and

services in accordance with [the policies of the 1988 Act] and applicable federal law.” *Idaho Code* § 62-604 provides that any telephone corporation that “did not, on January 1, 1988, hold a certificate of public convenience and necessity issued by the commission and, which does not provide basic local exchange service, shall, on and after the effective date of this act, be subject to the provisions of [Chapter 6, Title 62.]”

2. OCMC’s Price List provides for the “description, rules, regulations, rates and charges applicable to interexchange carrier telecommunications services and operator assisted services offered by OCMC, Inc . . . within the State of Idaho.” *Price List* at Original Sheets No. 6 and 12. OCMC’s Price List conclusively demonstrates that the Company is a telephone corporation and the operator-assisted services it provides in Idaho are telecommunications services. *Idaho Code* § 62-603(13) and (14). *See also* Title 62 Telephone Corporation Rules, IDAPA 31.42.01.001. Accordingly, the Company is subject to the Commission’s regulatory authority contained in Title 62.<sup>1</sup>

3. The Commission also has the authority to implement the Federal Telecommunications Act of 1996 and to create rules to carry out duties authorized by it. *Idaho Code* § 62-615. *See also Idaho Code* § 62-602(4). In addition, in enacting the Idaho Telecommunication Act of 1988 the Legislature intended “to protect and maintain high-quality universal telecommunications at just and reasonable rates by a balanced program of regulation and competition.” *Idaho Code* § 62-602(1).

4. *Idaho Code* § 62-620 provides the Commission with authority to determine whether its rules have been violated.

5. As stated previously, Staff has received complaints from consumers and obtained evidence through its own investigation that shows OCMC has violated the requirements of Rule 104.04.

6. *Idaho Code* § 62-616 vests the Commission with the “authority to investigate and resolve complaints made by subscribers to [Title 62] services which are subject to the provisions of this chapter [which concern] whether prices and conditions of service are in conformance with filed tariffs or prices lists[.]”

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<sup>1</sup> On May 7, 2002, the Commission received a letter from counsel for the Company stating that One Call Communications, Inc., a registered Title 62 Company, was changing its name to OCMC, Inc.

7. OCMC had its price list on file with the Commission between March 15, 2002 and July 29, 2003. *One Call Communications Price List*, (effective March 23, 1992). In Section III of this Price List – “Special Conditions Governing Operator Services” the Company stated that, “Rates will be provided on request.” *Id.* at First Revised Sheet No. 41. Through Staff’s investigation and the complaints it received from consumers, it is clear that OCMC has not provided its services in Idaho in compliance with this provision of its Price List.

8. Based on the foregoing, the Commission has jurisdiction to investigate the above matters.

## II.

### STATEMENT OF FACTS

9. The Defendant/Respondent is OCMC, Inc. OCMC is incorporated in the State of Indiana and has a Certificate of Authority to transact business as a foreign corporation within the State of Idaho. OCMC provides intrastate, intraLATA interexchange telecommunications services and operator assisted services in Idaho.<sup>2</sup> *OCMC Price List*, Original Sheet No. 12 (effective July 21, 2003). As a Title 62 Company, OCMC must file its price lists with the Commission and abide by the Operator Services and Pay Telephone Rules.

10. In 1988, near implementation of the Idaho Telecommunications Act of 1988, the Commission received several inquiries from alternate operator service (“AOS”) providers regarding the status of regulatory oversight for these telecommunications providers.<sup>3</sup> Order No. 21855, (Case No. GNR-T-88-3). In addition, the Commission had received complaints from consumers concerning AOS provider charges. *Id.* at 2. These consumers alleged being unaware that their call was being processed by the AOS rather than by the company they thought they were using. *Id.* The Commission noted the Federal Communications Commission (“FCC”) and

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<sup>2</sup> The Commission’s Operator Services and Pay Telephone Rules defines Operator and Directory Assistance Services as:

[A]ny telecommunications services that include, as a component, any automatic or live assistance to a telephone caller to arrange for billing or completion, or both, of a telephone call. They include, but are not limited to, intercept, call completion and assistance, and directory assistance services, whether local, MTS, or both.

IDAPA 31.51.01.005.05. *See also* IDAPA 31.51.01.005.06 (definition of OSP).

