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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission
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UTILITIES DIVISION STAFF, Complainant, 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 SWICHKOW; 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 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 COMPANY FOR THE CANCELLATION OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY.	Docket No. T-03889A-03-0202 **STAFF'S RESPONSE TO THE PHONE COMPANY MANAGEMENT GROUP, LLC ET AL. MOTION FOR CONTINUANCE**

STAFF'S NOTICE OF FILING REGARDING SUFFICIENCY OF DATA RESPONSES

STAFF'S RESPONSE TO MOTION OF TIM WETHERALD TO REPRESENT ON SYSTEMS TECHNOLOGY, LLC AND THE PHONE COMPANY MANAGEMENT GROUP, LLC

STAFF'S UPDATE ON INFORMATION TO BE OBTAINED FROM THE SECURITIES AND EXCHANGE COMMISSION

On October 7, 2003 Mr. Wetherald in a letter dated October 3, 2003 and addressed to Administrative Law Judge Dion notified Judge Dion of his intent to represent himself, On Systems Technology, LLC and The Phone Company Management Group, LLC in these proceedings. At the pre-hearing conference held on October 7, 2003 in this docket, Judge Dion stated that the letter would be treated as Mr. Wetherald's Motion to Represent himself and the entities identified in his letter. Judge Dion ordered Staff to file a response to Mr. Wetherald's Motion. Staff would note that Mr. Wetherald's motion only needs to be considered if Mr. Wetherald and the entities identified in his letter are currently before the Commission without representation. Mr. Wetherald and those entities are only without representation if Mr. Glaser's Motion to Withdraw as counsel for Mr. Wetherald and the entities is granted.

Mr. Glaser's motion was conditionally granted upon his client's compliance with outstanding discovery requests and Commission Orders. Therefore, if Judge Dion finds Mr. Glaser's clients have complied with discovery requests and Commission Orders and that the condition has been met concerning Mr. Glaser's withdrawal, Mr. Wetherald's motion to represent himself, The Phone Company Management Group, LLC (PCMG) and On Systems Technology, LLC (On Systems) should be considered. Because these two issues are linked, this filing will address first whether Mr. Glaser's clients have complied with discovery requests and Commission Orders and then with Staff's recommended treatment of Mr. Wetherald's motion should Mr. Glaser's Motion to Withdraw be granted in regard to Mr. Wetherald, PCMG and On Systems.

Finally, this filing will address Staff's recommendation concerning Mr. Wetherald's letter of October 8, 2003, docketed October 10, 2003, requesting Mr. Wetherald's Motion for Continuance and provide an update on the status of documents to be procured from the Securities and Exchange Commission.

Staff does not believe that Mr. Glaser's clients have complied with discovery requests and Commission Orders and therefore the conditions of the September 9, 2003 Procedural Order have not been met. Mr. Glaser, therefore remains as counsel to Mr. Wetherald, PCMG, and On Systems. Mr. Wetherald's Motion to Represent himself, PCMG and On Systems should not therefore be considered at this time as it is moot. In the alternative, if it is found that Mr. Glaser's clients have complied with discovery requests and Commission Orders, or if the condition is lifted for Mr. Glaser's withdrawal, Staff believes Mr. Wetherald should be permitted to represent himself, PCMG, and On Systems. Staff believes that Mr. Wetherald's required appearance in the United States District Court for the Southern District of Florida would preclude him from appearing before the Commission on November 3, 2003 and that Mr. Wetherald's request for continuance, though not timely, should be granted.

I. PCMG has not complied with Staff Discovery Requests and Commission Orders Compelling such Compliance.

On June 5, 2003, Staff filed to move the Administrative Law Judge to compel PCMG to answer certain data requests that Staff had addressed to PCMG. The motion sought to have PCMG ordered to answer five requests outstanding from Staff's second set of data requests, three which PCMG promised to provide when available, and two to which PCMG objected. The motion also sought to have PCMG ordered to answer Staff's sixth, seventh and eighth sets of data requests. On June 6, 2003, Staff filed an addendum to its June 5, 2003 filing which entered into the docket the exhibits which had been inadvertently omitted from the June 5, 2003 filing. In the Procedural Order dated September 9, 2003, Staff's Motion for Order to Compel and its Addendum to the Motion for Order to Compel Response to Data Requests were granted. Therefore, only if PCMG has provided the five responses ordered to Staff's second set of data requests, and provided responses to Staff's sixth, seventh, and eighth sets of data requests is PCMG in compliance with discovery requests and

Commission Orders.

PCMG belatedly provided responses to Staff's sixth, seventh, and eighth sets of data requests as an attachment to Mr. Wetherald's letter to Judge Dion dated October 3, 2003 and received by the Hearing Division on October 7, 2003. These responses were provided to Staff by Judge Dion at the October 7, 2003 pre-hearing conference. The responses were not provided to Staff or Staff's counsel in any form prior to that time. Contrary to Mr. Wetherald's assertions, responses to the sixth, seventh and eighth sets of data requests were not received by Staff counsel, nor did Mr. Wetherald attempt to confirm receipt with either Mr. Horton or Ms. Scott. Nonetheless, Staff considers the responses sufficient for PCMG to be considered in compliance with Staff's sixth, seventh and eighth sets of data requests as of October 7, 2003.

