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ARIZONA CORPORATION COMMISSION

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DATE: APRIL 21, 2004

DOCKET NOS: T-03889A-02-0796, T-04125A-02-0796, T-04125A-02-0577, T-03889A-02-0578 T-03889A-03-0152 and T-03889A-03-0202

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Philip Dion. The recommendation has been filed in the form of an Opinion and Order on:

ACC STAFF vs. LIVEWIRENET, ET AL.
(COMPLAINT/CC&N/CANCELLATION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **12:00** p.m. on or before:

APRIL 30, 2004

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

MAY 6, 2004

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

Arizona Corporation Commission
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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

UTILITIES DIVISION STAFF, Complainant, vs. LIVEWIRENET OF ARIZONA, LLC; THE PHONE COMPANY MANAGEMENT GROUP, LLC; THE PHONE COMPANY OF ARIZONA JOINT VENTURE d/b/a THE PHONE COMPANY OF ARIZONA; ON SYSTEMS TECHNOLOGY, LLC, and its principals, TIM WETHERALD, FRANK TRICAMO AND DAVID STAFFORD JOHNSON; THE PHONE COMPANY OF ARIZONA, LLP and its members, Respondents.	DOCKET NO. T-03889A-02-0796 DOCKET NO. T-04125A-02-0796
IN THE MATTER OF THE PHONE COMPANY OF ARIZONA JOINT VENTURE d/b/a THE PHONE COMPANY OF ARIZONA'S APPLICATION FOR 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 RESOLD 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 DECISION NO. _____ **OPINION AND ORDER**

DATES OF HEARING:	November 3, 2003, February 24, 25 and 26, 2004
PLACE OF HEARING:	Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE:	Philip J. Dion
APPEARANCES:	Maureen A. Scott, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission;
	David Stafford Johnson, in propria persona;
	Frank Tricamo, in propria persona;
	Jeffrey Crocket, SNELL & WILMER, on behalf of The Phone Company of Arizona, LLP; and
	Tim Wetherald, on behalf of LiveWirenet of Arizona, LLC, The Phone Company Management Group, LLC and On Systems Technology.

BY THE COMMISSION:

Procedural History

On October 18, 2002, the Arizona Corporation Commission ("Commission") Utilities Division ("Staff") filed a complaint and petition for relief against The Phone Company Management Group, LLC ("PCMG" or "Company") d/b/a The Phone Company of Arizona Joint Ventures d/b/a The Phone Company of Arizona ("PCA"), f/k/a LiveWireNet of Arizona, LLC, On Systems Technology, LLC ("On Systems"), and its principals, Tim Wetherald, Frank Tricamo, David Stafford Johnson, and The Phone Company of Arizona, LLP ("LLP") and its members (collectively "Respondents").

On November 7, 2002, the LLP, through its attorney, filed an answer to the Complaint.

On November 14, 2002, PCMG, On Systems and its principals, Tim Wetherald, Frank Tricamo and David Stafford Johnson filed an answer to the Complaint through their attorney, David Stafford Johnson.

On November 14, 2002, Qwest Corporation ("Qwest") filed an application to intervene, which was subsequently granted.

At a Procedural Conference held on January 7, 2003, Qwest indicated its intent to stop

providing service to PCMG, and thereby its customers, due to PCMG's non-payment of Qwest's bill. During the pre-hearing, a hearing was set for February 24, 2003, and Qwest was ordered to continue providing service until that date.[1]

On January 21, 2003, pursuant to Rule 33(c) and (d) of the Rules of the Supreme Court, Michael L. Glaser, a Colorado attorney with Shughart, Thompson and Kilroy PC, filed a Motion and Consent of Local Counsel for *Pro Hac Vice* admission in this matter on behalf of his clients, PCMG, d/b/a The Phone Company of Arizona Joint Ventures d/b/a PCA, f/k/a LiveWireNet of Arizona, LLC, On Systems and its principals, Tim Wetherald, Frank Tricamo and David Stafford Johnson. The Motion listed Marty Harper of Shughart, Thompson and Kilroy PC in Phoenix, Arizona as the designated member of the Arizona State Bar with whom communication could be made and upon whom papers shall be served. This request was granted.

On February 13, 2003, Staff filed a motion to continue the hearing scheduled for February 24, 2003.

On February 24, 2003, a pre-hearing conference was held, in lieu of the evidentiary hearing. All parties were present and all were represented by counsel. During the course of the pre-hearing, Qwest reiterated that PCMG and its related entities were delinquent in paying their obligations to Qwest and, therefore, Qwest had determined that it would cease providing resold local exchange and long distance telephone service to PCMG and its customers on March 6, 2003.[2] During the pre-hearing, counsel for PCMG was asked what steps the Company was taking in order to make sure its customers received uninterrupted service. Counsel for PCMG stated it had only received notice of Qwest's intent to terminate service the prior week and, therefore, it had not yet taken any steps to ensure uninterrupted service or to notify its customers.

On February 25, 2003, the Commission issued a Procedural Order ordering PCMG to provide

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[1] During the pre-hearing, Mr. Johnson stated he was not a member of the Arizona bar. Mr. Johnson was informed that he needed to obtain Pro Hac Vice status or the parties would have to retain other counsel.

[2] At the January 7, 2003 pre-hearing, Qwest had indicated that PCMG owed Qwest approximately $1.4 million and stated that $1.1 million of the debt was uncontested. Qwest further stated that since it had entered into an interconnection agreement with PCMG in May 2002, PCMG had only paid Qwest $41,000. At the February 24, 2003 pre-hearing, PCMG indicated that the $1.1 million was now in dispute.

reasonable notice to its customers of the possible termination or interruption of PCMG's service.[3] The Procedural Order further stated that if PCMG did not issue such notice, then Staff shall attempt to provide notice to the customers of PCMG. Finally, Qwest was ordered to continue providing resold local and long distance service to the customers of PCMG until at least March 21, 2003.[4]

On February 27, 2003, the Commission received a letter from counsel for PCMG. In the letter, counsel stated that PCMG would not be contacting Staff, preparing a notice, obtaining Staff approval of such notice or sending the notice to the affected customers as ordered by the Commission in the February 25, 2003 Procedural Order. Further, PCMG stated that it would pursue legal action to prevent Staff from issuing such a notice to its customers.

On February 28, 2003, an emergency Procedural Conference was held at the request of Staff. All parties were represented by counsel who either appeared in person or telephonically. Staff stated that, since PCMG refused to serve notice upon its customers as ordered by the Commission, the previous Procedural Order made it incumbent upon Staff to serve PCMG's customers with notice. Staff also indicated that it would be very difficult for Staff to notify PCMG's customers, as outlined in the February 25, 2003 Procedural Order. Staff explained that it did not have an updated customer list, that it would be a financial burden to Staff to send all of the customers a notice by mail and that preparing and mailing such notices would take at least one week to accomplish. Staff further stated that Qwest was in a better position to notify the customers of PCMG, because, according to Staff, Qwest had an updated customer list and the financial resources to assure proper notice. Staff stated that Qwest had the ability to accomplish the mailing of the notice by March 5, 2003.

Qwest indicated that it could provide notice to a majority of PCMG's customers, but would only do so if Qwest was able to recoup some of its costs from the ultimate provider of service. Further, Qwest stated that it would not send the customers of PCMG such notice without an order from the Commission. When Staff was questioned regarding the possible notification of PCMG's customers by publication, Staff stated that it did not feel publication was proper in this case. PCMG

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[3] The Procedural Conference that preceded this Procedural Order took place on February 24, 2003. At that Procedural Conference, PCMG was ordered to provide the notice which was subsequently chronicled in the February 25, 2003 Procedural Order.

[4] The Procedural Order did not authorize Qwest to terminate or discontinue service on March 21, 2003.

continued to object to Staff issuing the notice and also objected to Qwest assisting Staff with the preparation of the notice. PCMG also objected to the publication of notice.

Accordingly, in order to protect the public health, welfare and safety, it was determined the customers of PCMG needed reasonable notice of the possible termination or interruption of their service. Since PCMG stated it would not send such notice to its customers, it was determined that Staff was in a more appropriate position than Qwest to issue an impartial notice. Therefore, Staff was reordered to notify the customers of PCMG of the possible termination or interruption of their service consistent with the directives of the Procedural Order dated February 25, 2003. That Procedural Order also stated that this directive for Staff to undertake notification of PCMG's customers should not be interpreted as an indication that PCMG's failure to comply with a Commission Order is without consequences. It further stated the Commission will consider appropriate remedies for PCMG's actions at a subsequent date. Finally, the Procedural Order stated that it is in the public interest that Qwest not cease providing local exchange and long distance service until at least March 21, 2003.

On March 3, 2003, the Commission issued a Procedural Order that ordered Staff to provide notice to PCMG's former customers in accordance with the February 25, 2003 Procedural Order. The Procedural Order provided the notice language to be used in Staff's mailing. Subsequently, Staff mailed the notice which also included the date of the hearing in this matter.

On March 7, 2003, PCMG filed an appeal of the February 25, 2003 and March 3, 2003 Procedural Orders.

On March 21, 2003, Qwest filed a Motion for Clarification of the Procedural Orders issued on February 25, 2003 and March 3, 2003.

On March 24, 2003, Staff filed a Motion for Order to Compel Response to Data Requests.

On March 25, 2003, the Commission issued a Procedural Order setting a Procedural Conference for April 3, 2003, to address various Motions filed by the parties.

On April 3, 2003, all of the parties and DMJ Communications, Inc. ("DMJ") appeared for the pre-hearing. Due to the unavailability of the court reporter, the pre-hearing was then continued until April 10, 2003.

On April 10, 2003, the pre-hearing conference was held as scheduled. All of the parties were present and represented by counsel. DMJ Communications, Inc. also appeared and was represented by counsel. The pre-hearing conference addressed four motions that are listed as follows: Staff's Motion to Compel, PCMG's Motion to Terminate, Qwest's Motion for Clarification and the LLP's Motion to Dismiss. At the conclusion of the pre-hearing conference, the Administrative Law Judge took all of those Motions under advisement. At the pre-hearing conference, the following dockets were consolidated with this matter:

> Docket No. T-04125A-02-0577 – The Phone Company of Arizona's application for a CC&N;[5]
>
> Docket No. T-03889A-02-0578 – PCMG's application to discontinue local exchange service;[6]
>
> Docket No. T-03889A-03-0152 – PCMG's application to discontinue providing competitive facilities-based and resold local exchange service; and
>
> Docket No. T-03889A-03-0202 – PCMG's filing of an advice letter of Tim Wetherald voluntarily surrendering PCMG's CC&N.