<sup>3</sup> At the time of this rulemaking the Bell Companies were largely providing these services until new entities began competing for this segment of the market. They were defined as Alternate Operator Services Providers. Today they are simply known as OSPs.

several states had issued warnings to telephone customers regarding the practices and rates of AOS providers as they had received a surge in complaints regarding these companies. *Id.*

11. In response to these issues the Commission, pursuant to *Idaho Code* §§ 61-503 and 61-507, found the public safety and convenience required that the performance of AOS within Idaho be governed by certain proposed rules. *Id.* Among the proposed rules was the requirement that, “[a]ll operator assisted calls must be preceded by a disclosure of the name of the Company handling the call and the charge for making the connection,” and that “[t]he AOS provider or its agent is responsible for conformance with all rules and regulations that apply to the provision of this service.” Order No. 21855 at p. 4.

12. After conducting a rulemaking proceeding, the Commission issued General Order Nos. 178 and 178A that enacted these rules in November 1988. These rules governed the provision of AOS in Idaho. Specifically, at that time, Rule 9.4 of the Commission’s Interconnection Rules for AOS providers required:

[a]ll calls routed to an AOS provider must be preceded by disclosure of the AOS company’s name prior to completing the connection. The notification must clearly identify the AOS provider. Upon the caller’s request, the company handling the all must also quote the charge for making the connection and all other related operator-service charges.

Appendix to *General Order No. 178A* at 3. The Commission ordered AOS providers to not conduct intrastate business in Idaho except in conformance with these rules. *General Order No. 178A*.

13. In 1990, Congress, responding to widespread consumer dissatisfaction over high charges and certain practices of many OSPs arising from calls made from payphones, enacted the Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA), codified at 47 U.S.C. § 226. Under TOCSIA and rules enacted at its direction, OSPs were required to “brand” calls, allow consumers to terminate calls without incurring a charge before connection, and to disclose immediately to the consumer certain information regarding rates and charges.<sup>4</sup> 47 C.F.R. § 64.703(a) (1991). Section 64.703(3)(i) (1991) required the OSP to “disclose immediately to the consumer, upon request and at no charge to the consumer – (i) A quotation of its rates or charges for the call.”

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<sup>4</sup> “Brand” is a term used for an OSP identifying itself to a caller.

14. On July 30, 1991, the Commission issued General Order No. 181A that adopted amendments to its Operator Services Rules.<sup>5</sup> These new rules generally adopted the wording of the FCC's TOCSIA rules in order to minimize instances of dual regulatory schemes. In the Commission's new Rule 9.4iii(A) OSPs were required to:

[d]isclose immediately to the telephone caller, upon request and at no charge to the telephone caller: (A) a quote of the total rates and charges (including surcharges) to be billed by OSPs and MTS companies for the call.

15. In 1996 Congress enacted the Telecommunications Act of 1996 fundamentally changing telecommunication regulation by erecting a "procompetitive deregulatory national framework designed to accelerate rapid private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all markets to competition." S. Conf. Rep. No. 104-230, 104<sup>th</sup> Cong., 2d Sess. 1 (1996). Included in the Act was 47 U.S.C. § 276 that advanced two goals of promoting competition among payphone service providers and promoting the widespread deployment of payphone services to the benefit of the general public." 47 U.S.C. § 276(b)(1). In the proceeding to implement the goals of this provision the FCC stated that

for purposes of ensuring fair compensation through a competitive marketplace, the states should remove only those regulations that affect payphone competition; the states remain free at all times to impose regulations, on a competitively neutral basis, to provide consumers with information and price disclosure.

*In the Matter of the Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Notice of Proposed Rulemaking, CC Docket 96-128, DCC 96-254 at ¶¶ 16, 49, 59 and 60 (1996).*

16. On June 6, 1996, the FCC released the OSP Reform Notice. Billed Party Preference for InterLATA 0 + Calls, CC Docket No. 92-77, Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 7274 (1996). In the case the FCC sought comment on whether, consistent with the requirements of the 1996 Act, it should require all OSPs to disclose their rates on all 0 + calls.

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<sup>5</sup> On August 17, 1990, the Commission issued Order No. 23278, in Case No. 31.D-R-89-1 establishing a proceeding to amend its Operator Services Rules.

