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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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2 WILLIAM A. MUNDELL
CHAIRMAN
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COMMISSIONER
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COMMISSIONER

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5 UTILITIES DIVISION STAFF,

DOCKET NO. T-03889A-02-0796
T-04125A-02-0796

6 Complainant,

7 vs.

8
9 LIVEWIRENET OF ARIZONA, LLC; THE PHONE
COMPANY MANAGEMENT GROUP, LLC; THE
10 PHONE COMPANY OF ARIZONA JOINT
VENTURE dba THE PHONE COMPANY OF
11 ARIZONA; ON SYSTEMS TECHNOLOGY, LLC,
and its principles, TIM WETHERALD, FRANK
12 TRICAMO AND DAVID STAFFORD; THE
PHONE COMPANY OF ARIZONA, LLP and its
13 members,

14 Respondents.

PROCEDURAL ORDER

15 **BY THE COMMISSION:**

16 On October 18, 2002, the Arizona Corporation Commission ("Commission") Utilities
17 Division ("Staff") filed a complaint and petition for relief against LiveWirenet of Arizona, LLC and
18 The Phone Company Management Group, LLC d/b/a The Phone Company of Arizona Joint Ventures
19 dba The Phone Company of Arizona, On Systems Technology, LLC, and its principles, Tim
20 Wetherald, Frank Tricamo, David Stafford Johnson, and The Phone Company of Arizona, LLC and
21 its members (collectively "Respondents").

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

24 At a Procedural Conference held on January 7, 2003, Qwest indicated its intent to stop
25 providing service to LiveWirenet due to non-payment of its bill. During the pre-hearing, a hearing
26 was set for February 24, 2003, and Qwest was ordered to continue providing service until that date.

27 On February 13, 2003, Staff filed a motion to continue the hearing scheduled for February 24,
28 2003.

1 On February 24, 2003, a pre-hearing was held, in lieu of the evidentiary hearing. All parties
2 were present and all were represented by counsel. During the course of the pre-hearing, Qwest
3 reiterated that LiveWirenet and the related entities ("LiveWirenet") was delinquent in paying its
4 obligations to Qwest and, therefore, Qwest had determined that it would cease providing resold local
5 exchange and long distance telephone service to LiveWirenet and its customers on March 6, 2003.
6 During the pre-hearing, counsel for LiveWirenet was asked what steps the Company(s) was taking in
7 order to make sure its customers received uninterrupted service. Counsel for LiveWirenet stated it
8 had only received notice of Qwest's intent to terminate service the prior week and, therefore, it had
9 not taken any steps to insure uninterrupted service or to notify its customers.

10 On February 25, 2003, the Commission issued a Procedural Order that stated that
11 LiveWirenet shall give their customers reasonable notice of the possible termination or interruption
12 of their service. The Procedural Order further stated that if LiveWirenet did not issue such notice,
13 then Staff shall attempt to provide notice to the customers of LiveWirenet. Finally, Qwest was
14 ordered to continue providing resold local and long distance service to the customers of LiveWirenet
15 until at least March 21, 2003.¹

16 On February 27, 2003, the Commission received a letter from counsel for LiveWirenet. In the
17 letter, counsel stated that LiveWirenet would not be contacting Staff, preparing a notice, obtaining
18 Staff approval of such notice or sending the notice to the affected customers as ordered by the
19 Commission in the February 25, 2003 Procedural Order. Further, LiveWirenet stated that it would
20 pursue legal action to prevent Staff from issuing such a notice to its customers.

21 On February 28, 2003, an emergency Procedural Conference was held at the request of Staff.
22 All parties were represented by counsel who either appeared in person or telephonically. Staff stated
23 that, since LiveWirenet refused to serve notice upon its customers as ordered by the Commission, the
24 previous Procedural Order made it incumbent upon Staff to serve LiveWirenet's customers with
25 notice. Staff also indicated that it would be very difficult for Staff to notify LiveWirenet's customers,
26 as outlined in the February 25, 2003 Procedural Order, because Staff does not have an updated
27

28 ¹ The Procedural Order did not authorize Qwest to terminate or discontinue service on March 21, 2003.

