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MARC SPITZER, Chairman
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UTILITIES DIVISION STAFF, Complainant, vs. LIVEWIRENET OF ARIZONA, LLC; THE PHONE COMPANY MANAGEMENT GROUP, LLC; THE PHONE COMPANY OF ARIZONA JOINT VENTURE dba THE PHONE COMPANY OF ARIZONA; ON SYSTEMS TECHNOLOGY, LLC, and its principles, TIM WETHERALD, FRANK TRICAMO AND DAVID STAFFORD; THE PHONE COMPANY OF ARIZONA, LLP and its members, Respondents.	DOCKET NO. T-03889A-02-0796 T-04125A-02-0796
IN THE MATTER OF THE PHONE COMPANY OF ARIZONA JOINT VENTURE dba THE PHONE COMPANY OF ARIZONA'S APPLICATION FOR CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE INSTRASTATE 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, fka 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 dba THE PHONE COMPANY FOR THE CANCELLATION OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY.	DOCKET NO. T-03889A-03-0202 **PROCEDURAL ORDER**

Arizona Corporation Commission
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BY THE COMMISSION:

On October 18, 2002, the Arizona Corporation Commission ("Commission") Utilities Division ("Staff") filed a Complaint and Petition for Relief ("Complaint") against LiveWirenet of Arizona, LLC, The Phone Company Management Group, LLC, ("PCMG") The Phone Company of Arizona Joint Ventures dba The Phone Company of Arizona, On Systems Technology, LLC, and its principles, Tim Wetherald, Frank Tricamo, David Stafford Johnson, and The Phone Company of Arizona, LLP ("the LLP") and its members (collectively "Respondents").

On November 14, 2002, Qwest Corporation ("Qwest") filed an Application to Intervene, which was subsequently granted by the Commission.

On March 3, 2003, the Commission issued a Procedural Order scheduling this matter for a hearing on April 15, 2003.

On March 25, 2003, the Commission issued a Procedural Order that set this matter for a pre-hearing conference on April 3, 2003.

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

On April 10, 2003, the pre-hearing was held as scheduled. All of the parties were present and represented by counsel. DMJ also appeared and was represented by counsel. At the pre-hearing, the parties and DMJ argued their positions on the four motions that are listed as follows: Staff's Motion to Compel, PCMG's Motion to Terminate, Qwest's Motion for Clarification and The Phone Company of Arizona, L.L.P.'s Motion to Dismiss. During the pre-hearing, Mr. Glaser, counsel for LiveWirenet of Arizona, LLC, PCMG, On Systems Technology, LLC, and its principals, Tim Wetherald, Frank Tricamo, David Stafford Johnson, stated that he would not be attending the hearing scheduled for April 15, 2003 and would be withdrawing from the case. The Administrative Law Judge informed Mr. Glaser that he needed to file a formal motion before the Commission would consider such request. At the conclusion of the hearing, the Administrative Law Judge took the four Motions under advisement.

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

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 file certain information by May 2, 2003. The other Motions remained under advisement.

On April 14, 2003, Mr. Glaser filed a Motion to Withdraw from representing PCMG.

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 LiveWirenet of Arizona, LLC, PCMG, On Systems Technology, LLC, and its principals, Tim Wetherald, Frank Tricamo, David Stafford Johnson, nor their attorney, Mr. Glaser, appeared for the hearing.[1] No one from the public appeared at the hearing. The Motion to Terminate filed by PCMG and the Motion to Dismiss filed by the LLP were denied, and Qwest's Motion for Clarification remained under advisement. The Administrative Law Judge ordered Staff to file a response to the Motion to Withdraw and file any 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 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

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[1] 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.

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 Response in Support of Staff's Request to Deny Livewire Net's Motion to Terminate Proceeding and 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 it understood that DMJ only produced Letters of Authorizations ("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 all matters regarding PCMG or the Phone Company of Arizona be consolidated with this case. Staff also 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 is represented by Mr. Glaser, and, therefore, any filing on behalf of Mr. Johnson should be made by Mr. Glaser. Regardless, Staff should 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 May 14, 2003, Qwest filed a Reply in Support of Staff's Request for Consolidation of Matters Involving PCMG. In its Reply, Qwest joined Staff's request to consolidate all pending dockets involving PCMG.

At the April 10, 2003 pre-hearing, the Administrative Law Judge questioned the parties quite 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 according to the Arizona Secretary of State's files. Subsequently, 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 an attempt to clarify the LLP's lack of an ownership or management relationship with the other Respondents, especially Mr. Wetherald. 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. Since Mr. Wetherald appears 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 exists 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 Motion to Dismiss was denied.

