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AZ CORP COMMISSION
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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

UTILITIES DIVISION STAFF, Complainant, 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 principals, TIM WETHERALD, FRANK TRICAMO AND DAVID STAFFORD; THE PHONE COMPANY OF ARIZONA, LLP and its members, Respondents.	DOCKET NO. T-03889A-02-0796 T-04125A-02-0796
IN THE MATTER OF THE PHONE COMPANY OF ARIZONA JOINT VENTURE dba THE PHONE COMPANY OF ARIZONA'S APPLICATION FOR CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE INSTRASTATE TELECOMMUNICATIONS SERVICE AS A LOCAL AND LONG DISTANCE RESELLER AND ALTERNATIVE OPERATOR SERVICE.	DOCKET NO. T-04125A-02-0577
IN THE MATTER OF THE APPLICATION OF THE PHONE COMPANY MANAGEMENT GROUP, LLC, fka LIVEWIRENET OF ARIZONA, LLC TO DISCONTINUE LOCAL EXCHANGE SERVICE.	DOCKET NO. T-03889A-02-0578
IN THE MATTER OF THE APPLICATION OF THE PHONE COMPANY MANAGEMENT GROUP, LLC FOR CANCELLATION OF FACILITIES BASED AND RESOLD LOCAL EXCHANGE SERVICES.	DOCKET NO. T-03889A-03-0152
IN THE MATTER OF THE APPLICATION OF THE PHONE COMPANY MANAGEMENT GROUP, LLC dba THE PHONE COMPANY FOR THE CANCELLATION OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY.	DOCKET NO. T-03889A-03-0202 **PROCEDURAL ORDER**

Arizona Corporation Commission
DOCKETED

SEP 09 2003

DOCKETED BY

BY THE COMMISSION:

On October 18, 2002, the Arizona Corporation Commission ("Commission") Utilities Division ("Staff") filed a Complaint and Petition for Relief ("Complaint") against LiveWirenet of Arizona, LLC ("LiveWire"), The Phone Company Management Group, LLC, ("PCMG"), The Phone Company of Arizona Joint Ventures dba The Phone Company of Arizona, On Systems Technology, LLC ("On Systems"), and its principals, Tim Wetherald, Frank Tricamo, David Stafford Johnson, and The Phone Company of Arizona, LLP ("the LLP") and its members (collectively "Respondents").

On April 14, 2003, Michael Glaser and his firm, Shughart and Thompson and Kilroy, P.C., counsel to the PCMG, LiveWire, On Systems and its principals, Tim Wetherald, Frank Tricamo and David Stafford Johnson, filed a Motion requesting permission to withdraw as counsel for the above-listed entities and individuals. Mr. Glaser indicated that Mr. Wetherald, principle of PCMG and On Systems, informed Mr. Glaser that due to the lack of finances, Mr. Glaser and his firm's services were no longer required by PCMG, LiveWire, On Systems and Mr. Wetherald.

On May 2, 2003, Staff of the Commission's Utilities Division ("Staff") filed its response to the Motion to Withdraw. Staff opposed the Motion because it indicated that the Arizona Rules of Professional Conduct and the Arizona Rules of Civil Procedure require counsel to provide certain information before a motion to withdraw will be granted. Staff stated that Mr. Glaser's Motion did not contain such information.

On May 2, 2003, Tim Wetherald wrote a letter to the Commission indicating that Mr. Wetherald, PCMG, LiveWire and On Systems will not be participating in this matter and they will not provide the information that had been previously ordered by the Commission. Additionally, Mr. Wetherald confirmed in the letter that he had terminated Mr. Glaser and his firm from representing himself, PCMG, LiveWire and On Systems.

On May 9, 2003, Chairman Marc Spitzer docketed a letter questioning Mr. Wetherald, PCMG, LiveWire and On Systems' statement that they have declined to produce documents that are subject to discovery and questioning whether parties to Commission proceedings are free to ignore Commission orders. The Chairman also questioned whether counsel for such entities were also free

to ignore Commission rules and orders.

On May 12, 2003, David Stafford Johnson filed a pro per Motion to Dismiss this matter.

On May 15, 2003, a Procedural Order was issued, which set a pre-hearing for June 5, 2003, and ruled upon a number of motions. It also ordered various parties to file certain information with the Commission within the timeframe prescribed in the Procedural Order.

On May 16, 2003, Mr. Glaser filed a reply to Staff's response to the Motion to Withdraw.

