

BEFORE THE ARIZONA CORPORATION COMMISSION

UTILITIES DIVISION STAFF,
Complainant,

vs.

LIVEMIRENET 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.

Arizona Corporation Commission
DOCKETED

MAR 16 2004

DOCKETED BY *CR*

AND OTHER RELATED MATTERS.

At: Phoenix, Arizona

Date: February 25, 2004

Filed: MAR 16 2004

REPORTER'S TRANSCRIPT OF PROCEEDINGS
VOLUME IV
(Pages 372 through 596, inclusive.)

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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Corporation Commission, in Hearing Room 1 of said
4 Commission, 1200 West Washington Street, Phoenix, Arizona,
5 commencing at 9:00 a.m. on the 25th February, 2004.

6
7
8 BEFORE: PHILIP J. DION, III, Administrative Law Judge

9 APPEARANCES:

10 For the Complainant:

11 Ms. Maureen A. Scott
12 Staff Attorney, Legal Division
13 1200 West Washington Street
14 Phoenix, Arizona 85007-2927

15 For the Respondent The Phone Company of Arizona, LLP:

16 SNELL & WILMER, L.L.P.
17 By Mr. Jeffrey W. Crockett
18 One Arizona Center
19 400 East Van Buren
20 Phoenix, Arizona 85004
21 (Appearing at page 463.)

22 For the Respondents LiveWireNet of Arizona, LLC; The Phone
23 Company Management Group, LLC; Tim Wetherald; On Systems
24 Technology:

25 Mr. Tim Wetherald
In propria persona
10730 East Bethany Road, Suite 206
Aurora, Colorado 80014

1 APPEARANCES:

2
3 For the Respondent David Stafford Johnson:

4 Mr. David Stafford Johnson
5 In propria persona
6 740 Gilpin Street
7 Denver, Colorado 80218
8 (Appearing at page 363.)

9 For the Respondent Frank Tricamo
10 Mr. Frank Tricamo
11 In propria persona
12 6888 South Yukon Court
13 Littleton, Colorado 80128

10

11 For Qwest Corporation:

12 FENNEMORE CRAIG
13 By Ms. Theresa Dwyer
14 3003 North Central Avenue, Suite 2600
15 Phoenix, Arizona 85012

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1 ALJ DION: Good morning, everybody, and
2 welcome to the Arizona Corporation Commission. My name is
3 Phil Dion and this is the proceeding regarding the
4 Utilities Division Staff complaint against a number of
5 respondents. It has generally been referred to as the
6 LiveWire matter.

7 And there are a number of CRs associated with
8 this which I announced at the beginning of the hearing.
9 Yesterday we broke during the redirect of John Bostwick.
10 So, Mr. Bostwick, if you will retake the stand.

11 Mr. Bostwick, you recall you are still under
12 oath, sir?

13 MR. BOSTWICK: I am sorry, sir?

14 ALJ DION: Do you recall you are still under
15 oath?

16 MR. BOSTWICK: Yes.

17 ALJ DION: Okay, Ms. Scott.

18 MS. SCOTT: Yes.

19 ALJ DION: Please continue.

20 MS. SCOTT: Okay. Your Honor, there were a
21 few initial matters, too, that I would like to raise at
22 this time. I do have copies now of Exhibit S-2 for
23 everybody.

24 ALJ DION: Okay.

25 MS. SCOTT: Your Honor, Qwest has also talked

1 to me about possibly taking their witness out of order
2 this morning, because she is going to be in a training
3 session. I told Qwest's attorney that we did not have a
4 lot of cross-examination for their witness and had some
5 data responses that we wanted to get into the record that
6 Qwest provided. So we have no objection to taking her out
7 of order --

8 ALJ DION: Okay.

9 MS. SCOTT: -- this morning.

10 ALJ DION: What is her scheduling Ms. Dwyer?

11 MS. DWYER: This is Theresa Dwyer on behalf of
12 Qwest. The witness is unavailable this afternoon. So I
13 talked with Ms. Scott prior to the hearing to see if it
14 was amenable to her, since Staff is the party that asked
15 for the Qwest witness to be present, if she could be fit
16 in perhaps after one or two of Staff's witnesses this
17 morning. Or we could make ourselves available first thing
18 tomorrow morning.

19 ALJ DION: Okay. I believe Ms. Scott said she
20 had about somewhere between half an hour, an hour of
21 redirect. And I might have about 15 minutes of questions
22 just depending on the redirect. So that puts us somewhere
23 around the 10:00 hour.

24 Would the Qwest witness be available then
25 around 10:00, 10:15 at that point?

1 MS. DWYER: Yes, it would. That would be
2 appreciated.

3 ALJ DION: Mr. Wetherald?

4 MR. WETHERALD: Don't I get an opportunity to
5 recross?

6 ALJ DION: You get direct and you get to cross
7 and then there is redirect. That's how, that's how the
8 proceedings will work.

9 If you would like to call Mr. Bostwick in your
10 case, you can certainly do so, though. I would allow you,
11 however, to recross on items that were not presented
12 within the direct testimony.

13 So I believe there were a couple exhibits we
14 talked about that were just entered, as S-2 for example
15 which is just simply the stipulations.

16 But there was that letter we talked about,
17 S-4, which was from Mr. Hinsdale, which I did admit but we
18 didn't talk about except on redirect. I will certainly
19 allow you the latitude to get into that if you wanted to.

20 MR. WETHERALD: She has brought up she didn't
21 enter them as exhibits but she gave copies of, you know,
22 two rules that weren't brought up before. Although she
23 mentions the letter from the Iowa utility, whatever it
24 was, the only reason I didn't get into that was because it
25 is not on John Bostwick's testimony. It is listed as an

1 of do it forever, redirect, recross, reredirect,
2 rerecross. It is just a point. So I want you to
3 understand that, during your cross-examination, you can,
4 as long as it is relevant, you know, ask about anything.

5 But in this case, I certainly will give you
6 the latitude to talk about some of the things that were
7 brought up especially since we entered exhibits during
8 redirect, which isn't uncommon, or isn't -- it has been
9 done before but it is not always a common practice.

10 (Mr. Johnson enters the hearing room.)

11 ALJ DION: And I would imagine that, with
12 that, we are still talking about another 15, 20 minutes
13 and get to Qwest's witness around 10:30 this morning.

14 MR. WETHERALD: Okay.

15 ALJ DION: Just so that we know, Ms. Dwyer,
16 who will be testifying?

17 MS. DWYER: Monica Luckritz.

18 ALJ DION: Thank you. All right. Does that
19 take care of our preliminary stuff this morning?

20 If so, I will just note for the record that
21 present on behalf of Staff today is Ms. Maureen Scott. On
22 behalf of Qwest is Theresa Dwyer.

23 I note that Mr. Credle is here, and the
24 possibility that Mr. Crockett may appear later this
25 afternoon as Mr. Credle testifies. Mr. Credle is here

1 from the LLP.

2 Mr. Wetherald is here representing himself,
3 and PCMG and On Systems. Mr. Tricamo is here and
4 Mr. Johnson is here as well.

5 As I stated, Mr. Bostwick was on the stand and
6 Ms. Scott was redirecting him. So, Ms. Scott, your
7 questions?

8 MS. SCOTT: Yes. Thank you, Your Honor.

9

10 JOHN BOSTWICK,
11 a witness herein, having been previously duly sworn by the
12 Certified Court Reporter to speak the truth and nothing
13 but the truth, was further examined and testified as
14 follows:

15

16 REDIRECT EXAMINATION CONTINUED

17 BY MS. SCOTT:

18 Q. Good morning, Mr. Bostwick.

19 A. Good morning.

20 Q. I believe we left off with some redirect on
21 the discussion that you had with Mr. Wetherald relating to
22 Count Two of the complaint which deals with the
23 respondent's fitness to be a telecommunications provider
24 in Arizona.

25 ALJ DION: Ms. Scott, I am going to ask that

1 you pull the microphone a little closer.

2 MS. SCOTT: Oh, I am sorry, Your Honor.

3 ALJ DION: Sure.

4 BY MS. SCOTT:

5 Q. And, Mr. Bostwick, you received some questions
6 from Mr. Wetherald on his cross-examination regarding the
7 management structure. And your testimony was that we
8 received no organizational chart for PCMG or the operating
9 company in Arizona, is that correct?

10 A. That's correct.

11 Q. And yesterday we introduced into the record as
12 part of Exhibit S-3 the respondent's responses to our data
13 requests in this case, is that correct?

14 A. That's correct.

15 MS. SCOTT: Your Honor, I am approaching
16 Mr. Bostwick with LiveWireNet, PCMG, On Systems and Phone
17 Company of Arizona's response to Staff's second set of
18 data requests which was received by us on February 18th
19 and is part of S-3.

20 And page 5 of that document, I am going to ask
21 Mr. Bostwick to read the respondents' response to Staff
22 2-21 into the record.

23 THE WITNESS: PCMG has no organizational
24 chart. On Systems Technology, LLC owns all the membership
25 interest in PCMG. LiveWireNet of Arizona, LLC has changed

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1 officers.

2 THE WITNESS: Additionally, PCMG outsources
3 its accounting services under contract to Amy Overlin,
4 CPA.

5 BY MS. SCOTT:

6 Q. Okay, thank you.

7 Let's move on, Mr. Bostwick, to the discussion
8 you had with Mr. Wetherald then regarding Count III of the
9 complaint. And do you have a copy of the amended
10 complaint with you?

11 A. Yes. Yes, I do.

12 Q. Okay. And that, does Count III relate to the
13 financial capability of the respondents to provide service
14 in Arizona?

15 A. I don't see that on my copy here. Maybe I
16 have something different.

17 Yes, I am sorry. I see it as item 48.

18 Q. And, Mr. Bostwick, is it your understanding
19 that the respondents' companies that were operating in
20 Arizona did not pay Qwest for the underlying wholesale
21 services that they received?

22 A. Yes, it is.

23 Q. Did they pay Qwest any amount for those
24 services?

25 A. There was a small amount but I don't remember

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1 do that.

2 But I just want you to be prepared I am going
3 to limit it to what we talked about the latter part of,
4 you know, yesterday afternoon and today at this point.

5 MR. WETHERALD: And that's fair, Your Honor.
6 My concern is she is bringing a lot of information that I
7 feel is outside the scope I covered. And I would just
8 like an opportunity to clarify.

9 ALJ DION: And you will be given that
10 opportunity.

11 MR. WETHERALD: Okay.

12 ALJ DION: But I have been monitoring that and
13 she has been referring to your questions in the record.

14 MR. WETHERALD: But she also is producing more
15 documents.

16 ALJ DION: Well, that can happen. That can
17 happen, too. If you ask a question and you open a door to
18 something --

19 MR. WETHERALD: Right.

20 ALJ DION: -- then they are allowed to present
21 material like that. But like I said, and I think
22 appropriate in this case --

23 MR. WETHERALD: Right.

24 ALJ DION: -- I will give you the latitude to
25 ask questions about things like we talked about. But I

1 just wanted to make sure that you understood the
2 procedure, that you are going to be constrained to what we
3 talked about over the last four or five hours.

4 MR. WETHERALD: And I will.

5 ALJ DION: That was just for the record, not
6 only for you.

7 Ms. Scott.

8 MS. SCOTT: Thank you, Your Honor.

9 Your Honor, I have approached Mr. Bostwick
10 with a copy of LiveWireNet, PCMG, On Systems and Phone
11 Company Arizona's response to the second set of Staff's
12 data requests. Again it has a date of February 18th,
13 2003. And I am asking Mr. Bostwick to read on page 8 the
14 response to Staff 2-31.

15 ALJ DION: Okay. And just for those on the
16 listen line, because Ms. Scott has approached, she has
17 handed Mr. Bostwick a response to a data request by PCMG,
18 et cetera, and Mr. Bostwick will be reading the response.

19 THE WITNESS: The total amount owed by PCMG to
20 Sprint as of Sprint's last bill to PCMG was \$168,727.84.
21 PCMG, PCMG recently paid Sprint \$30,000 against the Sprint
22 bill, and has disputed \$33,560. According to PCMG's
23 records, PCMG owes Sprint \$105,167.84 after giving effect
24 to the recent payment, and the disputed amount. PCMG
25 expects a new bill from Sprint by February 15, 2003, which

1 will reflect the exact amount PCMG owes Sprint. PCMG will
2 make this bill available to the Staff as soon as PCMG
3 receives it. PCMG and Sprint are continuing to discuss
4 the disputed amount and PCMG's payment of the undisputed
5 amount -- amounts to Sprint.

6 Q. Okay. Were any copies of the Sprint bills
7 ever provided to the Staff to the best of your knowledge?

8 A. To the best of my knowledge, no.

9 Q. Okay. Mr. Bostwick, let's move on to the
10 discussion that you had with Mr. Wetherald relevant to
11 Count IV of the complaint.

12 And do you have that complaint in front of
13 you?

14 A. Is that the amended complaint?

15 Q. Yes, it is.

16 A. Yes, I do.

17 Q. And does Count IV address the technical
18 ability of the applicant to provide reasonable and
19 adequate service in Arizona?

20 A. Yes, it does.

21 Q. Mr. Bostwick, is there an obligation on
22 companies that do business in Arizona as
23 telecommunications providers to comply with all of the
24 rules and regulations of the Commission?

25 A. Yes, there is.

1 Mr. Wetherald you would like to --

2 MS. SCOTT: Yes, sir. Yes, Your Honor. And
3 just to clarify, this is part of Mr. Bostwick's testimony.
4 And Mr. Morton is covering the customer service issues
5 related to this. Mr. Bostwick is covering everything
6 else.

7 And, Your Honor, I would refer you to pages
8 166 through 172 of the November 3rd transcript.

9 ALJ DION: What was your question again,
10 Ms. Scott? Because I see Mr. Bostwick talking about the
11 paragraphs 50 and 51 in the amended complaint, and then
12 the disparity between the number of active customers that
13 PCMG says it has and the number that Qwest stated.

14 MS. SCOTT: On page 166 through 167 there is a
15 discussion about the rules and statutes and standards that
16 a company is to comply with. And, Your Honor, we also did
17 have a discussion yesterday as part of, I believe,
18 Count II, relating to R 14-2-1106. And I believe the
19 questions under that area were proper. So I guess I would
20 refer to both Count II and Count IV.

21 ALJ DION: Let me hear your question again,
22 Ms. Scott, now that I have a better --

23 MS. SCOTT: Okay. My question related to
24 R 14-2-1106 of the Commission rules which set forth
25 conditions, which is the applicant -- or the respondent

1 who violates their CC&N is subject to rescission. We
2 discussed that yesterday under Count II. And my question
3 to Mr. Bostwick was going to be with respect to B-1 and
4 B-5 -- or I am sorry -- B-6 of 1106.

5 And what I would like to ask Mr. Bostwick is
6 about, first of all, 1106B-6 which requires companies to
7 participate in and contribute to the Universal Service
8 Fund. And I would like to ask Mr. Bostwick whether we
9 asked the respondent that and whether we ever got a
10 response and about a subsequent discussion that we had
11 with NECA.

12 MR. WETHERALD: I guess I would object, Your
13 Honor. First of all, my cross-examination of Mr. Bostwick
14 dealt exclusively with our obligation to maintain and
15 repair facilities, not a reseller. I specifically asked
16 and I brought this up yesterday in my cross-examination of
17 Mr. Bostwick, I specifically asked him on my examination
18 whether Count II dealt with these two areas. And the
19 testimony was no, it did not.