The Commission issued a Procedural Order on March 26, 2003, that ordered PCMG to send notice to its customers regarding the possible termination of PCMG's services. The notice was also 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. After the issuance of the Procedural Order, PCMG informed the Commission that it would not send the notice to its customers. Therefore, on March 3, 2003, the Commission issued a Procedural Order that directed Staff to send a notice to PCMG's customers regarding PCMG's possible termination of services, a list of alternative providers and that Qwest would be the default provider.

Qwest filed a Motion for Clarification of the February 26 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.[2] Qwest stated that the application, notice[3] 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 has received a local service request from DMJ asking that the former customers of PCMG be transferred to DMJ. However, Qwest stated that it has not received any direct authorization, i.e. LOA(s), 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

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[2] Based on the record, it appears PCMG sold its customer base to USURF, Inc. It also appears that USURF has entered into a contract with DMJ where DMJ will provide service PCMG's former customers through the use of DMJ's CC&N.

[3] 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 has received calls from PCMG's former customers who are confused by the conflicting notices they have received.

to those customers, which was in direct conflict with notice sent by Commission Staff to PCMG's customers, is significant and any ambiguities created by such action must be resolved in light of the Commission's prior order. Therefore, consistent with the prior Procedural Order, Qwest is the provider for the former customers of PCMG who have not personally made a request to be served by any other properly certificated entity. Any customer(s) switched from Qwest to another provider without a LOA from the customer(s) should be transferred back to Qwest immediately.

As to PCMG's Motion to Terminate and the letter from Mr. Wetherald, they both mistakenly assert that since PCMG has filed an application to voluntarily surrender its CC&N, this matter has 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 or the serious allegations and potential new allegations against PCMG and the other Respondents in this matter. Therefore, the motion was denied.

Accordingly, the LLP's Motion to dismiss and PCMG's Motion to Terminate are denied and Qwest's Motion for Clarification is granted as explained above. Additionally, another pre-hearing should be scheduled to hear arguments regarding Mr. Glaser's Motion to Withdraw, the Motion to Dismiss filed by David Stafford Johnson, DMJ's Response to Qwest's Request for Clarification and Staff's Reply, to discuss the scheduling of witnesses and the presentation of evidence, in light of Staff's request to amend the Complaint and PCMG's assertion it will not be present for the hearing, and to address the issues in the letter written by Chairman Spitzer.

IT IS THEREFORE that a pre-hearing is set for **June 5, 2003 at 10:00 a.m.** at the Commission's offices at 1200 West Washington, Phoenix, Arizona.

IT IS FURTHER ORDERED that both Mr. Glaser and Mr. Harper shall be present for the pre-hearing.

IT IS FURTHER ORDERED that PCMG's Motion to Terminate is denied.

IT IS FURTHER ORDERED that the LLP's Motion to Dismiss is denied.

IT IS FURTHER ORDERED that Qwest's Motion to Clarify is granted as stated above.

IT IS FURTHER ORDERED that DMJ's Motion to Intervene is granted.

IT IS FURTHER ORDERED that Staff's Motion to Amend the Complaint in this matter is granted. Staff shall file any amendment(s) to the Complaint **on or before June 2, 2003**. In its filing Staff shall address, at a minimum, PCMG's apparent failure to maintain its performance bond, PCMG's apparent failure comply with R-14-2-1107, and PCMG's refusal to follow the Commission's orders as set forth in the February 25, 2003 and April 11, 2003 Procedural Orders.

IT IS FURTHER ORDERED that the following dockets shall be consolidated in this matter:

> Docket No. T-04125A-02-0577 – The Phone Company of Arizona's application for a CC&N;
>
> Docket No. T-03889A-02-0578 – PCMG's application to discontinue local exchange service;
>
> 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.

If there are any other dockets that the parties wish to be consolidated to this matter, then they shall file the appropriate motion listing the docket number, the name of the company and the title of the application.

IT IS FURTHER ORDERED that Staff shall file a response to David Stafford Johnson's Motion to Dismiss **on or before May 22, 2003.**

IT IS FURTHER ORDERED that Staff shall file a response to DMJ's Response to Qwest's Request for Clarification and Staff's Reply **on or before May 22, 2003**.

