

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

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

ORDER

Adopted: December 9, 2003

Released: December 12, 2003

By the Commission:

1. In this Order, we adopt a Consent Decree terminating an investigation into possible violations by OCMC, Inc. ("OCMC"), d/b/a/ One Call Communications, Inc., d/b/a/ Opticom, of Section 226 of the Communications Act of 1934, as amended (the "Act"), and the Commission's rules governing operator service providers.

2. The Commission and OCMC have negotiated the terms of a Consent Decree that would resolve this matter and terminate the investigation. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree, we find that the public interest would be served by approving the Consent Decree and terminating the investigation.

4. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), and 503(b) of the Communications Act of 1934, as amended, that the attached Consent Decree IS ADOPTED.

5. OCMC shall make its voluntary contribution to the United States Treasury by mailing a check or similar instrument, payable to the order of the Federal Communications

1 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).

2 We note that One Call Internet, Inc., which was formerly known as One Call Communications, Inc. and responded to the Notice of Apparent Liability issued in this matter, is not a proper party to this proceeding. See One Call Communications, Inc. d/b/a/ Opticom, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 18646 (2002) ("NAL"). See also letter from Steven A. Augustino, Counsel to One Call Internet, Inc. to Colleen K. Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, August 5, 2003, wherein OCI and OCMC stipulate that OCMC is the proper party to the NAL.

3 47 U.S.C. §§ 154(i), 154(j), 503(b).

Commission, to the Federal Communications Commission, Forfeiture Collection Section, Finance Branch, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232170005 and FRN 0003772910.

6. IT IS FURTHER ORDERED that the Commission investigation into the matter described herein is terminated.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dorch
Secretary

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CONSENT DECREE

I. INTRODUCTION

1. The Federal Communications Commission (the “FCC” or the “Commission”) and OCMC, Inc., (“OCMC”) d/b/a One Call Communications, Inc. d/b/a Opticom, by their authorized representative, hereby enter into this Consent Decree to resolve two investigations by the Commission: one (the “OSP Investigation”) regarding possible non-compliance with the operator service provider (“OSP”) requirements contained in Sections 226(b)(1)(A) and (b)(1)(C)(i) of the Communications Act of 1934, as amended (the “Act”), and Sections 64.703(a)(1), (a)(3)(i) and (a)(4) of the Commission’s rules;⁴ and the other regarding related matters raised in two letters of inquiry issued to OCMC (the “LOI Investigation”). Both investigations were undertaken pursuant to Sections 4(i) and 403 of the Act.⁵

2. On September 23, 2002, the Commission, following an investigation, issued a Notice of Apparent Liability (“NAL”).⁶ The NAL found that OCMC had apparently violated the Act and the Commission’s rules regarding OSPs by failing to brand⁷ at the origination point of operator service calls on 25 of 26 toll-free access codes⁸ tested; failing to brand at the termination point on 13 of these access codes; and failing to provide rate information at the termination point on all 26 of the tested access codes. Based upon these allegations, the NAL

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

⁵ 47 U.S.C. §§ 154(i), 403.

⁶ *One Call Communications, Inc. d/b/a/ Opticom*, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 18646 (2002).

⁷ “Branding” occurs when an OSP “identif[ies] [itself], audibly and distinctly, to the consumer.” 47 U.S.C. § 226(b)(1)(A); 47 C.F.R. § 64.703(a)(1).

⁸ “Access code” means “a sequence of numbers that, when dialed, connect the caller to the provider of operator services associated with that sequence.” 47 U.S.C. § 226(a)(1); 47 C.F.R. § 64.708(a).

found that OCMC was apparently liable for 38 separate violations of the branding requirements in Section 226(b)(1)(A) of the Act and Section 64.703(a)(1) of the Commission's rules. The *NAL* also found 26 separate apparent violations of the rate disclosure requirements of Section 226(b)(1)(C)(i) of the Act and Sections 64.703(a)(3)(i) and (a)(4) of the Commission's rules. As set forth in the *NAL*, the investigation apparently showed potential widespread violations of the Commission's rules, which appeared to be part of a deliberate scheme to take advantage of consumers' dialing errors.⁹ On September 30, 2002, pursuant to several conversations with counsel for OCMC, the Enforcement Bureau sent a letter to counsel for OCMC memorializing that OCMC was a proper party to the *NAL*, and issuing a Letter of Inquiry ("2002 LOI") to OCMC initiating the LOI Investigation.¹⁰ The 2002 LOI also dealt with OCMC's provisioning of operator services. OCMC filed its Response to the Notice of Apparent Liability for Forfeiture on October 30, 2002.

