



0000008077

305R

BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

1
2 **MARC SPITZER**
Chairman
3 **WILLIAM A. MUNDELL**
Commissioner
4 **JEFF HATCH-MILLER**
Commissioner
5 **MIKE GLEASON**
Commissioner
6 **KRISTEN MAYES**
Commissioner

Arizona Corporation Commission
DOCKETED

OCT 14 2003

DOCKETED BY *CM*

2003 OCT 14 P 3:40

AZ CORP COMMISSION
DOCUMENT CONTROL

7
8 UTILITIES DIVISION STAFF,
Complainant,

9 vs.

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

10 LIVEWIRENET OF ARIZONA, LLC n/k/a THE
11 PHONE COMPANY MANAGEMENT GROUP, LLC;
12 THE PHONE COMPANY OF ARIZONA JOINT
13 VENTURE, d/b/a/ THE PHONE COMPANY OF
14 ARIZONA; ON SYSTEMS TECHNOLOGY, LLC, and
its principals, TIM WETHERALD, FRANK TRICAMO,
DAVID STAFFORD, MARC DAVID SHINER and
LEON SWICKOW; THE PHONE COMPANY OF
ARIZONA, LLP and its members

15 Respondents.

16 IN THE MATTER OF THE PHONE COMPANY OF
17 ARIZONA JOINT VENTURE d/b/a/ THE PHONE
18 COMPANY OF ARIZONA'S APPLICATION FOR
19 CERTIFICATE OF CONVENIENCE AND NECESSITY
20 TO PROVIDE INTRASTATE
TELECOMMUNICATIONS SERVICE AS A LOCAL
AND LONG DISTANCE RESELLER AND
ALTERNATIVE OPERATOR SERVICE.

Docket No. T-04125A-02-0577

21 IN THE MATTER OF THE APPLICATION OF THE
22 PHONE COMPANY MANAGEMENT GROUP, LLC
f/k/a LIVEWIRENET OF ARIZONA, LLC TO
DISCONTINUE LOCAL EXCHANGE SERVICE.

Docket No. T-03889A-02-0578

23 IN THE MATTER OF THE APPLICATION OF THE
24 PHONE COMPANY MANAGEMENT GROUP, LLC
25 FOR CANCELLATION OF FACILITIES BASED AND
RSOLD LOCAL EXCHANGE SERVICES.

Docket No. T-03889A-03-0152

26 IN THE MATTER OF THE APPLICATION OF THE
27 PHONE COMPANY MANAGEMENT GROUP, LLC
28 d/b/a/ THE PHONE COMPANY FOR THE
CANCELLATION OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY.

Docket No. T-03889A-03-0202

**STAFF'S RESPONSE TO THE
PHONE COMPANY
MANAGEMENT GROUP, LLC ET
AL. MOTION FOR CONTINUANCE**

**STAFF'S NOTICE OF FILING
REGARDING SUFFICIENCY OF
DATA RESPONSES**

**STAFF'S RESPONSE TO MOTION
OF TIM WETHERALD TO
REPRESENT ON SYSTEMS
TECHNOLOGY, LLC AND THE
PHONE COMPANY
MANAGEMENT GROUP, LLC**

**STAFF'S UPDATE ON
INFORMATION TO BE OBTAINED
FROM THE SECURITIES AND
EXCHANGE COMMISSION**

On October 7, 2003 Mr. Wetherald in a letter dated October 3, 2003 and addressed to Administrative Law Judge Dion notified Judge Dion of his intent to represent himself, On Systems Technology, LLC and The Phone Company Management Group, LLC in these proceedings. At the pre-hearing conference held on October 7, 2003 in this docket, Judge Dion stated that the letter would be treated as Mr. Wetherald's Motion to Represent himself and the entities identified in his letter. Judge Dion ordered Staff to file a response to Mr. Wetherald's Motion. Staff would note that Mr. Wetherald's motion only needs to be considered if Mr. Wetherald and the entities identified in his letter are currently before the Commission without representation. Mr. Wetherald and those entities are only without representation if Mr. Glaser's Motion to Withdraw as counsel for Mr. Wetherald and the entities is granted.

Mr. Glaser's motion was conditionally granted upon his client's compliance with outstanding discovery requests and Commission Orders. Therefore, if Judge Dion finds Mr. Glaser's clients have complied with discovery requests and Commission Orders and that the condition has been met concerning Mr. Glaser's withdrawal, Mr. Wetherald's motion to represent himself, The Phone Company Management Group, LLC (PCMG) and On Systems Technology, LLC (On Systems) should be considered. Because these two issues are linked, this filing will address first whether Mr. Glaser's clients have complied with discovery requests and Commission Orders and then with Staff's recommended treatment of Mr. Wetherald's motion should Mr. Glaser's Motion to Withdraw be granted in regard to Mr. Wetherald, PCMG and On Systems.

1 Finally, this filing will address Staff's recommendation concerning Mr. Wetherald's letter of
2 October 8, 2003, docketed October 10, 2003, requesting Mr. Wetherald's Motion for Continuance
3 and provide an update on the status of documents to be procured from the Securities and Exchange
4 Commission.

