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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

- MARC SPITZER, Chairman
- WILLIAM A. MUNDELL
- JEFF HATCH-MILLER
- MIKE GLEASON
- KRISTIN K. MAYES

UTILITIES DIVISION STAFF

Complainant,

v.

LIVEWIRENET OF ARIZONA, LLC; THE PHONE COMPANY MANAGEMENT GROUP, LLC; THE PHONE COMPANY OF ARIZONA JOINT VENTURE D/B/A THE PHONE COMPANY OF ARIZONA; ON SYSTEMS TECHNOLOGY, LLC and its principals, TIM WETHERALD, FRANK TRICAMO AND DAVID STAFFORD; and THE PHONE COMPANY OF ARIZONA, LLP and its Members,

Respondents.

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

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

IN THE MATTER OF THE APPLICATION OF THE PHONE COMPANY MANAGEMENT GROUP, LLC FOR CANCELLATION OF FACILITIES-BASED AND RESOLD LOCAL EXCHANGE SERVICES.

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

DOCKET NO. T-03889A-02-0796

DOCKET NO. T-04125A-02-0796

Arizona Corporation Commission DOCKETED

JAN 29 2004

DOCKETED BY	<i>CAZ</i>
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DOCKET NO. T-04125A-02-0577

DOCKET NO. T-03889A-02-0578

DOCKET NO. T-03889A-03-0152

DOCKET NO. T-03889A-03-0202

NOTICE OF FILING PROPOSED SETTLEMENT

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**NOTICE OF FILING PROPOSED SETTLEMENT**

Counsel for The Phone Company of Arizona, LLP ("Partnership"), hereby files the attached Proposed Settlement in these consolidated dockets for consideration by the various parties. Based upon discussions counsel for the Partnership has had with Staff counsel and parties to this case, the Partnership believes that it is in the mutual interests of all parties to resolve the various pending applications and Staff's complaint, as amended, through a mutual settlement. The attached Proposed Settlement is intended as a starting point for settlement discussions, and no party in these proceedings has approved the Proposed Settlement.

In order that the parties have a chance to consider and discuss the Proposed Settlement, the Partnership requests a two-week continuance of the hearing date currently scheduled for Monday, February 2, 2004. Counsel for Staff and respondent Tim Wetherald have indicated that they do not oppose such a brief continuance.

RESPECTFULLY submitted this 29th day of January, 2004.

SNELL & WILMER



Jeffrey W. Crockett, Esq.  
One Arizona Center  
Phoenix, Arizona 85004-2202  
Attorneys for The Phone Company of Arizona, LLP

ORIGINAL and twenty (20) copies of the foregoing have been filed with Docket Control this 29th day of January, 2004.

1 A COPY of the foregoing has  
2 been hand delivered this 29th day of  
3 January, 2004, to:

3 Phil Dion, Administrative Law Judge  
4 Hearing Division  
5 ARIZONA CORPORATION COMMISSION  
6 1200 West Washington Street  
7 Phoenix, Arizona 85007

7 Ernest Johnson  
8 Director, Utilities Division  
9 ARIZONA CORPORATION COMMISSION  
10 1200 West Washington Street  
11 Phoenix, Arizona 85007

10 Maureen Scott, Staff Attorney  
11 Legal Division  
12 ARIZONA CORPORATION COMMISSION  
13 1200 West Washington Street  
14 Phoenix, Arizona 85007

14 A COPY of the foregoing has  
15 been mailed this 29th day of January,  
16 2004, to:

16 Tim Wetherald  
17 3025 South Parker Road, Suite 1000  
18 Aurora, CO 80014

18 David Stafford Johnson  
19 4577 Pecos Street  
20 P.O. Box 11146  
21 Denver, CO 80211-0146

21 Roald Haugan  
22 32321 County Highway 25  
23 Redwood Falls, MN 56283

23 Travis and Sara Credle  
24 3709 West Hedrick Drive  
25 Morehead City, NC 28557

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5030 Champion Blvd, Ste 6-198  
Boca Raton, FL: 33496



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**BEFORE THE ARIZONA CORPORATION COMMISSION**

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

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

**DOCKET NO. T-04125A-02-0577**

**DOCKET NO. T-03889A-02-0578**

**DOCKET NO. T-03889A-03-0152**

**DOCKET NO. T-03889A-03-0202**



1 C. On July 31, 2002, PCMG filed an Application to Discontinue Local Exchange  
2 Service in Arizona. PCMG's application was docketed as No. T-03889A-02-0578. By letter  
3 dated October 9, 2002, and docketed with the Commission, PCMG withdrew its pending  
4 application. This application is still pending before the Commission.