Additionally, pursuant to the Commission's Decision No. 63382 granting PCMG its CC&N, PCMG was orally ordered to maintain its performance bond.

At the April 10, 2003 pre-hearing, the Administrative Law Judge questioned the parties extensively about the past and present relationship of the LLP to any of the other Respondents. All parties denied that the LLP had any past or present connection with the other Respondents either through common ownership or any corporate affiliation. In fact, the LLP's main argument as to why it should be dismissed from this action is that the LLP has no ties to the other Respondents and their actions in this matter. At the pre-hearing, however, none of the parties could explain why Tim Wetherald was listed as the general partner for the LLP in the Arizona Secretary of State's files.

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[5] On July 31, 2002, The Phone Company of Arizona Joint Venture d/b/a The Phone Company of Arizona filed an Application for a Certificate of Convenience and Necessity to provide intrastate telecommunications service as a local and long distance reseller and alternative operator service provider. A letter seeking to voluntarily withdraw the Phone Company of Arizona's Application was docketed October 7, 2002, by counsel for On Systems, the general partner of the Phone Company of Arizona. On Systems held a thirty percent interest in the Partnership and was retained by the Partnership to perform management services for the Partnership. The Phone Company of Arizona Joint Venture d/b/a The Phone Company of Arizona was subsequently dissolved.

[6] On July 31, 2002, PCMG filed an Application to Discontinue Local Exchange Service in Arizona. By letter dated October 9, 2002, and docketed with the Commission, PCMG withdrew its pending Application.

Subsequently, in an attempt to clarify the LLP's lack of an ownership or management relationship with the other Respondents, especially Mr. Wetherald, the LLP filed an affidavit from Travis Credle that stated Tim Wetherald has never been the general partner or a partner of the LLP. In support of the affidavit, the LLP attached the partnership agreement of the LLP. One of the initial managing partners that signed the partnership agreement is Leon Switchkow. Mr. Switchkow's name has appeared in this matter before, specifically in Qwest's Opposition to Staff's Motion for Extension of Time filed on February 19, 2003. In the attachments to the Motion filed by Qwest, there is an action by the Securities and Exchange Commission ("SEC) against a number of Defendants, including Leon Switchkow, Tim Wetherald and Telecom Advisory Services, Inc. The SEC Complaint alleges that the Defendants defrauded investors though the sale of unregistered securities in six limited liability partnerships, including one called the Phone Company of Arizona, LLP, that were ostensibly formed to operate competitive local telephone exchange carriers in Western states where Qwest was the dominant local telephone carrier.

The Motion to Dismiss was denied because Mr. Wetherald appeared in the Arizona Secretary of State's files as the general partner of the LLP; Mr. Switchkow, who was an initial manager of the LLP, appears in an SEC complaint as a co-defendant with Telecom Advisory Services, Inc. and Tim Wetherald; an unclear relationship existed between the LLP's members, past and present, with the entities called Mile High Telecom and Telecom Advisory Services, Inc.; and because there is an unexplained nexus between the LLP and the other Respondents.

The Commission's February 25, 2003 Procedural Order ordered PCMG to send notice to its customers regarding the possible termination of PCMG's services. The notice was to include a list of alternative providers that PCMG's customers could contact in order to assure uninterrupted phone service. Additionally, the notice was to state that if PCMG's customers had not chosen an alternative provider by a certain date, and PCMG's services were terminated, then Qwest would be the default provider for such customers. The Commission's March 3, 2003 Procedural Order directed Staff to send a notice to PCMG's customers regarding PCMG's possible termination of services, a list of alternative providers and the statement that Qwest would be the default provider.

Qwest filed its Motion for Clarification of the February 25 and March 3, 2003 Procedural

Orders on March 21, 2003. In its Motion, Qwest stated that in a recent application to discontinue providing facilities-based and resold service filed with the Commission by PCMG, PCMG stated it had agreed to sell its customer base to DMJ Communications, Inc.[7] Qwest stated that the application, notice[8] and apparent transfer of PCMG customers to DMJ is in direct conflict with the February 25 and March 3, 2003 Procedural Orders. Qwest also stated that it had received a local service request from DMJ asking that the former customers of PCMG be transferred to DMJ. However, Qwest stated that it had not received any direct authorization, i.e. letters of authorization ("LOAs"), for those transfers from a number of PCMG's former customers.

The confusion created by PCMG in its refusal to follow Commission orders regarding sending notice to its customers, the apparent sale of its customer base and the subsequent notice sent by DMJ to those customers, which was in direct conflict with notice sent by Commission Staff to PCMG's customers, was significant. In order to resolve the ambiguities created by such action, and to reconcile them with the Commission's prior order, Qwest was ordered to be the provider for the former customers of PCMG who had not personally made a request to be served by any other properly certificated entity. Any customer(s) who had been switched from Qwest to another provider without a LOA from the customer(s) was ordered to be transferred back to Qwest immediately.

As to PCMG's Motion to Terminate, PCMG mistakenly asserted that since PCMG had filed an application to voluntarily surrender its CC&N, this matter had become moot. The mere filing of an application to discontinue service does not automatically mean that such application will be granted by the Commission. The Commission for various reasons may chose to deny such an application. Additionally, voluntarily purporting to surrender a CC&N, cancel a tariff or cease to provide telecommunication services in Arizona does not render moot the Commission's jurisdiction of the serious allegations and potential new allegations against PCMG and the other Respondents in this matter. Therefore, the Motion to Terminate was denied.

On April 11, 2003, the LLP filed the Clarifying Affidavit of Travis Credle.

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[7] Based on the record, PCMG sold its customer base to USURF, Inc. ("USURF"). USURF has entered into a contract with DMJ where DMJ will provide service to PCMG's former customers through the use of DMJ's CC&N.

[8] Qwest indicated that DMJ sent a notice to PCMG's former customers, just a few days after Staff sent its notice. Qwest stated that it had received calls from PCMG's former customers who were confused by the conflicting notices they received.

By Procedural Order issued on April 11, 2003, the evidentiary hearing set for April 15, 2003 was changed to a public comment hearing; the evidentiary hearing was continued; Staff's Motion to Compel was granted and PCMG was ordered to provide certain information by May 2, 2003. The Motion to Compel remained under advisement.

On April 14, 2003, Mr. Glaser and his firm, Shughart Thompson and Kilroy, P.C., counsel to the PCMG, d/b/a The Phone Company of Arizona Joint Ventures d/b/a PCA, f/k/a LiveWireNet of Arizona, LLC, On Systems and its principals, Tim Wetherald, Frank Tricamo and David Safford Johnson, filed a Motion requesting permission to withdraw as counsel for the above-listed entities and individuals. Mr. Glaser indicated that Mr. Wetherald, the manager of PCMG and On Systems, informed Mr. Glaser that due to the lack of finances, Mr. Glaser and his firm's services were no longer required by PCMG, d/b/a The Phone Company of Arizona Joint Ventures d/b/a PCA, f/k/a LiveWireNet of Arizona, LLC, On Systems and Mr. Wetherald.

On April 15, 2003, the public comment hearing took place as scheduled. Staff, Qwest, and the LLP were present and represented by counsel. DMJ also appeared and was represented by counsel. Neither PCMG, d/b/a The Phone Company of Arizona Joint Ventures d/b/a PCA, f/k/a LiveWireNet of Arizona, LLC, On Systems Technology, LLC, and its principals, Tim Wetherald, Frank Tricamo, David Stafford Johnson, nor their attorneys, Mr. Harper or Mr. Glaser, appeared for the hearing.[9] No one from the public appeared at the hearing. The Administrative Law Judge ordered Staff to file a response to the Motion to Withdraw and to file any other amendments to the Complaint on or before May 2, 2003.

On April 22, 2003, DMJ filed a Motion to Intervene.

On May 2, 2003, Tim Wetherald filed a letter with the Commission. In the letter, Mr. Wetherald admitted that PCMG failed to follow the directives of the Commission's February 25, 2003 Procedural Order and stated that PCMG would not produce the documents listed in Staff's

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[9] After the public comment session, a member of the hearing division staff tried to contact Marty Harper of Shughart Thomson & Kilroy PC, who was listed as local counsel in Mr. Glaser's Pro Hac Vice application that was granted by the Commission. Mr. Glaser is an attorney with the Denver, Colorado office of Shughart Thomson & Kilroy PC. Mr. Harper was unavailable, and the staff person spoke with Kelly Flood, who appeared with Mr. Glaser at the first pre-hearing in this matter. The staff person informed Ms. Flood that Mr. Glaser had failed to appear for the April 15, 2003 hearing and that Mr. Harper was local counsel.

Motion to Compel that were ordered by the Commission in the April 11, 2003 Procedural Order. Mr. Wetherald stated that since PCMG has "voluntarily surrendered" its CC&N, canceled its tariff and is no longer providing telecommunication services in Arizona, the Commission no longer has jurisdiction over PCMG and, therefore, PCMG would not be participating any further in this docket. He also stated that PCMG lacks the financial resources to go forward in this mater, and PCMG has instructed Mr. Glaser to not appear on PCMG's behalf and to withdraw as PCMG's counsel.

On May 2, 2003, Staff filed its Response to the Motion to Withdraw. Staff stated the Motion to Withdraw should not be considered until the Motion complies with the Arizona Rules of Civil Procedure, the Arizona Supreme Court's Rules and the Commission's Rules.

On May 2, 2003, Qwest filed a Further Request for Clarification of Procedural Order with Request for Expedited Ruling.

On May 8, 2003, Staff filed a Reply to Qwest's Further Request for Clarification of Procedural Order with Request for Expedited Ruling. Staff stated that DMJ only produced LOAs from a small fraction of PCMG's former customers, yet DMJ submitted local service requests to Qwest seeking transfer of many other former PCMG customers. According to Staff, Qwest's May 2, 2003 filing indicated that Qwest has apparently transferred all of those former customers of PCMG to DMJ. Staff stated in its Reply that, pursuant to the February 25, 2003 Procedural Order, a customer(s) who did not expressly authorize a transfer to DMJ through a LOA(s) should have gone, and should be returned, to Qwest as the default provider.