5 Staff does not believe that Mr. Glaser's clients have complied with discovery requests and
6 Commission Orders and therefore the conditions of the September 9, 2003 Procedural Order have not
7 been met. Mr. Glaser, therefore remains as counsel to Mr. Wetherald, PCMG, and On Systems. Mr.
8 Wetherald's Motion to Represent himself, PCMG and On Systems should not therefore be considered
9 at this time as it is moot. In the alternative, if it is found that Mr. Glaser's clients have complied with
10 discovery requests and Commission Orders, or if the condition is lifted for Mr. Glaser's withdrawal,
11 Staff believes Mr. Wetherald should be permitted to represent himself, PCMG, and On Systems.
12 Staff believes that Mr. Wetherald's required appearance in the United States District Court for the
13 Southern District of Florida would preclude him from appearing before the Commission on
14 November 3, 2003 and that Mr. Wetherald's request for continuance, though not timely, should be
15 granted.

16
17 **I. PCMG has not complied with Staff Discovery Requests and Commission Orders
Compelling such Compliance.**

18 On June 5, 2003, Staff filed to move the Administrative Law Judge to compel PCMG to
19 answer certain data requests that Staff had addressed to PCMG. The motion sought to have PCMG
20 ordered to answer five requests outstanding from Staff's second set of data requests, three which
21 PCMG promised to provide when available, and two to which PCMG objected. The motion also
22 sought to have PCMG ordered to answer Staff's sixth, seventh and eighth sets of data requests. On
23 June 6, 2003, Staff filed an addendum to its June 5, 2003 filing which entered into the docket the
24 exhibits which had been inadvertently omitted from the June 5, 2003 filing. In the Procedural Order
25 dated September 9, 2003, Staff's Motion for Order to Compel and its Addendum to the Motion for
26 Order to Compel Response to Data Requests were granted. Therefore, only if PCMG has provided
27 the five responses ordered to Staff's second set of data requests, and provided responses to Staff's
28 sixth, seventh, and eighth sets of data requests is PCMG in compliance with discovery requests and

1 Commission Orders.

2 PCMG belatedly provided responses to Staff's sixth, seventh, and eighth sets of data requests
3 as an attachment to Mr. Wetherald's letter to Judge Dion dated October 3, 2003 and received by the
4 Hearing Division on October 7, 2003. These responses were provided to Staff by Judge Dion at the
5 October 7, 2003 pre-hearing conference. The responses were not provided to Staff or Staff's counsel
6 in any form prior to that time. Contrary to Mr. Wetherald's assertions, responses to the sixth, seventh
7 and eighth sets of data requests were not received by Staff counsel, nor did Mr. Wetherald attempt to
8 confirm receipt with either Mr. Horton or Ms. Scott. Nonetheless, Staff considers the responses
9 sufficient for PCMG to be considered in compliance with Staff's sixth, seventh and eighth sets of
10 data requests as of October 7, 2003.

11 The September 9, 2003 Procedural Order ordered PCMG to provide responses to requests
12 which still have not been provided. These requests were in Staff's second set of data requests, mailed
13 on February 7, 2003 to Mr. Glaser as counsel to PCMG and were included in Staff's Motion to
14 Compel granted in the September 9, 2003 Procedural Order. Staff requested audited financial
15 statements from PCMG. PCMG, through counsel, responded that PCMG did not have audited
16 financials but would provide unaudited statements when released from PCMG's outside accountant.
17 Staff has not received the promised financials. Staff also sought information concerning into what
18 accounts customers checks made payable to the Phone Company of Arizona for payment of services
19 were being deposited. PCMG has not provided the information. Staff requested documentation
20 showing that PCMG was current on its state and federal income taxes and that PCMG was properly
21 administering Arizona Universal Service Fund and 911 surcharges. PCMG responded that the
22 information was not then available but would be provided when available under separate cover. Staff
23 has not received the information. Staff requested information concerning the amount of
24 reimbursements paid to Tim Wetherald or On Systems by PCMG. PCMG has not provided the
25 information. Staff requested a list of all bank accounts in the name of PCMG. Staff has not been
26 provided a response. PCMG is clearly not in compliance with discovery requests or Commission
27 Orders.

28 Because PCMG remains out of compliance with discovery requests and Commission Orders,

1 the condition that Mr. Glaser's clients be in such compliance prior to Mr. Glaser's withdrawal from
2 representation being granted has not been met. Therefore, Mr. Wetherald, PCMG, and On Systems
3 continue to be represented by Mr. Glaser.