20 What he wants to do is bring this testimony in
21 Count II, which I specifically asked so I would have an
22 opportunity, if it did, to cross-examine him relating to
23 those issues. And he said no, it doesn't.

24 MS. SCOTT: Well, I think it was acknowledged,
25 Your Honor, in the November 3rd hearing that there were,

1 there were a lot of questions posed to Mr. Bostwick that
2 were legal in nature. And I would submit that that
3 questioning by Mr. Wetherald was legal in nature.

4 ALJ DION: Well, then we should have dealt
5 with it at that time. If we are going to get into -- I
6 mean, the participation in the Universal Service Fund is
7 something that is generally done in an order of condition
8 of granting -- usually the Staff recommending a condition
9 of granting CC&N. So if there is an allegation of that,
10 then I think that goes more towards, if that participation
11 did not occur that goes more towards a count of an order
12 to show cause and a contempt of Commission.

13 MS. SCOTT: Your Honor, I would agree I think
14 we could address this in Count Five.

15 ALJ DION: So I am sustaining Mr. Wetherald's
16 objection in that I don't believe that it is, that this is
17 appropriate. I am not ruling on whether it is appropriate
18 in Count V; I just sustain your objection.

19 MR. WETHERALD: I understand.

20 MS. SCOTT: I would just note for the record,
21 Your Honor, that there is information that will be
22 introduced that pertains to Count V that may be relevant
23 to some of these other counts as well.

24 ALJ DION: Okay. We will deal with it at that
25 time with the individual witness who is testifying and

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1 what their knowledge is.

2 Do you have any other questions for
3 Mr. Bostwick?

4 MS. SCOTT: Yes. Oh, I am sorry. Me?

5 ALJ DION: Yes.

6 MS. SCOTT: Yes, I do.

7 ALJ DION: Okay.

8 BY MS. SCOTT:

9 Q. Okay. Mr. Bostwick, at this time let's move
10 on to Count V of the complaint, the amended complaint.

11 MR. WETHERALD: I am going to object, Your
12 Honor. Specifically I did not cross-examine Mr. Bostwick
13 on Count V because he specifically said that that was not
14 part of his direct testimony.

15 ALJ DION: Ms. Scott, that's the best of my
16 recollection as well. I believe that Mr. Lebrecht or
17 Mr. Morton was going to testify regarding those counts.

18 MS. SCOTT: Okay. Mr. Bostwick, Your Honor,
19 did have some relating to Count V. But if you would like,
20 I can cover it with Mr. Lebrecht.

21 ALJ DION: It is --

22 MS. SCOTT: But he did have some testimony
23 relating to Count V.

24 ALJ DION: If you can point me to -- it is not
25 what I like, it is just going on my recollection of three

1 months ago. And my recollection was that Mr. Bostwick was
2 essentially addressing Counts I through IV. Where did
3 Mr. Bostwick talk about anything in Count V?

4 MR. WETHERALD: Specifically that
5 cross-examination can be found on page 171 starting at
6 line 17 going to the next page. I think you will find
7 that Mr. Bostwick did say I am not testifying on Count V
8 and would let it go.

9 MS. SCOTT: Your Honor, Mr. Bostwick did
10 provide testimony in his direct which was filed on
11 March 28th on the company's transfer of its interests
12 through an asset purchase agreement to USURF.

13 ALJ DION: And that's fine. But I don't think
14 Mr. Wetherald had any questions about that.

15 MR. WETHERALD: I left it alone because he
16 specifically said he wasn't testifying about Count V.

17 ALJ DION: There was a filing of direct
18 testimony and he adopted it, so he has testified to it.

19 MR. WETHERALD: Okay.

20 ALJ DION: But, no, you didn't have any
21 questions about it.

22 MR. WETHERALD: No.

23 ALJ DION: So I don't -- I agree with
24 Mr. Wetherald, that there is really nothing to redirect,
25 that Mr. Bostwick's testimony stands.

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1 MS. SCOTT: Okay. I will direct those
2 questions to Mr. Lebrecht.

3 MR. WETHERALD: I guess, and I don't know if
4 this is the proper place to address it, but it sounds to
5 me like once again Ms. Scott is attempting to
6 substantially modify the prefiled testimony at this late
7 date in the thing without giving me any opportunity to see
8 or know what she is going to do.

9 ALJ DION: No. I don't find that,
10 Mr. Wetherald. What specifically? Because I have
11 sustained your objections where we have gone outside,
12 where I think we have gone outside of the record in this
13 case. So the -- I don't find that. But as I said, I am
14 not going to allow that testimony.

15 If Mr. Lebrecht or Mr. Morton have direct
16 information about this, they can testify. You can ask
17 them the questions you want about it. And it is up to
18 Staff as to who they choose and how they present their
19 case. I certainly wouldn't tell them how to do that, as I
20 wouldn't tell anyone.

21 But that being said, we will adhere to, you
22 know, the procedures of this Commission. And one of those
23 regarding the conducting the hearing is regarding those
24 questions that are relevant and the subject of
25 cross-examination during redirect. So, even if she is

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1 trying to do that, I am not allowing that. I don't
2 necessarily find that is the case and I don't find it to
3 be the intent. Again, it is up to her to call the
4 individual witness and present evidence before this
5 Commission in order to attempt to prove the allegations.

6 MR. WETHERALD: Thank you.

7 ALJ DION: Any other questions for
8 Mr. Bostwick, Ms. Scott?

9 MS. SCOTT: Let's see. I am just wrapping up,
10 Your Honor. If I could just go back through once more.

11 ALJ DION: Sure.

12 MS. SCOTT: But the sections I have --

13 BY MS. SCOTT:

14 Q. Okay, Mr. Bostwick, just a few wrapup
15 questions on Count, referring back to Count III, which has
16 to do with the financial capability of the applicant.

17 Is it your understanding that the applicant
18 has not made any further payment to Qwest for its
19 wholesale services?

20 A. That's correct.

21 Q. And with respect to Count IV and the technical
22 capability of the applicant, and that starts, again I am
23 referring to page 166 through 172 and your discussion with
24 Mr. Wetherald regarding his company, the operating company
25 being a reseller in Arizona, do you recall that?

1 THE WITNESS: Yes, it is.

2 ALJ DION: So you don't necessarily have to be
3 an employee or a staff member of the reseller, you could
4 be a third party, for instance?

5 Sometimes the Commission requires accounting
6 records of utilities. Those are generally required, those
7 prepared by CPAs, auditors, people outside of the utility.
8 But yet it is something we require of utilities and expect
9 of utilities. But those utilities are able to employ the
10 appropriate agencies or persons to accomplish that, is
11 that also correct.

12 THE WITNESS: That's correct.

13 ALJ DION: Okay. I just wanted to kind of
14 clarify that answer.

15 All right, Mr. Wetherald, you had some
16 recross? About 15 minutes or 20 minutes?

17 MR. WETHERALD: 15 to 20 minutes probably. I
18 will make it as quick as possible.

19 ALJ DION: Okay.

20 MR. WETHERALD: One of the things, Your Honor,
21 and I will enter this now, I talked about it in cross and
22 I told you I would bring it down. So this here is
23 basically the Secretary's form with the -- can I --

24 ALJ DION: Go ahead and show Mr. Bostwick the
25 exhibit and then give copies. Do you want a --

1 What did we mark this as, Mr. Wetherald?

2 MR. WETHERALD: W-2.

3 BY MR. WETHERALD:

4 Q. Mr. Bostwick, would you read the first
5 paragraph under application for registration of trade
6 name?

7 A. The registration of trade names and trademarks
8 is not legally required in Arizona, but it is an accepted
9 business practice. This is a registration for an Arizona
10 trade name only in accordance with A.R.S. Subsection
11 44-1460. This certificate does not in any way constitute
12 the registration of an internet domain name. Please note
13 that we do not register corporation names, e.g., ABC Inc.
14 Please clearly print or type your application to avoid
15 registration errors.

16 Q. Okay. Mr. Bostwick, do you have a nickname?

17 A. No, I don't.

18 Q. Do you know anybody who does?

19 A. I am not aware of anybody offhand. I can't
20 think of anybody.

21 Q. You know that some people have nicknames?

22 A. That's true.

23 Q. Okay. And that would really be kind of
24 equivalent of what I would call a social trade name, not
25 their real name but people just refer to them as that.

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1 Would that be a fair statement?

2 A. I will give you that.

3 Q. Okay. Is that their proper name?

4 A. For what standard? Proper for who?

5 Q. Proper name that they would use in legal
6 documents, for instance, or on credit applications?

7 A. Well, I am not a legal expert so I can't
8 answer that.

9 Q. Do you know what the term proper name means?

10 A. Under whose standards?

11 Q. Under a legal definition.

12 A. Well, again I am not a legal expert. So I
13 really don't know.

14 Q. So you don't know whether or not the term
15 proper name as referred to in R 14-2 -- I believe it would
16 be 1106. Unfortunately I can't find it right off in my
17 pile of crap here, stuff, excuse me.

18 But you remember yesterday Ms. Scott handed
19 you an exhibit?

20 A. She handed me?

21 Q. Wasn't an exhibit, it was a copy of the rules.

22 A. She handed me several rules, I believe.

23 Q. Here we are. One of which was 14-2-1104?

24 A. I would have to see it. I can't remember.

25 Q. I will hand you my copy --

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1 A. That's fair enough.

2 Q. -- if that's okay.

3 A. That's fine.

4 Q. And if you look on the right-hand of the page
5 down, she had you read part of that section?

6 A. Yes.

7 Q. And would you read the first line of that part
8 that she had you --

9 A. Yes. Proper name and intrastate address of
10 the telecommunications company.

11 Q. But today you cannot testify as to what proper
12 name means, can you?

13 A. Yes, I can. But you asked me under a legal
14 and I don't know what you mean by legal. I am not a
15 lawyer.

16 Q. Isn't this a largely legal document? I mean
17 it is a rule, isn't it?

18 A. It is a rule.

19 Q. It would have legal standing, would it not?
20 It would be basically how we determine what is right and
21 proper.

22 A. Well, based on that, we have an application
23 form. The application form asks for the name, corporate
24 name and the d/b/a name.

25 Q. Okay.

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1 A. That's the proper name that we use --

2 Q. Okay.

3 A. -- for the utility Commission.

4 Q. So --

5 A. Or Utility Division, Corporation Commission.

6 Q. So you do know that the proper name of a
7 corporation is its corporate name? And how would you know
8 what the proper name of a corporation is?

9 A. Well, you would furnish that on the
10 application.

11 Q. But let's say that you didn't believe that
12 that was the right name. How would you verify it was a
13 corporate name?

14 A. We could check with Corporation Commission
15 corporations section.

16 Q. It would be the name on the articles of
17 organization or on the articles of incorporation?

18 A. Yes, I would think so.

19 Q. Is it entirely possible, Mr. Bostwick, that a
20 corporation's proper name could be filed and yet, under
21 Arizona law, not have any requirement to file a d/b/a or
22 the equivalent of a nickname?

23 A. I said this again and I will say it one more
24 time. I am not a lawyer so I don't want to quote the law.

25 Q. I won't go any further. I think I made my

1 point.

2 You were also handed, Mr. Bostwick, a copy of
3 our application to discontinue service under LiveWireNet.
4 Do you remember that?

5 A. I vaguely do.

6 MR. WETHERALD: Do you have a copy for him or
7 should I just hand him --

8 MS. SCOTT: I think you can just hand him what
9 you have.

10 MR. WETHERALD: Okay.

11 BY MR. WETHERALD:

12 Q. Starting on about line 2, if you could start
13 LiveWire must, right after, would you read once again what
14 you read yesterday?

15 ALJ DION: Mr. Bostwick, just before you do,
16 just identify for me and give me the page number what you
17 are looking at.

18 THE WITNESS: Phone Company Management Group,
19 LLC, formerly known, it is a letter dated July 31st, 2002.
20 It is on page 2.

21 ALJ DION: And you are reading from page 2?

22 THE WITNESS: Right.

23 ALJ DION: Okay. Has that been marked,
24 Mr. Wetherald?

25 MR. WETHERALD: Well, she gave it to him to

1 read yesterday. I don't know if she marked it.

2 MS. SCOTT: It is already part of the record,
3 Your Honor. But, no, I did not mark it yesterday.

4 ALJ DION: Okay, Mr. Bostwick.

5 THE WITNESS: Accordingly, and pursuant to
6 Commission Rule R 14-2-1107, LiveWireNet must make an
7 application to discontinue local exchange service in order
8 to effect transfer of LWN's membership interest and
9 LiveWireNet to On Systems Technology, any transfer of
10 LiveWireNet's certificate of convenience and necessity to
11 On Systems Technology. The sale of LWN's membership
12 interest --

13 BY MR. WETHERALD:

14 Q. That's fine for just a moment. Okay. Does
15 this say that this was done in order to effect the
16 transfer or that we already did the transfer?

17 A. It is not past tense that I can see.

18 Q. Right, it is not. So this wouldn't indicate
19 that we had transferred the CC&N. We were making this
20 application so we could transfer the CC&N upon Commission
21 approval; would that be a fair statement? That's pretty
22 much what this says, doesn't it?

23 A. It says that, that portion of it.

24 MS. SCOTT: Your Honor, I am going to ask for
25 a clarification of the question to the witness. Is he

1 speaking with respect to the transfer to On Systems or
2 from LiveWireNet to On Systems?

3 I am going to ask that he be clearer of the
4 question to the witness on that point.

5 MR. WETHERALD: I am right now just going with
6 the first sentence that -- you gave him this to indicate
7 that there has been a transfer of some kind to On Systems.
8 I want to make this clear that we hadn't transferred
9 anything. That's part of what this process was.

10 Secondly, I am going to have him finish
11 reading down below with the next sentence that starts this
12 application is being filed.

13 BY MR. WETHERALD:

14 Q. If you want to read that line.

15 ALJ DION: Okay. But, again, we are talking
16 about the transfer to -- the proposed transfer is your
17 position -- to On Systems, is that correct?

18 MR. WETHERALD: Well, Your Honor, part of the
19 confusion in this is that, and you know whether it is --
20 you know, you hire out-of-state attorneys. Sometimes they
21 don't know the procedures or whatever. But there was a
22 process going on here that this document is going to show
23 when he reads it that was simply that we, for whatever
24 reason, and I, you know, right now you can't go back and
25 try and straighten this out, but I can tell you that this

1 makes it clear that the intent was to discontinue services
2 with PCMG and, at the same time, file for a new
3 application with The Phone Company of Arizona Joint
4 Venture and then to transfer those customers from one
5 entity to the next once the Commission approval had
6 happened.

7 Now, this may have been a three-step process
8 for whatever reason, going from LiveWireNet to On Systems
9 to whatever. But the intent was to take the customers
10 that were currently being served by PCMG and move them to
11 the joint venture.

12 The next line makes that extremely clear. If
13 he will read that, I think it will make clear the intent
14 of the parties when they filed this application.

15 MS. SCOTT: And, Your Honor, I was just
16 attempting to get clarification whether his initial
17 question to Mr. Bostwick was with regard to the
18 LiveWireNet/On Systems transfer.

19 MR. WETHERALD: Oh, I see. Yes.

20 ALJ DION: Okay. So we are talking about the
21 transfer of the LiveWire CC&N --

22 MR. WETHERALD: Right.

23 ALJ DION: -- to On Systems, is that correct,
24 Mr. Wetherald?

25 MR. WETHERALD: Yes.

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1 ALJ DION: Mr. Bostwick?