On May 9, 2003, Staff filed a Response to Letter From Tim Wetherald to Administrative Law Judge Philip J. Dion III Dated April 29, 2003 and Request to Consolidate Dockets and For Procedural Schedule. In its Response, Staff reiterated the point it made in its Response to PCMG's Motion to Terminate. Staff argued that the purported withdrawal of a CC&N and revocation of a tariff is irrelevant in rectifying PCMG's past behavior. In the Response, Staff requested that it be given until May 22, 2003 to amend its Complaint and filed a procedural schedule consistent with that request.

On May 9, 2003, Chairman Marc Spitzer filed a letter in this docket that raises some procedural concerns about PCMG, its counsel and some of the other Respondents in this matter, as well as a "pattern of delay and misconduct."

On May 12, 2003, a Motion to Dismiss this matter against David Stafford Johnson, an individual, was filed by Mr. Johnson. According to the record, Mr. Johnson was represented by Mr. Glaser, and, therefore, any filing on behalf of Mr. Johnson should have been made by Mr. Glaser. Regardless, Staff was ordered to file a Response to the Motion to Dismiss filed by Mr. Johnson.

On May 12, 2003, DMJ filed a Response to Qwest's Request for Clarification and Staff's Reply.

On June 2, 2003, Staff amended its Complaint against the Respondents.

On June 5, 2003, another pre-hearing conference in this matter was held. All parties appeared and were represented by counsel. The issues addressed at the pre-hearing were Mr. Glaser's Motion to Withdraw as Counsel, Mr. Johnson's Motion to Dismiss, and the setting of discovery timelines in the hearing in this matter. Additionally, there was a discussion regarding USURF and whether or not it should be joined as a necessary party in this matter, and a discussion of the pending Securities and Exchange Commission ("SEC") investigation regarding various principals of PCMG, On Systems and other related entities.

At the pre-hearing conference, Mr. Glaser was ordered to file Affidavits for Mr. Wetherald, Mr. Johnson and Mr. Tricamo that stated: their names; addresses; that they understood that Mr. Glaser would no longer be representing them in this matter; that they would obtain new counsel or otherwise be prepared for the hearing that will be set in this case; and if they fail to appear, the hearing could proceed in absentia or that a Motion for Default could be entered against them.[10] During the pre-hearing, it was noted that, based upon the service list of the Complaint filed on October 18, 2002, it was possible that Mr. Tricamo had not been served with the Complaint. It was further noted, however, that Mr. Tricamo was represented by Mr. Glaser and therefore, that Mr. Tricamo should be aware of the Complaint in this case. However, Staff was directed to look into this matter and make sure that Mr. Tricamo had in fact been served with the Complaint in this case. At the conclusion of the pre-hearing, the Motions were taken under advisement and, due to Staff's amending its Complaint and the possibility that Mr. Tricamo had not been served with the original

[10] This is the same information required under Rule 5.1 of the Arizona Rules of Civil Procedure.

Complaint in this matter, the parties agreed that the hearing in this matter should be set at least 90 days from the date of the pre-hearing.

On June 6, 2003, Staff filed an addendum to its Motion for Order to Compel Response to Data Requests.

On June 17, 2003, Frank Tricamo docketed a letter dated June 13, 2003 that was sent to him from Mr. Glaser requesting Mr. Tricamo sign an Affidavit stating that, among other things, Mr. Tricamo had knowledge of this matter and that he understands that if Mr. Glaser is allowed to withdraw, that Mr. Tricamo would have to retain his own counsel or otherwise be prepared for the hearing in this matter. Mr. Tricamo also docketed the letter he wrote in response to Mr. Glaser which was undated. In the letter, Mr. Tricamo states that he has had no communication with Mr. Glaser about this case, and that he has had no communication with Tim Wetherald, David Johnson, Mark Schriner or Leon Switchcow since late December, 2002 or early January, 2003. Mr. Tricamo asserted that he was never informed of this or any regulatory case in Arizona.

On June 23, 2003, the LLP filed a Motion to Dismiss all of the Counts in the Amended Complaint.

On June 23, 2003, Tim Wetherald filed an Affidavit regarding Mr. Glaser's Motion to Withdraw.

On June 25, 2003, Mr. Glaser filed a status report indicating that he has had difficulty in locating Mr. Tricamo. Mr. Glaser stated that once he was able to locate Mr. Tricamo, he sent Mr. Tricamo an Affidavit containing the information requested by the Commission and is attempting to get Mr. Tricamo to file such an Affidavit.

On June 27, 2003, David Stafford Johnson filed an Affidavit regarding Mr. Glaser's Motion to Withdraw.

On July 1, 2003, Mr. Glaser filed a supplemental status report. Mr. Glaser stated that Mr. Tricamo has not yet signed his Affidavit, but is requesting additional time so Mr. Tricamo can review his position, file the Affidavit, and retain new counsel. In the status report, Mr. Glaser stated that Mr. Tricamo requests until July 15, 2003, to review his position, submit his Affidavit and file a motion to dismiss and retain new counsel.

On July 16, 2003, Mr. Glaser filed a supplemental status report indicating that Mr. Tricamo needed additional time and would file his Affidavit on July 21, 2003.

On July 25, 2003, Mr. Glaser filed a further status report stating that Mr. Tricamo has not returned the executed Affidavit and that he has been unable reach Mr. Tricamo to ascertain the status of the Affidavit.

On July 31, 2003, Staff filed its response objecting to the LLP's Motion to Dismiss.

On August 5, 2003, Mr. Glaser filed a further status report stating that Mr. Tricamo has stated to him that he has not been served with a copy of Staff's Complaint of October 18, 2002 and that he would respond to it, if officially served.

On August 25, 2003, the LLP filed a Reply to Staff's response to its Motion to Dismiss.

On August 27, 2003, Staff filed a letter addressed to Mr. Tricamo which was sent by Certified Mail informing him that a formal Complaint, dated October 18, 2002, had been filed against him. The formal Complaint was attached to the letter.

Subsequently, Mr. Glaser's Motion to Withdraw in regards to PCMG, d/b/a The Phone Company of Arizona Joint Ventures d/b/a PCA, f/k/a LiveWireNet of Arizona, LLC, On System Technology, Mr. Wetherald and Mr. Johnson was granted, subject to the condition that Mr. Glaser's clients comply with the outstanding discovery requests and Commission orders. However, due to Mr. Glaser's failure to contact Mr. Tricamo, Mr. Glaser's Motion to Withdraw from representing Mr. Tricamo was taken under advisement.

On September 17, 2003, Tom Campbell of Lewis and Roca L.L.P. filed a Motion to Withdraw from representing DMJ in this matter. The motion was subsequently granted.

On October 10, 2003, Tim Wetherald filed a Motion to Continue in this matter which was scheduled for hearing during the week of November 3, 2003. Mr. Wetherald stated that he was requesting a continuance because he needed to be present for trial in the United States District Court, Seventh District of Florida, in the case of *The Securities and Exchange Commission v. Mark David Schriner, Leon Swichkow, Timothy Wetherald, et al.*[11]

[11] The Case No. is 03-60175-CIV-Zloch.

On October 10, 2003, Shughart, Thompson & Kilroy filed a renewed Motion to Withdraw as counsel to PCMG of Arizona, LLC, d/b/a The Phone Company of Arizona Joint Ventures d/b/a PCA, f/k/a LiveWireNet of Arizona, LLC, On Systems, Technology, LLC and its principals, Tim Wetherald, Frank Tricamo and David Stafford Johnson.

On October 29, 2003, a pre-hearing conference was held. Staff and the LLP were present and represented by counsel. Mr. Wetherald and Mr. Glaser appeared telephonically. Mr. Novak of Quarles & Brady Striech Lang, L.L.P. appeared representing Mr. Glaser and his firm, Shughart, Thompson & Kilroy ("Clients"). Mr. Johnson appeared telephonically. Mr. Tricamo, who was ordered to appear, was not present. During the pre-hearing, Mr. Novak stated his clients had turned over all the information they had to Commission Staff and, therefore, they had complied with that condition set forth in the previous Procedural Order regarding their request to withdraw. Further, Mr. Novak stated Mr. Tricamo has refused to contact or stay in contact with his clients, therefore, his clients should be relieved of their responsibility toward Mr. Tricamo and their Motion to Withdraw should be granted. Subsequently, Shughart, Thompson & Kilroy's renewed Motion to Withdraw was granted, while Mr. Wetherald's Motion to Continue and David Stafford Johnson's Motion to Dismiss were denied.

On November 3, 2003, the hearing was held as scheduled. Staff and the LLP were present and represented by counsel. Mr. Wetherald appeared and represented himself, On Systems, and PCMG. Mr. Johnson and Mr. Tricamo appeared and represented themselves. On February 2, 2004, the hearing reconvened. Staff and Qwest were present and were represented by counsel. Mr. Wetherald, Mr. Johnson and Mr. Tricamo appeared telephonically without the assistance of counsel. The LLP also appeared telephonically and was represented by counsel. Before the hearing recommenced, the parties jointly requested that the hearing in this matter be continued, so that they could review the LLP's Notice of Filing Proposed Settlement. After a discussion, it was determined that the parties would be given two weeks to review the LLP's Notice of Filing Proposed Settlement and, if appropriate, file a Notice of Settlement in this matter. It was also determined that since the parties may not reach a settlement, this matter should be reset for hearing for February 24, 2004.

On February 24, 2004, the hearing was held as scheduled. Staff, Qwest and LLP appeared

and were represented by counsel. Mr. Tricamo and Mr. Johnson appeared without the assistance of counsel. Mr. Wetherald again appeared on behalf of himself, PCMG and On Systems. Staff stated it had reached a settlement with LLP, Mr. Tricamo and Mr. Johnson.[12] The proposed settlement would dismiss this action against LLP, Mr. Tricamo and Mr. Johnson and states LLP, Mr. Tricamo and Mr. Johnson agreed to provide Staff with certain information. Also, Mr. Tricamo and Mr. Johnson agreed not to participate in the management and/or ownership of a utility in Arizona for the next five years.[13] Therefore, the hearing commenced with Mr. Wetherald, On Systems and PCMG as the remaining Respondents. During the hearing, testimony was taken and exhibits were entered into evidence. At the conclusion of the evidentiary portion of the hearing, the parties were ordered to file with the Commission their closing briefs and any late-filed exhibits on or before April 2, 2004, and Mr. Wetherald was ordered to file updated contact information with the Commission on or before March 5, 2004. At the conclusion of the hearing, the matter was taken under advisement.

