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BEFORE THE ARIZONA CORPORATION COMMISSION 2004 APR - 5 1 A 8: 14

COMMISSIONERS

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

AZ CORP COMMISSION  
DOCUMENT CONTROL

UTILITIES DIVISION STAFF

Complainant,

DOCKET NO. T-03889A-02-0796

DOCKET NO. T-04125A-02-0796

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; and THE PHONE COMPANY OF  
ARIZONA, LLP and its Members,

Arizona Corporation Commission

**DOCKETED**

APR - 5 2004

DOCKETED BY

Respondents.

IN THE MATTER OF THE PHONE COMPANY  
OF ARIZONA JOINT VENTURE d/b/a THE  
PHONE COMPANY OF ARIZONA'S APPLICA-  
TION 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

T-03889A-03-0202

CLOSING BRIEF OF THE PHONE COMPANY OF ARIZONA, LLP





1 Maureen Scott, Staff Attorney  
Legal Division  
2 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
3 Phoenix, Arizona 85007

4 A COPY of the foregoing was  
5 mailed via first class mail this  
6 2nd day of April, 2004, to:

7 Tim Wetherald  
3025 South Parker Road, Suite 1000  
8 Aurora, CO 80014

9 David Stafford Johnson  
Greystone Mansion  
10 1801 Williams Street, Suite 100  
11 Denver, CO 80218

12 Frank Tricamo  
6888 South Yukon Court  
13 Littleton, CO 80128

14 Roald Haugan  
32321 County Highway 25  
15 Redwood Falls, MN 56283

16 Travis and Sara Credle  
17 3709 West Hedrick Drive  
18 Morehead City, NC 28557

19 Steven Petersen  
2989 Brookdale Drive  
20 Brooklyn Park, MN 55444

21 Timothy Berg  
Theresa Dwyer  
22 Fennemore Craig  
23 3003 N. Central, Ste 2600  
Phoenix, Arizona 85003-2913

24  
25  
26

1 Qwest Corporation  
Attention: Law Department  
2 4041 North Central, 11th Floor  
3 Phoenix, Arizona 85012

4 Leon Swichkow  
2901 Clint Moore Road, #155  
5 Boca Raton, FL 33496

6 Marc David Shiner  
4043 NW 58th Street  
7 Boca Raton, FL 33496

8 Marc David Shiner  
9 5030 Champion Blvd, Ste 6-198  
10 Boca Raton, FL 33496

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# **EXHIBIT A**



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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.

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.

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.

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

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-02-0796

DOCKET NO. T-04125A-02-0796

DOCKET NO. T-04125A-02-0577

DOCKET NO. T-03889A-02-0578

DOCKET NO. T-03889A-03-0152

DOCKET NO. T-03889A-03-0202

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**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

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

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

7 D. On July 31, 2002, the Phone Company of Arizona Joint Venture (the "Joint  
8 Venture") filed an Application for a Certificate of Convenience and Necessity to provide  
9 intrastate telecommunications service as a local and long distance reseller and alternative  
10 operator service provider. The Joint Venture's Application was docketed as No. T-04125A-02-  
11 0577. A letter seeking to voluntarily withdraw the Joint Venture's Application was docketed  
12 October 7, 2002, by counsel for OST, the general partner of the Joint Venture. This  
13 Application is still pending before the Commission. OST was also retained by the Partnership  
14 to perform management services for the Partnership. The Joint Venture has since been  
15 dissolved.

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

19 F. On October 18, 2002, Staff filed a Complaint (the "Complaint") against  
20 LiveWireNet, PCMG, the Joint Venture d/b/a the Phone Company of Arizona, OST and its  
21 principles Tim Wetherald ("Wetherald"), Frank Tricamo and David Stafford Johnson, and the  
22 Partnership (collectively, the "Respondents"). The Complaint was docketed as Nos. T-  
23 03889A-02-0796 and T-04125A-02-0796. The Complaint raised concerns regarding the Phone  
24 Company of Arizona's status to provide telecommunications service in Arizona and whether it  
25 was a fit and proper entity to conduct service in the state.

