



BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

DOCKETED

MAR 31 2003

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UTILITIES DIVISION STAFF,
Complainant,

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

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,

NOTICE OF FILING ERRATA

Respondents.

On March 28, 2003, the Arizona Corporation Commission Staff ("Staff") filed the Direct Testimonies of John F. Bostwick and Brad Morton of the Utilities Division in this matter. Staff hereby files several erratas to the testimony submitted by Mr. John F. Bostwick.

1. Page 6, Line 23 should read as follows: "The Phone Company of Arizona were owned in full or in part and managed by On Systems, a company"
2. Page 8, Lines 1 and 2: The name "Phone Company of Arizona Joint Venture LLP," should be changed to "Phone Company of Arizona LLP".
3. Page 10, Line 14: The phrase "Company's various affiliates" should be changed to read "two different companies".
4. Page 23, Line 2: The reference to "See JFB-12 attached." should be deleted.

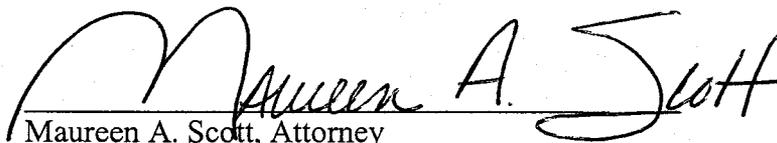
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5. Page 31, Line 13, add Item 6 to read: "Respondents Tim Wetherald and On Systems have demonstrated contempt and willful disregard of Commission orders and rules."

6. Page 31, Line 22 and 23: "Fourth, I recommend that the Commission deny Tim Wetherald, and any company owned or managed by him, the privilege of holding a CC&N to operate a public service corporation in Arizona again."

The revised pages of Mr. Bostwick's testimony which contain these erratas are attached. Please substitute these pages for those filed on March 28, 2003.

RESPECTFULLY submitted this 31st day of March, 2003.



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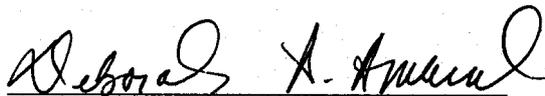
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Direct Testimony of John F. Bostwick

Docket Nos. T-03889A-02-0796 and T-04125A-02-0796

Page 6

1 A. On January 30, 2002, The Phone Company Management Group, LLC, d/b/a The Phone
2 Company filed information with the Commission that LiveWireNet of Arizona, LLC had
3 changed its name to The Phone Company Management Group, LLC, d/b/a The Phone
4 Company.

5
6 **Q. Since that time, what has Staff determined to be the status of The Phone Company
7 Management Group, LLC, d/b/a The Phone Company?**

8 A. According to statements by the management for LiveWireNet of Arizona, LLC, d/b/a
9 LiveWireNet, there was a restructure in the Articles of Management of LiveWireNet of
10 Arizona, LLC, d/b/a LiveWireNet prior to it filing a name change with the Corporations
11 Division of the Arizona Corporation Commission and subsequently with Docket Control
12 of the Arizona Corporation Commission. This restructuring to the Articles of
13 Management constituted a new legal entity which would have necessitated the transfer of
14 the Certificate of Convenience and Necessity from LiveWireNet of Arizona, LLC, d/b/a
15 LiveWireNet to the Phone Company Management Group, LLC, d/b/a The Phone
16 Company.

17
18 **Q. What is the relationship between LiveWireNet of Arizona, LLC, d/b/a LiveWireNet
19 or The Phone Company Management Group, LLC, d/b/a/The Phone Company and
20 The Phone Company of Arizona?**

21 A. Staff determined through pending dockets and its own research on this issue that
22 LiveWireNet or the Phone Company Management Group d/b/a The Phone Company and
23 The Phone Company of Arizona were owned in full or in part and managed by On

Direct Testimony of John F. Bostwick

Docket Nos. T-03889A-02-0796 and T-04125A-02-0796

Page 7

1 Systems, a company owned and operated by one Tim Wetherald. Staff also discovered
2 that while the names of both entities were so similar as to be confused or mistaken for one
3 another, they in fact represented much different legal entities.