On May 20, 2003, Commissioner Gleason filed a letter agreeing with Chairman Spitzer's earlier filing.

On May 21, 2003, Staff filed a response objecting to David Stafford Johnson's Motion to Dismiss.

On May 21, 2003, Michael Glaser docketed a letter that responded to Commissioner Spitzer's earlier filing.

On May 22, 2003, DMJ Communications ("DMJ") filed a response to the May 15, 2003 Procedural Order.

On June 2, 2003, David Stafford Johnson filed a letter with the Commission that replied to Staff's response to his Motion to Dismiss.

On June 2, 2003, Staff filed an Amended Complaint and made another filing regarding USURF America, Inc. ("USURF"), Telecom Advisory Services, Inc. and Mile High Telecom.

On June 2, 2003, The Phone Company of Arizona, L.L.P. filed a copy of a document that it alleges makes clear that Tim Wetherald is not, and has never been a partner (general, limited, managing or otherwise) of The Phone Company of Arizona, L.L.P.

On June 5, 2003, Staff filed a Motion for an Order to Compel Response to Data Requests. In the Motion, Staff asked the Commission to compel responses from PCMG.

On June 5, 2003, the pre-hearing in this matter was held as scheduled. Staff appeared and was represented by counsel. The Phone Company of Arizona, L.L.P. was represented by counsel. The remainder of the Respondents appeared through counsel. Qwest and DMJ Communications also appeared through counsel. The issues addressed at the pre-hearing were Mr. Glaser's Motion to Withdraw as Counsel, Mr. Johnson's Motion to Dismiss, and the setting of discovery timelines in the

hearing in this matter. Additionally, there was a discussion regarding USURF and whether or not it should be joined as a necessary party in this matter, and a discussion of the pending Securities and Exchange Commission ("SEC") investigation regarding various members of PCMG, On Systems and other related entities. At the pre-hearing, Mr. Glaser was ordered to file Affidavits for Mr. Wetherald, Mr. Johnson and Mr. Tricamo that stated: their names; addresses; that they understood that Mr. Glaser would no longer be representing them in this matter; that they would obtain new counsel or otherwise be prepared for the hearing that will be set in this case; and if they fail to appear, the hearing could proceed in absentia or that a Motion for Default could be entered against them. During the pre-hearing, it was noted that, based upon the service list of the Complaint filed on October 18, 2002, it was possible that Mr. Tricamo has not been served with the Complaint. It was further noted, however, that Mr. Tricamo was represented by Mr. Glaser and therefore, it would seem that Mr. Tricamo would be aware of the Complaint in this case. However, Staff was directed to look into this matter and make sure that Mr. Tricamo had in fact been served with the Complaint in this case. At the conclusion of the pre-hearing, the Motions were taken under advisement and, due to Staff's amending its Complaint and the possibility that Mr. Tricamo had not been served with the original Complaint in this matter, the parties agreed that the hearing in this matter should be set at least 90 days from the date of the pre-hearing.

On June 6, 2003, Staff filed an addendum to its Motion for Order to Compel Response to Data Requests.

On June 17, 2003, Frank Tricamo docketed a letter dated June 13, 2003 that was sent to him from Mr. Glaser requesting Mr. Tricamo to sign an Affidavit stating that, among other things, Mr. Tricamo had knowledge of this matter and that he understands that if Mr. Glaser is allowed to withdraw, that Mr. Tricamo would have to retain his own counsel or otherwise be prepared for the hearing in this matter. Mr. Tricamo also docketed the letter he wrote in response to Mr. Glaser which was undated. In the letter, Mr. Tricamo states that he has had no communication with Mr. Glaser about this case, and that he has had no communication with Tim Wetherald, David Johnson, Mark Schriner or Leon Switchcow since late December, 2002 or early January, 2003. Mr. Tricamo asserts that he has never been informed of this or any regulatory case in Arizona.

On June 23, 2003, The Phone Company of Arizona, L.L.P. filed a Motion to Dismiss all of the Counts in the Amended Complaint.

On June 23, 2003, Tim Wetherald filed an Affidavit regarding Mr. Glaser's Motion to Withdraw.

On June 25, 2003, Mr. Glaser filed a status report indicating that he has had difficulty in locating Mr. Tricamo. Mr. Glaser stated that once he was able to locate Mr. Tricamo, he sent Mr. Tricamo an Affidavit containing the information requested by the Commission and is attempting to get Mr. Tricamo to file such an Affidavit.

