



0000007874

ORIGINAL  
RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION

2002 NOV 11 P 4:19

1 WILLIAM A. MUNDELL

2 Chairman

3 JIM IRVIN

4 Commissioner

5 MARC SPITZER

6 Commissioner

Arizona Corporation Commission

DOCKETED

NOV 07 2002

AZ CORP COMMISSION  
DOCUMENT CONTROL

7 UTILITIES DIVISION STAFF

DOCKETED BY	CAT
-------------	-----

8 Complainant,

9 v.

10 LIVEWIRENET OF ARIZONA, LLC; THE PHONE  
 11 COMPANY MANAGEMENT GROUP, LLC; THE  
 12 PHONE COMPANY OF ARIZONA JOINT  
 13 VENTURE D/B/A THE PHONE COMPANY OF  
 14 ARIZONA; ON SYSTEMS TECHNOLOGY, LLC  
 15 and its principals, TIM WETHERALD, FRANK  
 16 TRICAMO AND DAVID STAFFORD; and THE  
 17 PHONE COMPANY OF ARIZONA, LLP and its  
 18 Members,

19 Respondents.

DOCKET NO. T-03889A-02-0796

DOCKET NO. T-04125A-02-0796

ANSWER TO COMPLAINT

20 The Phone Company of Arizona, LLP hereby answers the Utilities Division Staff's  
21 Complaint as follows:

22 **I. JURISDICTION**

23 1. The allegations contained in Complainant's paragraph one (1), upon good information  
24 and belief, are admitted. However, Respondent does not waive any of its defenses to personal or  
25 subject matter jurisdiction over it by the Arizona Corporation Commission.

26 **II. RESPONDENTS**

1 The allegation contained in Complainant's paragraph two (2) does not require an  
2 Answer of this Respondent however, upon good information and belief the allegation is admitted.

Snell & Wilmer

LLP  
LAW OFFICES  
One Arizona Center, 400 E. Van Buren  
Phoenix, Arizona 85004-2202  
(602) 382-6000



1           10. The allegations contained in Complainant's paragraph ten (10) do not require an  
2 Answer of this Respondent, however, upon good information and belief, they are admitted.

3           11. The allegations contained in Complainant's paragraph eleven (11) do not require an  
4 Answer of this Respondent, however, upon good information and belief, they are admitted.  
5 Furthermore, Respondent The Phone Company of Arizona, LLP had never been informed by Tim  
6 Wetherald or On Systems Technology, LLC that the \$100,000.00 Certificate of Deposit which it  
7 had placed into a Colorado bank was not a performance bond for The Phone Company of Arizona  
8 Joint Venture but, in fact, it was a performance bond for LiveWireNet. Moreover, Respondent  
9 states that the alleged transfer of LiveWireNet's membership interest to On Systems Technology,  
10 LLC and a transfer of LiveWireNet's Certificate of Convenience and Necessity (CC&N) to On  
11 Systems Technology, LLC was not disclosed to The Phone Company of Arizona, LLP by Tim  
12 Wetherald or On Systems Technology, LLC.

13           12. The allegations contained in Complainant's paragraph twelve (12), upon good  
14 information and belief, are admitted. Respondent, The Phone Company of Arizona, LLP had  
15 never been informed about the true relationship of the parties as described in Complainant  
16 paragraph twelve (12) by either Tim Wetherald or On Systems Technology, LLC.

17           13. The allegations contained in Complainant's paragraph thirteen (13) are denied as  
18 written. Respondent, The Phone Company of Arizona, LLP never advertised nor signed up  
19 customers in Arizona all of which was undertaken by On Systems Technology, LLC under the  
20 terms of a Management Agreement between The Phone Company of Arizona, LLP and On  
21 Systems Technology, LLC.

22           14. The allegations contained in Complainant's paragraph fourteen (14) do not require an  
23 Answer of this Respondent, however, upon good information and belief, are admitted as to the  
24 statements made by Mr. Glaser in his letter of October 4, 2002 which The Phone Company of  
25 Arizona, LLP denies as accurate in their entirety.  
26

1           15. The allegations contained in Complainant's paragraph fifteen (15) are denied as  
2 written. Upon good information and belief, The Phone Company of Arizona, LLP avers that the  
3 approximately 4,500 customers in Arizona are not currently being provided sufficient services at  
4 all.