On April 2, 2004, Staff filed its Closing Brief and Late-Filed Exhibits.

On April 2, 2004, Mr. Johnson filed his Closing Brief.

On April 2, 2004, Mr. Wetherald filed a Motion for Extension of Time to file his Closing Brief.

On April 5, 2004, a teleconference was held with all parties present, except Mr. Tricamo. At the teleconference, Mr. Wetherald's Motion for Extension was granted and he was given until April 8, 2004 to file his brief. Additionally, Staff's oral motion to file a Reply Brief was granted and Staff was ordered to file such brief, if necessary, by April 15, 2004.

On April 5, 2004, the LLP filed its Closing Brief.

On April 8, 2004, Mr. Wetherald filed his Closing Brief.

On April 8, 2004, Mr. Tricamo filed his Closing Brief.

On April 15, 2004, Staff filed its Reply Brief.

FINDINGS OF FACT

1. In Decision No. 63382 (February 16, 2001), the Commission granted a Certificate of

[12] See Exhibit A.

[13] Excluding Mr. Johnson's or Mr. Tricamo's ownership of stock that comprises less than 5 percent of the outstanding stock of a public utility.

Convenience and Necessity ("CC&N") to provide competitive facilities-based and resold local exchange telecommunication services in Arizona to LiveWireNet of Arizona, LLC d/b/a LiveWireNet ("LiveWireNet") subject to some conditions.

2. On January 29, 2002, LiveWireNet sold its membership interest to On Systems.

3. On January 29, 2002, LiveWireNet of Arizona, LLC filed information with the Commission to formally change its name from LiveWireNet of Arizona, LLC to PCMG.

4. PCMG is a wholly owned subsidiary of On Systems. Both entities are managed by Mr. Wetherald.

5. On Systems provided management services to PCMG. The services included provisioning, billing and customer service.

6. On January 30, 2002, Mr. Wetherald filed an initial tariff and price list for The Phone Company Management Group, LLC, d/b/a "The Phone Company."

7. On October 18, 2002, Staff filed a Complaint and Petition for Relief against the Respondents.

8. On June 2, 2003, Staff amended its Complaint ("Amended Complaint") against the Respondents.

9. Ultimately, a hearing was held in this matter on November 3, 2003 and continued on February 24, 25 and 26, 2004.[14]

10. Prior to the recommencement of the hearing, Staff presented to the ALJ a stipulation between Staff, the LLP, Mr. Tricamo and Mr. Johnson. The Stipulation stated that in exchange for the cooperation of the LLP, Mr. Tricamo and Mr. Johnson in this matter, Staff requested that those individuals be dismissed from this matter. Further, Mr. Tricamo and Mr. Johnson agreed not to manage and/or have any ownership interests in utilities in the State of Arizona for a period of five years.[15]

11. The Amended Complaint lists five counts.[16] The first Count alleged that PCMG advertised and offered telephone service in Arizona as "The Phone Company of Arizona." Staff

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[14] The procedural history, as stated above, is herein incorporated by reference.
[15] See Exhibit A.
[16] The Original Complaint listed Counts One through Four. The Amended Complaint added Count 5.

alleged that in providing service without a CC&N, PCA operated in violation of Commission's requirements. Staff argued that PCA has not been granted a CC&N by the Commission and its attorney, Michael Glaser, withdrew its application for a CC&N.[17] Staff argued that consequently, for a period of several months, PCA signed up customers and provided service without the authorization of the Commission.

12. The second Count alleged that PCA, PCMG, On Systems and Tim Wetherald are not fit and proper entities to provide telephone service in Arizona. Staff alleged that Mr. Wetherald and/or companies owned or managed by him have been the subject of investigations in multiple jurisdictions for infractions of state regulatory rules, had filed for bankruptcy protection and are the subject of investigation by the Federal Securities and Exchange Commission for securities fraud violations.

13. In Count Three, Staff alleged that PCMG d/b/a PCA is not financially capable of providing service in Arizona. Staff alleged that PCMG d/b/a PCA was delinquent in its payments to Qwest and Sprint Communications Company ("Sprint") in Arizona.

14. Count Four alleges that PCMG d/b/a PCA does not have the technical capability to provide telephone service in Arizona. Staff alleged that there have been seventy-seven (77) complaints filed by customers regarding PCMG's and/or PCA's management group's inadequate service.

15. In Count Five, Staff alleged PCMG, PCA, On Systems Technology and Mr. Wetherald have acted in contempt and willful violation of several Commission Orders. Staff alleged that those entities failed to comply with the February 23, 2003 Procedural Order which ordered PCMG to notify its customers of the possible termination or interruption of their service based upon Qwest's statements that it would be discontinuing PCMG and/or PCA's telecommunication services. Additionally, Staff stated that on April 11, 2003, a Procedural Order issued by the Commission granted Staff's Motion to Compel and required PCMG and Mr. Wetherald to respond to Staff's data request to this proceeding. Staff stated that in a letter dated April 29, 2003, Mr. Wetherald advised

[17] See Docket No. T-04125A-02-0577.

the Commission that he would not be responding to Staff's data request and thus, PCMG d/b/a PCA and Mr. Wetherald failed to comply with the Commission's April 11, 2003 Procedural Order. Additionally, Staff alleged that Decision No. 63382 requires PCMG to maintain a performance bond of $100,000. Staff alleged that PCMG's bond expired on February 19, 2003 and PCMG did not take any action to renew the bond. Staff alleged that PCMG has been out of compliance with Decision No. 63382 since February 19, 2003. Staff further noted that the Commission's May 15, 2003 Procedural Order required the company to maintain the bonding requirement; however Staff stated that it has not seen any filing by the Company demonstrating its compliance.

Count One

16. In Count One, Staff alleged that Respondents advertised and offered telephone service in Arizona as "The Phone Company of Arizona." Staff alleged that PCA has not been granted a CC&N by the Commission and its attorney, Michael L. Glaser, withdrew PCA's application for a CC&N. Staff alleged that for a period of several months, PCA signed up customers and provided service without the authorization of the Commission.

17. Staff also noted that LiveWireNet, now PCMG, sold its membership interest to On Systems without Commission approval.

18. Mr. Wetherald argued that PCA is simply a d/b/a of PCMG. He argued that since PCMG had authorization from the Commission to provide facilities-based and resold local telephone communications, PCA also had such authorization. Mr. Wetherald noted that in A.A.C. R14-2-1104(2), the Commission only requires that a company provide the Commission with its "proper" name. Mr. Wetherald argued that PCMG is the entity's proper name and that PCA is simply a d/b/a of PCMG. Therefore, Mr. Wetherald argued that PCMG and PCA had complied with the Commission's rules.

19. Staff argued that since PCMG failed to inform the Commission of its d/b/a or get permission to operate under a d/b/a, namely PCA, as part of its "proper" name, it was in violation of A.A.C. 14-2-1104(2). Further, Staff argued that since PCA provided telecommunications services to ratepayers in Arizona, it operated as a public service corporation without first obtaining a CC&N from the Commission in violation of A.R.S. § 40-281.

20. It is uncontroverted that PCA signed up customers and provided service to customers in Arizona. The question is whether or not PCA needed a separate CC&N to provide such services, or if an entity such as PCMG can market its services under a d/b/a without informing the Commission of the d/b/a.

21. We find that PCA signed up customers and provided service to customers in Arizona without first obtaining the proper authorization from the Commission. PCMG's CC&N did not include authorization for PCMG to operate under the d/b/a PCA. Mr. Wetherald's argument that PCA did not need separate or specific authorization from the Commission because PCA operated under PCMG's CC&N is undermined by the July 31, 2002 filing of The Phone Company of Arizona *d/b/a The Phone Company*. (Emphasis added) Clearly, Mr. Wetherald, who was the contact person listed for the joint venture in the application, was on notice that a company applying for a CC&N or a public service corporation using a d/b/a in Arizona must inform the Commission and obtain its permission to use its d/b/a, and that a d/b/a is considered part of its "proper" name. Therefore we find that PCMG d/b/a PCA, On Systems and Mr. Wetherald are in violation of A.R.S. § 40-281 and A.A.C. 14-2-1104(A)(2).

Counts Two, Three and Four

22. Counts Two, Three and Four of the Complaint essentially argue that PCMG d/b/a PCA, On Systems Technology and Tim Wetherald are not fit and proper entities to provide telephone service in Arizona, because PCMG d/b/a PCA is not financially or technically capable to provide telephone service in Arizona.

Fit and Proper

23. Staff argued that Mr. Wetherald's history of being a party to Consent Decrees in the States of Washington and Oregon for his actions in operating companies providing telecommunications services combined with his involvement with approximately four companies that have filed for protection under federal bankruptcy law[18] and the fact that the United States District

[18] Mr. Wetherald argued that 11 U.S.C. 525(A) states that, "a governmental unit may not deny, revoke . . . a license . . . to a person . . . that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act . . , solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act...." We are not considering Mr. Wetherald's prior history in bankruptcy actions in determining whether or not to rescind the CC&N granted to PCMG.

Court for the Southern District of Florida issued a preliminary injunction against Mr. Wetherald and others for alleged violations for the anti-fraud provisions of the Securities and Exchange Act show by a preponderance of the evidence that Mr. Wetherald and the companies he manages are not fit and proper entities to provide telephone service in Arizona.[19]

24. Mr. Wetherald argued that Staff's allegations are based upon information that Staff's witnesses stated "they got off the internet." Mr. Wetherald argued that without doing independent research and validating the information that Staff presented at the hearing, such information cannot be relied upon.

25. In Staff's Late-Filed Exhibits, Staff presented evidence of several investigations by other State commissions against Mr. Wetherald, or companies which Mr. Wetherald managed, for failing to comply with those commission's rules. The evidence also shows that Mr. Wetherald's telephone company ventures had been the subject of yet other investigations by the Attorneys General of the States of Oregon and Washington which had resulted in the entry of consent decrees against Mr. Wetherald. The information also showed that Mile High Telecom Joint Venture, a company managed by Mr. Wetherald in Colorado owed Qwest almost $5 million for services that it had not paid. Finally, Staff provided information about Mr. Wetherald and an entity called Telecom Advisory Services, that are the subject of an SEC complaint before the United States District Court for the Southern District of Florida alleging violations of federal securities laws in connection with the sale of the partnership interests in the Arizona Phone Company LLP, as well as similar partnership interests in other States. The U.S. District Court for the Southern District of Florida issued a preliminary injunction against these entities for alleged securities fraud in connection with their most recent telephone company operations. Telecom Advisory Services sold partnership shares to investors in phone companies in Arizona, Colorado and other states.