2 What did you want him to read?

3 BY MR. WETHERALD:

4 Q. The next sentence that starts on line -- this
5 application is being filed simultaneously, could you read
6 that sentence.

7 A. This application is being filed
8 simultaneously with the application of The Phone Company
9 of Arizona Joint Venture in which On Systems Technology is
10 a partner and which will continue as the local exchange
11 service provided by LiveWireNet upon the grant of that
12 application.

13 Q. So is there anything in these sentences that
14 you read that would lead you to believe that anybody other
15 than Phone Company Management Group or LiveWireNet service
16 had these customers prior to this transfer?

17 A. Can you repeat that question? I am a little
18 bit --

19 Q. Is there anything in this document that would
20 lead you to believe that The Phone Company Management
21 Group transferred those customers to the joint venture
22 prior to approval of the Commission?

23 MS. SCOTT: Well, Your Honor, I am going to
24 object. That is an ambiguous question and I don't think
25 the document addresses the transfer of the customers.

1 essentially equivalent of transfer of CC&N. For whatever
2 reason we probably didn't do it the way procedurally
3 Arizona likes to see it done, but the intent was never to
4 operate a company without a CC&N and do a fraudulent
5 transfer.

6 And I guess that's the point I am trying to
7 get at, maybe not very well.

8 ALJ DION: Well, and you are starting to
9 testify, too, without getting on the stand and taking the
10 oath. So I am going to essentially, just to let you know,
11 I am going to strike the last question, Mr. Bostwick's
12 answer, and what you told me --

13 MR. WETHERALD: That's fine.

14 ALJ DION: -- what you told me afterwards. I
15 am not going to consider that. But if you would like to
16 get up on the stand, you are free to do so when it is your
17 turn.

18 MR. WETHERALD: Okay.

19 BY MR. WETHERALD:

20 Q. Mr. Bostwick, yesterday you testified in your
21 redirect that the name The Phone Company of Arizona was a
22 d/b/a of the joint venture. Do you remember that?

23 A. Yes.

24 Q. Do you have any evidence that that's a d/b/a
25 of the joint venture and not a d/b/a of the partnership?

1 MR. WETHERALD: Thank you, Your Honor.

2 ALJ DION: And that's just for clarity of the
3 record because there are multiple dockets in this case.
4 And when you say the application, I feel compelled to do
5 that.

6 MR. WETHERALD: Maybe you will know, did I
7 already enter W-4?

8 ALJ DION: Yes, you did. It is the Arizona
9 Revised Statute 41-1013, or, excuse me, 1030. Yes, you
10 did.

11 MR. WETHERALD: Okay. Does he have a copy of
12 it up there?

13 ALJ DION: I would doubt it. Do you have a
14 copy of that statute, Mr. Bostwick?

15 THE WITNESS: I don't know what statute he is
16 referring to.

17 BY MR. WETHERALD:

18 Q. I will give you a copy of it. If you could,
19 read paragraph B.

20 ALJ DION: And this is W-4. It is the statute
21 I alluded to and this is paragraph B, Mr. Bostwick.

22 A. Paragraph B?

23 BY MR. WETHERALD:

24 Q. Yes.

25 A. Agent shall not base a licensing decision in

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1 whole or in part on a licensing requirement or condition
2 that is not specifically authorized by statute, rule or
3 state tribal gaming compact. A general grant of authority
4 in statute does not constitute a basis for imposing the
5 licensing requirement or condition unless a rule is made
6 pursuant to that general grant of authority that
7 specifically authorizes the requirement or condition.

8 Q. Thank you, Mr. Bostwick.

9 As you sit here today, based on your prior
10 testimony that, number one, you are unsure of the legal
11 definition of the term proper name, but you cannot show me
12 any rule or statute of this Commission or state that would
13 require me to file a d/b/a with this Commission, can you?

14 A. I am not a lawyer, so I can't answer that.
15 You asked me legally.

16 Q. No. I said that you said you are not a lawyer
17 earlier, you don't know the legal definition of the term
18 proper name.

19 A. Right.

20 Q. But can you point me to any rule or statute in
21 Arizona or this Commission that specifically requires the
22 filing of a notification to the Commission of an assumed
23 business name or trade name?

24 A. The only one that I can point to is the proper
25 name that you gave me for reading the ACC.

1 Q. And you don't know what the term proper name
2 means, do you?

3 A. Based on the ACC, I do, on the rule. We have
4 it in the application, the corporate name and the d/b/a.

5 Q. So are you saying that the application is the
6 equivalent of a rule?

7 A. I didn't say that. I just said that's what we
8 go by.

9 Q. Okay. Moving on, Mr. Bostwick. You testified
10 yesterday in regards to Exhibit JB-4 of your direct
11 testimony. Could you turn there for me. Are you there?

12 A. Yes, I have it.

13 Q. Okay. If I remember correctly, Mr. Bostwick,
14 what you essentially testified in this document regarding
15 was, and I am trying to remember this, was that the reason
16 you have the right to rely upon the article that I have
17 called into question many times, for which you prior
18 testified you had no idea where it came from or how it got
19 into your possession and you did no due diligence --

20 MS. SCOTT: Your Honor, I am going to object.
21 I think that is a mischaracterization of the testimony and
22 he is also starting to testify through his questions at
23 this point.

24 ALJ DION: Yes. Mr. Wetherald, I am going to
25 ask you: What is the gist of your question to

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1 Mr. Bostwick?

2 MR. WETHERALD: Well, the gist of the question
3 is simply that he used this letter from the State, I am
4 assuming it is from the State of Iowa, as justification as
5 to why this other document should be relied upon.

6 ALJ DION: Which other document?

7 MR. WETHERALD: Essentially it would be his
8 exhibit, it would be his Exhibit JFB-8.

9 ALJ DION: 8?

10 MR. WETHERALD: Correct.

11 ALJ DION: All right, Mr. Wetherald. Ask your
12 question. We got into the bankruptcy issue a little bit
13 yesterday.

14 MR. WETHERALD: This isn't about the
15 bankruptcy issue yesterday. Mr. Bostwick earlier
16 testified in November that I had a series of questions
17 that basically asked him if he knew where this document
18 had come from.

19 BY MR. WETHERALD:

20 Q. Do you remember those series of questions?

21 ALJ DION: I remember your questioning, you
22 know, kind of the authenticity so to speak of the
23 document.

24 MR. WETHERALD: Right. Mr. Bostwick yesterday
25 essentially addressed that issue, or Ms. Scott did with

1 Mr. Bostwick, by going back to this letter in JB-4 and
2 reading a paragraph that referenced this very same
3 document. It would be on the very last page, paragraph 5
4 of JB-4.

5 ALJ DION: Yes. Really the document is just
6 stating what the author of the letter essentially is
7 stating, that staff of that particular division found
8 out -- I don't necessarily, I don't necessarily see where
9 it is quoting this particular article.

10 MR. WETHERALD: I didn't say quoting. They
11 used it as a reference.

12 ALJ DION: I don't even see they say they
13 relied on it. There is no footnote. How do I know they
14 used this particular article for this information?

15 MR. WETHERALD: That was going to be exactly
16 my point, that yesterday Ms. Scott basically asked the
17 question about the reliance on this article and the fact
18 that it was referenced in this letter, evidently that that
19 was justification, because of the totality of the
20 evidence, to allow it in making it admissible. We can go,
21 we can go back and read it, but, I mean, that was
22 essentially the gist of where she was coming from.

23 MS. SCOTT: And, Your Honor, I would object.
24 That was not the gist of my line of questioning yesterday.
25 I didn't even refer to JFB-8 and I was referring only to

1 A. I don't remember.

2 Q. Have you ever talked to anybody at the State
3 of Iowa?

4 A. I don't recall any conversation.

5 ALJ DION: I am going to clarify that. State
6 of Iowa is a big place.

7 Have you ever talked to anybody at the State
8 of Iowa, what would be known as the Public Utility
9 Commission?

10 THE WITNESS: I have at one time, yes.

11 ALJ DION: Regarding this case?

12 THE WITNESS: I did some brief research. And
13 I can't tell you. I would have to go back to my notes.

14 ALJ DION: Okay.

15 BY MR. WETHERALD:

16 Q. Did you discuss this letter?

17 A. Did not.

18 Q. And you don't know who at Iowa you talked to?

19 A. Oh, I have got notes on who I talked to in
20 Iowa.

21 Q. But you don't recall, sitting here, who in
22 Iowa you talked to?

23 A. It was someone from the PC, or whatever.

24 Q. Did you talk with John Ridgeway?

25 A. I don't recall that name.

1 MS. SCOTT: -- it, the question at least.

2 ALJ DION: If you wish it, I will rule on it.
3 Do you want to rephrase it?

4 MR. WETHERALD: I will rephrase it.

5 ALJ DION: Okay.

6 BY MR. WETHERALD:

7 Q. Mr. Bostwick, throughout this whole
8 proceeding, I have asked you numerous times whether or not
9 you did any independent research or talked to anybody to
10 verify the allegations being made against me, both in the
11 JF-8 article, JFB-8 article, whatever article, in Count
12 II. Do you remember those questions?

13 A. What question are you asking me?

14 Q. I am asking: Have you talked to anybody other
15 than just looking at this, these paperworks, to verify the
16 allegations contained in them?

17 A. I talked to someone in Iowa. And I don't
18 remember the name. I could get my notes and go back and
19 look. But I didn't talk about this letter.

20 Q. So you didn't talk about the allegations
21 contained in paragraph 5?

22 A. Not about this letter.

23 Q. Okay. So, Mr. Bostwick, if the State of Iowa
24 received the same bad information that was given to you,
25 isn't it possible that you are relying on documents that

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1 are as flawed as possibly the same documents you are
2 relying on here?

3 A. I don't know what the State of Iowa had which
4 was as bad.

5 Q. But that's the problem. You didn't find out,
6 did you?

7 A. They didn't tell me.

8 Q. You didn't ask, did you?

9 A. I am not looking for bad. I am just looking
10 for information.

11 Q. But you are not doing anything to find out
12 personally yourself whether the allegations or information
13 being given to you is accurate or true, are you?

14 A. Consider -- concerning this letter I didn't
15 talk to anyone in Iowa about it.

16 ALJ DION: Let me interject. I think I have
17 got the point.

18 Mr. Bostwick, Mr. Wetherald's question
19 succinctly is, and you stated you did not do any
20 independent research about this letter which makes these
21 various allegations regarding other PUCs, and whatnot, you
22 said that, therefore, if that information contained in
23 that letter is flawed, which is a possibility, you are
24 possibly relying on that letter to your detriment if you
25 did not independently verify the things that are in the

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1 letter. Isn't that correct?

2 THE WITNESS: That's correct. I didn't do any
3 further research on the information contained in the
4 letter.

5 ALJ DION: That's your point, isn't it,
6 Mr. Wetherald?

7 MR. WETHERALD: Yes, that was my point. Thank
8 you.

9 ALJ DION: Okay.

10 BY MR. WETHERALD:

11 Q. Mr. Bostwick, I am going to --

12 Can you take judicial reviews? These are
13 applications for a CC&N for CLEC. I don't have an extra
14 copy but somebody could get you one. I am just going to
15 ask him real quick.

16 ALJ DION: Mr. Wetherald, is this an
17 application, just a blank application you printed off the
18 Arizona --

19 MR. WETHERALD: Yes.

20 ALJ DION: -- web site, the Commission's web
21 site?

22 MR. WETHERALD: Yes.

23 ALJ DION: Okay.

24 BY MR. WETHERALD:

25 Q. Yesterday you were asked whether or not it was

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1 Q. But you are using the issue of whether or not
2 I filed bankruptcies as a count of indictment, if you
3 will, as to my fit and properness?

4 A. It paints a picture of you, yes.

5 Q. Is there any rule or statute that would
6 prohibit me from holding a CC&N because I filed
7 bankruptcy?

8 A. Well, I can't speak to the statute because I
9 am not a lawyer.

10 Q. How about the rule?

11 A. I am sorry?

12 Q. How about the rule?

13 A. I am not aware of the rule per se saying
14 bankruptcy. I can't, I am not aware of that word
15 appearing.

16 Q. Okay. If you would turn with F --

17 Was it F-3, the label for the --

18 MS. SCOTT: S-3 is the Staff exhibit of the
19 data responses you submitted.

20 BY MR. WETHERALD:

21 Q. Could you look at F-3.

22 ALJ DION: S as in Sam.

23 MS. SCOTT: S.

24 MR. WETHERALD: I have been mishearing it.

25 ALJ DION: How many more questions do you

1 MR. WETHERALD: Your Honor, can I respond to
2 that?

3 ALJ DION: Briefly.

4 MR. WETHERALD: I will.

5 One of the issues here, and I think this is
6 more of an issue that I can address, I am not necessarily
7 saying that somebody submitted these inaccurately, what I
8 am saying, I want to make sure that those are clear that
9 those representations may not have been made by me.

10 ALJ DION: Well, now, you know, this is going
11 to get into a real sticky situation real fast. Because I
12 am assuming most of these documents were signed by
13 Mr. Glaser and his law firm. And Mr. Glaser and his law
14 firm have left the building so to speak.

15 MR. WETHERALD: Okay.

16 ALJ DION: Based upon a motion which you
17 supported.

18 MR. WETHERALD: Okay.

19 ALJ DION: I am going to take -- I have not
20 heard an allegation nor am going to hear an allegation
21 that there has been misconduct between Mr. Glaser or
22 actions by his firm that have impacted you.

23 Mr. Glaser, acting as your counsel, filed
24 these particular documents on behalf of the company. And
25 therefore, as counsel, as an agent, whatever the theory

1 you want to put it in, he filed those on behalf of the
2 company, and I am going to -- or didn't file them on
3 behalf of the company -- and I am going to take those
4 responses based upon that, because I don't have any
5 allegations of misconduct that things were filed behind
6 your back, that these filings were made in essence by
7 either PCMG or any of the other related entities.

8 MR. WETHERALD: I guess, and I am not saying
9 that they weren't filed on behalf of the company, I am
10 trying to basically make sure, because I have not reviewed
11 word for word all of these documents. So...

12 MS. SCOTT: Your --

13 MR. WETHERALD: But I also want to point out
14 that, even though I believe legal counsel did, I am not
15 the originator of some of this information. Maybe that's
16 something I should talk about. I am not alleging
17 wrongdoing at all. I mean but maybe this is a rule I
18 shouldn't even be going in.

19 ALJ DION: Probably, because since you are
20 representing yourself and the companies, you might have a
21 conflict of interest.

22 MR. WETHERALD: Okay.

23 ALJ DION: And we are going to have a larger
24 problem.

25 MR. WETHERALD: Then I will withdraw the

1 question.

2 ALJ DION: Okay.

3 BY MR. WETHERALD:

4 Q. Again, just very lastly, Maureen Scott this
5 morning asked you a question about one of the data
6 requests in which you responded that PCMG did not have a
7 management chart or an organizational chart. Do you
8 remember that?

9 A. Yes.

10 Q. Does the absence of an organizational chart
11 equate to the absence of management structure?

12 A. I believe it does.

13 Q. So it is entirely impossible that a management
14 structure couldn't exist if it wasn't somehow put down on
15 paper on a chart?

16 A. I didn't say that. I just said that you asked
17 me what I thought. And I told you.

18 Q. But would you agree that the absence of a
19 chart on paper is not necessarily the same thing as the
20 absence of actual structure?

21 A. Well, you had indicated that there is no
22 organizational chart. That to me indicates that there is
23 no structure.

24 Q. Could it just indicate that I never drew one
25 up?

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1 A. I am sorry, sir?

