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BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

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Arizona Corporation Commission
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AZ CORP COMMISSION
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JUN - 2 2003

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UTILITIES DIVISION STAFF,

Complainant,

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

vs.

LIVEWIRENET OF ARIZONA, LLC n/k/a 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, DAVID STAFFORD, MARC DAVID SHINER and LEON SWICKOW; 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.

Docket No. T-04125A-02-0577

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

Docket No. T-03889A-02-0578

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

Docket No. ~~T-03889A-03-0152~~

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

Docket No. T-03889A-03-0202

AMENDED COMPLAINT

1 Staff ("Staff") of the Utilities Division ("Division") of the Arizona Corporation Commission
2 ("ACC" or the "Commission"), for its Complaint and Petition for Relief against LiveWireNet Of
3 Arizona, LLC n/k/a The Phone Company Management Group, LLC d/b/a The Phone Company, The
4 Phone Company of Arizona Joint Venture d/b/a The Phone Company of Arizona, On Systems
5 Technology, Inc., LLC, and its principals, Tim Wetherald, Frank Tricamo and David Stafford
6 Johnson, Leon Switchkow and Marc Shiner, and the Phone Company of Arizona, LLP and its
7 members, alleges as follows:

8 **JURISDICTION**

9 1. The Commission has jurisdiction to hear complaints against public service
10 corporations pursuant to A.R.S. § 40-246. The Commission has jurisdiction to supervise and regulate
11 public service corporations pursuant to Article XV of the Arizona Constitution and Title 40 of the
12 Arizona Revised Statutes.

13 **RESPONDENTS**

14 2. Respondent LiveWireNet of Arizona, LLC d/b/a LiveWireNet is a public service
15 corporation which on February 16, 2001, in Decision No. 63382, was authorized to provide facilities-
16 based and resold local and long distance in Arizona.

17 3. On January 30, 2002, LiveWireNet filed a request to have its name changed to The
18 Phone Company Management Group, LLC d/b/a The Phone Company, also listed as a Respondent.
19 The Company's request for name change and proposed tariff was docketed as T-03889A-02-0080.

20 4. Respondent The Phone Company of Arizona Joint Venture d/b/a The Phone Company
21 of Arizona filed an application on July 31, 2002, for a statewide CC&N to provide resold long
22 distance telecommunications services, resold local exchange telecommunications services, and
23 alternative operator services in Arizona. The Company's application was docketed as T-04125A-02-
24 0577. It is still pending before the Commission.

25 5. Respondent On Systems Technology, LLC is a Colorado limited liability company
26 and a general partner in The Phone Company of Arizona Joint Venture. On Systems Technology was
27 also retained by The Phone Company of Arizona, LLP to perform management services for the
28

1 Phone Company of Arizona. Members of On Systems Technology included during relevant time
2 periods, Tim Wetherald, Frank Tricamo, David Stafford Johnson, Leon Switchkow and Marc Shiner.

3 6. Respondents The Phone Company of Arizona LLP, and its members, held a 70%
4 interest in The Phone Company of Arizona Joint Venture. On Systems Technology held a 30%
5 interest in The Phone Company of Arizona Joint Venture. Subsequently, Michael Glaser, attorney
6 for Mr. Wetherald, filed a request to withdraw the application for CC&N filed by the Phone
7 Company of Arizona.

8 BACKGROUND

9 7. Several Applications involving the Respondents are now pending before the
10 Commission. Some of the information contained in these Applications, as well as recent information
11 received by Staff regarding investigations in other States involving On Systems Technology, Tim
12 Wetherald and/or other companies owned or managed by them, as well as customer complaints
13 recently filed in Arizona have raised serious questions about the adequacy of the service now being
14 provided by Respondents to their customers, their compliance with provisions of Arizona law, their
15 financial technical capability to provide telephone service and whether they are fit and proper entities
16 to provide telephone service in Arizona.