17. In 1998 the FCC issued its decision regarding the above matter.<sup>6</sup> *Second Report and Order and Order on Reconsideration, In the Matter of Billed Party Preference for InterLATA 0+ Calls*, CC Docket No. 92-77, FCC 98-9, 13 F.C.C.R. 6122, 13 FCC Rcd. 6122 (1998). In it the FCC added language to 47 C.F.R. § 64.703 requiring OSPs, like OCMC, to provide price disclosures on interstate calls orally to the away-from home caller to ensure that consumers receive sufficient information about the rates they will pay for operator services at public payphones and other locations. This Rule, in pertinent part requires OSPs to:

3) Disclose immediately to the consumer, upon request and at no charge to the consumer--(i) A quotation of its rates or charges for the call; . . . .

(4) Disclose, audibly and distinctly to the consumer, at no charge and before connecting any interstate, domestic, interexchange non-access code operator service call, how to obtain the total cost of the call, including any aggregator surcharge, or the maximum possible total cost of the call, including any aggregator surcharge, before providing further oral advice to the consumer on how to proceed to make the call. The oral disclosure required in this subsection shall instruct consumers that they may obtain applicable rate and surcharge quotations either, at the option of the provider of operator services, by dialing no more than two digits or by remaining on the line.

47 C.F.R. 64.703(a)(3) and (4).

18. In refining and clarifying the requirements of 47 C.F.R. § 64.703 the FCC ruled that the “consumer” for the purposes of collect calls meant the caller and the called party and that rate disclosures had to be made available to both. *In the Matter of Billed Party Preference for InterLATA 0+ Calls, Second Order on Reconsideration*, CC Docket No. 92-77, FCC 01-355, 16 FCC Rcd. 22,314 (2001).

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<sup>6</sup> In this decision the FCC noted that:

Consumer education initiatives by the industry, government, and the media appear to have helped produce a favorable downward trend over recent years in the number of complaints received by the Commission about high OSP rates. Nevertheless, more than five years after enactment of TOCSIA, the high rates of many OSPs and surcharges imposed by aggregators continue to be a concern. In 1995, the second largest category of complaints processed by the Commission's Common Carrier Bureau consisted of complaints directed against OSPs, and the vast majority of these concerned rates and charges that consumers thought were excessive. In 1996; the Commission processed 4,132 written complaints about the level of interstate rates and services of OSPs. Accordingly, we examine in the next sections what additional steps we can and should take to foster greater competition by OSPs.

13 F.C.C.R. 6122 at ¶ 9 (emphasis added).

19. The Commission's Operator Services and Pay Telephone Rules contain the requirements OSPs must abide by in Idaho.

20. Rule 104.04, enacted on March 15, 2002, requires OSPs like OCMC to:

Disclose, audibly and distinctly to the consumer (caller for non-collect calls, called party for collect calls), at no charge, and before connecting any intrastate operator service call, how to obtain the total cost of the call, including any aggregator surcharge, or the maximum possible total cost of the call, including any aggregator surcharge, before providing further advice to the consumer on how to proceed to make the call. The oral disclosure required in Rule 104.04 shall instruct consumers that they may obtain applicable rate and surcharge quotations either, at the option of the provider of operator services, by dialing no more than (2) digits or by remaining on the line.

IDAPA 31.51.01.104.04 (emphasis added).

21. Rule 104.04 was created through a rulemaking to make additions and changes to the Commission's Operator Services and Pay Telephone Rules to recognize changes in federal law particularly in the area of rate disclosure to consumers/customers. *See* Notice of Proposed Rulemaking, Case No. 31-5101-0101 ("The proposed substantive changes to these Rules are made so that the Rules are consistent with recent changes in federal law. *See generally, In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order No. 96-388 (September 20, 1996))." These changes are consistent with the federal Telecommunications Act of 1996, The Telephone Operator Consumer Improvement Act of 1990 and FCC Rules. *See* 47 U.S.C. §§ 276, 253 and 226; 47 C.F.R. §§ 64.703(a)(3)(i) and (4) and 64.708(f). OCMC was an interested party in the rulemaking before the Commission as the notices demonstrate. *Notice of Public Workshop and Negotiated Rulemaking*, Order No. 28746, Service List. *See also Notice of Proposed Rulemaking Service List*, Case No. 31-5101-0101.