2 Q. Could it just indicate that I never put one on
3 paper?

4 A. Maybe you should have.

5 Q. I am not arguing whether I should or shouldn't
6 have. But that is different whether or not management
7 structure does or doesn't exist, isn't it?

8 A. Well, we don't have a picture that it does.
9 All we have is a picture that it doesn't.

10 Q. Now you are making an assumption that it
11 doesn't based on lack of information; would that be
12 accurate?

13 A. You didn't furnish anything to the contrary.

14 MR. WETHERALD: Okay. I don't have any
15 further questions.

16 ALJ DION: What we are going to do is we are
17 going to take our morning break, 15 minutes. I may have
18 some questions for you, Mr. Bostwick, so you are not
19 excused at this point.

20 We will get back here at ten to 11:00. Then
21 we will proceed. If I have any questions for
22 Mr. Bostwick, I am hoping that will be, you know, at most
23 10 minutes, perhaps 15 minutes. And then we will begin
24 with the Qwest witness sometime around 11:00 or five after
25 11:00.

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1 correct?

2 A. That's correct.

3 Q. And The Phone Company Management Group, both
4 of those companies, LiveWireNet and Phone Company
5 Management Group, Limited Liability Company, is that
6 correct?

7 A. Yes.

8 Q. Okay. And subsequently it is Staff's
9 assertion that PCMG then made various advertising
10 overtures to the public and through billing, they used the
11 name The Phone Company of Arizona, is that correct?

12 A. When you say that --

13 Q. Not the LLP, The Phone Company Management
14 Group used the name The Phone Company of Arizona when it
15 billed its customers or made advertising, things like
16 that; isn't that what you told me?

17 A. Well, my understanding, Your Honor, is that
18 The Phone Company of Arizona Joint Venture did go by the
19 Phone Company of Arizona who did the billing and
20 advertising.

21 Q. Okay. But there has been an assertion, has
22 there not been, by Mr. Wetherald that The Phone Company of
23 Arizona is a d/b/a of The Phone Company Management Group?
24 Didn't he say that? I am not saying you said that. I am
25 saying he said that.

1 A. I don't recall exactly what he said. I
2 can't --

3 Q. Okay. Was there any information provided to
4 the Commission that would have notified the Commission of
5 such an occurrence, in other words, that PCMG was using
6 the d/b/a The Phone Company of Arizona?

7 A. I am not aware anything.

8 Q. And, in fact, Mr. Wetherald showed you what is
9 known as W-2, that was the application for register of
10 trade name, is that correct?

11 A. That's correct.

12 Q. And it says that they are not, while the
13 registration of trade names and trademarks is not legally
14 required in Arizona, it is an accepted business practice
15 here, is that correct?

16 A. That's what the statement says.

17 Q. Okay. And essentially his argument is that,
18 because of the fact that they are not, that trade names
19 and trademarks are not legally required in Arizona by at
20 least the Secretary, that that application of the
21 Secretary's language should be applied to the Corporation
22 Commission, is that correct? That's his assertion?

23 A. That's his assertion.

24 Q. Is it Staff's assertion that utilities have a
25 different duty to the Corporation Commission than to the

1 Secretary?

2 A. That's correct.

3 Q. Okay. However, there is really no rule in the
4 Commission rules indicating that, if you use a d/b/a and
5 it is not within your application, your original
6 application, or a name change notification, if you use a
7 d/b/a or change your name, that you must inform the
8 Commission? Is there a rule to that effect, if you change
9 your name or if you use a d/b/a you must inform the
10 Commission of that?

11 A. If I am asked to cite the rule, I couldn't
12 cite it, but I understand where you are going with this.
13 And I believe that the, when a CC&N is worded and the
14 language put in there, is that they will follow all rules.
15 And the proper rules are following the proper rules. And
16 the Commission would have no way of filing a name change.
17 So a filing would have to be made. Also we would have to
18 know what tariff would have to be changed.

19 Q. Okay. So what Staff's position is, as I
20 understand it, is that the, from a public policy
21 perspective, if a company changes its name, it should
22 inform the Commission so that the Commission can properly
23 react to customer complaints as well as reacting to the
24 changes that would need to be made to various filings
25 including the tariff, is that correct?

2920000002

1 A. That's correct.

2 Q. All right. But the requirement of proper name
3 regarding the filing of, regarding the filing of proper
4 name, that seems to be the area of debate between you and,
5 or Staff -- excuse me -- and Mr. Wetherald, is that
6 correct?

7 A. It appears to be.

8 Q. Okay. If you give me a moment.

9 Just to follow up on Mr. Wetherald's analogy
10 regarding proper name. We were talking a little bit about
11 d/b/as and he had a proper name analogy as to what
12 someone's proper name is.

13 Their proper name is generally the name that,
14 you know, they are referred to either on record or
15 something like that. But sometimes besides nicknames,
16 people have akas, don't they, Mr. Bostwick?

17 A. Yes, they do.

18 Q. And I think the best way to analogize a d/b/a
19 is sort of an aka; doing business as is another way -- it
20 is essentially an aka, isn't that correct?

21 A. Yes.

22 Q. And did the forms, you know, when we talked a
23 little bit about the forms regarding the applications for
24 telecommunications, do they ask for the d/b/a?

25 A. Yes.

1 Q. And what is the reason for that?

2 A. Because a corporation would be doing many
3 affiliates. So they might have a subsidiary or affiliate
4 of some sort and they might just do business under a
5 different name for that particular function or activity.

6 Q. Isn't it just like you would ask for
7 somebody's aka, you just want to know any and all names
8 that that person or the company goes by so that you are
9 familiar with that entity; isn't that why you ask that,
10 Mr. Bostwick?

11 A. When you say the aka, that's also known as.

12 Q. Right.

13 A. Yes. There could be people out there that
14 know a company by a certain name and not know the
15 corporate name.

16 Q. Okay. My point is: Is that the reason, is
17 the reason that that question is asked, is so that Staff
18 has as much information to identify a particular entity
19 either by its true corporate name or its d/b/a so that it
20 can appropriately monitor that utility in the state of
21 Arizona?

22 A. That's correct.

23 Q. Okay. But still you admit that the rule
24 simply says proper name --

25 A. That's right.

1 Q. -- is that correct? It doesn't say names?

2 A. It doesn't say names.

3 Q. Doesn't say d/b/as?

4 A. Doesn't say d/b/a or aka.

5 Q. So it depends on the interpretation, wouldn't
6 you say?

7 A. Correct.

8 Q. Now, although PCMG -- LiveWireNet, LLC changed
9 its name to PCMG, is that name filing sufficient notice
10 for Staff regarding the CC&N and the way it would
11 essentially remain with LiveWireNet although it has a new
12 name, or is it Staff's opinion that something happened
13 during that name change as well that would necessitate a
14 filing for a transfer of CC&N from LiveWire to PCMG?

15 A. Well, filing for the name change, one would
16 also have to also file a tariff. So you would have two
17 documents. And, if there was a change in ownership, that
18 would be something different.

19 Staff's position, I believe, is the fact that
20 they changed the name, records reflect that at the
21 Corporation Commission. It is somewhat questionable if
22 they did that right since it is done by On Systems
23 Technology and coming down, acquiring LiveWireNet, and
24 then changing the name right away.

25 Q. Was --

292000003

1 A. We don't know if there was an entity change
2 and I think that has been what is questionable.

3 Q. Okay. Is Staff aware of any assets that were
4 sold in the purchase by On Systems and subsequent name
5 change to PCMG? Were there any assets sold?

6 A. I am not aware of any.

7 Q. Okay. All right. So is it Staff's
8 understanding that it was just simply an ownership change
9 or a stock change or a membership change?

10 A. I believe Staff's position is that it is just
11 a, it is a name change that was honored. We don't know to
12 the extent of how that was done. It is somewhat a legal
13 issue.

14 Q. Okay. Could it be possible, though, that if a
15 company changed its name and changed management, changed
16 other things, that the Commission would be able to review
17 that name change and determine whether or not a transfer
18 of CC&N might be necessary?

19 A. When you say "other things," depending what
20 those other things are. If they were assets or change in
21 ownership, that would constitute a different entity
22 entirely so we would want to look at that closer.

23 Q. My question is this: If it is just simply a
24 name change and management structure, nothing changed,
25 then perhaps that is sufficient.

292000003

1 But if the Commission issued a CC&N to
2 LiveWireNet based upon its financial and technical
3 capability at that time, and one of those reasons was
4 perhaps the experiences of the managers or the employees
5 or things like that, an ownership change occurs in which
6 those employees are removed and new employees are
7 inserted, isn't that a situation where the Commission
8 could step in and say this is more than a name change, the
9 underlying reasons we granted the CC&N have changed
10 because management has changed, and this new group of
11 managers may not be technically sufficient to hold a CC&N
12 in the State of Arizona, is that possible?

13 A. That's possible.

14 Q. I am not saying that happened here.

15 A. No, that's possible.

16 Q. Okay. But that is one of the powers of the
17 Corporation Commission, is to review the CC&N of companies
18 of utilities, isn't that correct?

19 A. That's correct.

20 Q. And it is for any reason, not just for reasons
21 stated in the application. It might be a myriad of
22 different pieces of information that might come to the
23 Commission, that the Commission might determine that a
24 review is necessary to determine if the company is a fit
25 and proper entity, isn't that correct?

292000002

1 A. That's correct, Your Honor.

2 Q. Okay. We talked a little bit about financial
3 viability and I am not really going to go into it. I
4 think we talked about it even in your direct testimony.

5 But although this is kind of moving into
6 Count V a little bit, it is my understanding that some
7 financial records were requested of PCMG, On Systems, et
8 cetera, is that correct, by Staff, is that correct?

9 A. That's correct, Your Honor.

10 Q. And that information was not given to Staff,
11 is that also correct?

12 A. That's correct, Your Honor.

13 Q. So it is fair to say that Staff does not have
14 an entirely accurate picture of the financial status of
15 those entities, is that fair to say?

16 A. That's correct.

17 Q. And so the information that you are relying
18 upon regarding the financial viability of PCMG, LiveWire,
19 et cetera, is either information that was submitted by
20 them or, if certain pieces of information weren't
21 submitted, you received them from other entities, perhaps
22 Qwest, perhaps Fred, is that correct?

23 A. That correct.

24 Q. That's how the investigation went?

25 A. Right.

292000003

1 Q. Now, we had a little talk about bankruptcy and
2 the fact that it may not appear in the application. And I
3 think Mr. Wetherald questioned whether the Corporation
4 Commission can subsequently withdraw his CC&N based upon
5 the fact, and maybe not the sole fact, of someone filing
6 bankruptcies.

7 The fact that somebody has filed for
8 bankruptcy or has filed bankruptcy doesn't in and of
9 itself render their application to be denied or that an
10 existing CC&N would be revoked, isn't that true?

11 A. That's true.

12 Q. It is just a situation where you look at, I
13 think it was amply stated, the totality of the
14 circumstances, of the circumstances of what is happening
15 in each individual situation, is that correct?

16 A. That's correct.

17 Q. Although we may not ask or the Commission may
18 not ask for bankruptcy information, if that information is
19 provided to the Commission, then that is certainly
20 something it could consider in reviewing a company's CC&N,
21 is that correct?

22 A. That's correct, Your Honor.

23 Q. And isn't that because bankruptcy can really
24 affect -- you know, we talked a little bit about
25 bankruptcy and how it affects the management and technical

1 ability, or may not affect the management and technical
2 ability of the corporation but it certainly affects the
3 financial ability of the corporation. And it might rather
4 affect it if the company or the principals have bankruptcy
5 in their past. Isn't that something that would make
6 something like acquiring capital a little bit more
7 difficult?

8 A. Yes. It would make it a little bit more
9 expensive.

10 Q. If the costs of capital are higher, especially
11 in a competitive market, isn't it going to be a
12 significant disadvantage to that entity?

13 A. It would.

14 Q. So the lack of access to capital or the
15 capital being an expensive or more expensive component may
16 lead the Commission to believe that a company may not have
17 the financial viability to compete effectively in the
18 telecommunications arena, isn't that possible?

19 A. That's possible.

20 Q. Additionally, things that happen after the
21 fact, even though we have asked for -- I believe that the
22 application asks have you had any judgements or officers
23 been criminally liable, things like that, asks within the
24 past five years, or ten years now maybe it is, is that
25 correct?

1 A. Yes.

2 Q. But that doesn't preclude the Commission from
3 things that happened subsequently to granting a CC&N. In
4 fact if the Commission were to learn one of the officers
5 or directors of a company was criminally indicted,
6 wouldn't that spur at least an investigation or wouldn't
7 that be a reason for the Commission to review whether or
8 not that company should maintain a CC&N in this arena?

9 A. Yes.

10 Q. You can think of a lot of things. MCI filed
11 bankruptcy, various things. Those are areas in which
12 things happened after the granting of the CC&N, yet the
13 Commission has the ability to review those companies in
14 order to determine whether they are a fit and proper
15 entity, is that correct?

16 A. That's correct, Your Honor.

17 Q. And, in fact, I think you told me that
18 subsequent to this matter, although I am really, I
19 understand it is in your notes, but I have not really
20 reviewed it, there is a, there is an SEC complaint in this
21 case that happened subsequently, is that correct?

22 A. Yes, Your Honor.

23 Q. And a temporary order issued based upon that
24 complaint, isn't that also correct?

25 A. Yes, Your Honor.

2920000003

1 Q. And that is something Staff, even though this
2 is after the complaint and even after the CC&N is issued,
3 it is something that the Staff and the Commission would
4 look at in determining whether or not that was something
5 for the Commissioners to review, isn't that correct?

6 A. Yes, Your Honor.

7 Q. We talked about it three months ago and we
8 talked a little bit about the consent order in Oregon,
9 Mr. Bostwick. Do you remember that?

10 A. Yes, I do.

11 Q. Do you remember what exhibit that is?

12 MR. WETHERALD: It is Washington.

13 BY ALJ DION:

14 Q. Mr. Bostwick, it might be Washington. If you
15 can find it in your exhibit list.

16 MS. SCOTT: Your Honor, I believe there are
17 consent decrees in both states.

18 ALJ DION: Okay. Where is the one in Oregon,
19 Ms. Scott?

20 MS. SCOTT: To the best of my knowledge we
21 asked Mr. Wetherald to provide that in a data request and
22 it was never provided.

23 ALJ DION: All right. Where is the one for
24 Washington, then?

25 MR. WETHERALD: It is JFB-6.

1 THE WITNESS: Yes, JFB-6 for State of
2 Washington.

3 ALJ DION: Okay.

4 BY ALJ DION:

5 Q. Now, I am going actually, I am going to
6 actually move on, Mr. Bostwick, from that. I don't need
7 that.

8 Regarding the other issue, it is Staff's
9 position that it is unknown as to how many customers that
10 PCMG served, is that correct, Mr. Bostwick?

11 A. We don't know how many they served. We know
12 how many mailings we made.

13 Q. Okay. And you have some information from
14 Qwest that you relied upon, but you really don't have an
15 accurate customer count; is that fair to say?

16 A. That's fair to say.

17 Q. And customer count would have changed from
18 month to month from the time it started doing business in
19 May, when I assume it would be lower than the time as it
20 grew, so it is just, it is just something Staff doesn't
21 know, is that right?

22 A. That's correct.

23 Q. Was there a tariff filed by either PCMG or The
24 Phone Company of Arizona?

25 A. There was a tariff, yes.

1 Q. Filed by PCMG?

2 A. It was with the application. I am trying to
3 think of the name on it. There is one on file. I don't
4 have it as an exhibit or with me.