26

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

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

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

14          J.     On June 2, 2003, Staff filed an Amended Complaint (the "Amended  
15 Complaint"). The Amended Complaint alleged that the Respondents, or some of them: (i)  
16 violated A.R.S. § 40-282 by providing telephone service in Arizona without a CC&N; (ii)  
17 violated A.R.S. § 40-361(B) in that Respondents, or some of them, are not fit and proper  
18 entities to provide telephone service in Arizona; (iii) violated A.R.S. § 40-361(B) in that  
19 Respondents, or some of them, are not financially capable of providing telephone service in  
20 Arizona; (iv) violated A.R.S. § 40-361(B) in that Respondents, or some of them, do not have  
21 the technical capability to provide telephone service in Arizona; and (v) acted in willful  
22 violation of Commission orders. In its prayer for relief, Staff requested that the Commission  
23 make certain findings as set forth in the Amended Complaint, revoke the CC&N of PCMG,  
24 impose monetary penalties on Respondents, or some of them, and deny OST and its members  
25 the right to obtain a CC&N in Arizona.  
26

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

4 L. By Procedural Order dated May 15, 2003, the Commission's Hearing Division  
5 consolidated Docket Nos. T-04125A-02-0577, T-03889A-02-0578, T-03389A-03-0152 and T-  
6 03889A-03-0202 with Docket Nos. T-03889A-02-0796 and T-04125A-02-0796. The  
7 Commission's Hearing Division held the first day of hearings in these consolidated dockets on  
8 November 3, 2003. The hearing was postponed due to a family emergency of the ALJ and was  
9 continued to February 2, 2004. A proposed settlement was docketed by counsel for the  
10 Partnership on January 29, 2004. In order to allow the parties adequate time for consideration  
11 of the proposed settlement, the hearing was subsequently rescheduled to commence on February  
12 24, 2004.

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

#### 18 TERMS AND CONDITIONS

19 1. No Finding of Wrongdoing by the Parties.

20 (a) Partnership. The Parties agree that the Partnership and its individual  
21 partners (with the exception of Leon Swichkow and Marc David Shiner) are not responsible for  
22 any wrongdoing alleged in the Complaint or the Amended Complaint in Docket Nos. T-03889A-  
23 02-0796 and T-04125A-02-0796. Staff acknowledges that the Partnership and its individual  
24 partners (with the exception of Leon Swichkow and Marc David Shiner) have at all times  
25 cooperated fully with Staff in its investigation of the Complaint and the Amended Complaint.  
26 There are no restrictions on the rights of the Partnership and its individual partners (with the

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

4 (b) Tricamo and Johnson. This Stipulation shall not constitute a finding of  
5 responsibility by Frank Tricamo and David Stafford Johnson for the wrongdoing alleged in the  
6 Complaint or the Amended Complaint, in Docket Nos. T-03889A-02-0796 and T-04125A-02-  
7 0796.

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

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

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

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

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

6 (d) Good Faith Efforts Required.

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

13 (e) Additional Assurance.

14 For a period of five (5) years from the effective date of an order approving this  
15 Stipulation, as a further additional assurance, David Stafford Johnson and Frank Tricamo  
16 voluntarily agree not to acquire any ownership interest in any public utility providing service in  
17 Arizona (excluding Mr. Johnson's or Mr. Tricamo's ownership of stock where such ownership  
18 comprises less than 5% of the outstanding stock of such public utility). Mr. Johnson and Mr.  
19 Tricamo further agree that they will not assume any management responsibilities in any public  
20 utility providing service in Arizona for that same period. Mr. Tricamo and Mr. Johnson further  
21 agree that they will not assume an employment relationship, provide legal services, or participate  
22 in the formation of a public utility or the formation of any business venture with the purpose of  
23 providing public utility service in Arizona for a period of five (5) years. If and when, after the  
24 five (5) year period, either Mr. Tricamo or Mr. Johnson undertake any of the activities proscribed  
25 above, they shall immediately notify the Commission. Such disclosure shall be in writing and  
26

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

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

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

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

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

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

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

23 (e) Unless the Parties to this Stipulation otherwise agree, in the event that the  
24 ALJ and/or Commission, if necessary, does not issue an order approving substantially all of the  
25 terms of this Stipulation, it shall be deemed withdrawn by the Parties. If any Party withdraws  
26

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

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

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

9 DATED this 24<sup>th</sup> day of February, 2004.

10 THE PHONE COMPANY OF ARIZONA, LLP

11 By: Jeffrey W. Crockett  
12 Its: Attorney

13 FRANK TRICAMO.

14 [Signature]

15 DAVID STAFFORD JOHNSON

16 [Signature]

17 UTILITIES DIVISION STAFF OF THE ARIZONA  
18 CORPORATION COMMISSION

19 By: E. G. Johnson  
20 Title: Utilities Director