3. The Enforcement Bureau issued a follow-up LOI to OCMC and One Call Internet, Inc. in the course of its LOI Investigation on April 7, 2003 ("Supplemental LOI"). OCMC responded in full to the 2002 LOI and the Supplemental LOI (collectively, "LOIs").

II. DEFINITIONS

4. For purposes of this Consent Decree, the following definitions shall apply:
- (a) The "FCC" or the "Commission" means the Federal Communications Commission and all Bureaus and Offices of the Commission, including the Enforcement Bureau.
 - (b) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (c) "OCMC" or the "Company" means OCMC, Inc., d/b/a One Call Communications, Inc., d/b/a Opticom, or any of its subsidiaries, affiliates, and successors.
 - (d) "Parties" means OCMC and the Federal Communications Commission.
 - (e) "OSPs" means providers of operator services, as defined by the Act and the Commission's rules.¹¹

⁹ These apparent dialing errors consisted of the use of toll-free access codes that used a dialing pattern similar to MCI's 1-800-COLLECT, AT&T's 1-800-CALLATT, or Verizon's 1-800-CALLGTE. Using toll-free access codes similar to these could result in consumers misdialing one or more digits in attempting to use the toll-free access codes cited above, and having the call be handled by OCMC as the OSP, rather than by the OSP that the caller allegedly had intended.

¹⁰ See Letter from Colleen K. Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, to Cheryl A. Tritt, September 30, 2002.

¹¹ See 47 U.S.C. § 226(a)(9); 47 C.F.R. § 64.708(i).

- (f) “Adopting Order” means an Order of the Commission adopting the terms and conditions of this Consent Decree.
- (g) “Effective Date” means the date on which the Commission adopts the Adopting Order.
- (h) Notice of Apparent Liability (“NAL”) means the *NAL* adopted on September 23, 2002, *One Call Communications, Inc., d/b/a Opticom*, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 18646 (2002).

III. AGREEMENT

5. OCMC represents and warrants that it is the properly named party to this Consent Decree and is solvent and has sufficient funds available to meet fully all financial and other obligations set forth herein. OCMC further represents and warrants that it has caused this Consent Decree to be executed by its authorized representative, as a true act and deed, as of the date affixed next to said representative’s signature. Said representative and OCMC respectively affirm and warrant that said representative is acting in his/her capacity and within his/her authority as a corporate officer of OCMC, and on behalf of OCMC and that by his/her signature said representative is binding OCMC to the terms and conditions of this Consent Decree. OCMC also represents that it has been represented by counsel of its choice in connection with this Consent Decree and is fully satisfied with the representation of counsel.

6. OCMC agrees that the Commission has jurisdiction over it and the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

7. OCMC will make a voluntary contribution to the United States Treasury in the amount of five hundred thousand dollars (\$500,000) within 14 calendar days after the Commission Order adopting this Consent Decree becomes final. OCMC must make this payment by check, wire transfer, or money order drawn to the order of the Federal Communications Commission, and the check, wire transfer, or money order should refer to “NAL Acct. No. 200232170005.” If OCMC makes this payment by check or money order, it must mail the check or money order to: Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois, 60673-7482. If OCMC makes this payment by wire transfer, it must wire such payment in accordance with Commission procedures for wire transfer.

8. OCMC agrees that it will voluntarily conduct a “Best Practices Compliance Program” as set forth below, beginning no later than 30 days after the Effective Date and will terminate that program pursuant only to the terms set forth in paragraph 23 below. Under this program, OCMC will:

- (a) Brand all calls to the toll-free access codes where OCMC is the OSP, including calls made from non-aggregator locations.¹²
- (b) Triple brand all collect calls to the toll-free access codes where OCMC is the OSP, including calls made from non-aggregator locations. “Triple brand” means that OCMC will brand collect calls at the origination point of the call, brand again when the called party is first contacted by OCMC on a collect call, and then brand a third time with a termination brand.
- (c) Automatically and affirmatively, by means of an automated menu prompt or otherwise, offer to all callers rate information on all calls made to the toll-free access codes where OCMC is the OSP, so that consumers will not have to take the affirmative step of requesting such information.
- (d) Implement a training program for all of its operators regarding the Best Practices Compliance Program. Newly hired operators will be trained on the program immediately upon employment with the Company. All operators will be given refresher training on the program annually.
- (e) Upon receiving knowledge of a specific consumer complaint to OCMC, the FCC, or any state regulatory authority, explicitly based upon the premise that the consumer misdialed one of the following three toll-free access codes -- MCI’s 1-800-COLLECT (1-800-265-5328), AT&T’s 1-800-CALLATT (1-800-225-5288), or Verizon’s 1-800-CALLGTE (1-800-225-5483) (collectively, “Other Access Codes”) -- and completed a telephone call using a toll-free access code served by OCMC that differs from one of the Other Access Codes by only one digit, OCMC agrees to adjust the rate OCMC charged to the lowest rate, based on the date, time and end points of the call, applicable to the Other Access Code that the consumer intended to dial, to the extent that OCMC is able to ascertain the access code that the consumer intended to dial. This rate adjustment requirement will apply to any complaint in which a consumer states he/she did not intend to use OCMC’s services, does not recognize the OCMC and/or Opticom name, or expresses the intention to have used a different OSP, as long as the consumer dialed an access code, for which OCMC is the OSP, that differs from one of the Other Access Codes by only one digit.
- (f) Undertake a consumer education program informing consumers about their rights under Section 226 of the Act and Sections 64.703-708 of the Commission’s rules, including how to request rate information when using toll-free access codes and how to access the consumer’s carrier of choice. This includes attending consumer education conferences around the country on a yearly basis and distributing written information for consumers.
- (g) In the case of agents controlling toll-free access codes, inform all such agents with whom OCMC has contracted to be the OSP of the provisions of the Best

¹² An “aggregator” is defined as 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).

Practices Compliance Program. This includes a written statement that the agent must sign acknowledging that it understands and agrees to the terms of the Best Practices Compliance Program.

- (h) In the event that an agent controlling toll-free access codes terminates its contract with OCMC and begins to take service for its toll-free access codes from another OSP, OCMC shall notify the Division Chief, Telecommunications Consumers Division, Enforcement Bureau, of such change, including the identification of the new OSP and a list of the toll-free access codes serviced by the new OSP.

Nothing in this Best Practices Compliance Program shall alter OCMC's obligation to otherwise comply with the Act and with the Commission's rules and orders.

9. Within 60 days from the Effective Date, OCMC will provide a formal report to the Bureau of its compliance with this Consent Decree, including progress in implementing its Best Practices Compliance Program. OCMC also agrees to send to the Bureau three months thereafter, and once again on the first anniversary of the Effective Date, or within 14 days upon request, a report detailing its compliance efforts ("Compliance Report") with regard to this Consent Decree, including but not limited to, a list of consumer complaints and/or requests to have an OCMC-charged rate adjusted to a non-OCMC rate for calls initiated via the toll-free access codes specified in paragraph 8(e) when OCMC is the OSP. The Compliance Report will contain the date of the call, the number allegedly misdialed by the consumer, the amount charged by OCMC, the amount that would have been charged by the OSP of the consumer's choice, and the amount refunded (if any) by OCMC.

10. In express reliance on the covenants and representations contained herein, the Commission agrees to terminate the OSP Investigation concerning compliance with Sections 226(b)(1)(A) and (b)(1)(C)(i) of the Act, and Sections 64.703(a)(1), (a)(3)(i) and (a)(4) of the Commission's rules, resolve the *NAL* and to terminate the LOI Investigation.

11. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement of: (a) the OSP Investigation; (b) any additional proceeding based on allegations of non-compliance with the OSP requirements contained in Sections 226(b)(1)(A) and (b)(1)(C)(i) of the Act and Sections 64.703(a)(1), (a)(3)(i) and (a)(4) of the Commission's rules occurring on or before the Effective Date; (c) the LOI Investigation; and (d) any additional proceeding based on information provided in response to the 2002 LOI or the Supplemental LOI regarding actions or conduct occurring on or before the Effective Date.