17 8. LiveWireNet received a CC&N from the Commission on February 16, 2001, to
18 provide facilities-based and resold local exchange telecommunications services in the State of
19 Arizona. Pursuant to Decision No. 63382, LiveWireNet was ordered to file a performance bond in
20 the amount of \$100,000 within 90 days of the effective date of the Decision. LiveWireNet filed and
21 received several extensions of time to submit proof of a performance bond which was subsequently
22 filed with the Commission on February 19, 2002.¹

23 9. On January 29, 2002, LiveWireNet filed Articles of Amendment with the Arizona
24 Corporation Commission changing its name to The Phone Company Management Group, LLC. On
25 January 30, 2002, Mr. Wetherald, filed an initial tariff and price list for The Phone Company
26 Management Group, LLC, a/k/a "The Phone Company."

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28 ¹ Phone Company of Arizona, LLP members allege that Mr. Wetherald misappropriated funds provided by them to satisfy the bonding requirement for LiveWireNet.

1 10. On July 31, 2002, the Phone Company Management Group, LLC (fna LiveWireNet)
2 filed an Application to Discontinue the provision of competitive facilities based and resold local
3 exchange service in Arizona.² The Application stated that Live Wire Networks, Inc. ("LWN"), a
4 Nevada corporation, agreed to sell to On Systems Technology, LLC all of the membership interests
5 held by LWN in LiveWireNet. It also stated that pursuant to R14-2-1107, LiveWireNet was making
6 application to discontinue local exchange service, in order to affect a transfer of LWN's membership
7 interest in LiveWireNet to On Systems Technology and a transfer of LiveWireNet's CC&N to On
8 Systems Technology. The Application also stated that it was being filed simultaneously with the
9 Application of the Phone Company of Arizona Joint Venture, in which On Systems Technology was
10 a partner, and which would continue the local exchange service provided by LiveWireNet upon a
11 grant of that Application. Finally, Applicant stated that it was "not proposing a refund of the
12 deposits collected pursuant to R14-2-503, subsection b, because LiveWireNet will transfer its
13 customer base to the Phone Company of Arizona Joint Venture, and there will be no disruption of
14 service."

15 11. On July 31, 2002, an Application for a Certificate of Convenience & Necessity was
16 filed for "The Phone Company of Arizona Joint Venture" d/b/a "The Phone Company of Arizona."
17 The Applicant's Management Contact was listed as Tim Wetherald and its attorney was listed as
18 Michael L. Glaser. In the Application, it was stated that The Phone Company of Arizona Joint
19 Venture was created on June 6, 2002. It was also stated that the Applicant had been funded by The
20 Phone Company of Arizona, LLP, a general partner in Applicant, in the amount of \$619,000. The
21 Phone Company Management Group, LLC, (which was referred to as a subsidiary of "On Systems
22 Technology, LLC") and also a general partner of Applicant, was to serve as the managing partner of
23 the Applicant. The Application also listed the members of On Systems Technology, LLC and The
24 Phone Company Management Group, LLC as Tim Wetherald, Frank Tricamo and David Stafford
25 Johnson.

26
27
28 ² In its Application, it was stated that LiveWireNet began providing resold/local exchange service after meeting the conditions set forth by the Commission in Decision No. 63382 on March 1, 2001, which would have been before the Company complied with the bonding requirements in the Commission's Order.

1 12. Upon information and belief, Respondents have been advertising and signing up
2 customers in Arizona under the name "The Phone Company of Arizona." Upon information and
3 belief, at the time Staff's original Complaint was filed, The Phone Company Management Group
4 and/or The Phone Company of Arizona provided services to approximately 4,500 customers in
5 Arizona.

6 13. On October 4, 2002, Mr. Glaser filed a letter on behalf of The Phone Company of
7 Arizona Joint Venture, d/b/a The Phone Company of Arizona stating that The Phone Company of
8 Arizona LLP which held a 70% ownership in the Phone Company of Arizona (On Systems
9 Technology held the other 30%) had failed to make its initial capital contribution of \$619,000.00, and
10 therefore, was deemed to have withdrawn from The Phone Company of Arizona. Mr. Glaser also
11 stated that under the Joint Venture Agreement, the interests held by the Limited Partnership were
12 deemed to be terminated and transferred, along with the capital account balance maintained on behalf
13 of the Limited Partnership by the manager of The Phone Company, to On Systems Technology.
14 Thus, according to Mr. Glaser, On Systems now owned all of The Phone Company of Arizona. Mr.
15 Glaser also stated that as sole owner of the Phone Company of Arizona, On Systems Technology had
16 decided to voluntarily withdraw The Phone Company of Arizona Joint Venture's application for a
17 CC&N.