26. Mr. Wetherald further argued that Count Two, which alleges that PCMG d/b/a PCA is not a "fit and proper entity", should be dismissed because the term does not appear in Arizona law or within the Commission's rules. Mr. Wetherald argued that A.R.S. § 41-1030(B) states: "[A]n agency

[19] The case involving alleged violations of the Securities and Exchange Act has been stayed pending the conclusion of a criminal investigation.

shall not base a licensing decision in whole or in part on a licensing requirement or condition that is not specifically authorized by statute, rule or state tribal gaming compact . . . ."

Financial Capability

27. Regarding PCMG d/b/a PCA's financial capability, Staff testified that PCMG d/b/a PCA owed Qwest approximately $1.5 million in past due bills.

28. PCMG argued that it disputes the entire amount it allegedly owes to Qwest.

29. PCMG sent a letter to Qwest in December 2002 in which it first disputed Qwest's bill. PCMG listed specific disputes in a January 22, 2003 letter to Qwest which accounted for approximately $560,000 of the outstanding amount owed. The remainder of the bill, approximately $860,000, PCMG claimed it was disputing because of Qwest's failure to provide customer service records in a timely manner.

30. Staff testified that, when questioned about the calculation of the $860,000, Mr. Wetherald and his attorney stated that the $860,000 number was used just as a "plug" and the actual number subject to dispute was much less.

31. Staff further testified that Qwest only received one payment of $41,543.93 which was in response to PCMG's May 22, 2002 bill.

32. Staff further stated that PCMG also has an outstanding bill with Sprint. Staff testified that the total amount owed by PCMG to Sprint as of Sprint's last bill to PCMG was $168,727.84. Staff stated that PCMG recently paid Sprint $30,000 against Sprint's bill and disputed $33,560. Staff stated that even according to PCMG, it owes Sprint approximately $105,000.

33. Staff noted that during its commencement of service from May 2002 until approximately March 2003, PCMG attained approximately 6,000 customers and paid Qwest approximately $41,000 on a $1.5 million bill and paid Sprint $30,000 on an approximately $169,000 bill.

34. Mr. Tricamo and Mr. Johnson, former principals of On Systems,[20] testified that Mr. Wetherald, who was not an accountant by trade, was in charge of the bank accounts of PCMG as well

[20] Mr. Tricamo has an ownership interest of twenty (20) percent in On Systems.

as the preparation of its financial statements. Mr. Tricamo further testified that while Mr. Wetherald did employ some qualified people, they played a minimal role in the actual preparation of PCMG's financial statements and merely assisted Mr. Wetherald sporadically rather than having a central role in the Company's finances.

35. Based on the evidence it is apparent that PCMG still owes Qwest and Sprint a substantial amount of money.

Technical Capability

36. Staff further alleged that, due to the numerous complaints received by the Commission, PCMG lacked the technical capability to provide telecommunication services in Arizona.

37. Mr. Wetherald argued that based upon the number of customers and based upon the types of complaints listed, PCMG's customer service performance was satisfactory, especially in comparison with other telecommunication companies in Arizona and it is technically capable of providing telephone service in Arizona.

38. Mr. Tricamo testified that Mr. Wetherald had begun taking over most facets of the business by January of 2002. Mr. Tricamo, who testified he had initially set up most of the internal controls and policies, indicated he was being squeezed out of the active management of the business; an event that hampered the Company's technical operations.

39. On May 2, 2003, the Commission received a letter from Mr. Wetherald. In the letter, Mr. Wetherald stated that PCMG wished to voluntarily surrender its CC&N and cancel its tariff for local exchange service. He stated PCMG was not rendering service, had no authorization from the Commission to do so, and the Commission did not have regulatory jurisdiction over PCMG because PCMG was not offering service and had surrendered its CC&N. Mr. Wetherald stated that PCMG lacked the financial resources to go forward and that it had no employees or operations. Furthermore, he stated PCMG had no equipment and no hard assets.

40. Mr. Wetherald further argued that A.A.C. R14-2-1106(A) states the Commission may deny granting a CC&N to an applicant if its application lacks sufficient financial or technical capabilities. He further argued that A.A.C. R14-2-1106(B) described the conditions which a public

service corporation must follow or its CC&N could be revoked. Mr. Wetherald argued the terms "financial or technical capabilities" do not appear in A.A.C. R14-2-1106(B), therefore, the Commission cannot revoke PCMG's CC&N.

Conclusion Regarding Counts Two, Three and Four

41. We disagree with Mr. Wetherald's interpretation of A.A.C. R14-2-1106. It stands to reason that if the Commission can deny a CC&N to an applicant if it fails to meet the requirements in A.A.C. R14-2-1106(A), then the Commission can also revoke a public service corporation's CC&N if it fails to maintain the standards set forth in A.A.C. R14-2-1106(A). Therefore, we find that it is in the public interest for public service corporations to adhere to the conditions set forth in A.A.C. R14-2-1106(A), and any failure to do so may result in the revocation of the public service corporation's CC&N.

42. Based on the evidence, PCMG d/b/a PCA had approximately 4,500 customers from whom PCMG d/b/a PCA collected monthly fees for its services. It was also shown that PCMG d/b/a PCA only paid approximately $70,000 of the approximately $1.6 million dollars it owes to Qwest and Sprint for wholesale costs. Therefore, it is clear that under the management of Mr. Wetherald PCMG d/b/a PCA did not meet its financial obligations to its service providers to pay for PCMG d/b/a PCA's operating costs. What is unclear is what happened to the money that PCMG d/b/a PCA collected from Arizona ratepayers that would normally go to funding such debts. As stated below in Count Five, Mr. Wetherald, who has no training or expertise in accounting, was responsible for preparing the financial books and records of PCMG d/b/a PCA. Initially, Mr. Wetherald refused to supply the requested financial information to the Commission. Ultimately, he did provide financial information, but it was very rudimentary and there was no explanation as to where the money collected from PCMG d/b/a PCA's customers went and no explanation as to why the uncontested portions of the bills owed to Qwest and Sprint have not been paid. Therefore, we find PCMG d/b/a PCA, On Systems and Mr. Wetherald lack the financial capability to operate as a telecommunications company in Arizona.

43. Additionally, PCMG d/b/a PCA, On Systems and Mr. Wetherald lack the technical capability to operate as a telecommunications company in Arizona. PCMG has ceased all operations

as a telecommunications company in Arizona, has no assets and no employees. Further, it was unable to audit the Qwest bills in a timely fashion and make at least partial payment to Qwest for the undisputed amounts. Finally, when asked for its customer list so that Staff could mail the notices of disconnection to its customers, PCMG ultimately provided a list with only approximately 2,900 names, whereas Qwest provided a list to Staff with almost 4,500 customer names. Therefore, it is evident that PCMG lacked the technical expertise to properly account for the number of customers it actually served.

44. Further, PGMG d/b/a PCA and Mr. Wetherald have exhibited a disturbing pattern of regulatory non-compliance in this case and in other jurisdictions.

45. Regarding Mr. Wetherald's argument about the term "fit and proper entity", we find that it is a conclusory statement, made about the ability of a public service corporation to adequately serve the public and the public interest. The evidence is clear that, although at one time the Commission determined PCMG to be a "fit and proper entity" in Decision No. 63382, its current financial and technical problems indicate otherwise.

46. Based on the evidence presented at the hearing, in the late-filed exhibits, and especially in light of the May 2, 2003 letter filed by Mr. Wetherald, it is clear that PCMG d/b/a PCA is no longer capable of providing telecommunications services in Arizona. It is further evident that PCMG has ceased all operations as a telecommunications company in Arizona. Therefore, even based upon Mr. Wetherald's arguments at the hearing, we find that PCMG d/b/a PCA no longer has the financial or technical capabilities to provide telecommunication services in Arizona, and its CC&N should be revoked. We further find that PCMG d/b/a PCA, On Systems and Mr. Wetherald are not fit and proper entities to operate a telecommunications public service corporation in Arizona.

Count Five

47. Regarding Count Five, Staff alleged that PCMG, PCA, On Systems and Mr. Wetherald acted in contempt and willful violation of the February 25, 2003 and April 11, 2003 Procedural Orders and failed to retain the performance bond as required in Decision No. 63382.

Compliance with Procedural Orders

48. It was uncontested at the hearing that PCMG d/b/a PCA, On Systems and Tim

Wetherald failed to follow the Commission's directives in the February 25, 2003 and April 11, 2003 Procedural Orders.

49. In the February 25, 2003 Procedural Order, PCMG was ordered to draft and mail a notice to its customers on or before February 27, 2003 that indicated that their phone service might be terminated and/or interrupted because of Qwest's statements that it would disconnect telecommunication services to PCMG due to non-payment of PCMG's bill.

50. PCMG argued in a letter dated February 26, 2003, that it was not going to follow the Procedural Order as it wished to "appeal" the decision in the Procedural Order.

51. In a letter dated May 2, 2003, Mr. Wetherald acknowledged that PCMG did not abide by the February 25, 2003 and April 11, 2003 Procedural Orders.

52. As a certificated public service corporation, PCMG has a duty to provide service to its customers. PCMG was ordered on February 25, 2003 to give notice to all of its customers that service could be terminated or interrupted. However, PCMG refused to comply with that directive and, as a result, the Commission had to take extraordinary action to ensure that PCMG's Arizona customers were protected.

53. Further, based upon the extraordinary circumstances, PCMG's argument that it was "appealing" the Procedural Order was not a reasonable response. The possible immediate discontinuance and/or termination of service to PCMG's customers necessitated immediate action by the Commission because the lack of a dial tone creates a significant public health and safety concern. Hence, in a effort to adequately inform PCMG's and PCA's customers, the Commission had to ensure that expedited deadlines were complied with and, when they were not complied with, had to ensure that Staff would be able to produce a notice in order to inform PCMG's and PCA's customers of the possible termination and/or discontinuance of their service and provide a list of alternate providers to those customers to ensure a constant dial tone to those consumers. Without Staff and Commission intervention, PCMG's unwillingness to provide the aforementioned notice could have put the health and welfare of approximately 4,500 Arizona residents in jeopardy.