4
5 **Q. What Name was the Company Using to Provide Service to Arizona Customers and**
6 **was this Entity Authorized to Provide Service in Arizona at Any Time**

7 A. To the best of Staff's knowledge, the Company has always been providing service under
8 the name "Phone Company of Arizona", which never received a CC&N from the
9 Commission. Staff obtained copies of several customer bills that clearly list The Phone
10 Company of Arizona as the provider of service. No other company name is listed on the
11 bills. Also, graphics contained in the television commercial provided by the company in
12 response to Staff's data requests 2-46 and 2-47 list The Phone Company of Arizona as the
13 service provider.

14
15 **Q. How did this entity come to Staff's attention initially?**

16 A. Staff began receiving complaints by customers of a company by the name of The Phone
17 Company of Arizona. Also, Staff became aware of television commercials for a company
18 by the name of The Phone Company of Arizona. After contacting the representative of
19 The Phone Company of Arizona and reviewing the Commission's data base, it was
20 determined that there was no company by that name that held a valid Certificate of
21 Convenience and Necessity with the Commission.

22

Direct Testimony of John F. Bostwick

Docket Nos. T-03889A-02-0796 and T-04125A-02-0796

Page 8

1 Staff also received calls from the members of the Phone Company of Arizona LLP, who
2 were investors with Mr. Wetherald in the Phone Company of Arizona and in other joint
3 ventures formed to provide telephone service in other states which raised concerns
4 regarding these entities and Mr. Wetherald.

5
6 **Q. Did the Phone Company of Arizona ever file an application with the Commission for**
7 **a CC&N?**

8 A. Yes. The Phone Company of Arizona Joint Venture, d/b/a The Phone Company of
9 Arizona under Docket No. T-04125A-02-0577 filed for a Certificate of Convenience and
10 Necessity on July 31, 2002 to provide intrastate telecommunications service as a local and
11 long distance reseller and provider of Alternative Operator Services.

12
13 **Q. Was the Certificate of Convenience and Necessity ever issued?**

14 A. No. On October 7, 2002, the Company's attorney filed to withdraw its application in
15 Docket No. T-03889A-02-0578. However, despite the fact that it did not have a valid
16 CC&N and subsequently withdrew its pending application, the Company still held itself
17 out as an authorized telephone service provider in Arizona and was signing up customers
18 under that name.

19
20 **Q. Please describe other problems uncovered by Staff in its investigation of The Phone**
21 **Company of Arizona.**

22 A. Staff found in its investigation that one or more of the companies owned or managed by
23 On System have several applications pending at the Commission at the present time.

Direct Testimony of John F. Bostwick

Docket Nos. T-03889A-02-0796 and T-04125A-02-0796

Page 10

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Q. Do any of the Respondents to this Complaint possess a CC&N that would allow them to do business as The Phone Company of Arizona (or the Telephone Company of Arizona)?

A. No. Neither LiveWireNet of Arizona, LLC, d/b/a LiveWireNet nor The Phone Company Management Group, LLC, d/b/a The Phone Company possessed a CC&N that would allow them to do business as The Phone Company of Arizona. Thus, even if the name change discussed above had included the necessary CC&N transfer, the new entity would not have been certificated to do business as The Phone Company of Arizona.

Q. What explanation does the Company offer for not having a valid CC&N in Arizona?

A. The Company claims that it is actually providing service to customers under the old LiveWireNet CC&N. However, this argument is not consistent with the facts which show that while the two different companies were using almost identical names to provide service to customers, resulting in an inaccurate appearance that the same company may be providing service, those names in actuality represented very different corporate entities.

Q. Could you please explain in more detail?

A. Yes. LiveWireNet or the Phone Company Management Group, d/b/a The Phone Company was an entity that was owned by On Systems and Mr. Tim Wetherald. The Phone Company of Arizona, however, was comprised of the Phone Company of Arizona LLP and its members which held a 70% interest in The Phone Company of Arizona and On Systems which held the remaining 30% interest in The Phone Company of Arizona.