5 ALJ DION: Okay. I think that's it,
6 Mr. Bostwick, if you just bear with me.

7 MS. SCOTT: I have a few follow-ups, Your
8 Honor.

9 ALJ DION: Well, I think we have gone, I have
10 gone long enough. If you have a question about
11 Mr. Wetherald and the application that he presented of
12 Mr. Bostwick, do you have a question about that? Because
13 that was kind of new.

14 MS. SCOTT: Yes.

15 ALJ DION: I will allow that in fairness
16 because that was something new we did talk about. If you
17 have got a question, go ahead and proceed.

18 MS. SCOTT: Your Honor, I have questions, a
19 few questions, one question on the name change or the name
20 issue. I have a question to follow up on your questions
21 regarding financials to correct what has been said. And I
22 have a question on the Iowa utility board letter that was
23 raised by Mr. Wetherald.

24 ALJ DION: Well, I will let you do the first
25 couple but we are starting to jockey around too much. I

1 think we -- at some point you are going to be stuck with
2 the answers that the witness gives us.

3 But if you have questions about the
4 application, go ahead. If you have questions about the
5 name change, then I will allow that. But, again, we are
6 going to start going back and forth and turning this into
7 a situation where, you know, I am going to have multiple
8 answers from the same witness just to multiple questions.

9 So go ahead and proceed with those two
10 questions, Ms. Scott.

11

12 FURTHER REDIRECT EXAMINATION

13 BY MS. SCOTT:

14 Q. With respect to the d/b/a issue, Mr. Bostwick,
15 is it your opinion as a nonlawyer, is it your opinion that
16 the requirement to file the proper name with the
17 Commission is effectuated by the requirements of the CC&N
18 application which require that the d/b/a be filed as well?

19 MR. WETHERALD: Objection, Your Honor. As a
20 nonlawyer he can't make a legal conclusion. His opinion
21 would be useless.

22 ALJ DION: I think I have covered, I think I
23 have actually covered that, Ms. Scott, to be honest. It
24 is fairly clear that Staff's position is that the rule
25 states proper name and proper name includes d/b/a. That

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1 A. Page 1 says The Phone Company of Arizona
2 profit and loss January through December 2002.

3 Q. Okay. And is that the first income statement
4 we have seen for The Phone Company of Arizona?

5 A. Yes, that's the only one.

6 Q. Okay. And do we know who prepared it?

7 A. No, I don't know.

8 Q. Okay. And on page, I guess it is also called
9 page 1, the following page, can you tell me what that is
10 entitled?

11 A. Phone Company of Arizona balance sheet as of
12 December 31st, 2002.

13 Q. And do we know who prepared that docket?

14 A. No.

15 Q. Okay. Thank you.

16 MR. WETHERALD: Just a point of clarification,
17 it really isn't a question. Maybe I should -- I don't
18 know, but part of that was also a CD which had all the
19 financial records for the companies. I mean it was given
20 to them, the Commission, along with that letter. So...

21 MS. SCOTT: Your Honor, we did not receive any
22 financial records.

23 MR. WETHERALD: It is part of the attachment
24 that I sent to you and docketed October 7, 2003 by the
25 Commission.

1 Honor.

2 BY MS. SCOTT:

3 Q. Mr. Bostwick, do you recall the discussion on
4 recross with Mr. Wetherald regarding the letter of, the
5 August 23rd, 2002 letter sent by the Iowa utilities board?

6 A. Right.

7 MR. WETHERALD: Objection, Your Honor.

8 ALJ DION: We are not going to get -- you know
9 what? We talked about this too much. I allowed
10 Mr. Wetherald some recross on stuff because we had gotten
11 into information that was not presented in Mr. Bostwick's,
12 in Mr. Bostwick's questions. But responses to
13 Mr. Wetherald's cross, I generally would not have allowed
14 Mr. Wetherald to recross but some of those items included
15 new exhibits that had not been entered so I found it only
16 fair to let him do that. So I am going to sustain the
17 objection.

18 Any other questions, Ms. Scott?

19 MS. SCOTT: No.

20 ALJ DION: Mr. Bostwick, you are excused.

21 THE WITNESS: Thank you.

22 ALJ DION: I don't know if you will be called
23 by someone later on but for now you are excused.

24 THE WITNESS: Possibility exists.

25 (The witness was excused.)

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1 ALJ DION: Yes.

2 Why don't we move on to Qwest's witness, or
3 the witness from Qwest rather.

4 (Whereupon Monica Luckritz was duly sworn by
5 the Certified Court Reporter.)

6 MS. DWYER: Theresa Dwyer on behalf of the law
7 firm of Fennemore Craig. We are not calling the witness.
8 It is a little bit of an odd position. We have been asked
9 to make the witness available. And due to the scheduling
10 conflicts, the Hearing Division and the parties were kind
11 enough to let the witness take the stand.

12 ALJ DION: That is my understanding as well.
13 Thank you for announcing.

14 Ms. Scott, do you have some questions for this
15 witness?

16 MS. SCOTT: Yes.

17

18 MONICA LUCKRITZ,
19 a witness herein, having been previously duly sworn by the
20 Certified Court Reporter to speak the truth and nothing
21 but the truth, was examined and testified as follows:

22

23 DIRECT EXAMINATION

24 BY MS. SCOTT:

25 Q. Could you just state your name and address and

1 who you are employed by for the record.

2 A. Yes. My name is Monica Luckritz. I am
3 employed by Qwest. And my address is 44 -- 4041 North
4 Central Avenue in Phoenix.

5 ALJ DION: Could I have you spell your last
6 name for the record.

7 THE WITNESS: Sure. L-U-C-K-R-I-T-Z.

8 BY MS. SCOTT:

9 Q. And are you familiar with this complaint
10 proceeding --

11 A. Yes.

12 Q. -- at all?

13 And you are familiar with The Phone Company
14 Management Group and Phone Company of Arizona, those
15 entities?

16 A. Yes.

17 Q. And did Qwest have an interconnection
18 agreement with The Phone Company Management Group?

19 A. Yes.

20 Q. Did Qwest have an interconnection agreement
21 with The Phone Company Joint Venture d/b/a The Phone
22 Company of Arizona?

23 A. Not to my knowledge, no.

24 Q. Did Qwest provide wholesale services to any of
25 those entities?

1 A. To The Phone Company of Arizona -- The Phone
2 Company Management Group, yes.

3 Q. Okay. And when did Qwest begin providing
4 wholesale services to The Phone Company Management Group?

5 A. I believe it was around the April, May time
6 frame of 2002.

7 Q. Okay. And when did Qwest stop providing those
8 services?

9 A. We discontinued processing their LSRs, which
10 is a local service request, in September of 2002.

11 ALJ DION: Now, just a point of clarification,
12 Ms. Luckritz. LSR, does it mean just new customers, I
13 mean they want a new connection for a new customer, or
14 does that also include customers who want to change their
15 service, either like to add services rather than deduct
16 services, but they want to get now call waiting or voice
17 mailing, any of those things?

18 THE WITNESS: Correct.

19 ALJ DION: Which one is it? Both?

20 THE WITNESS: No, both. They could not issue
21 any new customers. They could not issue any change on
22 existing customers.

23 ALJ DION: Okay. Could they deduct services?

24 THE WITNESS: Yes. They could send in
25 disconnects.

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1 ALJ DION: Okay. So they could disconnect
2 services, or I could say I no longer want voice mails or
3 those things?

4 THE WITNESS: No.

5 ALJ DION: They can't do that?

6 THE WITNESS: No.

7 ALJ DION: So the only thing that would
8 happen, they would have their existing accounts as is and
9 that was it, no changes would be made to those accounts
10 except to discontinue service?

11 THE WITNESS: That's correct.

12 ALJ DION: And no new accounts would be
13 established?

14 THE WITNESS: That is correct.

15 ALJ DION: Meaning new phone lines?

16 THE WITNESS: That is correct.

17 ALJ DION: Thank you.

18 BY MS. SCOTT:

19 Q. And why did Qwest stop processing the
20 company's LSRs?

21 A. There was a back balance owed and no payment
22 received.

23 Q. And had Qwest contacted the company about the
24 back balance owed?

25 A. Yes.

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1 Q. And when did the company first dispute any of
2 the amounts owing?

3 A. In December of 2002.

4 Q. Okay. Did Qwest send a disconnection notice
5 to the company?

6 A. Yes.

7 Q. And when did Qwest eventually disconnect the
8 company's service?

9 A. In March of 2003.

10 Q. Okay. And, Ms. Luckritz, what I have handed
11 you as S-6, do you recognize these documents?

12 A. Yes.

13 Q. And can you, are these letters signed by you?

14 A. They are not actually signed by me, but on
15 behalf of myself, yes.

16 Q. And are these Qwest's responses to Staff's
17 data request regarding, or are these your responses to
18 Staff's data requests regarding the issue of the monies
19 owed by The Phone Company to Qwest in this case?

20 A. Yes.

21 MS. SCOTT: Your Honor, I would ask that S-6
22 be admitted.

23 ALJ DION: Any objection? Hearing no
24 objection, S-6 will be admitted to the record.

25 BY MS. SCOTT:

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1 Q. Ms. Luckritz, has, other than this small
2 amount you received from The Phone Company, had there been
3 any additional payments on the Qwest bill?

4 A. No.

5 Q. And what is the outstanding balance at this
6 time?

7 A. Currently it is a little over \$1.9 million.

8 MS. SCOTT: Okay. I have no further
9 questions.

10 ALJ DION: Mr. Wetherald, your witness.

11

12

CROSS-EXAMINATION

13 BY MR. WETHERALD:

14 Q. Is it Luckritz?

15 A. Luckritz.

16 Q. Luckritz, I am sorry.

17 Ms. Luckritz, are you a billing representative
18 for Qwest?

19 A. A billing -- I don't --

20 Q. Representative. Are you a billing account
21 representative? Do you work in the billing department?

22 A. No, I do not.

23 Q. What do you do for Qwest?

24 A. I am in the public policy organization.

25 Q. Okay. So The Phone Company Management Group

1 questions?

2 THE WITNESS: Your Honor --

3 ALJ DION: Let me think about it.

4 THE WITNESS: Your Honor, could I just clarify
5 something as far as his last question?

6 ALJ DION: Well, I am all for clarity. Sure,
7 let me hear what you have to say, Ms. Luckritz.

8 THE WITNESS: In the interconnection agreement
9 in section 5.4, and specifically 5.4.4, it lays out very
10 clearly how a billing dispute is to be issued between
11 Qwest and a CLEC. And it is to be in writing within 15
12 days after the bill is received. And in writing is to be,
13 included in that is to be the amount, the reason for the
14 dispute. And the first time Qwest got any notification in
15 writing was in December of 2002.

16 ALJ DION: That's the first you know of, is
17 that correct?

18 THE WITNESS: Yes.

19 ALJ DION: Okay. And that's -- I don't have
20 any other questions on that.

21 Mr. Johnson, your line of questioning, sir?

22 MR. JOHNSON: Simply to clarify who has been
23 billed by Qwest and who was providing services.

24 ALJ DION: Okay. Then --

25 MR. JOHNSON: Very simple.

1 ALJ DION: -- that is very simple.

2 Who did Qwest provide service to, what entity,
3 I believe is what Mr. Johnson's question is.

4 THE WITNESS: It is my understanding Phone
5 Company Management Group.

6 MR. JOHNSON: So it was not On Systems
7 Technology?

8 THE WITNESS: Not that I am aware

9 MR. JOHNSON: So the funds are owed in your
10 view by The Phone Company, LLC?

11 THE WITNESS: Yes.

12 MR. JOHNSON: That was it.

13 ALJ DION: And as I understand it, the
14 interconnection agreement was between Qwest and The Phone
15 Company Management Group, LLC, correct?

16 THE WITNESS: Correct.

17

18 EXAMINATION

19 BY ALJ DION:

20 Q. I am going to follow up because there is
21 another way, LiveWire. The interconnection agreement was
22 not with LiveWire, is that correct?

23 A. No.

24 Q. And there is no billing to LiveWire, is that
25 also correct?

1 A. That's correct, yes.

2 Q. And it is also fair to say that the billing to
3 PCMG, according to the filings either prior to December or
4 the December filings, there are some amounts that are in
5 dispute between Qwest and PCMG, is that correct?

6 A. Yes.

7 Q. The amount may not be in dispute to Qwest but
8 there is a dispute about a portion of that bill; is that
9 also fair to say?

10 A. That's my understanding.

11 Q. Okay. I don't know if you will know this,
12 Ms. Luckritz, but in regards to establishing service in
13 interconnection agreements, is there a policy or procedure
14 that Qwest goes through kind of like a due diligence
15 standard that it has the ability to determine whether or
16 not, in establishing the interconnection agreement, this
17 is going to be a financial viable option or pursuant to
18 federal rule or statute, does it really not have that
19 option?

20 A. Well, Your Honor, we do look at a company.
21 And first of all we look to see if they have done business
22 with Qwest either in the state that they are asking to do
23 business now or in other states. And if they can't find
24 that type of situation, then they do go to Dunn &
25 Bradstreet and ask for financials.

1 Based on that, they would look at a company
2 that is going to do business as a wholesaler and have them
3 fill out a questionnaire. And based on how they fill out
4 that questionnaire, and one of the questions in the
5 questionnaire is how much business are you going to be
6 doing on a monthly basis, based on that we would ask for a
7 deposit of two times that amount.

8 And it is my understanding in The Phone
9 Company Management Group's questionnaire, they indicated
10 that they would be doing around \$4,000 a month of
11 business. Based on that, we did send a letter asking for
12 a deposit of \$8,000.

13 Q. Okay. But besides information just provided
14 to you by a company, there is a due diligence standard and
15 independent review as much as possible of the answers
16 received by that company seeking an interconnection
17 agreement; is that your statement?

18 A. We trust what the CLEC is providing on that
19 questionnaire are true answers, yes, Your Honor.

20 Q. But is there any independent verification of
21 those answers?

22 A. Do you --

23 Q. In other words, I can tell you anything I
24 wanted to tell you. But sometimes you can independently
25 verify, you might not be able to determine that they were

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1 going to do 4,000, 8,000, I understand you need to trust
2 what the CLEC says and adjust accordingly as time goes on,
3 but in regards to financials, do you, do you require an
4 audited financial set? Or do you rely upon, you know,
5 like you said, you rely upon the past business procedures
6 and other things, you might rely on Wall Street.

7 Is it Qwest's, you know, is it Qwest's policy
8 and practice to not only trust what is happening but, to
9 the extent possible, verify that those things are true?

10 A. Your Honor, under the Telecommunications Act,
11 Qwest is obligated to negotiate in good faith and to
12 provide services to CLECs in a nondiscriminatory manner.
13 I believe we don't do that. And I believe the reason we
14 don't is that could be viewed by some, including the
15 Commission I would think, as non -- as being
16 discriminatory. So we do the best that we can with what
17 we are given.

18 ALJ DION: Okay. And that's fair enough.

19 Mr. Credle?

20 MR. CREDLE: Never mind.

21 ALJ DION: You are in an odd situation because
22 you are represented by an attorney but he is not here. So
23 I am not going to allow you to ask that question. And I
24 understand, I understand that I answered what you asked.

25 Thank you very much. I don't have any further

1 questions. Thank you for your time this morning.

2 THE WITNESS: You are welcome. Thank you.

3 (The witness was excused.)