54. In fact, PCMG's intent regarding its "appeal" is clear in its March 6, 2003 letter which indicated that if it were forced to issue such a notice, it would essentially disrupt and/or terminate its

business. Clearly, PCMG acted out of self interest rather than looking out for the interests of its customers in its failure to abide by the February 25, 2003 Procedural Order. PCMG's true intent regarding its failure to comply with the February 25, 2003 Procedural Order is further exemplified by its subsequent sale of its customer base to USURF. The notice generated by DMJ to PCMG's former customers was sent to those customers during the same time frame as Staff sent its notice to those same customers. The dual notices sent to PCMG's customers clearly obscured the original intent of the February 25, 2003 Procedural Order, and the Commission received numerous inquiries from those customers who stated they were confused by the dual notices. Based upon the numerous pre-hearings held in February, combined with the February 25, 2003 Procedural Order and PCMG's subsequent actions, it is clear that the notice sent by DMJ was part of a deliberate plan to usurp the intent of the February 25, 2003 Procedural Order.

55. In regards to the April 11, 2003 Procedural Order, Staff's Motion to Compel was granted and PCMG and Mr. Wetherald were directed to provide certain information on or before May 2, 2003. As stated earlier, on May 2, 2003, the Commission received a letter from Mr. Wetherald indicating that PCMG d/b/a PCA and Mr. Wetherald would not be complying with the directives in the April 11, 2003 Procedural Order.

56. Although some of that information was eventually obtained by Staff from PCMG and Mr. Wetherald, some of it as late as October 2003, PCMG d/b/a PCA and Mr. Wetherald did not timely comply with the April 11, 2003 Procedural Order.

57. Mr. Wetherald's only defense to non-compliance with the February 25, 2003 and April 11, 2003 Procedural Orders was that those Procedural Orders are not orders of the "Commission." He argued that since there are no Decision numbers associated with the Procedural Orders, they are not orders of the "Commission" and, thus, he cannot be held in contempt pursuant to A.R.S. § 40-424.

58. Staff argued that PCMG d/b/a PCA, On Systems and Mr. Wetherald's failure to abide by the Procedural Orders listed in the Amended Complaint constitute a violation of A.R.S. § 40-424.

59. Based upon A.R.S. § 40-105(B)(3)[21], Procedural Orders which have not been reversed or altered by the Commissioners are "orders of the Commission".

60. We find that PCMG d/b/a PCA, On Systems and Mr. Wetherald deliberately failed to comply with the February 23, 2003 and April 11, 2003 Procedural Orders in violation of A.R.S. §§ 40-204, 40-241 and 40-424 and A.A.C. 14-2-1106(B)(1) and (3) and 14-2-1115(E).

Compliance with Performance Bond Requirement

61. In Decision No. 63882, PCMG was required to maintain a performance bond of $100,000 as condition of its CC&N. It is unconverted that PCMG's bond expired February 19, 2003 and PCMG, despite the Commission's May 15, 2003 Procedural Order requiring it to maintain its bond requirement, did not take any action to renew the bond. Further, it is unconverted that PCMG was serving customers after the bond expired.

62. Therefore, based on the evidence, we find that PCMG failed to maintain its performance bond in violation of Decision No. 63882, the May 15, 2003 Procedural Order, A.R.S. §§ 40-424 and A.A.C. 14-2-1106(B)(1).

Remedies

63. Mr. Wetherald was the member manager of On Systems and PCMG d/b/a PCA, and had actual control of all of the management decisions of On Systems and PCMG d/b/a PCA during the time frames alleged in the Amended Complaint. Further, Mr. Wetherald was the majority owner of On Systems and PCMG d/b/a PCA during the same period of time. Mr. Tricamo testified that Mr. Wetherald prepared all of the financial reports for On Systems and PCMG d/b/a PCA, although Mr. Wetherald lacked any accounting training or experience. Further, Mr. Tricamo testified that Mr. Wetherald had control of all of the bank accounts, signed all the checks and, therefore, determined which employees and creditors received payment for their services. Based on the evidence, it is apparent that Mr. Wetherald also made all of the hiring and firing decisions for On Systems and PCMG d/b/a PCA. Although On Systems and PCMG are registered as Limited Liability Corporations in Arizona, the reality is that those companies were essentially an extension of Mr.

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[21] "The executive secretary shall if directed by the commission: . . . [E]mploy experts, engineers, statisticians, accountants, inspectors and employees necessary to perform the duties and exercise the powers of the commission."

Wetherald. Mr. Wetherald's actions on behalf of On Systems and PCMG d/b/a PCA, especially the failure to provide the Commission with an organizational chart, financial records and other documents of the companies, further exemplify that On Systems and PCMG d/b/a PCA did not operate as LLCs, and were essentially the shadow of Mr. Wetherald. Based upon the record, we find that Mr. Wetherald and On Systems should be held accountable to the same extent as PCMG d/b/a PCA.

64. In its closing brief, Staff argued that based on the violations of Arizona law and the Commission Rules, PCMG's CC&N should be revoked. Staff also argued that Mr. Wetherald, PCMG and On Systems should pay a fine of $1.685 million. Finally, Staff stated that, due to Mr. Wetherald's serious misconduct, Mr. Wetherald should be restricted from operating a public utility in Arizona, or at a minimum, conditions should be instituted upon Mr. Wetherald before he operates another public utility in Arizona.

65. Based upon our findings that Staff proved its allegations against PCMG, PCA, On Systems and Mr. Wetherald in Counts One, Two, Three, Four and Five, we agree that PCMG's CC&N should be revoked, that fines should be levied and conditions should be placed upon Mr. Wetherald before he acquires any ownership interest in or employment by a public utility or a company applying to be a public utility in Arizona.

66. We agree that the conduct of PCMG, PCA, On Systems and especially Mr. Wetherald is egregious and undermined the ability of the Commission to protect the public interest. We also believe that the outrageous conduct exhibited in this matter by PCMG, PCA, On Systems and Mr. Wetherald certainly deserves consideration for the maximum penalty and fines under Arizona law. While we believe a fine of $1.6 million might be an appropriate figure to reflect our concern with the actions of PCMG dba PCA, On Systems and Mr. Wetherald, it is excessive when we examine the violations in this case and the degree to which the public's health and welfare was subjected to harm.

67. We find that PCMG d/b/a PCA, On Systems and Timothy Wetherald, jointly and severally, should be liable for a fine of $60,800 for Count One in which it was shown that PCA operated as a public utility without the proper authorization from the Commission. The fine is based upon an assessment of $200 per day from the approximate date PCA began marketing itself and/or

providing service in Arizona which we determine to be May 1, 2002 until the date it stopped providing service on approximately March 1, 2003.

68. We further find that PCMG d/b/a PCA, On Systems and Timothy Wetherald, jointly and severally, should be liable for a fine of $119,200 for the violations listed in Count Five. The fine is based upon an assessment of $5,000 per day for the failure to comply with the February 25, 2003 Procedural Order from February 27, 2003, the date of the letter from PCMG indicating it would not comply with the February 27, 2003 Procedural Order, up to and including March 11, 2003, the date Staff mailed its notice; plus an assessment of $100 per day for the failure to comply with the bonding requirements set forth in Decision No. 63382 and the May 15, 2003 Procedural Order from February 19, 2003 which is the day the bond lapsed, up to and including the effective date of this Decision on May 6, 2004; plus $5,000 for the failure to timely comply with the April 11, 2003 Procedural Order.

69. Based upon PCMG d/b/a PCA, On Systems and Mr. Wetherald's serious and ongoing violations of Arizona statutes, Commission orders, rules and regulations, it is reasonable and lawful to impose a total fine of $180,000 on PCMG d/b/a PCA, On Systems and Timothy Wetherald, jointly and severally.

Mr. Glaser, attorney for PCMG, On Systems, Mr. Wetherald, Mr. Tricamo and Mr. Johnson

70. The information and filings that the Commission has received regarding Mr. Glaser's representation of Mr. Tricamo in this matter are disturbing. On multiple occasions during the course of the procedural history of this matter, Mr. Glaser stated that he represented various entities and individuals, including Mr. Tricamo. At the June 5, 2003 pre-hearing, Mr. Glaser was specifically questioned about his representation of Mr. Tricamo and whether Mr. Glaser had served Mr. Tricamo with a copy of the Motion to Withdraw, since his name and Mr. Johnson's name did not appear on the service list. Mr. Glaser responded that, "We provided them copies of the motion . . . [T]hey were well aware of the withdrawal. And I think they, you know, essentially agree with Mr. Wetherald."[22] Subsequently, on June 17, 2003, Mr. Tricamo docketed a letter stating that Mr. Tricamo had no knowledge of this matter or that Mr. Glaser was representing him. Additionally, Mr. Tricamo wrote

[22] Record of the June 5, 2003 pre-hearing at page 9.

he was unaware, as of the June 5, 2003 pre-hearing, that Mr. Glaser was attempting to withdraw from representing Mr. Tricamo in this matter. Therefore, Mr. Glaser's representations to this Commission regarding Mr. Tricamo cause us concern.

71. Mr. Glaser's failure to appear for the hearing in this matter on April 15, 2003, and his ongoing failure to comply with Commission orders, are equally troubling. When questioned about his failure to appear, Mr. Glaser said, ". . .[I] had been instructed by our client not to appear. And perhaps it was an error in my judgment in not appearing, but I felt compelled to follow the instructions of my client."[23] While Mr. Glaser apologized for not appearing, he stated that he "felt compelled to adhere to his client's instructions."[24] Although Mr. Glaser may have been instructed not to appear by his clients, he still had a duty to appear to explain his position to the Commission. Mr. Glaser's failure to appear, and his explanation why he did not appear, are both unacceptable.

72. Mr. Glaser's failure to appear at the hearing, Mr. Glaser and his clients' failure to comply with discovery requests and Commission orders, and Mr. Glaser's assertion that he represented Mr. Tricamo when it is clear he never kept Mr. Tricamo reasonably informed about this matter, support the conclusion that Mr. Glaser's Pro Hac Vice status in Arizona should be revoked and that this Decision should be filed with the Colorado State Bar and Arizona State Bar.