18 14. On or about September 20, 2000, Staff was apprised by several of the general partners
19 of the Phone Company of Arizona, LLP, that Mr. Wetherald and On Systems Technology, LLC were
20 taking actions on behalf of The Phone Company of Arizona Joint Venture without their authorization.
21 Staff was also apprised by several of the general partners of The Phone Company of Arizona, LLP, of
22 several investigations at other State commissions involving other telephone companies owned or
23 managed by On Systems Technology, LLC in other States.

24 15. Staff was also apprised shortly thereafter that The Phone Company Management
25 Group was seriously delinquent in its payments to Qwest in Arizona, the underlying wholesale
26 service provider. At the time Staff filed its original Complaint, the Company was delinquent in its
27 payments to Qwest in the approximate amount of \$538,000.00. At the time Staff filed its original
28 Complaint, the total amount owing to Qwest was over \$850,000.00. Staff was also apprised by

1 Qwest that it had stopped processing new Local Service Requests (“LSRs”) for The Phone Company
2 Management Group and/or The Phone Company of Arizona in the State of Arizona because of its
3 failure to make payments for the underlying services provided by Qwest. Staff was also apprised that
4 Qwest had given notice to the Company that nonpayment of the past due balance would lead to
5 eventual service disconnection.³ In a February 25, 2003 Procedural Order, the Phone Company
6 Management Group was ordered to send notice to its customers of the possible disconnection by
7 Qwest. PCMG refused to provide notice to its customers, and the Staff subsequently sent a notice to
8 PCMG’s customers. On or about March 21, 2003, Qwest disconnected service to the Phone
9 Company Management Group and/or The Phone Company of Arizona due to billing disputes and
10 nonpayment of undisputed amounts owing.

11 16. On or about this same date, the Commission received notice that the Phone Company
12 Management Group had entered into an agreement to transfer its customer base to USURF America.
13 Upon information and belief, PCMG caused a notice to be issued to its customers apprising them of
14 the proposed transfer to USURF and DMJ Communications, in contravention of the Commission’s
15 February 25, 2003 and March 3, 2003 Procedural Order.

16 17. On March 28, 2003, Staff filed the Direct Testimony of John Bostwick and Brad
17 Morton in support of the allegations in its original Complaint.

18 18. On April 3, 2003, The Phone Company Management Group filed a Motion to
19 Terminate these Complaint Proceedings. PCMG stated that it voluntarily surrendered its Certificate
20 of Convenience and Necessity to the ACC, effective April 1, 2003, and requested cancellation of its
21 tariff effective the same date. According to PCMG, having surrendered its CC&N, all of the issues
22 raised in this proceeding have been rendered moot. PCMG’s Motion to Terminate was subsequently
23 denied by ALJ Dion in his May 15, 2003 Procedural Order.

24 19. As of the date of this Amended Complaint, the Commission had received 77 customer
25 complaints regarding The Phone Company of Arizona, including complaints involving disruption of
26

27
28 ³ Staff has informed Qwest that it may not disconnect service without prior notice to the Commission so that customer
may be transferred to other providers if necessary without service disruption.

1 service, and an inability to get in contact with Company representatives at the telephone numbers
2 provided.

3 20. Respondents Tim Wetherald and On Systems Technology were affiliated with Mile
4 High Telecom Joint Venture, a general partnership comprised of On Systems Technology and Mile
5 High Telecom Partners, LLP, a Colorado limited partnership.

6 21. On or about September 20, 2002, Staff of the Commission was notified of
7 investigations against Mile High Telecom Joint Venture in the State of Colorado, and of
8 investigations which were being commenced in the States of Washington and Minnesota into
9 affiliates of the Phone Company Management Group and On Systems Technology.

10 22. On or about February 20, 2002, the Colorado Public Utilities Commission issued an
11 Order to Show Cause and Notice of Hearing which stated that Mile High Telecom Partners, LLP was
12 providing resold local exchange services in Colorado without Colorado Commission authority, and
13 was collecting for jurisdictional telecommunications services without an effective tariff on file.

