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MARC SPITZER - Chairman
JIM IRVIN
WILLIAM A. MUNDELL
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ARIZONA CORPORATION COMMISSION

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August 25, 2003

GROUP COMMISSION
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Arizona Corporation Commission

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Certified Mail:

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Frank Tricamo
6888 South Yukon Court
Littleton, CO 80128

AUG 27 2003

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AUG 25 2003

Re: The Phone Company Management Group, LLC, et. Al.
Arizona Corporation Commission
Docket Nos. T-03889A-02-0796 and T-04125A-02-0796

ARIZONA CORPORATION COMMISSION
HEARING DIVISION

Dear Mr. Tricamo:

Enclosed herewith is a Formal Complaint in which you are a named Defendant. You have 20 days to respond to the allegations contained in this Complaint.

Please call me if you have any questions regarding this matter.

Sincerely,

Maureen A. Scott
Attorney, Legal Division
(602) 542-6022

cc: Judge Dion
Arizona Corporation Commission
Michael Glaser, Esq.

FORMAL COMPLAINT

BEFORE THE ARIZONA CORPORATION COMMISSION

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WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner

UTILITIES DIVISION STAFF,
Complainant

v.

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

LIVEWIRENET OF ARIZONA, LLC
Respondent

THE PHONE COMPANY MANAGEMENT
GROUP, LLC
Respondent

THE PHONE COMPANY OF ARIZONA JOINT
VENTURE D/B/A THE PHONE COMPANY OF
ARIZONA
Respondent

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

COMPLAINT

Staff ("Staff") of the Utilities Division ("Division") of the Arizona Corporation Commission ("ACC" or the "Commission"), for its Complaint and Petition for Relief against LiveWireNet Of Arizona, LLC n/k/a The Phone Company Management Group, LLC d/b/a The Phone Company, The

1 Phone Company of Arizona Joint Venture d/b/a The Phone Company of Arizona, On Systems
2 Technology, Inc., LLC, Tim Wetherald, Frank Tricamo and David Stafford, and the Phone Company
3 of Arizona, LLP and its members, alleges as follows:

4 JURISDICTION

5* 1. The Commission has jurisdiction to hear complaints against public service
6 corporations pursuant to A.R.S. § 40-246. The Commission has jurisdiction to supervise and regulate
7 public service corporations pursuant to Article XV of the Arizona Constitution and Title 40 of the
8 Arizona Revised Statutes.

9 RESPONDENTS

10 2. Respondent LiveWireNet of Arizona, LLC d/b/a LiveWireNet is a public service
11 corporation which on February 16, 2001, in Decision No. 63382, was authorized to provide facilities-
12 based and resold local and long distance in Arizona.

13 3. On January 30, 2002, LiveWireNet filed a request to have its name changed to The
14 Phone Company Management Group, LLC d/b/a The Phone Company, also listed as a Respondent.
15 The Company's request for name change and proposed tariff was docketed as T-03889A-02-0080.

16 4. Respondent The Phone Company of Arizona Joint Venture d/b/a The Phone Company
17 of Arizona filed an application on July 31, 2002, for a statewide CC&N to provide resold long
18 distance telecommunications services, resold local exchange telecommunications services, and
19 alternative operator services in Arizona. The Company's application was docketed as T-04125A-02-
20 0577. It is still pending before the Commission.

21 5. Respondent On Systems Technology, LLC is a Colorado limited liability company
22 and a general partner in The Phone Company of Arizona Joint Venture. On Systems Technology was
23 also retained by The Phone Company of Arizona, LLP to perform management services for its
24 business.

25 6. Respondents The Phone Company of Arizona LLP, and its members, hold a 70%
26 interest in The Phone Company of Arizona Joint Venture.

1 LiveWireNet. It was stated that pursuant to R14-2-1107, LiveWireNet was making application to
2 discontinue local exchange service, in order to effect a transfer of LWN's membership interest in
3 LiveWireNet to On Systems Technology and a transfer of LiveWireNet's CC&N to On Systems
4 Technology. The Application also stated that it was being filed simultaneously with the Application
5 of the Phone Company of Arizona Joint Venture, in which On Systems Technology is a partner, and
6 which will continue the local exchange service provided by LiveWireNet upon a grant of that
7 Application. Finally, Applicant stated that it was "not proposing a refund of the deposits collected
8 pursuant to R14-2-503, subsection b, because LiveWireNet will transfer its customer base to the
9 Phone Company of Arizona Joint Venture, and there will be no disruption of service."