12. The Commission agrees that, in the absence of new material evidence, it will not, on its own motion, initiate any other enforcement action against OCMC concerning the matters that were the subject of the OSP Investigation occurring prior to the Effective Date, or concerning possible past violations of Sections 226(b)(1)(A) and (b)(1)(C)(i) of the Act and Sections 64.703(a)(1), (a)(3)(i) and (a)(4) of the Commission's rules occurring prior to the Effective Date, or seek on its own motion any administrative or other penalties from OCMC based on the OSP Investigation. Consistent with the foregoing, nothing in this Consent Decree limits the Commission's authority to consider and adjudicate any complaint that may be filed

pursuant to Section 208 of the Act, 47 U.S.C. § 208, and to take any action in response to such complaint.

13. The Commission agrees that it will not, on its own motion, initiate any new proceeding, formal or informal, or take any action on its own motion against OCMC concerning the matters that were the subject of the LOI Investigation occurring prior to the Effective Date, or concerning possible past violations occurring on or before the Effective Date based on information provided in response to the 2002 LOI or the Supplemental LOI, or seek on its own motion any administrative or other penalties from OCMC based on the LOI Investigation. OCMC waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Order adopts the Consent Decree without change, addition, or modification. The FCC also agrees that, in the absence of material new evidence related to such matters, it will not institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against OCMC with respect to its basic qualifications, including the character qualifications, to be a Commission licensee.

14. OCMC's decision to enter into this Consent Decree is expressly contingent upon the issuance of an Order by the Commission that is consistent with this Consent Decree, and that adopts the Consent Decree without change, addition, or modification.

15. OCMC represents and warrants that it shall not effect any change in its form of doing business or its organizational identity or participate directly or indirectly in any activity to form a separate entity or corporation that engages in acts prohibited in this Consent Decree or for any other purpose which would otherwise circumvent any part of this Consent Decree or the obligations of this Consent Decree. OCMC agrees to notify the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, Washington, D.C. 20554, at least thirty (30) days prior to the effective date of any material change in OCMC's legal status or corporate structure that may materially affect its obligations hereunder, including but not limited to any merger, incorporation, dissolution, assignment, or any other change that may materially affect OCMC's obligations under this Consent Decree. Nothing in this Consent Decree shall be deemed to be an obligation by OCMC to disclose to the Bureau "material inside information," as that term is defined in applicable securities laws and regulations.

16. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

17. OCMC represents and warrants that neither OCMC nor any of its representatives, employees, agents or any other person acting under, by, through, or on behalf of OCMC, directly or indirectly, or through any corporate or other device, shall state, represent, or imply that the FCC, or any other governmental unit or subdivision thereof, approved or authorized any practice, act, or conduct of OCMC as a result of this Consent Decree, other than the standards and actions set forth in this Consent Decree.

18. The Parties also agree that if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission, where compliance with the provision would result in a violation of the subsequent rule or order, that provision will be superseded by such Commission rule or order.

19. By this Consent Decree, OCMC does not waive or alter its right to assert and seek protection from disclosure of any privileged or otherwise confidential and protected documents and information, or to seek appropriate safeguards of confidentiality for any competitively sensitive or proprietary information. The status of materials prepared for, reviews made and discussions held in the preparation for and implementation of OCMC's compliance efforts under this Consent Decree, which would otherwise be privileged or confidential, are not altered by the execution or implementation of the terms of this Consent Decree and no waiver of such privileges is made by this Consent Decree.

20. If either Party (or United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither OCMC nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and OCMC and the Commission will waive any statutory right to a trial de novo with respect to any matter upon which the Adopting Order is based, and shall consent to a judgment incorporating the terms of this Consent Decree.

21. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act and the Commission's Rules. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, OCMC does not admit any noncompliance or liability for violating Commission rules in connection with any of the matters that are the subject of this Consent Decree.

22. OCMC agrees that any violation of the Consent Decree or the Adopting Order will constitute a separate violation of a Commission order, entitling the Commission to exercise any rights or remedies attendant to the enforcement of a Commission order.

23. OCMC agrees to continue the Best Practices Compliance Program without a specific expiration date. OCMC can petition the Enforcement Bureau no sooner than thirty-six (36) months from the Effective Date regarding the appropriateness of terminating the Best

Practices Compliance Program. The Parties agree that the reporting requirements described in paragraph 9 of this Consent Decree shall expire thirty-six (36) months from the Effective Date.

24. This Consent Decree may be signed in counterparts.

For the Federal Communications Commission

For OCMC, Inc.

By: _____
Marlene H. Dortch
Secretary

By: _____
Joseph A. Pence
President and CEO
OCMC, Inc.

Date

Date