5           16. The allegations contained in Complainant's paragraph sixteen (16) are admitted.

6           17. The allegations contained in Complainant's paragraph seventeen (17) do not require  
7 an Answer of this Respondent, however, upon good information and belief, they are admitted.

8           18. The allegations contained in Complainant's paragraph eighteen (18) are denied for  
9 lack of information to form a belief therein.

10           19. The allegations contained in Complainant's paragraph nineteen (19) are denied as  
11 written. The Phone Company of Arizona, LLP is not affiliated with Mile High Telecom Joint  
12 Venture however, upon good information and belief, On Systems Technology, LLC has a  
13 Management Agreement with Mile High Telecom Partners, LLP substantially similar to the  
14 Management Agreement it has with The Phone Company of Arizona, LLP.

15           20. The allegations contained in Complainant's paragraph twenty (20) are denied for lack  
16 of information to form a belief therein.

17           21. The allegations contained in Complainant's paragraph twenty-one (21), upon good  
18 information and belief, are admitted. However, Respondent The Phone Company of Arizona,  
19 LLP believes the Colorado PUC's Order to Show Cause and Notice of Hearing targeted On  
20 Systems Technology, LLC as Manager for Mile High Telecom.

21           22. The allegations contained in Complainant's paragraph twenty-two (22) are admitted  
22 however, upon good information and belief, Qwest has also targeted On Systems Technology,  
23 LLC as manager of Mile High Telecom Joint Venture, for its refusal to pay for resale  
24 telecommunications services which it had contracted for with Qwest through a subsidiary known  
25 as Maxcom, Inc.  
26







1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**SECOND AFFIRMATIVE DEFENSE**

50. The Complainant's claims are barred by the Doctrine of Latches, Estoppel, Waiver and the Statute of Frauds.

**THIRD AFFIRMATIVE DEFENSE**

51. The Complaint fails to mitigate its damages, if any.

**FOURTH AFFIRMATIVE DEFENSE**

52. Complainant's claims are barred by the Defense of Misrepresentation or Fraud in the Factum. On Systems Technology, LLC induced The Phone Company of Arizona, LLP by fraudulent representation, or pretense, to execute the Telecommunications, Services and Operating Agreement (Joint Venture Agreement) from which The Phone Company of Arizona Joint Venture traces its existence.

**FIFTH AFFIRMATIVE DEFENSE**

53. Complainant's claims are barred by its own failure to effectively conduct due diligence with regard to the Certificate of Convenience and Necessity application granted to LiveWireNet on February 16, 2001 and its granting of extensions to LiveWireNet for the filing of a performance bond for over a year and its acceptance of a performance bond from LiveWireNet which was submitted by The Phone Company of Arizona, LLP specifically for The Phone Company of Arizona, LLP Certificate of Convenience and Necessity not that of LiveWireNet.

**SIXTH AFFIRMATIVE DEFENSE**

54. Complainant's claims are barred by On Systems Technology, LLC's breach of the Joint Venture relationship, its breach of fiduciary duties, its engagement in self-dealing, and its engagement in actual and constructive fraud.

**WHEREFORE**, The Phone Company of Arizona, LLP as Respondent in this Complaint prays that the Complaint be dismissed and that judgment be entered in its favor. Furthermore;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**VII. PRAYER FOR RELIEF**

55. The Phone Company of Arizona, LLP respectfully requests that the Arizona Corporate Commission commence an expedited investigation into this Complaint and take appropriate action, including but not limited to the following:

a. Determine whether the service being provided by LiveWireNet of Arizona, LLC, The Phone Company Management Group, LLC, On Systems Technology, LLC and its principals, is inadequate, inefficient or unreasonable for the Citizens of Arizona;

b. Determine whether LiveWireNet of Arizona, LLC, The Phone Company Management Group, LLC and On Systems Technology, LLC have misrepresented to The Phone Company of Arizona, LLP that they are serving customers in the State of Arizona with a valid Certificate of Convenience and Necessity when, in fact, they are not;

c. Determine whether Respondent On Systems Technology, LLC, and its principal Tim Wetherald, is a fit and proper entity to provide telephone service;

d. If it is determined that the service being provided by LiveWireNet of Arizona, LLC or The Phone Company Management Group, LLC or On Systems Technology, LLC and its principal Tim Wetherald is inadequate, inefficient and unreasonable, order a revocation of Respondent LiveWireNet's (n/k/a The Phone Company Management Group) Certificate of Convenience and Necessity under the authority granted in Arizona Law.