Direct Testimony of John F. Bostwick

Docket Nos. T-03889A-02-0796 and T-04125A-02-0796

Page 23

1 provide customer service records in a timely manner and in parity with Qwest's provision
2 of such records to itself. However, when Staff questioned Mr. Wetherald and his attorney
3 on this, Staff was told that the number used was just a "plug" and that the actual number
4 subject to dispute was actually much less. See JFB-13 attached.

5
6 **Q. Are you aware of any provision under Arizona Law that would allow the Company**
7 **to dispute and ultimately not pay its bills to Qwest because it believed that Qwest was**
8 **not providing Customer Service Records in a timely manner?**

9 A. No. When Staff put this question to the Company in a meeting with it, the Company
10 indicated that Colorado had a rule which permitted set-off in such cases. As far as
11 Arizona Law, the Company referred to the Arizona Performance Assurance Plan, however
12 it conceded that it did not understand how the Arizona PAP worked. Staff would also note
13 that the Arizona PAP will not become effective until Qwest receives Section 271 authority
14 from the Commission. The Company also relies on Qwest's SGAT. However, Staff
15 could find no provision in the SGAT or the Company's Interconnection agreement which
16 would make such set-offs permissible.

17
18
19 **Q. Are you aware of any other unpaid bills by PCMG?**

20 A. Yes, PCMG currently has an outstanding bill with Sprint. The total amount owed by
21 PCMG to Sprint as of Sprint's last bill to PCMG was \$168,727.84. PCMG recently paid
22 Sprint \$30,000 against the Sprint bill, and has disputed \$33,560. According to PCMG, it
23 owes Sprint \$105,167.84, after giving effect to recent payment, and the disputed amount.

Direct Testimony of John F. Bostwick

Docket Nos. T-03889A-02-0796 and T-04125A-02-0796

Page 31

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Q. What findings do you believe that the record evidence supports?

A. Staff believes that the evidence supports the following findings:

1. The Respondent Phone Company of Arizona is serving customers without a valid CC&N and is in violation of Arizona Statutes and Commission Rules which require all public service corporations to obtain a CC&N before providing service to the public;
2. The Respondent Phone Company Management Group (fna LiveWireNet) and the Phone Company of Arizona are not fit and proper entities to provide service in Arizona.
3. The service being provided by the Respondents Phone Company Management Group (fna LiveWireNet) and the Phone Company of Arizona is inadequate and unreasonable.
4. The Respondent Phone Company Management Group (fna LiveWireNet) and the Phone Company of Arizona are not financially capable of providing service in Arizona
5. The Respondent Phone Company Management Group (fna LiveWireNet) and the Phone Company of Arizona are not technically capable of providing service in Arizona.
6. Respondent Tim Wetherald and On Systems have demonstrated contempt and willful disregard of Commission orders and rules.”

Q. What are your recommendations with regard to this matter?

Direct Testimony of John F. Bostwick

Docket Nos. T-03889A-02-0796 and T-04125A-02-0796

Page 32

1 A. First, I recommend that the Respondent LiveWireNet's (nka Phone Company
2 Management Group) CC&N be revoked by the Commission.

3 Second, I recommend that the Respondents be required to return any and all customer
4 deposits and prepayments still in their possession.

5 Third, I recommend that the Respondent Tim Wetherald and On Systems be subject to
6 monetary fines in the amount of \$ 1,685,000 under A.R.S. 40-424 for acting in contempt
7 of Commission rules.

8 Fourth, I recommend that the Commission deny Tim Wetherald, and any company owned
9 or managed by him, the privilege of holding a CC&N to operate a public service
10 corporation in Arizona again.

11 Fifth, I recommend that the Commission refer this matter to the Arizona Attorney
12 General's Office for further investigation in the event criminal charges may be
13 appropriate.