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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

DOCKETED

MAY 02 2003

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2003 MAY -2 P 2: 56

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 MOTION
TO WITHDRAW AS COUNSEL TO
PHONE COMPANY MANAGEMENT
GROUP ET AL. OF SHUGHART
THOMSON & KILROY, P.C. AND
MICHAEL L. GLASER**

On Oct 18, 2002, The Arizona Corporation Commission Utilities Division ("Staff") filed a complaint against, among others, LiveWireNet of Arizona, LLC n/k/a The Phone Company Management Group, LLC. The Firm of Shughart Thomson & Kilroy, P.C. (the Firm), counsel to the

1 aforementioned respondents, filed a motion to withdraw as counsel on April 11, 2003. At the April
2 15 public comment session, the Administrative Law Judge (“ALJ”) instructed Staff to file in response
3 to the Motion to Withdraw. The ALJ instructed Staff to consider applicable Arizona Civil, Ethical,
4 Administrative and other rules and to opine on the Firm’s motion. Consideration of applicable
5 ethical, court, and administrative rules cause Staff to conclude the Firm’s Motion should not be
6 granted at this time.

7 The Firm’s Motion avows that “PCMG has instructed Mr. Michael L. Glaser [of the Firm],
8 counsel for PCMG, not to continue its representation of PCMG in this proceeding, and instructed
9 counsel not to prepare and file and prosecute its direct case in support of its position in response to
10 the Staff’s Complaint, and to cease continuing all legal representation of it in connection with the
11 above-captioned matter.” In Mr. Glaser’s affidavit, attached as Exhibit A to the Firm’s Motion, Mr.
12 Glaser states under oath that Mr. Timothy Wetherald, the managing partner of PCMG instructed the
13 Firm and Mr. Glaser to withdraw their representation based on a lack of resources to proceed. Staff
14 gives the language “to cease continuing all legal representation” a meaning that discharges the Firm
15 from its representation of PCMG in this docket. Mr. Glaser’s affidavit also states that Mr.
16 Wetherald’s decision to instruct Mr. Glaser’s withdrawal is based on PCMG’s inability to pay for any
17 future representation. However, nothing has been filed in the docket by Mr. Wetherald, as the client,
18 indicating that Mr. Glaser and the Firm have been discharged.

19 The Arizona Administrative Code provides that a withdrawal may be permitted “upon written
20 application and good cause shown under such terms, conditions and notices to clients and other
21 parties as the Commission or presiding officer may direct.” A.A.C. R14-3-104.E. Mr. Glaser and the
22 Firm have made written application and notice to other parties through its filing of its motion.
23 PCMG’s instruction to Mr. Glaser not to represent PCMG any further in this docket would generally
24 be considered good cause. In fact, Arizona’s Ethical Rules demand withdrawal when a lawyer is
25 discharged.

26 Arizona’s Ethical Rules provide that “Except as stated in paragraph (c), a lawyer shall not
27 represent a client or, where representation has commenced, shall withdraw from the representation of
28 a client if . . . the lawyer is discharged.” AZ St. S. Ct. R. 42 ER 1.16(a)(3). Paragraph (c) states

1 “[w]hen ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good
2 cause for terminating the representation.” AZ St. S. Ct. R. 42 ER 1.16(c). Glaser has avowed that
3 Mr. Wetherald has discharged Mr. Glaser of his duties in representing the Phone Company
4 Management Group in this docket. However, nothing has been filed in the docket by PCMG or Mr.
5 Wetherald stating that Mr. Glaser and the Firm have been discharged. The Arizona Rules of Civil
6 Procedure require such a filing.

7 The Arizona Rules of Civil Procedure require an application to withdraw to be supported by a
8 written statement of the reason for withdrawal, along with the client’s name, address and phone
9 number. AZ St. R. Civ. Proc. 5.1(a)(2). In addition, the attorney must submit either the client’s
10 written approval of the application to withdraw, or a statement that the client cannot be located. AZ
11 St. R. Civ. Proc. 5.1(a)(2)(A)-(B). Once a case has been set for trial, withdrawal is not permitted
12 unless a substituting lawyer is named, the client signs off stating he will be ready for trial, or the court
13 is satisfied good cause exists to allow withdrawal. AZ R. Civ. Proc. 5.1(a)(2)(C).