14 23. While this matter was subsequently settled, the case was reopened. At least one other
15 docket has been opened in Colorado addressing the application of Mile High Telecom Joint Venture
16 to discontinue or curtail jurisdictional telecommunications service. Qwest filed pleadings in that
17 Docket alleging that Mile High Telecom Joint Venture was delinquent in its payments to Qwest for
18 wholesale services rendered in an amount of approximately \$2.6 million dollars in Colorado. In
19 April, 2003, Mile High Telecom was subsequently ordered to cease operations in Colorado.

20 24. On October 8, 2002, the Minnesota Department of Commerce filed a complaint with
21 the Minnesota Public Utilities Commission ("MPUC") alleging that the Minnesota Phone Company,
22 another entity owned in part or managed by On Systems Technology and Mr. Wetherald had been
23 offering local telephone service for months without State approval. The Complaint also stated that
24 the Company did not have a certified 911 emergency calling plan. At the time of Staff's original
25 Complaint, the Commerce Department was recommending that the PUC require the Minnesota Phone
26 Company to return all charges paid by customers since it began doing business in the state, and that it
27 be fined \$10,000 a day for violating the law. Sources reported that the total fine recommended by the
28 Department of Commerce against the Minnesota Phone Company could total several million dollars.

1 Since that time, Mr. Wetherald and On Systems Technology have terminated their affiliation with the
2 Phone Company of Minnesota.

3 25. Upon information and belief, Mr. Wetherald and/or On Systems Technology have
4 owned and/or managed approximately four other companies in various states which have since filed
5 for protection under federal bankruptcy law, the most recent being Mile High Telecom in Colorado.
6 Customers were adversely affected as a result.

7 26. Mr. Wetherald is also a party to two Consent Decrees in Washington and Oregon
8 involving his actions in operating telecommunications ventures in those states.

9
10 **Claims**

11 **First Count**

12 27. The Utilities Division Staff restates paragraphs 1 through 26 as if fully set forth herein.

13
14 28. A.R.S. 40-482 provides that "no public service corporation shall exercise any right or
15 privilege under any franchise or permit without first having obtained from the Commission a
16 certificate of public convenience and necessity."

17
18 29. Upon information and belief, the Respondents advertised and offered telephone
19 service in Arizona as "The Phone Company of Arizona." The Phone Company of Arizona has not
20 been granted a CC&N by the Commission and its attorney, Michael L. Glaser, withdrew its
21 Application for a CC&N. Consequently, for a period of several months, the Phone Company of
22 Arizona signed up customers and provided service without authorization by the Commission.

23 30. All Companies granted CC&N's by the Commission are required to comply with
24 various Commission orders, rules and regulations. Two of the requirements imposed upon all
25 certificated CLECs is a performance bond requirement and a tariff requirement. In providing service
26 without a CC&N, The Phone Company of Arizona operated in violation of these and other
27 Commission important requirements typically imposed as part of the certification process.

1 convenience of its patrons, employees and the public, and as will be in all respects adequate, efficient
2 and reasonable.”

3
4 51. A.R.S. Section 40-321 states that “[w]hen the commission finds that the equipment,
5 appliances, facilities or service of any public service corporation, or the methods of manufacture,
6 distribution or transmission, storage or supply employed by it are unjust, unreasonable, unsafe,
7 improper, inadequate or insufficient, the commission shall determine what is just, reasonable, safe,
8 proper, adequate or sufficient, and shall enforce its determination by order or regulation.”

9
10 52. Respondents Phone Company Management Group and/or the Phone Company of
11 Arizona do not have the technical capability to provide telephone service in Arizona.

12 53. Currently, there have been 77 complaints filed by customers regarding the
13 Respondents The Phone Company of Arizona’s and/or The Phone Company Management Group’s
14 inadequate service. Customers have reported that The Phone Company of Arizona’s numbers give
15 error messages advising that there is no working number. Other complaints have been made by
16 customers stating that they no longer have long distance service and are unable to reach the
17 Company.

18
19 54. Respondent The Phone Company Management Group and/or Respondent The Phone
20 Company of Arizona have insufficient internal management structure and inadequate staffing to be
21 technically capable of providing telephone service in Arizona.

22 55. Respondent The Phone Company Management Group’s CC&N should be revoked due
23 to its technical inability to provide reasonable and adequate telephone service in Arizona.