IT IS FURTHER ORDERED that PCMG shall docket in this matter the advice letter of Tim Wetherald that was filed on March 25, 2003 in Docket No. T-03889A-00-0393 **on or before May 30, 2003**. If PCMG fails to docket the letter, then Staff shall docket the letter **on or before June 2, 2003.**

IT IS FURTHER ORDERED that Staff shall make a filing regarding USURF, Inc. **on or before June 2, 2003**. The filing should include all relevant information pertaining to this docket and shall, at a minimum, include a list detailing its past and present partners, members, officers, board members and shareholders, information regarding any past or present commonality of membership

and corporate structure or any contractual relationship with any of the Respondents, Leon Switchkow, Telecom Advisory Services, Inc. and/or Mile High Telecom, and any information regarding the purchase of PCMG's customer base by USURF.

IT IS FURTHER ORDERED that Staff shall make a filing regarding Telecom Advisory Services, Inc. **on or before June 2, 2003**. The filing should include all relevant information pertaining to this docket and shall, at a minimum, include a list detailing its past and present partners, members, officers, board members and shareholders, information regarding any past or present commonality of membership and corporate structure or any contractual relationship with any of the Respondents, Leon Switchkow, and/or Mile High Telecom.

IT IS FURTHER ORDERED that Staff shall make a filing regarding Mile High Telecom **on or before June 2, 2003**. The filing should include all relevant information pertaining to this docket and shall, at a minimum, include a list detailing its past and present partners, members, officers, board members and shareholders, information regarding any past or present commonality of membership and corporate structure or any contractual relationship with any of the Respondents, Leon Switchkow, and/or Telecom Advisory Services, Inc.

IT IS FURTHER ORDERED that based upon Staff's Reply to Qwest's Further Request for Clarification filed on May 8, 2003, specifically the exhibit detailing the complaint filed in Colorado alleging DMJ has slammed some of Mile High Telecom's former customers, Staff shall investigate whether DMJ has slammed any of PCMG's former customers, has violated any Arizona laws or Commission rules in this matter, and the implications of the Colorado complaint in this matter.

IT IS FURTHER ORDERED that Staff shall contact the Public Utilities Commission of the State of Colorado regarding, at a minimum, the complaint filed in Colorado against DMJ and the complaint(s) against any of the Respondents listed in the exhibits in Qwest's Opposition to Staff's Motion for Extension of Time filed on February 19, 2003. Staff shall obtain any and all information that is relevant to this proceeding and analyze such information in light of the circumstances of this case.

IT IS FURTHER ORDERED that, pursuant to the Commission Decision granting PCMG its CC&N, PCMG is required to maintain its performance bond and it has not been relieved of that

requirment by the Commission. Therefore, any proceeds and/or security used to secure the performance bond shall be maintained for that purpose until further Order of the Commission.

IT IS FURTHER ORDERED that Staff shall contact the SEC regarding the matter that was attached as an exhibit in Qwest's Opposition to Staff's Motion for Extension of Time filed on February 19, 2003. Staff should obtain any and all information that is relevant to this proceeding from the SEC and analyze such information in light of the circumstances in this case.

IT IS FURTHER ORDERED that Staff shall contact the Securities Division of the Arizona Corporation Commission and/or the Arizona Attorney General's Office to alert them of any possible violations of the Securities Act of Arizona or any other Arizona Law by Respondents, including, but not limited to, the matters addressed in the SEC complaint and the LLP's allegation that Mr. Wetherald altered the Certificate of Deposit with the 1st United Bank..

IT IS FURTHER ORDERED that DMJ shall file a list detailing its past and present partners, members, officers, board members and shareholders. DMJ shall also file information regarding any past or present commonality of membership, corporate structure or any contractual relationship with any of the Respondents, Leon Switchkow, Telecom Advisory Services, Inc. and/or Mile High Telecom. DMJ shall further file information regarding the status of its CC&N including the current status and amount of its bond. DMJ shall also make a filing that updates the Commission about the complaint filed against it in Colorado and its status as a telecommunications provider in Colorado. DMJ shall file such information **on or before May 22, 2003**.

IT IS FURTHER ORDERED that DMJ shall file a copy of the Notice it sent to PCMG's former customers in this docket **on or before May 22, 2003**.

IT IS FURTHER ORDERED that Staff shall address the letter filed by Carol VanWassehnova filed in this docket on March 25, 2003.

IT IS FURTHER ORDERED that the Ex Parte Rule is still in effect.

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IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend or waive any portion of this Procedural Order by subsequent Procedural Order or by ruling at hearing.

Dated this 15 date of May, 2003.

PHILIP J. DION III
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed/delivered this 15 day of May, 2003 to:

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