5 D. On July 31, 2002, the Joint Venture filed an application for a Certificate of  
6 Convenience and Necessity to provide intrastate telecommunications service as a local and long  
7 distance reseller and alternative operator service provider. The Joint Venture's application was  
8 docketed as No. T-04125A-02-0577. A letter seeking to voluntarily withdraw the Joint  
9 Venture's application was docketed October 7, 2002, by counsel for OST. This application is  
10 still pending before the Commission.

11 E. On March 11, 2003, PCMG filed an Application to Discontinue Providing  
12 Competitive Facilities Based and Resold Exchange Service. PCMG's application was docketed  
13 as No. T-03889A-03-0152, and is still pending before the Commission.

14 F. On April 2, 2003, PCMG filed an advice letter seeking to voluntarily surrender  
15 its CC&N. PCMG's application was docketed as No. T-03889A-03-0202, and is still pending  
16 before the Commission.

17 G. OST is a general partner in the Joint Venture. OST was also retained by the  
18 Partnership to perform management services for the Partnership. The Joint Venture has been  
19 dissolved.

20 H. On October 18, 2002, Staff filed a complaint (the "Complaint") against  
21 LiveWireNet, PCMG, the Joint Venture, OST and its principles Wetherald, Tricamo and  
22 Johnson, and the Partnership (collectively, the "Respondents"). The Complaint was docketed  
23 as Nos. T-03889A-02-0796 and T-04125A-02-0796. On June 2, 2003, Staff filed an amended  
24 complaint (the "Amended Complaint"). The Amended Complaint alleged that the Respondents,  
25 or some of them: (i) violated A.R.S. § 40-282 by providing telephone service in Arizona  
26 without a CC&N; (ii) violated A.R.S. § 40-361(B) in that Respondents, or some of them, are

1 not fit and proper entities to provide telephone service in Arizona; (iii) violated A.R.S. § 40-  
2 361(B) in that Respondents, or some of them, are not financially capable of providing telephone  
3 service in Arizona; (iv) violated A.R.S. § 40-361(B) in that Respondents, or some of them, do  
4 not have the technical capability to provide telephone service in Arizona; and (v) acted in  
5 willful violation of Commission orders. In its prayer for relief, Staff requested that the  
6 Commission make certain findings as set forth in the Amended Complaint, revoke the CC&N  
7 of PCMG, impose monetary penalties on Respondents, or some of them, and deny OST and its  
8 members the right to obtain a CC&N in Arizona.

9 I. Respondents, and each of them, deny the allegations contained in Staff's  
10 Complaint and Amended Complaint.

11 J. By procedural order dated May 15, 2003, the Commission's hearing division  
12 consolidated Docket Nos. T-04125A-02-0577, T-03889A-02-0578, T-03389A-03-0152 and T-  
13 03889A-03-0202 with Docket Nos. T-03889A-02-0796 and T-04125A-02-0796. The  
14 Commission's hearing division held the first day of hearings in these consolidated dockets on  
15 November 3, 2003. However, the hearing was recessed due to a family emergency of the  
16 administrative law judge, and was subsequently rescheduled for February 2, 2004.

17 K. The Parties have determined that it is in their respective best interests to settle  
18 the various cases included in this consolidated docket. Thus, the parties have entered into this  
19 Agreement, subject to its approval by the Commission, which resolves all of the outstanding  
20 issues in the Complaint, the Amended Complaint, and the other dockets included in this  
21 consolidated docket.

#### 22 TERMS AND CONDITIONS

23 1. Revocation of Certificate of Convenience and Necessity of PCMG. Effective on  
24 the date the Commission issues its order approving this Agreement, the Parties agree that  
25 PCMG's Certificate of Convenience and Necessity shall be revoked. The applications filed by  
26 PCMG in Docket Nos. T-03889A-02-0578, T-03899A-03-0152, and T-03889A-03-0202 shall

1 be administratively closed. The administrative closure shall be completed by Docket Control  
2 within fourteen (14) days following the date of an order of the Commission approving this  
3 Agreement.