e. If it is determined that On Systems Technology, LLC is not a fit and proper entity to provide telephone service in the State of Arizona, deny the request of LiveWireNet to transfer its Certificate of Convenience and Necessity to On Systems Technology, LLC.

f. And any such additional relief as may be requested during these proceedings and/or that the Commission may deem appropriate under the circumstances.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

RESPECTFULLY submitted this 7<sup>th</sup> day of November, 2002.

SNELL & WILMER, L.L.P.



Jeffrey W. Crockett, Esq.  
George A. Tsiolis, Esq.  
Counsel to The Phone Company of Arizona, LLP

ORIGINAL and fifteen (15) copies of the foregoing Answer have been filed with Docket Control this 7th day of November, 2002.

A COPY of the foregoing Answer has been hand delivered this 7th day of November, 2002, to:

Maureen Scott, Esq.  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

Chairman William A. Mundell  
Commissioner Jim Irvin  
Commissioner Marc Spitzer  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

Lyn Farmer, Chief Administrative Law Judge  
Hearing Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

Ernest Johnson  
Director, Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

- 1 A COPY of the foregoing Answer has  
2 been mailed this 7th day of November,  
3 2002, to:
- 4 James R. Hinsdale, Manager  
5 4577 Pecos Street  
6 PO Box 11146  
7 Denver, CO 80211-0146  
8 The Phone Company Management Group, LLC  
9 n/k/a LiveWireNet of Arizona, LLC
- 10 Tim Wetherald  
11 4543 E. University Drive  
12 Phoenix, AZ 85034  
13 The Phone Company Management Group, LLC  
14 d/b/a The Phone Company Management Group, LLC
- 15 Roald Haugan, Managing Partners Chairman  
16 32321 County Highway 25  
17 Redwood Falls, MN 56283  
18 The Phone Company of Arizona, LLP
- 19 Michael and Jennifer Bell, MD  
20 124 Edwards Drive  
21 Morehead City, NC 28557  
22 The Phone Company of Arizona, LLP
- 23 Robert E. Coles, MC  
24 201 Lands End Road  
25 Morehead City, NC 28557  
26 The Phone Company of Arizona, LLP
- Travis and Sara Credle  
3709 West Hedrick Drive  
Morehead City, NC 28557  
The Phone Company of Arizona, LLP
- Paul Lillienthal  
11030 Boone Circle  
Bloomington, MN 55438  
The Phone Company of Arizona, LLP

- 1 Jeffrey Moore, MD  
3714 Guardian Avenue
- 2 Morehead City, NC 28577
- 3 The Phone Company of Arizona, LLP
  
- 4 Steven Petersen  
2989 Brookdale Drive
- 5 Brooklyn Park, MN 55444
- 6 The Phone Company of Arizona, LLP
  
- 7 John G. Prosser, II  
4162 Wincrest Lane
- 8 Rochester, MI 48306
- 9 The Phone Company of Arizona, LLP
  
- 10 Marvin Schlutz  
509 South Louisiana
- 11 Mason City, LA 50401
- 12 The Phone Company of Arizona, LLP
  
- 13 Helena and Ron Slechta  
816 10<sup>th</sup> Street, PO BOX 430
- 14 Kolona, IA 52247
- 15 The Phone Company of Arizona, LLP
  
- 16 Michael L. Glaser, Esq.  
LOTTNER RUBIN FISHMAN BROWN & SAUL, P.C.  
633 Seventeenth Street, Suite 2700
- 17 Denver, CO 80202-3635
- 18 The Phone Company of Arizona, LLP
- 19 The Phone Company of Arizona Joint Venture
  
- 20 Tim Wetherald  
3025 South Parker Road, Suite 1000
- 21 Aurora, CO 80014
- 22 On Systems Technology, LLC
- 23 The Phone Company of Arizona Joint Venture
- 24 The Phone Company of Arizona, LLP
  
- 25 
- 26