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BEFORE THE ARIZONA CORPORATION COMMISSION

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

Arizona Corporation Commission

**DOCKETED**

APR 15 2004

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

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.

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.

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.

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-02-0796  
T-04125A-02-0796

Docket No. T-04125A-02-0577

Docket No. T-03889A-02-0578

Docket No. T-03889A-03-0152

Docket No. T-03889A-03-0202

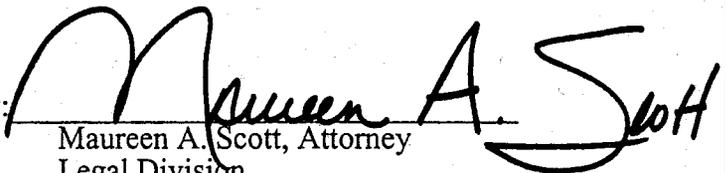
**STAFF'S NOTICE OF FILING  
REPLY BRIEF**

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

3 RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of April, 2004.

5 ARIZONA CORPORATION COMMISSION

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19 Copy of the foregoing mailed this 15<sup>th</sup> day  
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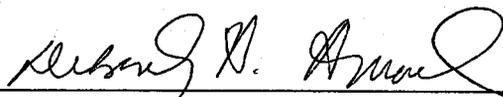
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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

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.

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

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 SWICHKOW; 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**  
27 **COMPANY OF ARIZONA'S APPLICATION FOR**  
28 **CERTIFICATE OF CONVENIENCE AND NECESSITY**  
**TO PROVIDE INTRASTATE**  
**TELECOMMUNICATIONS SERVICE AS A LOCAL**  
**AND LONG DISTANCE RESELLER AND**  
**ALTERNATIVE OPERATOR SERVICE.**

Docket No. T-04125A-02-0577

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

Docket No. T-03889A-02-0578

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

Docket No. T-03889A-03-0152

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

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  
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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.

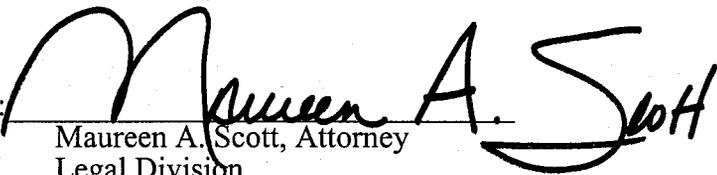
3 RESPECTFULLY submitted this 15<sup>th</sup> day of April, 2004

4 ARIZONA CORPORATION COMMISSION

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