4 2. Administrative Closure of Application for CC&N by Joint Venture. The  
5 application filed by the Joint Venture in Docket No. T-04125A-02-0577 shall be  
6 administratively closed. The administrative closure shall be completed by Docket Control  
7 within fourteen (14) days following the date of an order of the Commission approving this  
8 Agreement.

9 3. Dismissal with Prejudice. The Complaint and Amended Complaint filed by Staff  
10 in Docket Nos. T-03889A-02-0796 and T-04125A-02-0796 shall be dismissed with prejudice as  
11 to all Parties subject only to the following conditions:

12 (a) PCMG Not to Operate as Public Service Corporation or do Business in  
13 Arizona. PCMG has ceased doing business in Arizona, and as of the date of this Agreement,  
14 does not provide telephone service or any other form of public utility service to any customer in  
15 Arizona. From and after the date of an order approving this Agreement, PCMG shall not  
16 reapply for a certificate of convenience and necessity to provide public utility service in  
17 Arizona, nor shall the company do business in Arizona.

18 (b) Wetherald Not to Own a Public Service Corporation in Arizona. From  
19 and after the date of an order approving this Agreement, and subject to Section 3(c) of this  
20 Agreement, Wetherald shall not (i) serve as an officer or director of any public service  
21 corporation providing service in the State of Arizona; or (ii) own an interest in a public service  
22 corporation providing service in the State of Arizona. For purposes of this Agreement, the  
23 phrase "own an interest" shall not apply to Wetherald's ownership of shares of a public service  
24 corporation providing service in the State of Arizona if Wetherald's ownership amounts to less  
25 than five percent (5%) of the outstanding shares of the public service corporation.

26

1                   (c)    Lifting of Restrictions on Wetherald.   Wetherald is the subject of a  
2 complaint brought by the Securities and Exchange Commission (Case No. 03-60175-CIV-  
3 ZLOCH) pertaining to the operation of various public service corporations. In the event that  
4 Wetherald is exonerated of any responsibility or liability for wrong-doing in the operation of  
5 such public service corporations, or in the event that Wetherald enters into an agreement with  
6 the SEC to settle the SEC investigation whereby Wetherald does not admit guilt or wrong-  
7 doing, then the restrictions set forth in Section 3(b) of this Agreement shall be lifted.  
8 Wetherald understands and agrees that in the event such restrictions are lifted, and Wetherald  
9 (or any public service corporation over which Wetherald exercises control) files an application  
10 in Arizona for a certificate of convenience and necessity to provide public utility service, then  
11 such application shall be evaluated by the Commission under the then-applicable criteria for  
12 granting certificates of convenience and necessity, and such application may be approved or  
13 denied based upon the Commission's evaluation of the public interest.

14                   (d)    No Admission of Wrongdoing by Wetherald. Staff acknowledges that this  
15 Settlement Agreement does not constitute a finding of wrongdoing on the part of Wetherald in  
16 Docket Nos. T-03889A-02-0796 and T-04125A-02-0796, and further acknowledges that nothing  
17 contained in this Agreement, including the restrictions set forth in Section 3(b), constitute an  
18 admission of wrongdoing by Wetherald.

19                   4.    Fine. PCMG shall pay to the Commission a fine in the amount of \$5,000  
20 ("Fine"). Neither Wetherald, Johnson nor Tricamo shall be personally liable for the Fine.

21                   5.    No Restriction on the Rights of the Partnership and its partners, Johnson and  
22 Tricamo to Apply for Certificates of Convenience and Necessity. Staff has determined that the  
23 Partnership and its partners, Johnson and Tricamo are not responsible for any wrongdoing  
24 alleged in the Complaint and the Amended Complaint, and that the Partnership, Johnson and  
25 Tricamo should be dismissed with prejudice as respondents in Docket Nos. T-03889A-02-0796  
26 and T-04125A-02-0796. Staff acknowledges that the Partnership and its partners, Johnson and

1 Tricamo have cooperated with Staff in its investigation of the Complaint and the Amended  
2 Complaint. There are no restrictions on the rights of the Partnership or its partners, Johnson or  
3 Tricamo to apply for certificates of convenience and necessity to provide public utility service  
4 in the State of Arizona, or to do business in the State of Arizona.