14 Staff believes the ALJ should require the client’s written approval of Mr. Glaser’s and the
15 Firm’s application to withdraw. Staff believes the ALJ is authorized to require such a filing by
16 A.A.C. R14-3-104.E. which requires good cause shown under the terms and conditions as directed by
17 the presiding officer. Staff further believes withdrawal should be conditioned upon Mr. Wetherald
18 signing off that he will be ready to go to hearing on the matter with or without counsel at any date set
19 for hearing by the ALJ. Mr. Glaser has in the past sought to withdraw from representation of entities
20 tied to Mr. Wetherald shortly before hearing. In Colorado, Mr. Glaser moved to withdraw on the day
21 of the October 16, 2002 hearing in the Mile High Telecom matter stating a conflict of interest.¹ The
22 Colorado Public Utilities Commission allowed Mr. Glaser’s withdrawal, but the hearing was delayed
23 until October 22, 2002 to allow Mr. Wetherald time to retain new counsel. Staff believes timing of
24 the withdrawal request may be a practice employed by Mr. Wetherald to delay the hearing in
25 Arizona.

26
27 ¹ See *In the Matter of the Application of Mile High Telecom Joint Venture to Discontinue or Curtail Jurisdictional*
28 *Telecommunications Service*, CPUC Docket No. R02-1261, Recommended Decision of Administrative Law Judge
William J. Fritzel Granting Application to Discontinue Jurisdictional Telecommunications Service, Approving Transition
Plan and Designating Default Provider, at para. J.

1 Staff believes that written approval from Mr. Wetherald of Mr. Glaser's and the Firm's
2 withdrawal should be filed to support Mr. Glaser's motion before it is considered. The writing from
3 Mr. Wetherald should also indicate his understanding and acceptance that he and the parties named in
4 the complaint and represented by Mr. Glaser and the Firm must be ready to proceed immediately to
5 hearing if so ordered by the ALJ, with or without representation. The motion should not be
6 considered for approval without these filings.

7 RESPECTFULLY SUBMITTED this 2nd day of May, 2003.

8 ARIZONA CORPORATION COMMISSION

9
10 By: 

11 Maureen A. Scott
12 Gary H. Horton
13 Attorney, Legal Division
14 1200 West Washington Street
15 Phoenix, Arizona 85007
16 (602) 542-6026

17 Original and 13 copies of the foregoing filed
18 this 2nd day of May 2003, with:

19 Docket Control
20 Arizona Corporation Commission
21 1200 West Washington
22 Phoenix, Arizona 85007

23 Copy of the foregoing hand-delivered/mailed
24 this 2nd day of May, 2003, to:

25 Lyn Farmer
26 Chief Administrative Law Judge
27 Hearing Division
28 Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Ernest Johnson
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

1 Marty Harper
2 Kelly J. Flood
3 Shughart Thomson & Kilroy, P.C.
4 One Columbus Plaza
5 3636 N. Central, Suite 1200
6 Phoenix, AZ 85012
7 Attorneys for LiveWireNet of Arizona, et al

8 Michael L. Glaser
9 Michael D. Murphy
10 1050 17th Street, Suite 2300
11 Denver, CO 80202
12 Attorneys for LiveWireNet of Arizona, et al

13 Tim Wetherald
14 3025 S. Park Road, Suite 1000
15 Aurora, CO 80014

16 David Stafford Johnson, Manager
17 4577 Pecos Street
18 P. O. Box 11146
19 Denver, CO 80211-0146
20 The Phone Company Management Group,
21 LLC n/k/a LiveWireNet of Arizona, LLC

22 Roald Haugan
23 Managing Partners Chairman
24 32321 County Highway 25
25 Redwood Falls, MN 56283
26 The Phone Company of Arizona, LLP

27 Michael & Jennifer Bell, MD
28 1234 Edwards Drive
Morehead City, NC 28557
The Phone Company of Arizona, LLP

29 Robert E. Coles, MD
30 201 Lands End Road
31 Morehead City, NC 28557
32 The Phone Company of Arizona, LLP

33 Travis & Sara Credle
34 3709 West Hedrick Drive
35 Morehead City, NC 28557
36 The Phone Company of Arizona, LLP

Paul Lillienthal
11030 Boone Circle
Bloomington, MN 55438
The Phone Company of Arizona, LLP

Jeffrey Moore, MD
3714 Guardian Avenue
Morehead City, NC 28577
The Phone Company of Arizona, LLP

Steven Petersen
2989 Brookdale Drive
Brooklyn Park, MN 55444
The Phone Company of Arizona, LLP

John G. Prosser, II
4162 Wincrest Lane
Rochester, MI 48306
The Phone Company of Arizona, LLP

Marvin Schultz
509 South Louisiana
Mason City, IA 50401
The Phone Company of Arizona, LLP

Helen & Ron Slechta
816 10th Street, P. O Box 430
Kolona, IA 52247
The Phone Company of Arizona, LLP

Timothy Berg
Theresa Dwyer
Fennemore Craig
3003 N. Central, Suite 2600
Phoenix, AZ 85003-2913

Mark Brown
Qwest Corporation
3033 N. Third Street, Suite 1009
Phoenix, AZ 85012

Jeffrey Crockett
Snell & Wilmer
One Arizona Center
400 East Van Buren
Phoenix, AZ 85004

26 Nancy Roe

28