4 MS. DWYER: Your Honor, at this juncture and
5 because Qwest appeared as an intervenor, third-party
6 witness, Qwest would ask to be excused from the hearing.
7 I am available by phone if something should come up.

8 ALJ DION: Anyone have an objection?

9 MS. SCOTT: No.

10 ALJ DION: I don't have an objection. If you
11 are going to listen in on the listen line, that's fine.
12 That's up to you and your client regarding the
13 participation. However, if you would like to have from
14 this moment on --

15 MS. DWYER: Thank you.

16 (Ms. Dwyer leaves the hearing.)

17 ALJ DION: We are getting close to the lunch
18 hour.

19 Ms. Scott, who will be next on behalf of
20 Staff?

21 MS. SCOTT: Brad Morton, Your Honor.

22 ALJ DION: How long do you expect Mr. Morton
23 to testify? 15, 20 minutes? Half an hour?

24 MS. SCOTT: Probably 15, 20 minutes.

25 ALJ DION: Okay. I would like to keep going.

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1 So why don't we get Mr. Morton on the stand and go until
2 the noon hour.

3 Mr. Morton, if you would raise your right
4 hand, sir.

5

6

7 BRADLEY MORTON,
8 a witness herein, having been first duly sworn by the
9 Certified Court Reporter to speak the truth and nothing
10 but the truth, was examined and testified as follows:

11

12

DIRECT EXAMINATION

13 BY MS. SCOTT:

14 Q. Would you please state your name and business
15 address for the record.

16 A. Bradley Morton, 1200 West Washington Street,
17 Phoenix.

18 Q. And by whom are you employed and in what
19 capacity?

20 A. Arizona Corporation Commission, I am a Public
21 Utilities Consumer Analyst II.

22 Q. And what are your, what are your
23 responsibilities in that capacity?

24 A. Answering consumer calls, questioning tariff
25 violations by public utilities in the state.

Q. And I am handing you what I believe will be

1 2002 meeting, when I checked our database, we only had
2 eight complaints at that time. They were primary
3 complaints about billing, minor disputes.

4 They progressed after the meeting date I would
5 say by maybe a week or two. They increased because the
6 consumers using the service were unable to dial long
7 distance calls. When they found this unavailable, they
8 tried calling the company, and the 800 number for the
9 company was no longer in service or in some way
10 interrupted. And at that point they came to the
11 Commission.

12 As time went on over the next series of the
13 next few months, the consumer complaints changed to
14 problems with, they were supposed to use a dial around
15 service because there was a problem with long distance,
16 and they were in turn being billed large bills by the dial
17 around. So they were billing concerns.

18 We also received complaints by consumers that
19 the company wouldn't disconnect accounts, that changes
20 couldn't be made and so forth.

21 And then, after that, it was strictly the fact
22 that they were losing their service, that the service was
23 going out per documents that the Commission had sent out
24 explaining that the company was no longer going to provide
25 service as of I believe March 21st of 2003.

1 Q. Were any of the complaints by customers that
2 they couldn't get ahold of representatives at the company?

3 A. Yes.

4 Q. I am handing you what I am asking the court
5 reporter to mark as S-8. Would you please identify what I
6 have just handed you as S-8 for the record?

7 A. These are actually a total of 77 consumer
8 complaints and 110 consumer inquiries. The breakdown on
9 that is the inquiries were what we took after the company
10 ceased providing business. But we still had consumers
11 calling about billing issues, about disconnect issues, and
12 also what they had wanted was refunds for prepaid service.
13 But we broke down the classification at the point that the
14 company stopped providing service.

15 Q. Okay. In general, Mr. Morton, would you say
16 that the company cooperated with the Commission's
17 investigation of these complaints or not?

18 A. There were delays. We covered -- we had two
19 people at the company that we dealt with in various
20 stages. Vernettea Chapman I believe was one and I believe
21 Yvette Woods was the other.

22 We had a little problem. We had to explain on
23 several occasions that, when a complaint came over, that
24 there were five business days for the utility to respond
25 to the complaint. We were not getting those responses in

1 those five business days. We had problems also reaching
2 the contacts for the company that were considered
3 regulatory contacts. There would be no answer, phone out
4 of service, e-mail address not deliverable, and so forth.
5 And it pretty much continued. You know, it would improve
6 for a little while and then drop down and then go back.

7 MS. SCOTT: Okay. Your Honor, I would like to
8 offer S-7 and S-8 into the record at this time.

9 ALJ DION: Any objection?

10 MR. WETHERALD: No.

11 ALJ DION: No objection, S-7 and S-8 shall be
12 admitted into the record.

13 MS. SCOTT: And Mr. Morton is available for
14 cross.

15 ALJ DION: Mr. Wetherald, do you have -- how
16 long do you expect your questions are going to be?

17 MR. WETHERALD: Probably at least an hour. Do
18 you want to get started?

19 ALJ DION: Yes. Is there going to be a good
20 breaking point at ten minutes?

21 MR. WETHERALD: I think so.

22 ALJ DION: Let's go until the noon hour and
23 then --

24 MR. WETHERALD: Okay.

25

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1 CROSS-EXAMINATION

2 BY MR. WETHERALD:

3 Q. Good morning, Mr. Morton.

4 A. Good morning.

5 Q. Reviewing your prefiled testimony, which I
6 will be using today, you give a little bit of your
7 education background. Do you currently hold an
8 undergraduate degree?

9 A. No, I do not.

10 Q. So you had two years in Illinois, Chicago
11 Circle Campus but --

12 A. Yes.

13 Q. -- you did not receive any degrees?

14 A. No.

15 Q. Have you had any continuing type of education
16 courses?

17 A. Other than courses provided by my employers, I
18 have taken no additional classes.

19 Q. What kind of courses would those have been?

20 A. Customer service, handling of customer service
21 problems, computer issues, primarily that type of class.

22 Q. Okay. When you say customer service, can you
23 be more specific? Was it how to deal with customer
24 complaints?

25 A. Right, how to deal with an irate customer,

1 that type of thing.

2 Q. And where did you receive those classes?

3 A. Numerous ones during my period of employment
4 at Illinois Bell Telephone.

5 Q. Okay.

6 A. And here at the Commission we go through a
7 series of Fred Pryor seminars every few years to update us
8 on better service.

9 Q. Okay. I am noticing your work history. You
10 spent some 22 years with Illinois before you came to the
11 Commission?

12 A. AT&T and Illinois Bell.

13 Q. What were your responsibilities with Illinois
14 bell?

15 A. My first several years I was employed at
16 actually what were AT&T Phone Center stores. And I sold
17 service, established residential accounts and made various
18 changes on accounts, anything involving residential
19 service.

20 Q. Okay. And then how long did you --

21 A. Then that was approximately seven years. Then
22 I moved over to the Illinois Bell business office and
23 continued to do the same job in a nonface-to-face contact,
24 over the phone, which included the collection of past due
25 accounts.

1 Q. Were you a representative?

2 A. Yes.

3 Q. How long did you do that?

4 A. My entire time with Illinois Bell was that
5 title.

6 Q. Were you, I don't know how to -- did you ever
7 reach any levels of management?

8 A. No.

9 Q. So it was strictly --

10 A. Strictly customer service representative.

11 Q. Have you had any experience then in
12 establishing call centers for dealing with customer
13 service?

14 A. Establishing a service, no.

15 Q. Implementing policies and procedures as to how
16 customer service should be handled and calls directed or
17 routed?

18 A. Some here at the Commission in a type of
19 fill-in supervisory position, directing calls in which we
20 feel we have a problem. If we find all of a sudden one
21 day we wake up and there are 50 calls for a certain
22 company, there is a problem. So we kind of route them to
23 an individual so the answers they are giving to the public
24 would be the same uniformity.

25 Q. Okay. But have you had any experience in

1 helping to set up or establish how a company or a CLEC,
2 such as Phone Company Management Group, might manage and
3 handle inbound customer calls?

4 A. No.

5 Q. Have you had any experience in the
6 implementation or ongoing management of tracking
7 information related to customer service issues?

8 A. No.

9 Q. How about billing issues?

10 A. In establishing those billing issues?

11 Q. No, in establishing a system or a procedure to
12 handle calls related to billing issues.

13 A. No.

14 Q. So do you believe, Mr. Morton, that you have
15 any particular expertise that would allow you to make a
16 determination as to the viability or practicality of any
17 company's internal operation as it relates to customer
18 service?

19 A. I know from my interaction with other
20 regulatory people with other utilities what I can expect.
21 If that answers your question, I am not sure.

22 Q. And you would be saying what to expect in
23 terms of results? What you see back --

24 A. Correct.

25 Q. -- but not necessarily how those results would

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1 Q. 100 percent, they have never missed a five-day
2 deadline?

3 A. What I would like to clarify, when we say a
4 deadline, you can call me and say, Mr. Morton, I have
5 received your consumer complaint, I am researching it, it
6 will be a few days. So it doesn't mean that five business
7 days means that that complaint has to be completed and
8 finished.

9 Q. I understand.

10 A. Okay. So I would say yes, within that
11 understanding.

12 Q. And how do you notify utilities of a consumer
13 complaint?

14 A. It varies according to utility. If they have
15 e-mail, we do it electronically. If they have fax, we do
16 it by fax. We even have a few companies that we actually
17 have to mail the complaints to.

18 Q. And it would be from the time of reception
19 that they should respond within five days?

20 A. Right.

21 Q. Not the date that you actually received the
22 complaint?

23 A. Right. We allow additional time if there is a
24 factor such as mail.

25 Q. Okay. Do you do anything to track and to

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1 verify that the complaint was actually sent and received?
2 Or let's deal with sent first.

3 A. No.

4 Q. So the assumption is, by the Staff, is that
5 all of the complaints given in S-8 were in fact sent and
6 received by The Phone Company Management Group?

7 A. We would assume they were, because if they
8 didn't, we would get an undeliverable type of status.

9 Q. Assuming how you sent it?

10 A. Right. I mean, we have had IT problems where
11 we found that we have been down for a day and something
12 hasn't got to a company. But other than that, most
13 companies will call us and say we haven't gotten anything
14 from you today, is there something wrong.

15 Q. Okay. But that would assume that there was
16 probably enough complaints on generally a predictable
17 level that the company would know if it was missing
18 something, correct?

19 A. Yes.

20 Q. But let's say for a small company that didn't
21 have many complaints, that probably wouldn't be the case,
22 would it?

23 A. Probably not.

24 Q. And the only way that you would know -- or let
25 me put it this way: The bounceback, if you will, on an

1 e-mail assumes that if -- assumes in the first place that
2 the e-mail was sent, doesn't it?

3 A. Uh-huh.

4 Q. Do you track receipt or do you keep copies of
5 sent e-mails or sent faxes with confirmations that they
6 were sent of any kind?

7 A. No.

8 Q. So once again, the assumption would be it was
9 sent, but there is no way of verifying that it was
10 actually sent; would that be accurate?

11 A. Yes.

12 MR. WETHERALD: Okay. Your Honor, now would
13 probably be a good stopping time.

14 ALJ DION: Okay. Let's go off the record for
15 a second.

16 (An off-the-record discussion ensued.)

17 ALJ DION: Let's go back on the record.

18 We just had a brief discussion regarding the
19 scheduling of witnesses. Mr. Credle is scheduled to fly
20 back to his home tomorrow so we will put him on the stand
21 this afternoon after Mr. Morton, who will continue when we
22 return back at 1:15.

23 So, Mr. Morton, you understand that you are
24 still under oath, that you may talk to your lawyer but not
25 to talk anybody else regarding this matter --

1 THE WITNESS: Yes.

2 ALJ DION: -- until you are through
3 testifying?

4 THE WITNESS: Yes, Your Honor.

5 ALJ DION: All right. We will see everybody
6 at 1:15, then.

7 (A recess ensued at 12:03 p.m., reconvening at
8 1:20 p.m.)

9 (Mr. Crockett is present in the hearing.)

10 ALJ DION: Okay. We are back on the record in
11 the LiveWire matter. And, Mr. Morton, you were on the
12 stand, although we have something to take care of
13 preliminarily.

14 Ms. Scott?

15 MS. SCOTT: Yes, Your Honor. Yesterday we
16 entered into the record S-3, which was a complete set of
17 the data responses to Staff's data requests that were
18 filed by Phone Company Management Group, On Systems, Phone
19 Company of Arizona, and LiveWireNet. We since discovered
20 that it was not the complete set. So we have augmented it
21 with the remaining data responses that those companies
22 submitted and we have given a new copy to Mr. Wetherald,
23 yourself, the court reporter.

24 ALJ DION: Okay, great.

25 Mr. Wetherald, did you have a chance to talk

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1 to Ms. Scott about that?

2 MR. WETHERALD: I did. I haven't had a chance
3 to review it, but I am sure it is fine.

4 ALJ DION: Okay. All right. We have
5 Mr. Morton.

6 Mr. Morton, you remember you are still under
7 oath, is that correct?

8 THE WITNESS: Yes, Your Honor.

9 ALJ DION: And Mr. Wetherald your cross
10 continues.

11 MR. WETHERALD: Okay.

12 BY MR. WETHERALD:

13 Q. Mr. Morton, in your testimony you state that
14 you met with representatives of the partnership -- I am
15 paraphrasing here, so if I am getting something wrong,
16 please correct me --

17 A. Correct.

18 Q. -- September 11th, 2002?

19 A. Yes.

20 Q. Other than Roald Haugan and Patrick Johnson
21 were any other people present at that meeting?

22 A. No.

23 Q. So, and who from the Staff attended that
24 meeting?

25 A. Robert Kennedy and myself.

1 Q. And who is Robert Kennedy?

2 A. Robert Kennedy was at the time program
3 director for consumer services. He is now retired.

4 Q. You further state that you were told there
5 were problems with the company and other companies in
6 other states. Can you elaborate a little bit on what you
7 were told?

8 A. Yes. I was told that paperwork had come
9 across, and I believe it was Mr. Haugan's desk --

10 Q. Okay.

11 A. -- that he said led him to believe that there
12 were some improprieties taking place, and he had mentioned
13 there was a problem in, I believe it was, Colorado.

14 Q. Okay. Did he tell you what the paperwork was?

15 A. No.

16 Q. Did he elaborate on specifically what it was?

17 A. No, just that it seemed to me that it was
18 improper, so he was questioning.

19 Q. Did you keep any notes on that meeting?

20 A. Yes, I did.

21 Q. Do you have those notes?

22 A. Yes, I do.

23 Q. I don't need you to get them now but would it
24 be possible for me to get a copy? Would it be possible
25 for me to get a copy of notes?

1 A. What they are, they are notes but I typed them
2 up. So they are, you know, there are a few additional
3 handwritten notes but they are the original.

4 MR. WETHERALD: Would it be possible for me to
5 get a copy of those?

6 ALJ DION: Ms. Scott, do you have an
7 objection?

8 MS. SCOTT: No, I don't.

9 BY MR. WETHERALD:

10 Q. While we are doing, maybe just for the sake of
11 brevity, we will keep -- did you meet with the partners at
12 any time before that?

13 A. I believe we had, after I brought our legal
14 Staff in, I believe we had someone on a teleconference.
15 And I am not sure of the name of that person.

16 Q. From the partnership you mean?

17 A. I am not sure if it was a partner or if it was
18 an attorney representing the partners.

19 Q. In one of your data requests you give a couple
20 names from a meeting that happened on September 20th.
21 Were you a part of that meeting?

