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BEFORE THE ARIZONA CORPORATION COMMISSION

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MARC SPITZER
Chairman
JAMES M. IRVIN
Commissioner
WILLIAM A. MUNDELL
Commissioner
JEFF HATCH-MILLER
Commissioner
MIKE GLEASON
Commissioner

Arizona Corporation Commission
DOCKETED
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2003 APR -2 P 4: 24
AZ CORP. COMMISSION
DOCUMENT CONTROL

UTILITIES DIVISION STAFF,
Complainants,

vs.

LIVEWIRENET OF ARIZONA, LLC,
Respondents,

THE PHONE COMPANY MANAGEMENT
GROUP, LLC,
Respondents,

THE PHONE COMPANY OF ARIZONA JOINT
VENTURE d/b/a THE PHONE COMPANY OF
ARIZONA,
Respondents,

ON SYSTEMS TECHNOLOGY, LLC, and its
Principles, TIM WETHERALD, FRANK
TRICAMO and DAVID STAFFORD,
Respondents,

THE PHONE COMPANY OF ARIZONA, LLP,
and its members,
Respondents.

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

**OPPOSITION TO MOTION FOR
ORDER TO COMPEL RESPONSE
TO DATA REQUESTS**

1 The Phone Company Management Group, LLC f/k/a LiveWireNet of Arizona,
2 LLC ("PCMG"), On Systems Technology, LLC, and its principals, Tim Wetherald,
3 Frank Tricamo and David Stafford Johnson ("On Systems"), hereby oppose the Motion
4 for Order to Compel Response to Data Requests, filed March 24, 2003, by the Staff of
5 the Arizona Corporation Commission ("Commission") in the above-captioned case. In
6 support of its opposition, PCMG respectfully states:

7 1. The Staff requests an Order compelling PCMG to produce documents
8 pursuant to the following data requests:

- 9
- 10 DATA REQUEST 2-13: A copy of PCMG's audited financial statements.
- 11
- 12 DATA REQUEST 2-16: Disclosure of PCMG's corporate bank accounts, the
13 balances in those bank accounts, and a copy of the bank statements for the past
14 two months.
- 15
- 16 DATA REQUEST 2-17: Documentation that surcharges such as the Arizona
17 Universal Service Fund and 911 surcharges or any other fee or tax are being
18 collected or passed on to the appropriate entities, and documentation that PCMG
19 is current on its federal and state income taxes and audited financial statements.
- 20
- 21 DATA REQUEST 2-27: Balance sheets and income statements of On Systems.
- 22
- 23 DATA REQUEST 2-45: All bank accounts in the name of PCMG, including the
24 banking institution's name, account number and branch location.
- 25
- 26

1 PCMG has objected to Staff Data Requests 2-16 and 2-45 as beyond the scope of
2 this proceeding and not likely to lead to the discovery of admissible evidence. PCMG
3 continues to assert this objection, and submits that Staff's requests constitute "a fishing
4 expedition" for information that is not needed for the Staff to present its case on whether
5 PCMG is fit and qualified to hold a Certificate of Convenience and Necessity ("CCN").
6 There is no requirement for the Staff to "follow the trail of money" to determine
7 whether PCMG is fit and proper to hold a CCN from the State of Arizona. Instead, the
8 Commission's determination as to whether PCMG is fit and proper can be decided
9 without this information.

10 Moreover, the Commission is not the proper party to "follow the trail of money,"
11 as it is not auditing PCMG. The Commission has not charged PCMG with any
12 wrongdoing in connection with the management of its local exchange business, and,
13 indeed, the Commission would have no jurisdictional basis to look into such matters,
14 even if there were allegations of wrongdoing. Put simply, the Commission has no
15 jurisdiction to determine whether PCMG is operating its business properly, or in
16 contravention of any federal or state laws, other than the Arizona public utility laws
17 administered by the Commission. The Commission's sole jurisdiction in this case
18 relates to determination of whether PCMG is fit and proper to hold a CCN, and is
19 financially qualified to hold such a certificate. Financial qualifications can be
20 determined on the basis of the same information the Commission utilizes to process an
21 application for a CCN -- financial statements and representations of an applicant rather
22 than bank account information.