5 6. Procedure for Entry into Force of this Agreement. The Parties hereby urge the  
6 Commission to adopt this Agreement as an order of the Commission. This Agreement shall not  
7 enter into force until the Commission enters an order approving substantially all of the terms of  
8 this Agreement. The Parties shall use the procedures described in Sections 7 and 8 of this  
9 Agreement.

10 7. Authority of Staff; Commission Approval.

11 (a) The Parties acknowledge and agree that: (i) Staff does not have the power  
12 to bind the Commission; and (ii) for purposes of settlement, Staff acts in the same manner as a  
13 party in proceedings before the Commission.

14 (b) The parties further acknowledge and agree that: (i) this Agreement acts as  
15 a procedural device to propose its terms to the Commission; and (ii) this Agreement has no  
16 binding force or effect until finally approved by an order of the Commission.

17 (c) The Parties further acknowledge and agree that the Commission will  
18 evaluate the terms of this Agreement, and that after such evaluation the Commission may  
19 require insubstantial modifications to the terms hereof before accepting this Agreement.

20 (d) The Parties agree that in the event that the Commission adopts an order  
21 approving substantially all of the terms of this Agreement, such action by the Commission  
22 constitutes approval of the Agreement, and thereafter the Parties shall abide by its terms.

23 8. Effect of Modifications by the Commission. In the event that any Party objects  
24 to any modification to the terms of this Agreement made by the Commission in an order  
25 approving substantially all of the terms of this Agreement, such Party shall timely file an  
26 application for rehearing under A.R.S. §40-253. In the event that a Party does not file such an

1 application, that Party shall be deemed: (i) to have accepted any modifications made by the  
2 Commission; and (ii) to have conclusively and irrefutably accepted that any modifications to the  
3 terms of this Agreement are not substantial and therefore the Commission order does adopt  
4 “substantially all” of the terms of this Agreement as contemplated under Section 6 hereof.

5 If any Party to this Agreement files an application for rehearing and alleges that the  
6 Commission has not adopted substantially all terms of the Agreement, then such application  
7 shall be deemed a withdrawal of the Agreement, and the Parties shall request a procedural order  
8 setting Staff's Amended Complaint for hearing. Such hearing shall be without prejudice to the  
9 position of any of the Parties, and this Agreement and any supporting documents relating  
10 thereto shall not be admitted into evidence for any purpose nor used by the Commission in its  
11 final consideration of the Amended Complaint.

12 If a Party's application does not affirmatively and specifically allege that the  
13 Commission has failed to adopt substantially all terms of the Agreement, and the application for  
14 rehearing is denied, either by Commission order or by operation of law, and such Party still  
15 objects to any modification to the terms of this Agreement made by the Commission, that Party  
16 shall timely file an appeal of the Commission's decision pursuant to A.R.S. § 40-254 or § 40-  
17 254.01, as appropriate. In the event that the Party does not file such an appeal, then that Party  
18 shall be deemed: (i) to have accepted any modifications made by the Commission to the terms  
19 of the Agreement; and (ii) to have conclusively and irrefutably accepted that any modifications  
20 to the terms of this Agreement are not substantial and therefore the Commission's order does  
21 adopt “substantially all” of the terms of this Agreement within the meaning of Section 6 hereof.

22 9. Definitive Text. The “Definitive Text” of this Agreement shall be the text  
23 adopted by the Commission in an order adopting substantially all the terms of this Agreement  
24 including all modifications made by the Commission in such an order.

25 10. Severability. Each of the terms of the Definitive Text of this Agreement are in  
26 consideration and support of all other terms. Accordingly, such terms are not severable.



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TIM WETHERALD

\_\_\_\_\_  
DAVID STAFFORD JOHNSON

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FRANK TRICAMO

\_\_\_\_\_  
THE PHONE COMPANY OF ARIZONA, LLP

By: \_\_\_\_\_

Its: \_\_\_\_\_

UTILITIES DIVISION STAFF OF THE ARIZONA  
CORPORATION COMMISSION

By: \_\_\_\_\_

Title: \_\_\_\_\_

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