Settlement Proposal

73. Based on the record, we find that the Settlement attached as Exhibit A is reasonable. It is clear from the record that the LLP should not be held culpable for any of the allegations in the Amended Complaint as it never participated in the ownership or management of PCMG d/b/a PCA or On Systems. Although Mr. Tricamo and Mr. Johnson certainly had significant management and decision making positions with PCMG d/b/a PCA and On Systems, their positions with those companies terminated prior to the period of time listed in the Amended Complaint. Therefore, their concession to not manage or own any interest in a public service corporation in Arizona for a period of five years, subject to the parameters of the agreement, is a proper resolution for the level of their involvement in this case. Additionally, the LLP, Mr. Tricamo and Mr. Johnson provided information

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[23] Id at pages 16 and 17.
[24] Id at page 17.

that was helpful to Staff in this matter. Therefore, we find that the Settlement attached as Exhibit A should be approved.

CONCLUSIONS OF LAW

1. PCMG d/b/a PCA is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. Tim Wetherald operated PCMG d/b/a PCA and On Systems, as his alter ego and, as such, Mr. Wetherald and On Systems are subject to the jurisdiction of the Commission to the same extent as PCMG d/b/a PCA.

3. The Commission has jurisdiction over the subject matter of the Complaint.

4. Notice of the hearing was provided in accordance with the law.

5. Based upon PCMG's violations of Arizona State Laws and Commission Rules, Decision No. 63382 should be rescinded and the CC&N authorized therein to PCMG should be revoked pursuant to A.R.S. § 40-252.

6. Based upon the evidence presented at the hearing, PCMG does not have the financial or technical capability to provide telecommunications services and, therefore, is not a fit and proper entity to provide telecommunications services to customers in Arizona. Therefore, PCMG's CC&N should be revoked pursuant to A.R.S. § 40-252 in order to protect the public interest.

7. Pursuant to A.R.S. § 40-424, PCMG d/b/a PCA, On Systems and Mr. Wetherald should be fined for their failure to comply with Decision No. 63382, three Commission Procedural Orders and their violations of A.R.S. §§ 40-204, 40-241, A.R.S. § 40-281, A.A.C. 14-2-1104(2), A.A.C. 14-2-1106(B)(1) and (3) and 14-2-1115(E).

8. Based upon PCMG d/b/a PCA, On Systems and Mr. Wetherald's serious and ongoing violations of Commission orders, rules and regulations, and pursuant to the authority granted to the Commission under Article XV, Section 16 of the Arizona Constitution, it is reasonable and lawful to impose a fine of $180,000 on PCMG d/b/a PCA, On Systems and Timothy Wetherald, jointly and severally, based on an assessment of $200 per day from the approximate date PCA began marketing itself and/or providing service in Arizona which we determine to be May 1, 2002 until the date it stopped providing service on approximately March 1, 2003; plus an assessment of $5,000 per day for

the failure to comply with the February 25, 2003 Procedural Order from February 27, 2003, the date of the letter from PCMG indicating it would not comply with the February 27, 2003 Procedural Order, up to and including March 11, 2003, which is the date Staff filed and mailed its notice, plus $5,000 for the failure to timely comply with the April 11, 2003 Procedural Order, plus an assessment of $100 per day for the failure to comply with the bonding requirements set forth in Decision No. 63382 and the May 15, 2003 Procedural Order from February 19, 2003 which is the day the bond lapsed, up to and including the effective date of this Decision.

9. Pursuant to A.R.S. §40-426 and based upon the nature of the violations in this case, this matter should be referred to the appropriate criminal agencies.

10. The Settlement, attached as Exhibit A, is reasonable and in the public interest, and should be approved.

ORDER

IT IS THEREFORE ORDERED that Decision No. 63382 is hereby rescinded and the Certificate of Convenience and Necessity conditionally granted to Phone Company Management Group, f/k/a LiveWireNet of Arizona, LLC d/b/a LiveWireNet is hereby revoked.

IT IS FURTHER ORDERED that Phone Company Management Group, d/b/a Phone Company of Arizona, On Systems and Tim Wetherald shall jointly and severally pay a fine of $180,000 for their violations of Arizona law and Commission rules and orders, within 90 days of the date of this Decision.

IT IS FURTHER ORDERED that the administrative penalties shall be made payable to the "State of Arizona" for deposit into the general fund of the State of Arizona.

IT IS FURTHER ORDERED that the Stipulation in Exhibit A is approved, and this matter is dismissed with prejudice against The Phone Company of Arizona, LLP, Frank Tricamo and David Stafford Johnson subject to the conditions set forth in the Stipulation.

IT IS FURTHER ORDERED that if Tim Wetherald obtains any direct or indirect ownership interest in a public service corporation or in an entity applying to be a public service corporation, or is employed in any capacity by a public service corporation or by an entity applying to be a public service corporation in the State of Arizona, he must notify the Commission, by docketing the

appropriate materials subject to Staff and Commission review, at least ninety (90) days prior to acquiring any such interest or accepting any such employment. Any failure on the part of Mr. Wetherald to notify the Commission as prescribed above, may result in the filing of a contempt proceeding(s) and/or the filing of any other appropriate action(s) against Mr. Wetherald.

IT IS FURTHER ORDERED that the *Pro Hac Vice* status of Mr. Michael L. Glaser of Shughart Thomson & Kilroy PC in Denver Colorado is hereby revoked.

IT IS FURTHER ORDERED that a copy of this Decision shall be sent by certified mail to the Colorado State Bar and Arizona State Bar for the appropriate review by those entities.

IT IS FURTHER ORDERED that a copy of this Decision shall be sent to the appropriate criminal agencies, including the Office of the Arizona Attorney General and the Office of the Maricopa County Attorney, for their review of criminal violations, including A.R.S. §40-426.

IT IS FURTHER ORDERED that the Phone Company Management Group, d/b/a Phone Company of Arizona and Tim Wetherald shall make a filing that updates the Commission regarding the correct domestic and foreign address, statutory agent and lists the officers, directors, principles and/or members of the Phone Company Management Group on or before June 6, 2004.

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IT IS FURTHER ORDERED that Docket Nos. T-04125A-02-0577, T-03889A-02-0578, T-03889A-03-0152, and T-03889A-03-0202 are dismissed and administratively closed.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER COMMISSIONER

COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2004.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

PJD:mj

SERVICE LIST FOR: ACC v. LiveWireNet, et al.

DOCKET NO.: T-03889A-02-0796, et al.

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

UTILITIES DIVISION STAFF Complainant, v. LIVEWIRENET OF ARIZONA, LLC; THE PHONE COMPANY MANAGEMENT GROUP, LLC; THE PHONE COMPANY OF ARIZONA JOINT VENTURE D/B/A THE PHONE COMPANY OF ARIZONA; ON SYSTEMS TECHNOLOGY, LLC and its principals, TIM WETHERALD, FRANK TRICAMO AND DAVID STAFFORD JOHNSON; and THE PHONE COMPANY OF ARIZONA, LLP and its Members, Respondents.	DOCKET NO. T-03889A-02-0796 DOCKET NO. T-04125A-02-0796
IN THE MATTER OF THE PHONE COMPANY OF ARIZONA JOINT VENTURE d/b/a THE PHONE COMPANY OF ARIZONA'S APPLICATION FOR 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 RESOLD 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 OF CONVENIENCE AND NECESSITY.	DOCKET NO. T-03889A-03-0202

Exhibit A

DECISION NO.

STIPULATION FOR DISMISSAL

The Phone Company of Arizona, LLP, and its partners (excluding partners Marc David Shiner and Leon Swichkow) (collectively, the "Partnership"), Frank Tricamo, an individual ("Tricamo"), David Stafford Johnson, an individual ("Johnson"), and the Arizona Corporation Commission's Utilities Division Staff ("Staff") hereby enter into this Stipulation for Dismissal (the "Stipulation") regarding the Complaint, as amended, filed by Staff in *Utilities Division Staff v. LiveWireNet of Arizona, LLC, The Phone Company Management Group, LLC, The Phone Company of Arizona Joint Venture d/b/a The Phone Company of Arizona, On Systems Technology, LLC, and its principals, Tim Wetherald, Frank Tricamo and David Stafford Johnson, and The Phone Company of Arizona, LLP, and its Members (Docket Nos. T-03889A-02-0796 et al.)* (the "Complaint Proceeding"). Staff, Frank Tricamo, David Stafford Johnson and the Partnership are referred to herein collectively as the "Parties" and individually as a "Party." This Stipulation does not apply to Marc David Shiner or Leon Swichkow.

RECITALS

A. LiveWireNet is a public service corporation which on February 16, 2001, in Decision No. 63382 (Docket No. T-03889A-00-0393), was authorized to provide facilities-based and resold local and long distance telecommunications services in Arizona. Pursuant to Decision No. 63382, LiveWireNet was ordered to file a performance bond in the amount of $100,000 within 90 days of the effective date of the decision. LiveWireNet requested and received several extensions of time to submit proof of a performance bond, and LiveWireNet filed a copy of a bond on February 19, 2002.

B. LiveWireNet subsequently sold its membership interest to On Systems Technology ("OST"), and as part of this same transaction purportedly transferred its CC&N to OST as well. On January 29, 2002, LiveWireNet then filed Articles of Amendment with the Arizona Corporation Commission changing its name to The Phone Company Management

Group, LLC (also referred to herein as "PCMG"). On January 30, 2002, PCMG filed an initial tariff and price list for PCMG, doing business as The Phone Company.

C. On July 31, 2002, PCMG filed an Application to Discontinue Local Exchange Service in Arizona. PCMG's Application was docketed as No. T-03889A-02-0578. By letter dated October 9, 2002, and docketed with the Commission, PCMG withdrew its pending Application. Both Applications are still pending before the Commission.

D. On July 31, 2002, the Phone Company of Arizona Joint Venture (the "Joint Venture") filed an Application for a Certificate of Convenience and Necessity to provide intrastate telecommunications service as a local and long distance reseller and alternative operator service provider. The Joint Venture's Application was docketed as No. T-04125A-02-0577. A letter seeking to voluntarily withdraw the Joint Venture's Application was docketed October 7, 2002, by counsel for OST, the general partner of the Joint Venture. This Application is still pending before the Commission. OST was also retained by the Partnership to perform management services for the Partnership. The Joint Venture has since been dissolved.

E. By letter dated December 20, 2002, Qwest notified PCMG that its service was subject to disconnection. At the time, the Phone Company of Arizona was providing service to approximately 6,000 customers.

