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BEFORE THE ARIZONA CORPORATION COMMISSION

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1
2 **MARC SPITZER**
Chairman
3 **WILLIAM A. MUNDELL**
Commissioner
4 **JEFF HATCH-MILLER**
Commissioner
5 **MIKE GLEASON**
Commissioner
6 **KRISTIN K. MAYES**
Commissioner

Arizona Corporation Commission

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AZ CORP COMMISSION
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8 UTILITIES DIVISION STAFF,
9 vs. Complainant,

Docket No. T-03889A-02-0796
T-04125A-02-0796

10 LIVEWIRENET OF ARIZONA, LLC n/k/a THE
11 PHONE COMPANY MANAGEMENT GROUP, LLC;
12 THE PHONE COMPANY OF ARIZONA JOINT
13 VENTURE, d/b/a/ THE PHONE COMPANY OF
14 ARIZONA; ON SYSTEMS TECHNOLOGY, LLC, and
its principals, TIM WETHERALD, FRANK TRICAMO,
DAVID STAFFORD, MARC DAVID SHINER and
LEON SWICKOW; THE PHONE COMPANY OF
ARIZONA, LLP and its members

15 Respondents.

16 IN THE MATTER OF THE PHONE COMPANY OF
17 ARIZONA JOINT VENTURE d/b/a/ THE PHONE
18 COMPANY OF ARIZONA'S APPLICATION FOR
19 CERTIFICATE OF CONVENIENCE AND NECESSITY
20 TO PROVIDE INTRASTATE
TELECOMMUNICATIONS SERVICE AS A LOCAL
AND LONG DISTANCE RESELLER AND
ALTERNATIVE OPERATOR SERVICE.

Docket No. T-04125A-02-0577

21 IN THE MATTER OF THE APPLICATION OF THE
22 PHONE COMPANY MANAGEMENT GROUP, LLC
f/k/a LIVEWIRENET OF ARIZONA, LLC TO
DISCONTINUE LOCAL EXCHANGE SERVICE.

Docket No. T-03889A-02-0578

23 IN THE MATTER OF THE APPLICATION OF THE
24 PHONE COMPANY MANAGEMENT GROUP, LLC
25 FOR CANCELLATION OF FACILITIES BASED AND
RSOLD LOCAL EXCHANGE SERVICES.

Docket No. T-03889A-03-0152

26 IN THE MATTER OF THE APPLICATION OF THE
27 PHONE COMPANY MANAGEMENT GROUP, LLC
28 d/b/a/ THE PHONE COMPANY FOR THE
CANCELLATION OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY.

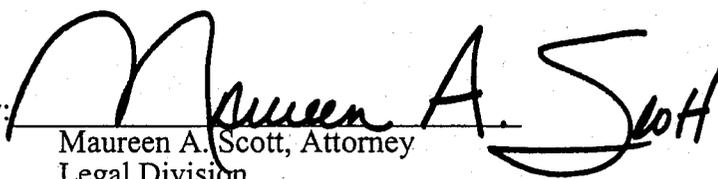
Docket No. T-03889A-03-0202

**STAFF'S NOTICE OF FILING
REPLY BRIEF**

1 The Staff of the Arizona Corporation Commission ("Staff") hereby files its Reply Brief in
2 the above referenced proceeding.

3 RESPECTFULLY SUBMITTED this 15th day of April, 2004.

4
5 ARIZONA CORPORATION COMMISSION

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13 Original and 21 copies of the foregoing filed
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19 Copy of the foregoing mailed this 15th day
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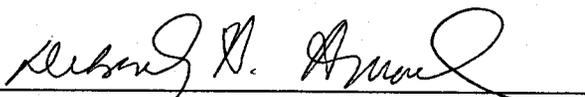
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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **MARC SPITZER**
3 **Chairman**
4 **WILLIAM A. MUNDELL**
5 **Commissioner**
6 **JEFF HATCH-MILLER**
7 **Commissioner**
8 **MIKE GLEASON**
9 **Commissioner**
10 **KRISTIN K. MAYES**
11 **Commissioner**

12 UTILITIES DIVISION STAFF,
13 **Complainant,**

14 vs.