22. After its enactment of Rule 104.04 OCMC did not request an exemption from the application of its requirements for its services between March 15, 2002 and July 29, 2003.

23. On June 24, 2003, Staff received a complaint from a consumer about OCMC's conduct.<sup>7</sup> The consumer alleged placing a collect call to his home number in Boise, on May 29,

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<sup>7</sup> In addition to the consumer complaint discussed above Staff received consumer complaints regarding OCMC's failure to provide the opportunity to receive information about rates. Staff alleges that some of these complaints are still unresolved. In addition, Staff has received numerous complaints regarding OCMC's rates.

2003, from a payphone located at the Costco Warehouse Store, 2051 S. Cole Road.<sup>8</sup> The consumer complained the charges for the call were excessive (\$19.21 for four minutes) and the called party was not given the opportunity to obtain information about call charges.

24. On June 27, 2003, Staff attempted to verify the consumer's complaint by placing a collect call from the same phone at Costco to Staff's office. Staff found that the called party on the call was also not provided the audible notice required by Rule 104.04 about how to obtain information about call charges. In addition, the caller on this call was not provided the opportunity upon request to obtain information about call charges in conformance with Rule 104.03.

25. On July 3, 2003, Staff sent correspondence to OCMC requesting that the Company:

Provide evidence that this phone, number 208-321-9602, did provide the customer with the required audible notice of an opportunity to obtain the charges for the call or present plan, including a timeline, for ensuring that all payphones in Idaho that are provided operator services by Opticom or any other divisions of OCMC, Inc. do provide such notices.

Staff further requested that OCMC eliminate the charges for the call placed by the complaining customer.

26. On July 16, 2003, OCMC responded stating:

The calling party was advised of how to obtain a rate quote. In addition, the called party on automated collect calls is now being instructed that they may obtain call charges. Oral disclosure to the called party on live collect calls is not currently in place, but should be implemented by July 31, 2003.

*OCMC Letter*, filed July 17, 2003 (emphasis added). The Company also stated that the complaining consumer was given a 100% credit against the charges incurred.

27. Based on the Company's response, Staff advised the Company by Letter, on August 18, 2003, that OCMC appeared to have violated Rule 104.04 of the Commission's Operator Services and Pay Telephone Rules. Staff stated that because OCMC's rates are significantly higher than other OSPs, it is possible that many consumers who used its services

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<sup>8</sup> The phone at the Costco Warehouse is specifically identified by its number, (208)-321-9602.

and were not provided the required rate disclosure would have decided to not have the collect call connected.

28. On September 19, 2003, Staff sent an additional letter to OCMC requesting that it provide: 1) the dates when it began providing the called party on fully automated collect calls and calls processed by a live operator the opportunity to obtain call charges; and 2) starting from March 15, 2002, the total number of intrastate collect calls OCMC processed in Idaho broken down into two categories, those handled as automated calls as well as those handled via live operators.

29. OCMC responded on October 2, 2003 and admitted that until the end of July 2003, it did not comply with the requirements of Rule 104.04.<sup>9</sup> Specifically, OCMC stated it did not begin providing the called party the opportunity to obtain information about call charges on automated collect calls until sometime between July 3 and 16, 2003. The Company also stated it did not provide the caller or the called party the opportunity to obtain information about call charges through a live operator until July 29, 2003. The Company also disclosed that between March 14, 2002 and July 31, 2003 it processed 9,021 Idaho intrastate collect calls that were handled by its automated system and 3,872 Idaho intrastate collect calls that were handled by live operators.

30. Based on the foregoing call data Staff alleges that OCMC has violated Rule 104.04 of the Commission's Operator Services and Pay Telephone Rules since its effective date on March 15, 2002 by failing to provide the required disclosures for 12,893 local collect phone calls.