4 **II. If Mr. Glaser's Motion to Withdraw as Counsel to Mr. Wetherald, PCMG, and On**
5 **Systems is Granted, Mr. Wetherald's Motion to Represent Himself, PCMG, and On**
6 **Systems Should be Granted.**

7 As detailed above, it is Staff's opinion that the conditions placed on Mr. Glaser's withdrawal
8 have not been met and that Mr. Glaser continues to represent Mr. Wetherald, et al. However, should
9 it be determined that either the condition has been met, or that the condition should be lifted, it is
10 Staff's opinion that Mr. Wetherald's motion to represent himself, PCMG and On Systems should be
11 granted. Staff notes that it is unclear who will represent respondent Phone Company of Arizona if
12 Mr. Glaser's withdrawal is granted. If Mr. Glaser's motion is granted Mr. Wetherald, et al, would be
13 left without counsel. Mr. Wetherald must then be required to either obtain new counsel or allowed to
14 represent himself. Staff believes that Mr. Wetherald should be allowed to represent himself pro se,
15 and to act as representative under A.R.S. § 40-243.B. to PCMG and On Systems. Mr. Wetherald is
16 not a member of the Arizona State Bar, and seeks as an officer or employee of the Public Service
17 Corporations PCMG and On Systems to represent them before the Commission. Such representation
18 is not Mr. Wetherald's primary duty, but is secondary to his management responsibilities. Staff
19 assumes Mr. Wetherald has the authority to grant himself specific authorization to act in a
20 representative capacity.

21 Ordering Mr. Wetherald to obtain counsel presents some challenges. First, Staff believes the
22 time necessary for new counsel to familiarize itself with the complex facts of this case may further
23 delay the proceeding. Second, it is Staff's understanding that Mr. Wetherald, PCMG, and On
24 Systems lack the financial capability of obtaining representation at this time. Because Mr.
25 Wetherald's representation appears to meet the requirements of A.R.S. § 40-243.B. and the obtaining
26 of new counsel by Mr. Wetherald would present these challenges, Staff recommends Mr. Wetherald
27 be allowed to represent himself and the companies as requested if Mr. Glaser's withdrawal is
28 permitted.

1 **III. Mr. Wetherald's Motion to Continue should be Granted.**

2 If Mr. Wetherald is required to be in District Court in Florida on November 3, 2003 as is
3 currently the case based on the District Court's Order filed by Mr. Wetherald, then this proceeding
4 should be continued for a period of time no longer than two weeks. While it appears possible that the
5 district court case will not proceed on November 3, 2003, Staff would prefer certainty as to the
6 hearing date to a wait and see approach before continuing the hearing. In other words, Staff would
7 prefer to move the hearing date back now, rather than waiting to see if the district court case is heard
8 on November 3.

9
10 **IV. Staff Update on Information to be Obtained from the Securities and Exchange Commission.**

11 Staff has again contacted the Securities and Exchange Commission concerning testimony
12 given leading to the preliminary injunction in the Florida District Court case. Testimony has been
13 gathered but not yet copied. Copies will be made and delivered to the Legal Division by early next
14 week. Staff will file relevant portions of the testimony in this docket.

15 RESPECTFULLY SUBMITTED this 14TH Day of October, 2003.

16 STAFF OF THE ARIZONA CORPORATION COMMISSION

17
18 By: 

19 Gary H. Horton
20 Attorney, Legal Division
21 1200 West Washington Street
22 Phoenix, Arizona 85007
23 (602) 542-6026

24 Original and 21 copies of the foregoing filed
25 this 14th day of October, 2003, with:

26 Docket Control
27 Arizona Corporation Commission
28 1200 West Washington
Phoenix, Arizona 85007

1 Copy of the foregoing mailed this 14th day
2 of October, 2003, to:

3 Lyn Farmer
4 Chief Administrative Law Judge
5 Hearing Division
6 Arizona Corporation Commission
7 1200 West Washington
8 Phoenix, Arizona 85007

9 Ernest Johnson
10 Director, Utilities Division
11 Arizona Corporation Commission
12 1200 West Washington
13 Phoenix, Arizona 85007

14 Chairman Marc Spitzer
15 Commissioner William A. Mundell
16 Commissioner Jeff Hatch-Miller
17 Commissioner Mike Gleason
18 Commissioner Kristin K. Mayes

19 Michael L. Glaser
20 Michael D. Murphy
21 1050 17th Street, Suite 2300
22 Denver, CO 80202
23 Attorneys for LiveWireNet of Arizona, et al

24 Tim Wetherald
25 3025 S. Park Road, Suite 1000
26 Aurora, CO 80014

27 David Stafford Johnson, Manager
28 4577 Pecos Street
P. O. Box 11146
Denver, CO 80211-0146
The Phone Company Management Group,
LLC n/k/a LiveWireNet of Arizona, LLC

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

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

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

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

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

Mark Brown
Qwest Corporation
4041 N. Central, 11th Floor
Phoenix, AZ 85012

Thomas H. Campbell, Esq.
Lewis and Roca
40 North Central
Phoenix, AZ 85004
Attorneys for DJM

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

4 Frank Tricamo
5 14231 E. 4th Avenue, Suite 360
6 Aurora, CO 80011

Leon Swichkow
2901 Clint Moore Road #155
Boca Raton, FL 33496

Marc David Shiner
4043 NW 58th Street
Boca Raton, FL 33496

Marc David Shiner
5030 Champion Blvd., Suite 6-198
Boca Raton, FL 33496

6

7

8

9

Nancy Roe

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28