1 customer list, it would be a financial burden to Staff to send all of the customers a notice by mail, and
2 it would take Staff at least one week to assemble and mail the notices. Staff further stated that Qwest
3 was in a better position to notify the customers of LiveWirenet. According to Staff, Qwest has an
4 updated customer list, Qwest could accomplish mailing of the notice by March 5, 2003, and Qwest
5 has the financial resources to assure proper notice.

6 Qwest indicated that it could provide notice to a majority of LiveWirenet's customers, but
7 would only do so if Qwest was able to recoup some of its costs from the ultimate provider of service.
8 Further, Qwest stated that it would not send the customers of LiveWirenet such notice without an
9 order from the Commission. When Staff was questioned regarding the possible notification of
10 LiveWirenet's customers by publication, Staff stated that it did not feel publication was proper in this
11 case. LiveWirenet continued to object to Staff issuing the notice and also objected to Qwest assisting
12 Staff with the preparation of the notice. LiveWirenet also objected to the publication of notice.

13 As a certificated public service corporation, LiveWirenet has a duty to provide service to its
14 customers. LiveWirenet was ordered on February 25, 2003 to give notice to all of its customers that
15 service could be terminated or interrupted. However, LiveWirenet refused to comply with that
16 directive and, as a result, the Commission must take extraordinary action to ensure that
17 LiveWirenet's Arizona customers are protected. Accordingly, in order to protect the public health,
18 welfare and safety, the customers of LiveWirenet should be given reasonable notice of the possible
19 termination or interruption of their service. Since LiveWirenet has stated it will not send such notice
20 to its customers, Staff shall attempt to notify the customers of LiveWirenet of the possible
21 termination or interruption of their service. This directive for Staff to undertake notification of
22 LiveWirenet's customers should not be interpreted as an indication that LiveWirenet's failure to
23 comply with a Commission Order is without consequences. The Commission will consider
24 appropriate remedies for LiveWirenet's actions at a subsequent date.

25 Further, it is in the public interest that Qwest not cease providing local exchange and long
26 distance service until at least March 21, 2003.

27 IT IS THEREFORE ORDERED that pursuant to Article XV of the Arizona Constitution and
28 A.R.S. §§ 40-202, 40-246 and 40-321, Staff shall draft a notice of hearing and a notice regarding the

1 possible termination or interruption of LiveWirenet's service to LiveWirenet's customers and mail
2 such notice to each of those customers on or before March 10, 2003.²

3 IT IS FURTHER ORDERED that Staff shall file the appropriate number of copies of the
4 Notice and an affidavit stating that Staff has mailed the Notice to LiveWirenet's customers with
5 Docket Control on or before March 14, 2003.

6 IT IS FURTHER ORDERED that pursuant to Article 15 of the Arizona Constitution and
7 A.R.S. §§ 40-204 and 40-241, LiveWirenet and Qwest shall assist Staff in assembling the customer
8 list(s) of LiveWirenet on or before March 5, 2003. The list(s), at a minimum, shall include the
9 customer's name and address.

10 IT IS FURTHER ORDERED that Staff can address the recovery of costs of this investigation
11 later on during the complaint process.

12 IT IS FURTHER ORDERED that a hearing shall be scheduled for April 15, 2003 at 10:00
13 a.m. at the Commission's offices at 1200 West Washington, Phoenix, Arizona.

14 IT IS FURTHER ORDERED that Staff shall file its pre-filed testimony on or before March
15 28, 2003.

16 IT IS FURTHER ORDERED that the remaining parties and/or intervenors shall file their pre-
17 filed testimony on or before April 11, 2003.

18 IT IS FURTHER ORDERED that Staff's Motion to Bifurcate the hearing in this case is
19 denied.

20 IT IS FURTHER ORDERED that as well as the Notice of possible termination or interruption
21 of service, Staff shall also include in the notice the following notice of hearing:

22
23 **NOTICE OF COMPLAINT AND PETITION FOR RELIEF FILED BY THE UTILITIES**
24 **DIVISION OF THE ARIZONA CORPORATION COMMISSION AGAINST**
25 **LIVEWIRENET OF ARIZONA, LLC, n/k/a THE PHONE COMPANY MANAGEMENT**
26 **GROUP, LLC, d/b/a THE PHONE COMPANY OF ARIZONA JOINT VENTURE d/b/a THE**
27 **PHONE COMPANY OF ARIZONA, ON SYSTEMS TECHNOLOGY, LLC and its principles,**
28 **TIM WETHERALD, FRANK TRICAMO AND DAVID STAFFORD, THE PHONE**
COMPANY OF ARIZONA, LLC and its members
Docket Nos. T-03889A-02-0796 and T-04125A-02-0796

² The Commission also relies on the intent of A.A.C. R14-2-1107.