F. On October 18, 2002, Staff filed a Complaint (the "Complaint") against LiveWireNet, PCMG, the Joint Venture d/b/a the Phone Company of Arizona, OST and its principles Tim Wetherald ("Wetherald"), Frank Tricamo and David Stafford Johnson, and the Partnership (collectively, the "Respondents"). The Complaint was docketed as Nos. T-03889A-02-0796 and T-04125A-02-0796. The Complaint raised concerns regarding the Phone Company of Arizona's status to provide telecommunications service in Arizona and whether it was a fit and proper entity to conduct service in the state.

G. On March 10, 2003, Staff mailed a notice to the Phone Company of Arizona's customers, at the direction of the Administrative Law Judge ("ALJ"), advising those customers that Qwest had provided notice to the Phone Company of Arizona that its service was subject to disconnection by Qwest. The notice also contained a list of alternative providers for the customers to contact for service and a statement that Qwest would be the default provider in the event that the customer did not choose another provider. The Phone Company of Arizona' s service was disconnected by Qwest some time after March 21, 2003.

H. On March 11, 2003, PCMG filed an Application to Discontinue Providing Competitive Facilities Based and Resold Exchange Service. PCMG's Application was docketed as No. T-03889A-03-0152, and is still pending before the Commission.

I. On April 2, 2003, PCMG filed an advice letter seeking to voluntarily surrender its CC&N. PCMG's application was docketed as No. T-03889A-03-0202, and is still pending before the Commission.

J. On June 2, 2003, Staff filed an Amended Complaint (the "Amended Complaint"). The Amended Complaint alleged that the Respondents, or some of them: (i) violated A.R.S. § 40-282 by providing telephone service in Arizona without a CC&N; (ii) violated A.R.S. § 40-361(B) in that Respondents, or some of them, are not fit and proper entities to provide telephone service in Arizona; (iii) violated A.R.S. § 40-361(B) in that Respondents, or some of them, are not financially capable of providing telephone service in Arizona; (iv) violated A.R.S. § 40-361(B) in that Respondents, or some of them, do not have the technical capability to provide telephone service in Arizona; and (v) acted in willful violation of Commission orders. In its prayer for relief, Staff requested that the Commission make certain findings as set forth in the Amended Complaint, revoke the CC&N of PCMG, impose monetary penalties on Respondents, or some of them, and deny OST and its members the right to obtain a CC&N in Arizona.

K. Respondents Partnership, Frank Tricamo and David Stafford Johnson have denied the allegations contained in Staff's Complaint and Amended Complaint as they pertain to each of them.

L. By Procedural Order dated May 15, 2003, the Commission's Hearing Division consolidated Docket Nos. T-04125A-02-0577, T-03889A-02-0578, T-03389A-03-0152 and T-03889A-03-0202 with Docket Nos. T-03889A-02-0796 and T-04125A-02-0796. The Commission's Hearing Division held the first day of hearings in these consolidated dockets on November 3, 2003. The hearing was postponed due to a family emergency of the ALJ and was continued to February 2, 2004. A proposed settlement was docketed by counsel for the Partnership on January 29, 2004. In order to allow the parties adequate time for consideration of the proposed settlement, the hearing was subsequently rescheduled to commence on February 24, 2004.

M. The Partnership, Frank Tricamo, David Stafford Johnson, and Staff agree that a stipulation between the Parties is in the public interest. Thus, the Parties have entered into this Stipulation, subject to its approval by the ALJ and/or the Commission, if necessary, which resolves all of the outstanding issues in the Complaint and the Amended Complaint as to the Partnership, Frank Tricamo and David Stafford Johnson.

TERMS AND CONDITIONS

1. No Finding of Wrongdoing by the Parties.

(a) Partnership. The Parties agree that the Partnership and its individual partners (with the exception of Leon Swichkow and Marc David Shiner) are not responsible for any wrongdoing alleged in the Complaint or the Amended Complaint in Docket Nos. T-03889A-02-0796 and T-04125A-02-0796. Staff acknowledges that the Partnership and its individual partners (with the exception of Leon Swichkow and Marc David Shiner) have at all times cooperated fully with Staff in its investigation of the Complaint and the Amended Complaint. There are no restrictions on the rights of the Partnership and its individual partners (with the

exception of Leon Swichkow and Marc David Shiner) to apply for certificates of convenience and necessity to provide public utility service in the State of Arizona, or to do business in the State of Arizona.

(b) Tricamo and Johnson. This Stipulation shall not constitute a finding of responsibility by Frank Tricamo and David Stafford Johnson for the wrongdoing alleged in the Complaint or the Amended Complaint, in Docket Nos. T-03889A-02-0796 and T-04125A-02-0796.

2. Dismissal with Prejudice. The Complaint and Amended Complaint filed by Staff in Docket Nos. T-03889A-02-0796 and T-04125A-02-0796 shall be dismissed with prejudice as to the Partnership, its individual partners (with the exception of Marc David Shiner and Leon Swichkow), David Stafford Johnson and Frank Tricamo, subject to the following conditions:

(a) The Partnership. The Partnership pre-filed, in these consolidated proceedings, the direct testimony of Travis Credle, a partner in the Partnership. Mr. Credle agrees to appear at the hearing in these consolidated dockets to sponsor his pre-filed direct testimony, and shall answer questions from Staff and/or the ALJ pertaining to the pre-filed testimony or other matters related to these consolidated dockets.

(b) Mr. Frank Tricamo. Mr. Frank Tricamo did not pre-file direct testimony in these consolidated dockets. However, Mr. Frank Tricamo agrees to appear at the hearing in these consolidated dockets to answer questions from Staff and/or the ALJ pertaining to matters related to these consolidated dockets. Mr. Tricamo has recently been cooperative with the Staff and has provided information and facts in his possession which Staff believes will lead to the resolution of issues raised in the Staff's Complaint and Amended Complaint. Mr. Tricamo agrees to provide such facts and information to the ALJ and Staff during the hearing.

(c) Mr. David Stafford Johnson. Mr. David Stafford Johnson did not pre-file direct testimony in these consolidated dockets. However, Mr. David Stafford Johnson agrees to appear at the hearing in these consolidated dockets to answer questions from Staff and/or the ALJ

pertaining to matters related to these consolidated dockets. Mr. Stafford Johnson has recently been cooperative with the Staff and has provided information and facts in his possession which Staff believes will lead to the resolution of issues raised in the Staff's Complaint and Amended Complaint. Mr. David Stafford Johnson agrees to provide such facts and information to the ALJ and Staff during the hearing.

(d) Good Faith Efforts Required.

Mr. Frank Tricamo, Mr. David Stafford Johnson and the Partnership all agree that they are required by the terms of this Stipulation to make a good faith effort to provide to the Staff or the ALJ at the hearing, any information and/or facts in their possession in order to resolve the issues raised by the Staff's Complaint and Amended Complaint. If the parties fail to act in a manner consistent with this Stipulation, Staff will seek appropriate relief including reinstatement of the Complaint and Amended Complaint against the Parties.

(e) Additional Assurance.

For a period of five (5) years from the effective date of an order approving this Stipulation, as a further additional assurance, David Stafford Johnson and Frank Tricamo voluntarily agree not to acquire any ownership interest in any public utility providing service in Arizona (excluding Mr. Johnson's or Mr. Tricamo's ownership of stock where such ownership comprises less than 5% of the outstanding stock of such public utility). Mr. Johnson and Mr. Tricamo further agree that they will not assume any management responsibilities in any public utility providing service in Arizona for that same period. Mr. Tricamo and Mr. Johnson further agree that they will not assume an employment relationship, provide legal services, or participate in the formation of a public utility or the formation of any business venture with the purpose of providing public utility service in Arizona for a period of five (5) years. If and when, after the five (5) year period, either Mr. Tricamo or Mr. Johnson undertake any of the activities proscribed above, they shall immediately notify the Commission. Such disclosure shall be in writing and

addressed to the Director of Utilities, Arizona Corporation Commission, 1200 West Washington Street, Phoenix, Arizona, 85007, and shall reference Docket No. T-03889A-02-0796. A copy of said letter shall also be sent to the Commission's Compliance Division.

3. Procedure for Entry into Force of this Stipulation. This Stipulation shall not become effective until the ALJ, and/or Commission, if necessary, has issued an order approving substantially all of the terms of this Stipulation.

4. Authority of Staff; Approval by the ALJ and/or Commission.

(a) The Parties acknowledge and agree that: (i) Staff does not have the power to bind the ALJ and/or the Commission; and (ii) for purposes of this Stipulation, Staff acts in the same manner as a party in proceedings before the ALJ and/or Commission.

(b) The Parties further acknowledge and agree that: (i) this Stipulation acts as a procedural device to propose its terms to the ALJ, and/or Commission if necessary; and (ii) this Stipulation has no binding force or effect until approved by an order of the ALJ, and if necessary, the Commission.

(c) The Parties further acknowledge and agree that the ALJ will evaluate the terms of this Stipulation, and that after such evaluation the ALJ may enter an order approving the Stipulation requiring insubstantial modifications to the terms hereof and/or before making his recommendation regarding this Stipulation to the Commission, if necessary.

(d) The Parties agree that in the event that the ALJ and/or Commission, if necessary, issues an order approving substantially all of the terms of this Stipulation, such action by the ALJ and/or Commission, if necessary, constitutes approval of the Stipulation, and thereafter the Parties shall abide by its terms.

(e) Unless the Parties to this Stipulation otherwise agree, in the event that the ALJ and/or Commission, if necessary, does not issue an order approving substantially all of the terms of this Stipulation, it shall be deemed withdrawn by the Parties. If any Party withdraws

from the Stipulation, then any other party may promptly request that the ALJ schedule a hearing on the allegations against the Party as set forth in the Complaint and Amended Complaint.

5. Severability. Each of the terms of the Stipulation are in consideration and support of all other terms. Accordingly, such terms are not severable.

6. Support and Defend. The Parties agree to support and defend this Stipulation before the ALJ and the Commission, if necessary. If this Stipulation enters into force, the Parties shall support and defend this Stipulation before any court or regulatory agency in which it may be at issue.

DATED this 24rd day of February, 2004.

THE PHONE COMPANY OF ARIZONA, LLP

By: Jeffrey W. Crockett

Its: Attorney

FRANK TRICAMO

DAVID STAFFORD JOHNSON

UTILITIES DIVISION STAFF OF THE ARIZONA CORPORATION COMMISSION

By: E. G. Johnson

Title: Utilities Director

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