31. Staff alleges this is not the first time OCMC has possibly violated the Commission's Operator Service and Pay Telephone Rules. In January 1995, the Commission approved a Consent Agreement between the Commission Staff and One Call Communications,

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<sup>9</sup> It should be noted that on December 11, 2003, the FCC adopted a Consent Decree terminating an investigation into possible violations by OCMC, Inc. of Section 225 of the Communications Act of 1934, as amended, and the FCC Rules governing OSPs. Specifically, the Decree resolved an investigation that had found that OCMC had violated the FCC's Rules regarding OSPs by failing to brand at the origination point of operator service calls placed via toll-free access codes; failing to brand at the termination point on certain access code calls; and failing to provide rate information at the termination point of these access code calls. *In the Matter of OCMC, Inc. dba One Call Communications, Inc. dba OPTICOM*, 2003 WL 22928442 (F.C.C. 2003). To resolve this investigation OCMC agreed: to make a \$500,000 contribution to the United States Treasury; and to engage in certain practices to ensure future compliance with the FCC's Rules.

Inc., OCMC's predecessor. The Consent Agreement resolved One Call's alleged violations of Rule 102.01 of the Commission Operator Services and Pay Telephone Rules. To resolve this matter One Call made a \$1,000 contribution to the State's General Fund and agreed to not engage in any future acts, practices or omissions that would constitute violations of Idaho Code, Title 62 or the Commission Rules. *Consent Agreement* at 2. Furthermore, the Consent Agreement provided that should One Call be found to be operating contrary to the terms of Agreement the Commission shall file a complaint in the appropriate district court in support of a request that such court enter a preliminary and permanent injunction against One Call's operations. *Id.*

### III.

#### CAUSES OF ACTION

The Commission Staff alleges OCMC violated the requirements of Rule 104.04 of the Commission's Operator Services and Pay Telephone Rules by failing to provide the required disclosures to the called party on 12,938 completed intrastate collect calls made from payphones in Idaho that OCMC provides OSP services for between March 15, 2002 until July 31, 2003.

The Commission Staff alleges that OCMC violated the terms of its own Price List by failing to provide the called party on 12,938 intrastate collect calls the opportunity to receive information about charges for a connected call between March 15, 2002 and July 29, 2003.

#### PRAYER FOR RELIEF

Complainant Staff requests that the Commission hold an evidentiary hearing to determine whether OCMC has violated Rule 104.04.

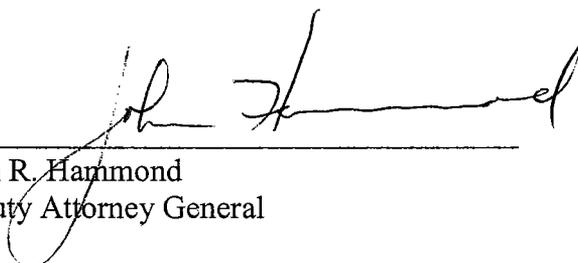
At the conclusion of evidentiary proceedings Complainant Staff requests that the Commission find: 1) that OCMC failed to comply with the Commission's Operator Services and Pay Telephone Rule 104.04 between March 15, 2002 until July 29, 2003; 2) failed to seek a waiver from the application of the above Rules to its services; and 3) failed to comply with the terms of its own Price List. Staff also requests that the Commission determine the number of times that OCMC failed to comply with this Rule and its Price Lists by equating one violation, per one collect call connected by OCMC during the applicable time period.

Given the prior Consent Agreement Staff also requests that the Commission upon finding that OCMC has violated its Rules, direct the attorney for the Commission to file an action, pursuant to *Idaho Code* § 62-620 in the District Court to seek the imposition of penalties

for the number of times the Company has failed to comply with Rule 104.04 of the Commission's Operator Services and Pay Telephone Rules and for any violations concerned with failing to comply with the terms of its Price List, unless the Company agrees to remit an appropriate civil penalty to the Commission for the General Fund of the State of Idaho.

Such other and further relief as the Commission deems just and proper.

Respectfully submitted this 15th day of March 2004.