10 12. On July 31, 2002, an Application for a Certificate of Convenience & Necessity was
11 filed for "The Phone Company of Arizona Joint Venture" d/b/a "The Phone Company of Arizona."
12 The Applicant's Management Contact was listed as "Tim Wetherald" and its attorney was listed as
13 "Michael L. Glaser". In the Application, it was stated that The Phone Company of Arizona Joint
14 Venture was created on June 6, 2002. It was also stated that the Applicant had been funded by The
15 Phone Company of Arizona, LLP, a general partner in Applicant, in the amount of \$619,000. The
16 Phone Company Management Group, LLC, (which was referred to as a subsidiary of "On Systems
17 Technology, LLC) and also a general partner of Applicant, was to serve as the managing partner of
18 the Applicant. The Application also listed the members of On Systems Technology, LLC and The
19 Phone Company Management Group, LLC as Tim Wetherald, Frank Tricamo and David Stafford
20 Johnson.

21 13. Upon information and belief, Respondents have been advertising and signing up
22 customers in Arizona under the name "The Phone Company of Arizona."

23 14. On October 4, 2002, Mr. Glaser filed a letter on behalf of The Phone Company of
24 Arizona Joint Venture, d/b/a The Phone Company of Arizona stating that The Phone Company of
25 Arizona LLP which held a 70% ownership in the Phone Company (On Systems Technology held the
26 other 30%) had failed to make its initial capital contribution of \$619,000.00, and therefore, was
27 deemed to have withdrawn from The Phone Company. Mr. Glaser also stated that under the Joint
28 Venture Agreement, the interests held by the Limited Partnership were deemed to be terminated and

1 transferred, along with the capital account balance maintained on behalf of the Limited Partnership
2 by the manager of The Phone Company, to On Systems Technology. Thus, according to Mr. Glaser,
3 On Systems now owned all of The Phone Company. Mr. Glaser also stated that as sole owner of the
4 Phone Company, On Systems Technology had decided to voluntarily withdraw The Phone Company
5 of Arizona Joint Venture's application for a CC&N.

6 15. Upon information and belief The Phone Company Management Group and/or The
7 Phone Company of Arizona provides services to approximately 4,500 customers in Arizona.

8 16. On or about September 20, 2000, Staff was apprised by several of the general partners
9 of the Phone Company of Arizona, LLP, that Mr. Wetherald and On Systems Technology, LLC were
10 taking actions on behalf of The Phone Company of Arizona Joint Venture without their authorization.
11 Staff was also apprised by several of the general partners of The Phone Company of Arizona, LLP, of
12 several investigations at other State commissions involving affiliates of On Systems Technology,
13 LLC providing service in other States.

14 17. Staff was also apprised shortly thereafter that The Phone Company Management
15 Group was seriously delinquent in its payments to Qwest in Arizona, the underlying wholesale
16 service provider. The Company is delinquent in its payments to Qwest in the approximate amount of
17 \$538,000.00. The total amount owing to Qwest is now over \$850,000.00. Staff was also apprised by
18 Qwest that it had stopped processing new Local Service Requests ("LSRs") for The Phone Company
19 Management Group LLC in the State of Arizona, pursuant to its Interconnection Agreement, because
20 of its failure to make payments for the underlying services provided by Qwest. Staff was also
21 apprised that Qwest had given notice to the Company that nonpayment of the past due balance would
22 lead to eventual service disconnection.²

23 18. As of October 10, 2002, the Commission had received 36 customer complaints
24 regarding The Phone Company of Arizona, including complaints involving disruption of service, and
25 an inability to get in contact with Company representatives at the telephone numbers provided.
26
27

28 ² Staff has informed Qwest that it may not disconnect service without prior notice to the Commission so that customer
may be transferred to other providers if necessary without service disruption.

1 19. Respondents are affiliated with Mile High Telecom Joint Venture, a general
2 partnership comprised of On Systems Technology and Mile High Telecom Partners, LLP, a Colorado
3 limited partnership.

4 20. On or about September 20, 2002, Staff of the Commission was notified of
5 investigations against Mile High Telecom Joint Venture in the State of Colorado, and of
6 investigations which were being commenced in the States of Washington and Minnesota into
7 affiliates of the Phone Company Management Group and On Systems Technology.