On June 27, 2003, David Stafford Johnson filed an Affidavit regarding Mr. Glaser's Motion to Withdraw.

On July 1, 2003, Mr. Glaser filed a supplemental status report. Mr. Glaser stated that Mr. Tricamo has not yet signed his Affidavit, but is requesting additional time so Mr. Tricamo can review his position, file the Affidavit, and retain new counsel. In the status report, Mr. Glaser stated that Mr. Tricamo requests until July 15, 2003, to review his position, submit his Affidavit and file a motion to dismiss and retain new counsel.

On July 16, 2003, Mr. Glaser filed a supplemental status report indicating that Mr. Tricamo needed additional time and would file his Affidavit on July 21, 2003.

On July 25, 2003, Mr. Glaser filed a further status report stating that Mr. Tricamo has not returned the executed Affidavit and that he has been unable reach Mr. Tricamo to ascertain the status of the Affidavit.

On July 31, 2003, Staff filed its response objecting to The Phone Company of Arizona, L.L.P.'s Motion to Dismiss.

On August 5, 2003, Mr. Glaser filed a further status report stating that Mr. Tricamo has stated to him that he has not been served with a copy of Staff's Complaint of October 18, 2002 and that he would respond to it, if officially served.

On August 25, 2003, The Phone Company of Arizona, L.L.P. filed a reply to Staff's response to its Motion to Dismiss.

On August 27, 2003, Staff filed a letter addressed to Mr. Tricamo which was sent by Certified

Mail informing him that a formal Complaint, dated October 18, 2002, had been filed against him. The formal Complaint was attached to the letter.

Regarding Mr. Glaser's Motion to Withdraw, ER 1.16(a) of the Rules of the Supreme Court of Arizona states in relevant part, that "a lawyer . . .shall withdraw from representation of a client if: . . .the lawyer is discharged." The only exception to this rule is that counsel may be ordered by a tribunal to represent the client not withstanding good cause for terminating the representation.[1] In addition, Rule 5.1 of the Arizona Rules of Civil Procedure requires a counsel attempting to withdraw from representation to set forth a written application that states the reasons for withdrawal together with the client's name, residence and telephone number. The Affidavits filed by Mr. Wetherald and Mr. Johnson comply with the rules as stated above and with the directives that were given at the June 5, 2003 pre-hearing. It is apparent from the Affidavits that both Mr. Wetherald and Mr. Johnson are aware that Mr. Glaser is attempting to withdraw from representing them and that they will be responsible for either obtaining new counsel or representing themselves in this matter. Therefore, Mr. Glaser's Motion to Withdraw in regards to PCMG, LiveWire, On System Technology, Mr. Wetherald and Mr. Johnson should be granted, subject to the condition that Mr. Glaser's clients comply with the outstanding discovery requests and Commission orders.

As to Mr. Glaser's representation of Mr. Tricamo, the Commission has not received an Affidavit from Mr. Tricamo. However, the information and filings that the Commission has received regarding Mr. Glaser's representation of Mr. Tricamo in this matter are disturbing. On multiple occasions during the course of the procedural history of this matter, Mr. Glaser has stated that he represents various entities and individuals, including Mr. Tricamo. At the June 5, 2003 pre-hearing, Mr. Glaser was specifically questioned about his representation of Mr. Tricamo and whether Mr. Glaser had served Mr. Tricamo with a copy of the Motion to Withdraw, since his name and Mr. Johnson's name did not appear on the service list. Mr. Glaser responded that, "We provided them copies of the motion . . . [T]hey were well aware of the withdrawal. And I think they, you know, essentially agree with Mr. Wetherald."[2] Subsequently, on June 17, 2003, Mr. Tricamo docketed a

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[1] ER 1.16(c)

[2] Record of the June 5, 2003 pre-hearing at page 9.

letter stating that Mr. Tricamo had no knowledge of this matter or that Mr. Glaser was representing him. It, therefore, seems highly likely that Mr. Tricamo was also unaware, as of the June 5, 2003 pre-hearing, that Mr. Glaser was attempting to withdraw from representing Mr. Tricamo in this matter. If this is the case, Mr. Glaser's representations to this Commission regarding Mr. Tricamo are troubling.