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John R. Hammond  
Deputy Attorney General

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**McDevitt & Miller LLP**  
Lawyers

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(208) 343-7500  
(208) 336-6912 (Fax)

420 West Bannock Street  
P.O. Box 2564-83701  
Boise, Idaho 83702

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Chas. F. McDevitt  
Dean J. (Joe) Miller  
IDAHO PUBLIC UTILITIES COMMISSION

October 1, 2003

John Hammond, Esq.  
IDAHO PUBLIC UTILITIES COMMISSION  
472 West Washington Street  
Boise, Idaho 83702

Re: One Call Communications

Dear John:

In response to the questions in your letter of September 19, 2003, OCMC has provided to me, for transmittal to you, the following:

1. Programming changes—automated collect calls: OCMC's records do not reveal the precise date. It would have been after Wayne Hart's July 3<sup>rd</sup> letter and before Ms. Clores July 16<sup>th</sup> letter.
2. Script implementation date: July 29, 2003.
3. Copy of Script: A copy is attached.
4. Call Data starting March 12, 2002:

From Mar 14 2002 through July 31, 2003

Idaho intralata/intrastate AUTO collect totals: 9,021 calls

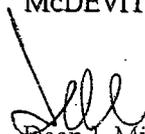
Idaho intralata/intrastate LIVE collect totals: 3,872 calls

5. OCMC inserted a message into the call tour program. The message is automatic.
6. OCMC drafted the script after making test calls to other operator service providers. The script was written and inserted into the operator screens. The operators also received a bulletin reminding them to read their screen. This was a dialog change and was handled like all dialog changes. The operators are trained to read their screens.

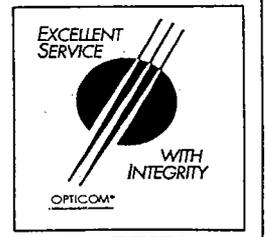
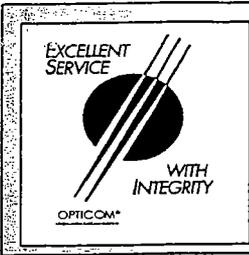
I trust this information is responsive to your requests.

Very truly yours,

McDEVITT & MILLER LLP

  
Dean J. Miller

DJM/sg  
Attach.  
C: Ann Bernard



## Rate Quote Dialogue

July 29, 2003

### EXPLANATION:

You will begin to receive call screens that contain special "rate quote" dialogue that is to be recited to the destination party. The new dialogue will appear in the "Ask/Answer Dialogue" box and is to be used when asking for the acceptance of charges:

### PROCEDURE:

"This is the Opticom Operator. A rate quote is available upon request. I have a collect call from \_\_\_\_\_. Will you accept the charges?"

<b>MAIN</b>	<b>13</b>	<b>Training with validation</b>	<b>30-Sep-2003 10:53:12 AM</b>
<b>Exit Brand:</b> Thank you for using OPTICOM			
<b>Site Information</b> 3056213972 NORTH DADE, FL Full service			
<b>Agent Information</b> 8000			
<b>Ask/Answer Dialog</b> <b>SAY TO THE CALLER:</b> OPERATOR 1112. MAY I HELP YOU. May I have the area code and number you are calling? ( ) _____ How are you billing your call? 1 - Collect, 2 - Third party, 3 - Card  Connection type: 1-Station to station, 2-Person to person Station to Station  #E8> Dial #E2> Rates #E9> Trans #E12> Emergency #E10> Finish			
Caller is on the line, class 07 Swld:12			

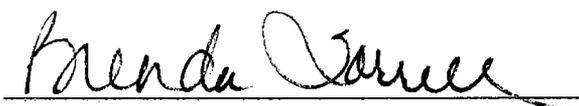
## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 15<sup>TH</sup> DAY OF MARCH 2004, SERVED THE FOREGOING **STAFF'S PETITION TO INITIATE AN INVESTIGATION**, IN CASE NO. GNR-T-04-4, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

ANN C. BERNARD  
OCMC, INC.  
801 CONGRESSIONAL BLVD.  
CARMEL, IN 46032  
E-mail: [ann.bernard@ocld.com](mailto:ann.bernard@ocld.com)

DEAN J. MILLER  
McDEVITT & MILLER, LLP  
420 W. BANNOCK STREET  
PO BOX 2564 – 83701  
BOISE, ID 83702  
E-mail: [joe@mcdevitt-miller.com](mailto:joe@mcdevitt-miller.com)

CT CORPORATION  
300 N. 6<sup>TH</sup> STREET  
BOISE, ID 83702

  
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SECRETARY