15 LIVEWIRENET OF ARIZONA, LLC n/k/a THE
16 PHONE COMPANY MANAGEMENT GROUP, LLC;
17 THE PHONE COMPANY OF ARIZONA JOINT
18 VENTURE, d/b/a/ THE PHONE COMPANY OF
19 ARIZONA; ON SYSTEMS TECHNOLOGY, LLC, and
20 its principals, TIM WETHERALD, FRANK TRICAMO,
21 DAVID STAFFORD, MARC DAVID SHINER and
22 LEON SWICKOW; THE PHONE COMPANY OF
23 ARIZONA, LLP and its members

24 **Respondents.**

25 IN THE MATTER OF THE PHONE COMPANY OF
26 ARIZONA JOINT VENTURE d/b/a/ THE PHONE
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Docket No. T-03889A-02-0578

Docket No. T-03889A-03-0152

Docket No. T-03889A-03-0202

**REPLY BRIEF OF
COMMISSION STAFF**

1 On April 2, 2004, Mr. Wetherald filed a Motion for an Extension of Time to file his Post-
2 Hearing Brief. By Procedural Order dated April 5, 2004, Mr. Wetherald was given until April 8,
3 2004 to file his Brief on behalf of himself and the Respondent Companies which he represents. Since
4 Staff had already filed its Initial Brief, Staff was given until April 15, 2004, to respond to Mr.
5 Wetherald's Brief. Staff submits the following Reply.

6 Staff does not intend to respond to each and every argument made by Mr. Wetherald. Staff's
7 position is fully set forth in its initial Post-Hearing Brief. However, Staff believes that several
8 statements made by Mr. Wetherald in his Brief require a response.

9 First, Mr. Wetherald alleges that the Staff was merely out to "Get Tim" and that there was a
10 rush to "shut down" Mr. Wetherald's activities and operations in Arizona. PCMG Brief at p. 4. Mr.
11 Wetherald also attempts to paint the picture that the Staff relied solely upon its meetings with the
12 Phone Company of Arizona LLP investors in bringing the Complaint and Amended Complaint
13 against Mr. Wetherald, and that Staff did no independent investigatory work prior to bringing the
14 Complaints. PCMG Brief at p. 2. This is simply not the case. As Mr. Wetherald himself
15 acknowledges, approximately 40 days elapsed between the initial meeting between Staff and the LLP
16 partners (September 11, 2002) and the filing of Staff's initial Complaint. During this time, Staff did
17 considerable independent investigatory work which lead to several alarming conclusions which Staff
18 reasonably believed required immediate action on its part. Staff discovered that PCMG/and or the
19 Phone Company of Arizona was seriously delinquent in their payments to the underlying wholesale
20 providers in both Arizona and California. Staff also discovered that Qwest had stopped processing
21 new LSRs on behalf of the Phone Company, a scenario which could not help but lead to service
22 disruption and potential customer harm. The Company was receiving delinquency notices from
23 Qwest but was not responding to them. The Company was having internal problems with investors.
24 The Company was involved in innumerable other state investigations involving possible rule
25 violations. There was no rush to "shut down" Mr. Wetherald, as alleged. There was a rush to
26 determine whether Phone Company's customers' health and welfare was about to be adversely
27 impacted and to find ways to avoid that from occurring.

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1 Second, Mr. Wetherald asserts that the Commission has no ability or authority to examine
2 whether an applicant is "fit and proper" to provide service in the state. Staff strongly disagrees. The
3 Commission is required by Section 40-281 et seq. to investigate all applicants for a certificate of
4 convenience and necessity for a given area and to issue a certificate only upon a showing that the
5 issuance to a particular applicant would serve the public interest. *James P. Paul Water Co. v.*
6 *Arizona Corp. Com'n*, 671 P.2d 404 (1983).

7 The same principle applies where res judicata is urged as a ground for continuance of
8 certificate. *Davis v. Corporation Commission*, 393 P.2d 909 (1964). Accordingly, one of the factors
9 that the Commission may consider in determining whether a Company's certificate should be
10 revoked, is whether the entity continues to be a fit and proper entity from a financial and technical
11 perspective. Mr. Wetherald argues that the Commission cannot consider the Company's financial
12 capabilities once the CC&N is granted, because while this is a requirement under R14-2-1106 (A) for
13 grant of a CC&N, there is no reference to a company's financial capability in R14-2-1106(B), which
14 lists several grounds for revocation of a CC&N. However, Mr. Wetherald's arguments ignore the
15 fact that the Commission relied upon LiveWireNet's technical and financial capabilities to provide
16 service to grant a CC&N to the Company in the first place. If the conditions upon which the
17 Commission relied to grant the original CC&N are no longer present, the Commission can certainly
18 consider this failure to continue to meet the prerequisites for licensure in revoking a company's
19 CC&N, and in making the public interest determination.