24
25 **Count Five**

26 56. The Utilities Division Staff restates paragraphs 1 through 55 above as if fully set forth
27 herein.
28

1 57. The Phone Company Management Group, The Phone Company of Arizona, On
2 Systems Technology and Mr. Wetherald have, since this proceeding commenced, acted in contempt
3 and willful violation of several Commission orders.

4
5 58. On February 25, 2003, ALJ Dion issued a Procedural Order that ordered LiveWirenet
6 to notify the customers of the Phone Company of Arizona of the possible termination or interruption
7 of their service. On February 27, 2003, the Commission received a letter from counsel for
8 LiveWirenet stating that it would not be sending the notice to its customers, as ordered by the
9 Commission. As a result, Staff was ordered on March 3, 2003 to notify the Company's customers of
10 the impending service disconnection. Subsequently, The Phone Company Management Group and/or
11 The Phone Company of Arizona and/or On Systems Technology and Mr. Tim Wetherald, acted again
12 in direct contravention of the Commission's February 25, 2003 and March 3, 2003 Procedural
13 Orders, by selling the Company's customer base to a third party. The Respondents caused to be
14 issued a notice to customers advising them of the proposed transfer to DMJ Communications, Inc.
15 ("DMJ") which was in direct conflict with the Staff's notice issued in accordance with the March 3,
16 2003 Procedural Order.

17 59. Decision No. 63382 requires PCMG to maintain a performance bond of \$100,000,
18 which was to increase if at any time it would be insufficient to cover prepayments or deposits
19 collected from the company's customers. The bond expired on February 19, 2003, and PCMG has
20 not taken any action to renew the bond. PCMG has been out of compliance with Decision No. 63382
21 since February 19, 2003. The Commission's May 15, 2003 Procedural Order required the Company
22 to maintain the bonding requirement; however Staff has not seen any filing by the Company
23 demonstrating its compliance.

24
25 60. A Procedural Order issued by the Commission on April 11, 2003, granted Staff's
26 Motion to Compel and required the Phone Company Management Group, the Phone Company of
27 Arizona and Mr. Wetherald to respond to the Staff's data requests in this proceeding. In a letter dated
28 April 29, 2003, Mr. Wetherald advised ALJ Dion and the Commission that he would not be

1 responding to any of the Staff's data requests and thus would not be complying with the
2 Commission's Procedural Order.

3
4 61. The Phone Company of Arizona, The Phone Company Management Group, On
5 Systems and Mr. Wetherald have repeatedly acted in willful violation of Commission Orders and
6 should be subject to fines under A.R.S. Sections 40-424 and 40-425.

7
8 **RELIEF**

9 62. The Utilities Division Staff respectfully requests that the Commission commence an
10 expedited investigation into this Complaint and take appropriate action, including but not limited to
11 the following:

- 12
13 a. Determine that the Respondents Phone Company Management Group and
14 The Phone Company of Arizona are not technically and financially capable
15 of providing telephone service in Arizona and that Respondents are not fit
16 and proper entities to provide telephone service in Arizona;
- 17 b. Determine that Respondent The Arizona Phone Company was serving
18 customers without a valid CC&N;
- 19
20 c. Determine that as a result the service provided by Respondents The Phone
21 Company of Arizona and The Phone Company Management Group was
22 inadequate and unreasonable;
- 23
24 d. Revoke the CC&N of the Phone Company Management Group under the
25 authority granted in A.R.S. Sections 40-202, 40-203, 40-321 and 40-322.
- 26
27 e. Impose monetary penalties on The Phone Company Management Group,
28 The Phone Company of Arizona, and On Systems Technology and its

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members as may be appropriate under the authority granted in A.R.S. Sections 40-424 and 40-425 et seq.;

- f. Deny On Systems Technology and its members the right to obtain a CC&N in Arizona again due to their actions in this case.
- g. Such additional relief as may be requested during these proceedings and/or that the Commission may deem appropriate under the circumstances.

RESPECTFULLY SUBMITTED this 2nd day of June, 2003.



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5 1200 West Washington
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7 Copy of the foregoing hand-delivered/mailed
8 This 2nd day of June, 2003, to:

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