8 21. On or about February 20, 2002, the Colorado Public Utilities Commission issued an
9 Order to Show Cause and Notice of Hearing which stated that Mile High Telecom Partners, LLP was
10 providing resold local exchange services in Colorado without Colorado Commission authority, and
11 was collecting for jurisdictional telecommunications services without an effective tariff on file.

12 22. While this matter was subsequently settled, the case has been reopened. At least one
13 other docket has been opened in Colorado addressing the application of Mile High Telecom Joint
14 Venture to discontinue or curtail jurisdictional telecommunications service. Qwest filed pleadings in
15 that Docket alleging that Mile High Telecom Joint Venture was delinquent in its payments to Qwest
16 for services rendered in an amount of approximately \$2.6 million dollars in Colorado.

17 23. On October 8, 2002, the Minnesota Department of Commerce filed a complaint with
18 the Minnesota Public Utilities Commission ("MPUC") alleging that the Minnesota Phone Company,
19 another affiliate of the Phone Company Management Group and On Systems Technology, had been
20 offering local telephone service for months without State approval. The Complaint stated that the
21 Company did not have a certified 911 emergency calling plan. The Commerce Department is
22 recommending that the PUC require the Minnesota Phone Company to return all charges paid by
23 customers since it began doing business in the state, and that it be fined \$10,000 a day for violating
24 the law. Sources reported that the total fine recommended by the Department of Commerce against
25 the Minnesota Phone Company could total several million dollars.

1 proper, adequate or sufficient, and shall enforce its determination by order or regulation.”

2 31. Upon information and belief, Respondent Phone Company Management Group and/or
3 The Phone Company of Arizona is providing resold local and interexchange service to approximately
4 4,500 customers in Arizona.

5
6 32. On July 31, 2002, Respondent On Systems’ attorney Michael Glaser filed an
7 application to discontinue the provision of local exchange service by Respondent Phone Company
8 Management Group. The Application also indicated that local service would be provided by On
9 Systems Technology, a partner in the Phone Company of Arizona Joint Venture. The Application
10 also stated that its purpose was to effect a transfer of LiveWireNet’s Certificate of Convenience and
11 Necessity to On Systems Technology. As already indicated, on October 4, 2002, Mr. Glaser also
12 filed a letter withdrawing the application of The Phone Company of Arizona to provide service in
13 Arizona.

14 33. On Systems Technology is not a registered public service corporation in the State of
15 Arizona nor does it have an Application for a CC&N pending with the Commission, and Staff has
16 concerns that On Systems Technology, and its members, have not been found to be a fit and proper
17 entity to provide service in Arizona. Additionally, Staff has concerns that the Respondents may no
18 longer be financially capable of providing service in Arizona.

19
20 34. Accordingly, Respondent Phone Company Management Group and the Phone
21 Company of Arizona customers could be harmed by a transfer to On Systems Technology.

22 Count Three

23 35. The Utilities Division Staff restates paragraphs 1-34 as if fully set forth herein.

24
25 36. A.R.S. Section 40-361(B) states that “[e]very public service corporation shall furnish
26 and maintain such service, equipment and facilities as will promote the safety, health, comfort and
27 convenience of its patrons, employees and the public, and as will in all respects adequate, efficient
28 and reasonable.”

1 37. A.R.S. Section 40-321 states that "[w]hen the commission finds that the equipment,
2 appliances, facilities or service of any public service corporation, or the methods of manufacture,
3 distribution or transmission, storage or supply employed by it are unjust, unreasonable, unsafe,
4 improper, inadequate or insufficient, the commission shall determine what is just, reasonable, safe,
5 proper, adequate or sufficient, and shall enforce its determination by order or regulation.

6
7 38. Respondent Phone Management Group is delinquent in its payments to Qwest in
8 Arizona, its underlying wholesale service provider, in an amount of approximately \$538,000.00, and
9 it is currently indebted to Qwest in an amount of approximately \$850,000.00.

10 39. Qwest has discontinued the processing of new LSRs for The Phone Company
11 Management Group d/b/a The Phone Company and has indicated that if the delinquent amounts are
12 not paid, Qwest will disconnect services to the Company.

13
14 40. Discontinuance of service by Qwest will result in harm to the Respondent's
15 approximately 4,500 customers.