23 PCMG is willing to provide documentation in response to Staff's Data Requests
24 2-13 and 2-27, but does not have audited financial statements available. It is in the
25 process of obtaining unaudited financial statements for the year ended December 31,
26

1 2003, and will provide those statements to the Staff as soon as they are available from
2 PCMG's outside accountant. On Systems will also provide similar documents.

3 With respect to Staff Data Request 2-17, PCMG will provide documentation that
4 the surcharges are being collected and passed on appropriately, as soon as it files the
5 necessary reports with the State of Arizona. PCMG understands those reports are not
6 due until April 30, 2003, and is in the process of preparing such reports.

7 PCMG will not provide its federal and state income tax returns, as those filings
8 are not likely to lead to discovery of admissible evidence in this proceeding, and are not
9 needed by the Staff to determine whether PCMG is fit and proper to hold a CCN.

10 In any case, the Staff's Data Requests are now moot. Simultaneously with the
11 filing of this response, PCMG is voluntarily surrendering its CCN to the Commission,
12 and will cease providing local exchange service effective upon the Commission's receipt
13 of PCMG's surrender of its CCN. PCMG will also cancel its tariff, effective upon the
14 same date.

15 In view of these circumstances, PCMG submits there is no need to produce
16 documents under Staff Data Requests 2-13, 2-17 and 2-27, which are partially the
17 subject of the Staff's Motion, to which PCMG would otherwise respond. Further, upon
18 surrender of PCMG's CCN, PCMG will be filing a motion with the Commission to
19 dismiss the above-captioned docket, as the issue of whether PCMG is fit and proper to
20 hold a CCN will become moot.

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1 DATED this 12th day of April, 2003.

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By: Michael L. Glaser
Michael L. Glaser, Colorado Bar #13681
Michael D. Murphy, Colorado Bar #14236
Shughart Thomson & Kilroy, P.C.
1050 17th Street, Suite 2300
Denver, CO 80202
303.572.9300
303.572-7883 fax

AND

Marty Harper, Arizona Bar #003416
Kelly J. Flood, Arizona Bar #019772
Shughart Thomson & Kilroy, P.C.
One Columbus Plaza
3636 North Central Avenue, Suite 1200
Phoenix, Arizona
602.650.2000
602.264.7033 fax

*Attorneys for The Phone Company
Management Group, LLC f/k/a
LiveWireNet of Arizona, LLC, On Systems
Technology, LLC, and its principals, Tim
Wetherald, Frank Tricamo and David
Stafford Johnson*

1 ORIGINAL and 13 copies of the foregoing
2 sent via Federal Express this 13th day
3 of April, 2003 to:

4 Docket Control
5 ARIZONA CORPORATION COMMISSION
6 1200 West Washington Street
7 Phoenix, AZ 85007

8 COPY of the foregoing sent via Federal
9 Express, this 13th day of April, 2003:

10 Maureen A. Scott, Esq.
11 Legal Division
12 ARIZONA CORPORATION COMMISSION
13 1200 West Washington Street
14 Phoenix, AZ 85007

15 Christopher Kempley, Chief Counsel
16 Legal Division
17 ARIZONA CORPORATION COMMISSION
18 1200 West Washington Street
19 Phoenix, AZ 85007

20 Lyn Farmer, Chief Hearing Officer
21 Hearing Division
22 ARIZONA CORPORATION COMMISSION
23 1200 West Washington Street
24 Phoenix, AZ 85007

25 Ernest Johnson, Director
26 Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

1 **COPY of the foregoing sent via U.S. mail,**
2 **postage prepaid, this _____ day of April, 2003:**

3 Tim Wetherald
4 3025 S. Parker Road, Suite 1000
5 Aurora, CO 80014

*On Systems Technology, LLC
The Phone Company of Arizona Joint Venture
The Phone Company of Arizona, LLP
The Phone Company Management Group, LLC
d/b/a The Phone Company Management
Group, LLC*

7 Timothy Berg
8 Theresa Dwyer
9 FENNEMORE CRAIG
10 3003 N. Central Avenue, Suite 2600
11 Phoenix, AZ 85003-2913

Qwest Corporation

11 Mark Brown
12 QWEST CORPORATION
13 3033 N. 3rd Street, Suite 1009
14 Phoenix, AZ 85012

Qwest Corporation

14 Jeffrey Crockett
15 SNELL & WILMER
16 One Arizona Center
17 400 E. Van Buren
18 Phoenix, AZ 85004

The Phone Company of Arizona

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