1 Staff of the Utilities Division ("Staff") of the Arizona Corporation
2 Commission ("ACC") has filed a Complaint and Petition for Relief against
3 LiveWirenet of Arizona, LLC n/k/a The Phone Company Management Group, LLC,
4 d/b/a The Phone Company Of Arizona Joint Venture d/b/a The Phone Company Of
5 Arizona, On Systems Technology, LLC and Its Principles, Tim Wetherald, Frank
6 Tricamo And David Stafford, The Phone Company Of Arizona, LLC And Its
7 Members alleging various violations of certain A.C.C. Rules and Arizona Revised
8 Statutes. In its allegations, among other things, Staff alleges that the Respondents are
9 not fit and proper entities to provide telephone service to their customers. In its
10 Complaint, Staff seeks relief in the form of fines and requests the revocation of
11 LiveWirenet's n/k/a the Phone Manager Group's Certificate of Convenience and
12 Necessity to provide telephone service. Depending upon the nature of relief ordered,
13 telephone service may be affected.

14 The Complaint of the Commission's Utilities Division Staff, and any answer
15 filed by Respondents are available for inspection during regular business hours at the
16 offices of the Commission located at 1200 West Washington Street, Phoenix, Arizona
17 85007.

18 Under appropriate circumstances, interested parties may intervene in the
19 proceedings and participate as a party. You may have the right to intervene in the
20 proceeding, or you may make a statement for the record. Intervention shall be in
21 accordance with A.A.C. R14-3-105, except that all motions to intervene must be filed
22 on or before April 1, 2003. Persons desiring to intervene must file a written motion to
23 intervene with the Commission and send such motion to the Company or its counsel
24 and to all parties of record, and which at the minimum, shall contain the following:

25 1. The name, address, and telephone number of the proposed intervenor and of
26 any party upon whom service of documents is to be made if different than the
27 intervenor.

28 2. A short statement of the proposed intervenor's interest in the proceeding
(e.g. a customer of the company, a shareholder of the company, a competitor, etc.).

3. A statement certifying that a copy of the motion to intervene has been
mailed to the Company or its counsel and to all parties of record in the case.

A.A.C. R14-3-105 shall govern the granting of motions to intervene. The
granting of intervention, among other things, entitles a party to present sworn evidence
at the hearing and to cross-examine other witnesses. However, failure to intervene
will not preclude any interested person or entity from appearing at the hearing and
making a statement on their own behalf. The hearing is scheduled to commence on
April 15, 2003 at 10:00 a.m. at the Arizona Corporation Commission, 1200 West
Washington Street, Phoenix, Arizona 85007. Please check with the Commission for
any changes to the scheduled hearing date.

If you have any comments, mail them to:

The Arizona Corporation Commission
Attention Docket Control
re: ACC v. LiveWirenet, et al.
T-03889-02-0796, et al.
1200 West Washington Street
Phoenix, Arizona 85007

If you have any questions about this application, or want information on intervention, you may contact the Consumer Services Section of the Commission at 1200 West Washington Street, Phoenix, Arizona 85007 or call 1-800-222-7000.

The Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request a reasonable accommodations such as sign language interpreter, as well as request this document in an alternative format, by contacting Shelly Hood, ADA Coordinator, voice phone number 602/542-3931, E-Mail shood@cc.state.az.us. Requests should be made as early as possible to allow time to arrange the accommodation.

Dated this 3 date of March, 2003.



PHILIP J. DION III
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed/delivered this 3 day of March, 2003 to:

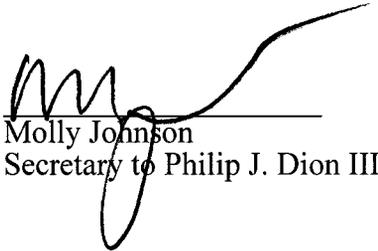
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