The September 9, 2003 Procedural Order ordered PCMG to provide responses to requests which still have not been provided. These requests were in Staff's second set of data requests, mailed on February 7, 2003 to Mr. Glaser as counsel to PCMG and were included in Staff's Motion to Compel granted in the September 9, 2003 Procedural Order. Staff requested audited financial statements from PCMG. PCMG, through counsel, responded that PCMG did not have audited financials but would provide unaudited statements when released from PCMG's outside accountant. Staff has not received the promised financials. Staff also sought information concerning into what accounts customers checks made payable to the Phone Company of Arizona for payment of services were being deposited. PCMG has not provided the information. Staff requested documentation showing that PCMG was current on its state and federal income taxes and that PCMG was properly administering Arizona Universal Service Fund and 911 surcharges. PCMG responded that the information was not then available but would be provided when available under separate cover. Staff has not received the information. Staff requested information concerning the amount of reimbursements paid to Tim Wetherald or On Systems by PCMG. PCMG has not provided the information. Staff requested a list of all bank accounts in the name of PCMG. Staff has not been provided a response. PCMG is clearly not in compliance with discovery requests or Commission Orders.

Because PCMG remains out of compliance with discovery requests and Commission Orders,

the condition that Mr. Glaser's clients be in such compliance prior to Mr. Glaser's withdrawal from representation being granted has not been met. Therefore, Mr. Wetherald, PCMG, and On Systems continue to be represented by Mr. Glaser.

II. If Mr. Glaser's Motion to Withdraw as Counsel to Mr. Wetherald, PCMG, and On Systems is Granted, Mr. Wetherald's Motion to Represent Himself, PCMG, and On Systems Should be Granted.

As detailed above, it is Staff's opinion that the conditions placed on Mr. Glaser's withdrawal have not been met and that Mr. Glaser continues to represent Mr. Wetherald, et al. However, should it be determined that either the condition has been met, or that the condition should be lifted, it is Staff's opinion that Mr. Wetherald's motion to represent himself, PCMG and On Systems should be granted. Staff notes that it is unclear who will represent respondent Phone Company of Arizona if Mr. Glaser's withdrawal is granted. If Mr. Glaser's motion is granted Mr. Wetherald, et al, would be left without counsel. Mr. Wetherald must then be required to either obtain new counsel or allowed to represent himself. Staff believes that Mr. Wetherald should be allowed to represent himself pro se, and to act as representative under A.R.S. § 40-243.B. to PCMG and On Systems. Mr. Wetherald is not a member of the Arizona State Bar, and seeks as an officer or employee of the Public Service Corporations PCMG and On Systems to represent them before the Commission. Such representation is not Mr. Wetherald's primary duty, but is secondary to his management responsibilities. Staff assumes Mr. Wetherald has the authority to grant himself specific authorization to act in a representative capacity.

Ordering Mr. Wetherald to obtain counsel presents some challenges. First, Staff believes the time necessary for new counsel to familiarize itself with the complex facts of this case may further delay the proceeding. Second, it is Staff's understanding that Mr. Wetherald, PCMG, and On Systems lack the financial capability of obtaining representation at this time. Because Mr. Wetherald's representation appears to meet the requirements of A.R.S. § 40-243.B. and the obtaining of new counsel by Mr. Wetherald would present these challenges, Staff recommends Mr. Wetherald be allowed to represent himself and the companies as requested if Mr. Glaser's withdrawal is permitted.

III. Mr. Wetherald's Motion to Continue should be Granted.

If Mr. Wetherald is required to be in District Court in Florida on November 3, 2003 as is currently the case based on the District Court's Order filed by Mr. Wetherald, then this proceeding should be continued for a period of time no longer than two weeks. While it appears possible that the district court case will not proceed on November 3, 2003, Staff would prefer certainty as to the hearing date to a wait and see approach before continuing the hearing. In other words, Staff would prefer to move the hearing date back now, rather than waiting to see if the district court case is heard on November 3.

IV. Staff Update on Information to be Obtained from the Securities and Exchange Commission.

Staff has again contacted the Securities and Exchange Commission concerning testimony given leading to the preliminary injunction in the Florida District Court case. Testimony has been gathered but not yet copied. Copies will be made and delivered to the Legal Division by early next week. Staff will file relevant portions of the testimony in this docket.

RESPECTFULLY SUBMITTED this 14TH Day of October, 2003.

STAFF OF THE ARIZONA CORPORATION COMMISSION

By: _____

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Original and 21 copies of the foregoing filed this 14th day of October, 2003, with:

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