16
17 Count Four

18 41. The Utilities Division Staff restates paragraphs 1-40 as if fully set forth herein.

19
20 42. A.R.S. section 40-361(B) states that "[e]very public service corporation shall furnish
21 and maintain such service, equipment and facilities as will promote the safety, health, comfort and
22 convenience of its patrons, employees and the public, and as will be in all respects adequate, efficient
23 and reasonable."

24
25 43. A.R.S. Section 40-321 states that "[w]hen the commission finds that the equipment,
26 appliances, facilities or service of any public service corporation, or the methods of manufacture,
27 distribution or transmission, storage or supply employed by it are unjust, unreasonable, unsafe,
28

1 improper, inadequate or insufficient, the commission shall determine what is just, reasonable, safe,
2 proper, adequate or sufficient, and shall enforce its determination by order or regulation.”
3

4 44. As of October 10, 2002, there have been 36 complaints by the Respondent The Phone
5 Company of Arizona’s customers regarding their service. Customers have reported that The Phone
6 Company of Arizona’s numbers give error messages advising that there is no working number. Other
7 complaints have been made by customers stating that they no longer have long distance service and
8 are unable to reach the Company.

9 45. Respondent The Phone Company Management Group and/or Respondent The Phone
10 Company of Arizona’s customers are being harmed by apparent service disruptions and an inability
11 to reach Respondent personnel who can address their concerns.

12
13 RELIEF

14 46. The Utilities Division Staff respectfully requests that the Commission commence an
15 expedited investigation into this Complaint and take appropriate action, including but not limited to
16 the following:

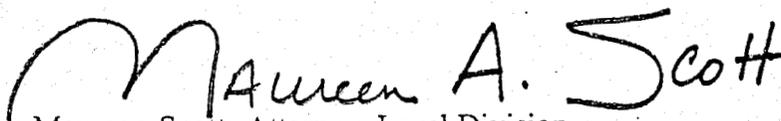
- 17
- 18 a. Determine that the service being provided by the Respondents is
19 inadequate, inefficient and unreasonable;
 - 20 b. Determine whether Respondent The Arizona Phone Company is
21 serving customers without a valid CC&N;
 - 22
 - 23 c. Determine whether Respondent On Systems Technology is a fit and proper
24 entity to provide telephone service;
 - 25
 - 26 d. If it is determined that the service being provided by the Respondents is
27 inadequate, inefficient and unreasonable, order a revocation of the
28 Respondent LiveWireNet’s (nka The Phone Company Management Group)

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CC&N under the authority granted in A.R.S. Sections 40-202, 40-203, 40-321 and 40-322.

- e. If it is determined that The Arizona Phone Company is providing service to customers without a valid CC&N, impose monetary penalties on On Systems Technology and its members and The Phone Company of Arizona Joint Venture and its members as may be appropriate under the authority granted in A.R.S. Sections 40-424 et seq.;
- f. If it is determined that On Systems Technology is not a fit and proper entity to provide telephone service in the State of Arizona, deny the request of LiveWireNet to transfer its CC&N to On Systems Technology.
- g. Such additional relief as may be requested during these proceedings and/or that the Commission may deem appropriate under the circumstances.

RESPECTFULLY SUBMITTED this 18th day of October, 2002.



Maureen Scott, Attorney, Legal Division
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The original and fifteen (15) copies of the foregoing were filed this 18th day of October, 2002 with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

1 Copies of the foregoing were hand-delivered
this 18th day of October, 2002 to:

2 Chairman William A. Mundell
3 Commissioner Jim Irvin
4 Commissioner Marc Spitzer
5 Arizona Corporation Commission
6 1200 West Washington
7 Phoenix, Arizona 85007

8 Lyn Farmer, Chief Administrative Law Judge
9 Hearing Division
10 Arizona Corporation Commission
11 1200 West Washington
12 Phoenix, Arizona 85007

13 Ernest Johnson
14 Director, Utilities Division
15 Arizona Corporation Commission
16 1200 West Washington
17 Phoenix, Arizona 85007

18 Copies of the foregoing were mailed this ^{21st} 18th day of October, 2002
19 by certified mail, return receipt requested, to:

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26 David Stafford Johnson, Manager
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36 LLC d/b/a
37 The Phone Company of Arizona, LLP

38 Roald Haugan, Managing Partners Chairman
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18 Deborah A. Amaral
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