20 Third, Mr. Wetherald argues that the Commission cannot refuse to grant nor can it revoke a
21 license because the entity has filed for protection under the Bankruptcy Act. Mr. Wetherald cites to
22 11 USC 525(A) which states in part:

23 " ...a governmental unit may not deny, revoke, suspend, or refuse to renew
24 a license, permit, charter, franchise, or other similar grant to, condition
25 such a grant to, ...a person that is or has been a debtor under this title or a
26 bankrupt or a debtor under the Bankruptcy Act, or another person with
27 whom such bankrupt or debtor is or has been associated..."
28

1 In Mr. Wetherald's own words, he could file 6,000,000 bankruptcies and the Commission couldn't
2 take that into account. Tr. at p. 141. While Staff disagrees, Staff would point out that it is not relying
3 upon the bankruptcy filings alone. As Staff has stated innumerable times in this case, Staff is not
4 recommending revocation of the Company's CC&N because of any single bankruptcy or
5 investigation. Staff is relying upon the totality of circumstances, including patterns of conduct by
6 Mr. Wetherald and companies owned or managed by him, to arrive at its conclusions and
7 recommendations in this case. In Mr. Wetherald's case, there are patterns of bankruptcy filings for
8 the companies he has operated, nonpayment or other problems with the underlying service providers,
9 investigations, consent decrees, violations of commission rules and orders and consumer harm. Staff
10 also believes that the fact that many of Mr. Wetherald's telephone business ventures have ended in
11 bankruptcy does reflect on the technical ability of Mr. Wetherald to manage and/or own telephone
12 companies and provide service in Arizona.

13 Next, Mr. Wetherald argues that Staff has failed to show that PCMG's financial condition put
14 any of its patrons, employees or the public at risk in any way. Wetherald Brief at p. 14. This is not
15 exactly true. Staff showed that Qwest stopped processing new LSRs for the Company as early as
16 September, 2002. This meant that no changes could be made to the customers' accounts. In fact
17 some of the complaints received by Staff were due to the customer's inability to get the service they
18 had signed up for. The Company continued to provide service after its bond expired. The Company
19 also refused to send a notice to its 4,500 customers despite the fact that their service was subject to
20 imminent disconnection by Qwest.

21 Finally, Mr. Wetherald takes issue with Mr. Morton's testimony as a basis in part for Count
22 IV of the Amended Complaint. Mr. Wetherald's reference to 77 complaints, refers only to the total
23 number of customer complaints lodged with the Commission between July, 2002 to March, 2003.
24 During September 2002 through October 2002, there were 18 complaints filed by consumers
25 regarding quality of service and an inability to reach the Company. There were also 26 complaints
26 filed regarding billing disputes, service not working, and restriction of service. There were an
27 additional 9 complaints filed between November 2002 through March 2003 relating to quality of
28 service and inability to reach the Company.

1 The Company also had only one regulatory contact to handle all complaints. ACC Staff
2 Witness Morton determined that the overdue responses of the Company were due to the Company
3 having only one regulatory person at a time and the high call volume. Mr. Morton was particularly
4 concerned with an increase in complaints that customers were having problems reaching the
5 Company's regulatory person, including non-deliverable e-mail and out of service telephone lines
6 through their 800 number.

7 Mr. Wetherald's attacks on Mr. Morton's credentials are particularly unfounded. Mr. Morton
8 has 30 years of customer service experience involving telecommunications providers. He has served
9 the Arizona Commission for nine of those years. As a Public Utilities Consumer Analyst II, he
10 serves in a team leader capacity in the Consumer Services Department. Contrary to Mr. Wetherald's
11 assertions, Staff does not believe that one has to manage a call center to be capable of determining
12 whether the quality of customer service is adequate.

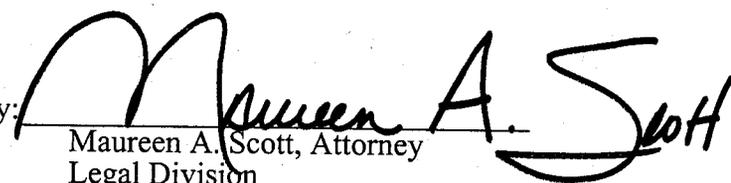
13 Other evidence of the Company's inadequate technical ability to provide service included its
14 inability to keep an up-to-date customer list. The Company's customer list did not have
15 approximately 1,600 customers on it that Qwest's records showed were still customers of the
16 Company. The inability of the Company to provide the Staff with a chart showing the internal
17 management structure of the Company and the breakdown of what management structure may have
18 existed as evidenced by the testimony of Mr. Tricamo also supports this Count. The Company's
19 financial problems, including not paying the underlying service provider for wholesale service, is a
20 clear indication that the Company was not properly managing its accounts payable and did not have
21 the necessary personnel to audit the Qwest bills in a timely manner. The Company's continued
22 failure to provide Staff with financial statements and the fact that Mr. Wetherald, who was not an
23 accountant by trade, was preparing these statements, all support this Count of the Complaint as well.
24 When Staff finally did receive a set of cryptic financial statements, Staff could not verify any of the
25 numbers contained therein.

26 In conclusion, Staff believes the Company's CC&N should be revoked, fines should be
27 assessed given the egregiousness of the Company's conduct in certain instances, restrictions should
28

1 be placed on Mr. Wetherald's ability to obtain a CC&N in Arizona again and this matter should be
2 referred to the Attorney General's Office for further investigation.

3 RESPECTFULLY submitted this 15th day of April, 2004

4 ARIZONA CORPORATION COMMISSION

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