Mr. Glaser's failure to appear for the hearing in this matter on April 15, 2003, and his ongoing failure to comply with Commission orders, are equally troubling. When questioned about his failure to appear, Mr. Glaser said, ". . .[I] had been instructed by our client not to appear. And perhaps it was an error in my judgment in not appearing, but I felt compelled to follow the instructions of my client."[3] While Mr. Glaser apologized for not appearing, he stated that he "felt compelled to adhere to client's instructions."[4] Although Mr. Glaser may have been instructed not to appear by his clients, he still had a duty to appear to explain his position to the Commission. Mr. Glaser's failure to appear, and his explanation why he did not appear, are both unacceptable.

Mr. Glaser's failure to appear at the hearing, Mr. Glaser and his clients' failure to comply with discovery requests and Commission orders, and Mr. Tricamo's allegations, with respect to Mr. Glaser's representation support the conclusion that Mr. Glaser's Pro Hac Vice status in Arizona should potentially be revoked and that a complaint should possibly be filed with the Colorado State Bar.

Based upon PCMG, LiveWire, On Systems and its principals' track record of failing to provide information to the Commission, Staff should contact the Securities and Exchange Commission and obtain any information that it can regarding the preliminary injunction that was granted against On Systems, Tim Wetherald and various other entities and individuals.

Accordingly, a pre-hearing should be set to discuss The Phone Company of Arizona, L.L.P.'s Motion to Dismiss the Amended Complaint; to determine Mr. Glaser's representation of Mr. Tricamo in this matter; and a hearing should be set

IT IS THEREFORE ORDERED that a hearing shall be set for November 3, 2003 at 9:00 a.m. at the Commission's offices, 1200 West Washington, Phoenix, Arizona.

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[3] Id at pages 16 and 17.
[4] Id at page 17.

IT IS FURTHER ORDERED that a pre-hearing conference addressing The Phone Company of Arizona, L.L.P's Motion to Dismiss, Mr. Glaser's representation of Mr. Tricamo, and Mr. Glaser's Pro Hac Vice status in Arizona shall be set for October 7, 2003 at 2:00 p.m.

IT IS FURTHER ORDERED that the parties shall reserve November 5, 6 and 7, 2003 for additional dates of hearing, if necessary.

IT IS FURTHER ORDERED that Staff shall file any supplemental testimony on or before October 8, 2003.

IT IS FURTHER ORDERED that Respondents shall file any supplemental testimony on or before October 22, 2003.

IT IS FURTHER ORDERED that Staff's Motion for Order to Compel and its Addendum to the Motion for Order to Compel Response to Data Requests is granted.

IT IS FURTHER ORDERED that Mr. Glaser's Motion to Withdraw from representing The Phone Company Management Group, LLC, LiveWireNet of Arizona, LLC, On Systems Technology, LLC and its principals, Tim Wetherald and David Stafford Johnson is granted, conditioned upon Mr. Glaser and his clients complying with any and all discovery requests and previous Commission orders. Such discovery requests include Staff's Motion to Compel and Staff's Addendum to the Motion to Compel Response to its Data Requests. Once Mr. Glaser and his clients have complied with Staff's requests, then Staff shall, within 7 days, make a filing in this docket stating that such information has been received and at that time, the withdrawal will become effective.

IT IS FURTHER ORDERED that The Phone Company Management Group, LLC, LiveWireNet of Arizona, LLC, On Systems Technology, LLC and its principals shall comply with any and all discovery requests and Commission orders, including Staff's Motion to Compel and Staff's Addendum to Motion to Compel Response on or before September 23, 2003.

IT IS FURTHER ORDERED that Mr. Glaser's Motion to Withdraw from representing Mr. Tricamo is under advisement.

IT IS FURTHER ORDERED that David Stafford Johnson's Motion to Dismiss is denied.

IT IS FURTHER ORDERED that Mr. Tricamo shall attend the pre-hearing in this matter in person or by telephone. If Mr. Tricamo wishes to participate telephonically, he must contact the

Hearing Division at 602-542-4250 at least three days prior to the pre-hearing in order to accommodate such request.

IT IS FURTHER ORDERED that the Staff shall contact the Securities and Exchange Commission and obtain any public records including, but not limited to testimony, exhibits or the like in conjunction with the preliminary injunction against On Systems Technology, LLC, Tim Wetherald and various other entities and individuals.

IT IS FURTHER ORDERED that USURF America, Inc. shall be joined in this matter as an indispensable party.

IT IS FURTHER ORDERED that the Ex Parte Rule is still in effect.

IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend or waive any portion of this Procedural Order by subsequent Procedural Order or by ruling at hearing.

Dated this 9 date of September, 2003.

PHILIP J. DION III
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed/delivered this 9 day of September, 2003 to:

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By: _____
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