22 A. I have a date of September 27th there was a
23 meeting that I met --

24 Q. It might just be a typo in the --

25 A. Yes.

1 Q. Was there only one partner on the phone or
2 were there several representatives of the partnership?

3 A. I am only remembering one.

4 Q. What --

5 A. And I want to say the name was Petersen.

6 Q. Steve Petersen?

7 A. I am not sure. The last name Petersen comes
8 to mind.

9 Q. In some of your notes you mention a Steve
10 Johnson but I have a feeling that may be Steve Petersen.

11 A. Yes.

12 Q. So it might have been Steve Petersen?

13 A. Yes.

14 Q. Did Mr. Petersen identify himself as a partner
15 or as an attorney?

16 A. That I actually don't recall.

17 Q. Do you have notes from that meeting?

18 A. No.

19 Q. Just the one.

20 A. Excuse me. Let me correct myself.

21 I have one note in addition. On the typed
22 sheet that I typed up from the September 11th I do have a
23 notation on that meeting. With Maureen is what I have
24 down. But it is, it is just one line. But it doesn't
25 mention anyone's name or anything like that.

1 Q. Right. Do you know of any other meetings with
2 the partners that would have happened during that time
3 frame, between any of the Commission Staff members that
4 you wouldn't have been involved with?

5 A. There was a meeting a long time after this all
6 took place. And I believe it was Mr. Credle that we met
7 with, but I am not positive.

8 Q. Okay. And that was a long time after this all
9 started?

10 A. Yes.

11 Q. Would -- based on your estimate, I get the
12 sense, and I just want to make sure I am not
13 mischaracterizing anything, that this was kind of the
14 catalyst, if you will, that kind of got this ball rolling?

15 A. Yes.

16 ALJ DION: Mr. Wetherald, when you say
17 "this" --

18 BY MR. WETHERALD:

19 Q. The initial meeting with Roald Haugan and
20 Mr. Johnson and the representation that I may be
21 inundating improper conduct, would that be --

22 A. Right, that would be the initial meeting.

23 ALJ DION: Thank you.

24 BY MR. WETHERALD:

25 Q. But have you or any other Staff member that

1 you know ever sought to verify and quantify what that
2 misconduct was or is?

3 MS. SCOTT: Your Honor, this is going far
4 beyond the scope of his direct testimony.

5 MR. WETHERALD: Well, actually, Your Honor, it
6 is not. He opened the door when he said that he met and
7 raised concerns. I think I have a right to know what the
8 concerns were.

9 MS. SCOTT: In fact those concerns are
10 addressed in the testimony of others, not Mr. Morton.

11 ALJ DION: No, I am going to overrule, I mean
12 I am going to allow him to answer that.

13 Did you do any independent investigations
14 besides taking customer complaints, Mr. Morton, regarding,
15 you know, the things that Mr. Haugan mentioned?

16 THE WITNESS: No. As I believe I mentioned
17 before, my feelings were that, at the end of the meeting
18 with Mr. Haugan, that it was outside of our scope in
19 consumer services. I didn't know whether it was a
20 securities matter or whatever. And that's why I brought
21 in legal, because I just felt it wasn't our department.

22 BY MR. WETHERALD:

23 Q. Eventually what happened on that October 18th,
24 you guys filed a complaint against the parties I
25 represent, myself and a whole gob of other people. Would

1 that be a fair --

2 A. Yes.

3 Q. -- assessment?

4 How long did it take the Staff to prepare that
5 complaint?

6 A. I can't be sure on that.

7 MS. SCOTT: Again --

8 THE WITNESS: I didn't have much to do --

9 MS. SCOTT: -- this is beyond the scope -- I
10 am sorry, Mr. Morton -- this is beyond the scope of his
11 direct, far beyond.

12 MR. WETHERALD: I will tie it together, Your
13 Honor. I am going somewhere with this.

14 ALJ DION: Okay. I think it is fair to say,
15 Mr. Morton, you didn't compile this complaint, did you?

16 THE WITNESS: No, not at all.

17 ALJ DION: Okay.

18 BY MR. WETHERALD:

19 Q. Did you start talking about the need to file a
20 complaint two days, a week before, two weeks before?

21 A. I never mentioned a complaint. The only thing
22 that happened after, after my introduction to the matter
23 was that consumer services, we started tracking the
24 problems. But other than that, it was pretty much turned
25 over to the legal at the time that the second meeting took

1 saying.

2 I have other copies if people want. I am
3 going to hand you what has been marked as W-1.

4 BY MR. WETHERALD:

5 Q. Do you recognize the context of Exhibit W-1?

6 A. Yes. The cover sheet is from our database.
7 It is a report telling a number of complaints by the
8 Utilities Docket No.

9 Q. And the corresponding pages after?

10 A. Those are actually complaints themselves.

11 Q. Okay. Would those be the complaints listed on
12 the cover sheet?

13 A. Checking the top two, yes. So I would assume
14 they are.

15 Q. I believe that I didn't give you the whole
16 data request, because I am really only concerned with the
17 information that I gave you here. But these were part of
18 the data request supplied by the Commission to PCMG.

19 Kind of in the way of maybe establishing a
20 little bit of a background for where we go with this, do
21 you still have S-3 up there?

22 A. I don't have numbers on these. I have my
23 testimony.

24 Q. It would be data requests -- or response to
25 Staff's data request.

1 MS. SCOTT: I'm sorry? I am sorry, which data
2 request?

3 MR. WETHERALD: I am looking for March 19th,
4 2003.

5 THE WITNESS: Yes, sir, I have that.

6 BY MR. WETHERALD:

7 Q. Attached to that is what is listed as annex
8 A-1, it is on the back, which a customer list with Phone
9 Company of Arizona. It lists customers with phone
10 numbers, kind of puts a status by them. Do you see that?

11 A. Oh, yes, sir.

12 Q. Okay. If you go to the very end of that
13 report, which would be at the bottom page 120 --

14 A. Yes, sir.

15 Q. -- you will see a total number of customers on
16 this list. And what is that number?

17 A. 6,604.

18 Q. How many notices did you send out in March?

19 A. That I do not know.

20 Q. You don't know the total number?

21 A. They were done through our administrative
22 personnel, so I don't know the exact number.

23 Q. But throughout this whole ordeal, the number
24 of customers that PCMG serviced ranges anywhere from
25 forty-three to six thousand. So can we agree for the sake

1 A. Yes.

2 Q. If you would turn with me to W -- is it 3? I
3 can't remember the number of this exhibit.

4 ALJ DION: I believe you referred to these as
5 W-3A, 3B and 3C.

6 BY MR. WETHERALD:

7 Q. If you go to 3B, W-3B.

8 A. Yes.

9 Q. You will see that on -- there is another table
10 there, and on that table there is a column called accounts
11 billed?

12 A. Yes.

13 Q. And it ranges from 1501 in May down to 5212 in
14 December?

15 A. Yes, sir.

16 Q. Okay. And then you see new installs there?

17 A. Yes.

18 Q. Which is simply the number of customers billed
19 in a month minus the previous customers which kind of
20 gives us kind of an idea how many new customers we have
21 net at least?

22 A. Yes.

23 Q. I know that you have no way of knowing how
24 accurate these are, and I am not going to ask you to
25 verify their accuracy, but can we, for the sake of

1 discussion here, assume they are fairly representative of
2 what really happened?

3 A. I will assume so, yes.

4 Q. I know that you would have no way of verifying
5 things and I am not trying to get you to say this is
6 accurate.

7 A. Right.

8 MR. WETHERALD: Does that make sense?

9 ALJ DION: It makes sense. It just, I don't
10 know where you are going to go with it.

11 BY MR. WETHERALD:

12 Q. All right. And then if you would go to W-3C,
13 again, this is a summary of your complaints broken out by
14 week. Do you see that?

15 A. Yes, sir.

16 Q. And the percentage in that week of a total of
17 56?

18 A. Yes, sir.

19 MR. WETHERALD: Okay. I would like to offer
20 the exhibit.

21 ALJ DION: Do you have an objection?

22 MS. SCOTT: I have no objection.

23 ALJ DION: No objection, W-3A, B and C will be
24 admitted.

25 I don't think we admitted what was called W-2,

1 which was the list of names and the corresponding
2 complaints that followed. Do you want to admit that as
3 well, Mr. Wetherald?

4 MR. WETHERALD: Oh, I am sorry. Yes, I do.

5 ALJ DION: Okay. Excuse me, Mr. Wetherald.

6 That was W-1. That was W-1, which is the --

7 MR. WETHERALD: The list.

8 ALJ DION: -- list of individual complaints by
9 Docket No. and then subsequently the individual complaints
10 printed out.

11 Do you have any objection to those, Ms. Scott?

12 MS. SCOTT: I have no objection.

13 ALJ DION: No objection, W-1 will be admitted
14 into evidence as well.

15 Okay, Mr. Wetherald.

16 BY MR. WETHERALD:

17 Q. As we -- well, I am going to do a little bit
18 of sidetrack.

19 You were asked a question then. This is
20 related a little bit to what is the status of the consumer
21 complaints against the company. And actually let's go to
22 maybe -- maybe I am getting myself screwed up here.

23 But essentially in your testimony you state
24 that you began to see, after the September 11th meeting,
25 an escalation in the number of complaints?

1 processing our LSR orders?

2 A. Yes.

3 Q. Which would have had the effect of not
4 allowing us to make pick changes and other necessary
5 customer changes?

6 A. Yes.

7 Q. You further go on to state that you don't feel
8 the company was adequately taking the necessary steps to
9 resolve these issues?

10 A. Yes.

11 Q. Okay. And you had primary contacts with the
12 company?

13 A. Yes.

14 Q. And those were Vernettea Chapman?

15 A. Yvette Woods was the other one.

16 Q. Yvette Woods, and I can't remember, Chapman.
17 Tracy or -- no. You mentioned names earlier.

18 A. Vernettea Chapman and Yvette Woods.

19 Q. That's right. When you became concerned, did
20 you make any attempt to reach somebody in the company who
21 might have the ability to actually make changes?

22 A. I believe I strictly dealt with the regulatory
23 person that we were given as the contact, so it would have
24 been Vernettea or Yvette, and explained to them that the
25 process -- sometimes companies don't always know the

1 process -- so we explain that upon receipt of this, they
2 are to investigating the complaint, contact the customer
3 and then, after the customer is contacted, then we are
4 supposed to get a response as to whether something was
5 solved or not.

6 Q. I understand.

7 A. So we did explain that several times.

8 Q. You explained that to them?

9 A. Yes.

10 Q. Okay. You are dealing with a company that --
11 the employees of the company. Did you ever ask those
12 employees whether they expressed your concern with them or
13 frustration, asked whether they had the authority to make
14 any changes to help the situation?

15 A. I would say no.

16 Q. Okay. So you didn't escalate this to anybody
17 at the company like myself or Frank Tricamo or anybody
18 else that might have the ability to actually resolve this
19 issue?

20 A. I believe the very first meeting that I had
21 where I met you, I expressed that to you. And you said
22 that there was an individual and it was a gentleman that
23 you were going to refer it to. And that was the very
24 first meeting.

25 Q. And when did that occur?

1 A. I am afraid I don't recall on that but I know
2 it took place at the Commission.

3 Q. Correct. Would that have been in 2003
4 possibly? I don't know.

5 A. I would be guessing but I would think so since
6 this all started in September of 2002.

7 Q. But prior to filing the complaint in which it
8 is alleged that we were not technically competent, part of
9 that is based on that we weren't handling customer service
10 complaints, you had not made any attempt to reach anybody
11 at the company with authority to make any changes?

12 A. We never went above the regulatory person.

13 Q. Now, you say that you were frustrated because
14 things weren't happening, but let's look for a minute at
15 W-3C. Okay?

16 A. Yes, sir.

17 Q. We started providing service in May. And
18 between May and August, there are no complaints.

19 Okay. Potentially during that same time
20 frame, if you look at W-3B, we had provisioned
21 approximately 3300 people, new customers, and yet there
22 were no complaints?

23 A. After August?

24 Q. After August, we have four or six complaints
25 in August. And then we jump down to the 28th and the 5th,

1 when Qwest started processing LSRs, and we had some
2 problems and jumped to 22.

3 What is the number for the week of
4 October 12th?

5 A. And we are looking at which? Oh, I see what
6 you are saying. October 12th, number three --
7 5.36 percent.

8 Q. How about October 19th?

9 A. One complaint at 1.79 percent.

10 Q. How about the 26th?

11 A. One complaint at 1.79 percent.

12 Q. And then as we go down, it kind of starts
13 averaging, you know, one to three a week, doesn't it, all
14 the way through January?

15 A. Yes.

16 Q. And there are some weeks with no complaints,
17 correct?

18 A. Yes, that's correct.

19 Q. Now, if we weren't doing anything to resolve
20 the issue, doesn't it make sense that, with somewhere
21 between four and six thousand customers who aren't getting
22 long distance service, have a company that doesn't care
23 about them, however you want to say that, or isn't
24 adequately responding to the customers's needs, that you
25 would see not a decrease but an increase in the weekly

1 number of complaints?

2 A. I don't know that I can make that assumption.
3 When you take in customer service complaints for almost 30
4 years, nothing surprises you.

5 Q. So did we call the customers and tell them not
6 to call you?

7 A. No. But sometimes consumers will have
8 problems and not call us.

9 Q. Okay. But yet you make assumptions in your
10 testimony based on this information that -- if you turn
11 with me to page 4 of your testimony. I am not sure that's
12 the same page of what she gave us earlier as S whatever.
13 I have it in this little binder.

14 A. I have it.

15 Q. Is it page 4? If you look at the question on
16 line 1, it says: Given your experience with the utility
17 described above, do you believe that their process for
18 handling customer complaints is adequate and sufficient?
19 And what do you say?

20 A. I say no.

21 Q. And what is that based on?

22 A. It is based on my experience with regulatory
23 people from all the other utilities that we regulate.

24 Q. You can base that kind of an assessment
25 between October 5th and October 26th, or let's just say

1 the 19th, okay, a potential of four additional complaints,
2 you can make the assessment that the way we handle
3 customer service isn't adequate on four complaints?

4 A. Again, numbers are not the factor. The way
5 they are handled, whether it is one complaint or 50
6 complaints, if we don't get a response within a certain
7 time frame and then we find we are not able to reach the
8 regulatory person by a resource available to us, then I
9 would say there is a problem.

10 Q. Okay. Let's look at that for a second then.
11 Okay? If you will turn to W-3B, if you look at the bottom
12 of the page, there is a column that says response time.

13 A. Yes, sir.

14 Q. And if you would like, I can demonstrate how I
15 came up with this number. But essentially, if you look at
16 the date that we received the complaint or the date the
17 customer called on the complaint, which would be the date,
18 if you look customer complaint, if you look at the first
19 one which is Sherise Hightower for a second, okay, you see
20 the date up on top, it says date, I am assuming that's the
21 date you received the complaint?

22 A. Yes.

23 Q. If you look down to the utility's response
24 date -- okay?

25 A. Yes.

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1 Q. -- that is what I am going to assume would be
2 our first response back to you, because it is the only
3 information I have. Okay?

4 But I want to also clarify something. This
5 would be worst case. You have also testified that it may
6 just be that somebody called you and that may not be
7 represented on this paperwork, correct?

8 A. Yes, sir.

9 Q. So worst case scenario, on the stuff that you
10 gave us here, allowing for no time for Staff to e-mail or
11 fax or whatever, assuming it was done on the very same day
12 that you received it, okay, PCMG responded 62 and a
13 half percent within five business days. The majority of
14 these complaints were responded to within the time
15 allowed. And that's being extremely harsh, assuming that
16 all of those things happened.

