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BEFORE THE ARIZONA CORPORATION COMMISSION

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

Arizona Corporation Commission

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AZ CORP COMMISSION
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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 JOHNSON,
Respondents,

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

**Docket No. T-03889A-02-0796
T-04125A-02-0796**

**STAFF'S RESPONSE TO QWEST'S
MOTION FOR CLARIFICATION,
LIVEWIRENET'S MOTION TO
DISMISS, AND THE PHONE
COMPANY OF ARIZONA, LLP
MOTION TO DISMISS COMPLAINT**

On October 18, 2002, the Arizona Corporation Commission ("Commission") Utilities
Division ("Staff") filed a complaint and petition for relief against LiveWirenet of Arizona, LLC, The
Phone Company Management Group, LLC d/b/a The Phone Company of Arizona Joint Venture d/b/a

1 The Phone Company of Arizona, On Systems Technology, LLC and its principals.

2 On November 14, 2002, Qwest Corporation ("Qwest") filed an Application to Intervene, that
3 was subsequently granted by the Commission.

4 At the January 7, 2003 Procedural Conference, Qwest informed the Commission that it
5 intended to stop providing service to LiveWirenet due to delinquent payments. The Administrative
6 Law Judge (ALJ) ordered Qwest to continue providing service until February 24, 2003, the date of
7 the pre-hearing conference.

8 On February 13, 2003, Staff filed a Motion to Continue the February 24, 2003, hearing.

9 A pre-hearing conference was held on February 24, 2003. During the conference, Qwest
10 stated that it would cease providing resold local exchange and long distance telephone service to
11 LiveWirenet and its customers on March 6, 2003, due to LiveWirenet's non-payment of its bill. In its
12 response, LiveWirenet stated it had not yet begun the process of notifying its customers because
13 Qwest had only notified the company the prior week of its intent to terminate service.

14 On February 25, 2003, the ALJ ordered LiveWirenet to give their customers reasonable notice
15 of the possible termination or interruption of service. The ALJ further ordered that if LiveWirenet
16 failed to issue such notice, the Staff would attempt to provide it. Additionally, Qwest was ordered to
17 continue to provide resold local service to the LiveWirenet until at least March 21, 2003.

18 On February 27, 2003, the Commission received a letter from LiveWirenet's counsel. The
19 letter informed the Commission that LiveWirenet would not be contacting Staff, preparing a notice,
20 obtaining Staff approval of such notice or sending the notice to the affected customers as ordered by
21 the ALJ on February 25, 2003. In addition, LiveWirenet stated its intent to pursue legal action
22 preventing Staff from issuing the notice.

23 When LiveWirenet reused to issue notice, Staff requested an emergency Procedural
24 Conference which was held on February 28, 2003. There Staff opined that Qwest was in a better
25 position financially and practicably than Staff to issue the notice. Qwest indicated it was willing to
26 issue the notice, but only with an order to do so and only if it would recoup the notice's costs from
27 the ultimate provider.

28 A procedural order was issued on March 3, 2003. The order required Staff to draft a notice of

1 hearing and a notice of possible termination or interruption of LiveWirenet's service to its customers
2 and to mail the notice on or before March 10, 2003. LiveWirenet and Qwest were directed to assist
3 Staff in assembling the customer list(s) of LiveWirenet on or before March 5, 2003.

4 On March 21, 2003, Qwest filed a Motion for Clarification of the Procedural Orders of March
5 3, 2003, and February 25, 2003. On the same day, The Phone Company of Arizona, LLP filed a
6 Motion to Dismiss the complaint against it. A Motion to Terminate Proceeding was filed by
7 LiveWirenet on April 2, 2003.

8 **MOTION FOR CLARIFICATION**

9 Staff believes the directives in the Procedural Orders of February 25th and March 3rd are clear.
10 Qwest is not to discontinue or terminate local exchange or long distance services to LiveWirenet
11 before March 21, 2003. LiveWirenet is to notify customers that Qwest intends to discontinue service
12 on or after March 21, 2003, and give the customers adequate information on alternative providers and
13 designate Qwest as the default provider. Qwest is to help Staff in assembling the LiveWirenet
14 customer list(s).

15 Qwest is unclear as to whether or not it is authorized to transfer LiveWirenet customers to
16 Qwest or DMJ without having received written authorization from the customer. Staff believes the
17 orders provide that Qwest may transfer customers to Qwest as the default provider if the customer
18 does not choose some other provider. Of course Qwest may transfer a customer to itself with a letter
19 of authorization from that customer. The order did not, and could not have, contemplated the
20 transfer of customers to a third party. Here, DMJ.

21 Staff does not believe the order precluded a transfer to a third party if all notice requirements
22 were met, and the commission approved the transfer. Those requirements would include notice to the
23 customers of LiveWirenet's intent as a local exchange carrier to abandon its service area. A.A.C.
24 R14-2-1107 obligates the local exchange carrier to provide certain notice upon abandonment.
25 Further, the commission has not approved the transfer of LiveWirenet's customers to DMJ. In fact, it
26 appears to Staff that DMJ does not have a tariff in effect allowing it to provide interexchange service
27 to its customers. It is providing that service to the transferred customers.

28

1 Wetherald never again operates a public service corporation within the state of Arizona.

2 **CONCLUSION**

3 Staff submits that it is in the public interest to deny LiveWirenet's Motion to Terminate the
4 proceeding. Staff does not oppose The Phone Company of Arizona, LLP Motion to Dismiss Staff
5 interprets the February 25th and March 3rd Procedural Orders to name Qwest as the default carrier.
6

7 RESPECTFULLY SUBMITTED this 7th day of April, 2003.

8 ARIZONA CORPORATION COMMISSION

9
10
11 By: 

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17 (602) 542-6026

16 Original and 13 copies of the foregoing filed
17 this 7th day of April 2003, with:

18 Docket Control
19 Arizona Corporation Commission
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20 Phoenix, Arizona 85007

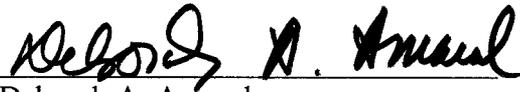
21 Copy of the foregoing hand-delivered/mailed
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