17 And you are telling me that your experience
18 with four complaints was that we were inadequate?

19 A. The interaction that I experienced with your
20 regulatory personnel was not the standard to which the
21 Commission is used to, if that answers your question.

22 Q. Well, how do you determine that standard?

23 A. Well, by experience, by working with our
24 regulatory people we know what to expect. We are
25 surprised if we receive something other than that quality

1 of service.

2 Q. But in your testimony, what you say is that
3 the regulatory contacts from the utility were unresponsive
4 to calls and faxes regarding consumer complaints, the
5 five-business-day response time was not met and telephone
6 messages were unanswered for days at a time.

7 A. What page are you on?

8 Q. Page 5, well, actually starting on page 4 is
9 where you were asked the position to please summarize.
10 Page 5 is where -- what I just read from, starting on
11 line 1.

12 A. Those would be, when I mentioned that, and we
13 have to find the individual case and example, would be the
14 time when we are not able to reach the representative by
15 telephone, the e-mails were returned as nondeliverable, we
16 could get no response. So we tried on a daily basis. So
17 that could be one instance. But that's the type of
18 problem we did experience.

19 Q. Okay. And between when we obviously had the
20 problem in September, where we had 22 complaints, how
21 many, if you want to just add them up real quickly, how
22 many complaints were received by your office between
23 October 12th and January 4th?

24 A. Received by our office on just your company?

25 Q. Yes.

1 A. And I am sorry, the date you wanted was from
2 what date to what date?

3 Q. From October 12th through January 4th.

4 A. About 18.

5 Q. So --

6 MS. SCOTT: Could I just --

7 ALJ DION: Through January 4th, Mr. Wetherald?

8 MR. WETHERALD: October 12th and January 4th.

9 ALJ DION: I get a different number than 18.

10 MR. WETHERALD: I do, too.

11 ALJ DION: I think I get 23.

12 MR. WETHERALD: That's what I thought.

13 ALJ DION: Okay. So it is Mr. Morton --

14 THE WITNESS: I am sorry.

15 ALJ DION: -- might have just missed a week.

16 THE WITNESS: Yes.

17 ALJ DION: So it is 23.

18 BY MR. WETHERALD:

19 Q. So we are talking essentially, what would
20 amount to, somewhere between 60 and 80 days; would that be
21 a fair assessment?

22 A. Yes.

23 Q. 28 complaints, or 23 complaints, excuse me.
24 Essentially less than one every two to three days. Okay?
25 And yet you can make a definitive statement that we were

1 inadequate?

2 A. I felt so, yes.

3 Q. But yet you have no definitive standard other
4 than your own subjectivity that I could rely on to see
5 whether or not I was or wasn't inadequate, do you?

6 A. Again, I can only go by the experiences that
7 we handle with other regulatory bodies. When we deal with
8 the utility company we expect certain things from the
9 regulatory people. When we don't get those, it becomes an
10 issue.

11 Q. So the answer to that, there is nothing other
12 than your subjective experience that I can rely on or that
13 Mr. Dion can rely on?

14 A. I would say yes.

15 Q. So would it be fair to say that there is
16 nothing that anybody could probably do in an objective
17 manner to change that, other than to have a conversation
18 with you and find out specifically what you wanted the
19 company to do?

20 A. No. I by no means am the head of that
21 department. I was the lead Staff person on this
22 particular utilities case only so that we could keep track
23 of them, we could tell customers the same information
24 rather than having different variations of what was being
25 told. But I am not the, I am not the end all in consumer

1 services. My word is not the final word.

2 Q. But yet at no time did you or are you aware of
3 whether or not your boss ever contacted somebody with the
4 company with decision-making authority and escalated this
5 overwhelming problem with 23 complaints in 80 days?

6 A. I do not believe he did.

7 Q. Okay. And yet somehow -- would you please
8 explain to me how I am to know that this is a problem and
9 to take steps to fix it if I am never told it is a
10 problem?

11 A. Well, I did tell you at the very first meeting
12 we had that there was a problem.

13 Q. Okay. Which was sometime --

14 A. Which I don't remember the exact date.

15 Q. -- almost three months after the complaint was
16 filed. So how about after the complaint was filed?

17 A. No.

18 Q. Okay. Isn't one of the charges of the
19 Commission to promote competition?

20 A. Yes.

21 Q. So how is the public interest promoted if
22 small companies are not afforded the opportunity to
23 correct and resolve issues prior to the filing of
24 complaints and actions by the PUC and are forced to spend
25 hundreds of thousands of dollars defending them rather

1 than putting those resources into actually building and
2 running the company?

3 MS. SCOTT: Your Honor, I am going to object.
4 It goes beyond the scope of his direct.

5 ALJ DION: That's going to be quite, not only
6 that, it is going to be big speculation on perhaps a
7 consumer representative to formulate an opinion on. I
8 mean you are asking him, regarding his experience just
9 regarding the policies and procedures of consumer
10 services, as to the entire business plan of a
11 telecommunications company. I think that is going a
12 little bit beyond his experience.

13 MR. WETHERALD: Right.

14 ALJ DION: I am going to sustain that
15 objection.

16 MR. WETHERALD: I will go along with that.

17 ALJ DION: How many more minutes of questions
18 do you have, Mr. Wetherald?

19 MR. WETHERALD: Hopefully not too many more.

20 ALJ DION: Okay.

21 BY MR. WETHERALD:

22 Q. Looking for W -- here it is -- looking at W-3,
23 I guess it would be 3B again, how many billing issues
24 total for the company were there? And once again billing
25 issues, if you look at the first page, W-3A are grouped

1 together as 01A, B, C, D. Those are all billing issues
2 under your service codes. Do you see that?

3 A. Yes. With the total of 16?

4 Q. 16, okay. And between May and December, how
5 many accounts did we bill if you looked at the total lot?

6 A. That was a total of accounts billed of -- is
7 that 34,648?

8 Q. And we had 16 billing complaints in that time
9 frame?

10 A. Yes.

11 Q. Which, if you look at the percentage of
12 billing errors, what is that percentage?

13 A. And I am looking at B. I am not seeing a
14 percentage.

15 Q. At the very top it says billing analysis.

16 A. Oh, I am sorry. Okay. That is .046 percent.

17 Q. If we go down the complaint table where it
18 says complaint analysis --

19 A. Uh-huh, yes.

20 Q. -- okay, install complaints. We had how many?

21 A. You had four.

22 Q. And how many installs did we do approximately?

23 A. 5,989.

24 Q. So we had five customers complain on install
25 issues out of 6,000, and I am to assume that there is a

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1 problem with the way we do business. How do you get
2 there?

3 A. I am not -- when I give a -- when I say to you
4 the quality of service, I am not taking just one portion.
5 What I am taking is a high volume of calls. I think that
6 the biggest thing that took my attention was the point at
7 which your consumers did not have long distance and could
8 not reach the company.

9 Q. Okay. How many --

10 A. That was, that was the largest number of calls
11 that I believe we had.

12 Q. And when did that occur?

13 A. I don't have an exact date. I would have to
14 go over these complaints and determine when it started.

15 Q. Okay.

16 A. But I would say it was probably the fall of
17 2002.

18 Q. So how many people do you think were out of
19 service with long distance issues?

20 A. They are not broken down into that specific
21 issue. I can't tell you exactly how many.

22 Q. Well, could we say that potentially 6,000
23 people were without long distance service?

24 A. Not that called the Commission.

25 Q. I didn't say that called the Commission.

1 A. Okay. I can't give you an answer.

2 Q. Is that a potential, though?

3 A. Certainly.

4 Q. We had 6,000 people and we were having long
5 distance issues so that's a possibility?

6 A. That's a possibility.

7 Q. If you look at the first page, W-3A.

8 A. Yes, sir.

9 Q. If you look at service complaints, total
10 service complaints, what is the number?

11 A. Eight.

12 Q. Okay. If you look at quality of service and
13 take out the 15 for 05F, which is they can't reach the
14 company, and add that to it, what do you come up with?

15 A. 15 --

16 Q. Okay. Well, it is 15 for 05, 15 minus 22. 22
17 minus 15 is how much?

18 A. Seven.

19 Q. Seven. And add that to the H, so we get --

20 A. 15.

21 Q. Never mind. I was looking at the wrong
22 number.

23 A. Okay.

24 Q. So 15 complaints in three months for 6,000
25 people that could potentially be related under your code

1 to long distance service, and somehow I did a bad job?

2 MS. SCOTT: Your Honor, I am going to object
3 as far as W-3B. Mr. Morton has not had an opportunity to
4 check the veracity of the numbers under accounts billed or
5 new installs. He has no knowledge of those numbers. So
6 to be asking him whether the complaints for a particular
7 month as a percentage of either of those two columns is
8 not appropriate.

9 ALJ DION: I actually am going in a different
10 way, Mr. Wetherald. I am going to an asked and answered.

11 It is my understanding, you made it clear and
12 I don't need to go down every column, your argument is
13 that there is a certain percentage of the total of 6,000
14 or so customers that were served that actually complained.
15 And it is your question to Mr. Morton as to how does that
16 make this a, I wouldn't say you, but the company, how are
17 they deficient in the customer representation.

18 I think Mr. Morton has answered at least three
19 times. It doesn't have to do with the number but it had
20 to do with his expectation. And you covered that as far
21 as the subjective expectation. So I think you are going
22 to hit that wall with every question.

23 BY MR. WETHERALD:

24 Q. Okay. Last thing I would like to ask you,
25 Mr. Morton, in relation to that is that isn't it a fair

1 statement that the objective of customer service should be
2 to alleviate the need for a customer to call the
3 Commission and register a complaint?

4 A. To alleviate?

5 Q. Correct, to deal with it before it gets to you
6 in a satisfactory manner.

7 A. For a company to do that?

8 Q. Yes.

9 A. Yes, that's correct.

10 Q. At the risk of doing an asked and answered,
11 wouldn't you assume, then, that the small percentages
12 would indicate that there was success on the company's
13 part of achieving that goal?

14 A. I would say on a whole, yes, except for that
15 quality of service part where the company couldn't be
16 reached. That was our concern. And I would have the same
17 concern with Qwest if we got 15 in a row or over a period
18 of time.

19 Q. But that happened in a, what really amounts
20 to -- if we go through the things, we can do that -- but
21 didn't that really occur in what would amount to probably
22 a 7- to 10-day period?

23 A. Yes, sir, it did.

24 Q. So how do you characterize a whole company's
25 success and failure based on an anomaly such as that?

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1 A. I don't think I am determining the company's
2 failure. I am determining there is a problem, that we
3 identified that there was a problem.

4 Q. I think what we could say is that there was a
5 problem, past tense, was a problem. But I guess I am
6 failing to see anywhere in your testimony in the documents
7 produced to me when they are looked at that that was a
8 continuing problem.

9 It would appear to me, Mr. Morton, that it
10 would appear based on the numbers I have seen, and I guess
11 I am trying to figure out how you could disagree, that
12 that problem is fixed.

13 A. The problem existed up to the utility no
14 longer doing business. I mean we have recurring problems
15 up until the point that the company was no longer valid.

16 Q. Well, actually, in, and you can do this, but
17 if you look at the quality service issues under 05F, you
18 received one complaint in November related to not being
19 able to reach the company and none between November and
20 December of not being able to reach the company. I would
21 say that that probably was a good indication the problem
22 got fixed.

23 A. Well, there were problems, may not have been
24 the utility's fault, disconnection of service, people
25 being dead and not be -- still being connected. We had

1 situations like that. We had families that rented, we had
2 landlords who couldn't rent to a new occupant because the
3 Phone Company of Arizona still had phone there and
4 wouldn't disconnect it.

5 And not all your consumer complaints are
6 complaints. There can be inquiries where we feel there is
7 nothing that we really -- the company is necessarily doing
8 wrong. But they are problems.

9 Q. Okay. And those aren't part of what you have
10 given me here in your data request, that may be part of --

11 A. They are part of it. There is 110
12 inquiries in there.

13 Q. Okay.

14 ALJ DION: When you say "in there," is that
15 S-8, Mr. Morton?

16 THE WITNESS: I believe it is.

17 MR. WETHERALD: I really can't speak to those
18 because I really haven't had an opportunity to look at
19 them.

20 BY MR. WETHERALD:

21 Q. Just as kind of a -- do you know how many
22 customer complaints Qwest received in the same time
23 period?

24 A. No, I do not.

25 Q. How about AT&T?

1 A. No, I do not.

2 Q. How about Cox Cable?

3 A. No, I do not.

4 Q. Do you know how many customers are actively
5 serving residential customers in Arizona?

6 A. No, I do not.

7 Q. So there may be a number on the list that
8 really don't offer services?

9 A. Yes.

10 Q. I am going to offer another exhibit real
11 quick. It is not numbered, so I don't know what we number
12 this one.

13 The information either supplied to me -- do
14 you know who Alfonso is in your office?

15 A. Yes.

16 Q. I can't remember his last name.

17 A. Amezcua.

18 Q. He gave me this thing with the compilation of
19 the number of complaints received for the time period
20 1/1/02 through 1/31/03.

21 If you look on the second page you will see
22 AT&T Communications. How many complaints did they
23 receive?

24 A. AT&T was 229.

25 Q. Okay. How many did Cox Cable receive?

1 ALJ DION: Okay. Ms. Scott, how long is your
2 redirect going to be?

3 MS. SCOTT: Probably about ten minutes.

4 ALJ DION: Ten minutes okay. Let's go ahead
5 and proceed then.

6 MS. SCOTT: First I would ask Your Honor for
7 Mr. Wetherald to clarify the year that Exhibit W-A through
8 C applies to. You have months but I don't see a year.

9 ALJ DION: It is W-3A through C. I am just
10 going to take --

11 Mr. Wetherald, it is my understanding that
12 this is from -- the months relate from essentially the
13 summer of '02 to January of '03, is that correct?

14 MR. WETHERALD: Correct.

15 ALJ DION: So if there is a January listing,
16 it is a January of '03. The other months listed would be
17 '02 in that exhibit, is that correct?

18 MR. WETHERALD: Yes, it is.

19 ALJ DION: Thank you.

20 MS. SCOTT: Okay, thank you, Your Honor.

21

22 REDIRECT EXAMINATION

23 BY MS. SCOTT:

24 Q. Mr. Morton, referring you to W-3A through C,
25 have you had an opportunity -- did you see this exhibit

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1 before today?

2 A. No, I did not.

3 Q. Have you had an opportunity to check the
4 accuracy of the information contained in these schedules?

5 A. No, I have not.

6 Q. And so do you have any idea whether any of
7 this is accurate or not at this point?

8 A. No, I do not.

9 Q. You had a discussion with Mr. Wetherald
10 regarding your regulatory contacts at the phone company of
11 Arizona, is that correct?

12 A. That is correct.

13 Q. Were those the people that you were told to
14 deal with on consumer complaints at the company?

15 A. Yes.

16 Q. Were you told at any time to escalate
17 complaints to Mr. Wetherald?

18 A. That would not have been our normal procedure,
19 no.

20 Q. So the normal procedure is to deal with the
21 regulatory contacts that you are given?

22 A. Right.

23 Q. And it is consumer service's opinion that, if
24 there is a problem, that there is internal escalation
25 within the company up to perhaps the CEO if necessary,

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1 correct?

2 A. That is correct.

3 Q. Mr. Morton, I believe -- I hope I have his
4 exhibit number right. Is it W-2, the listing?

5 ALJ DION: W-1.

6 MS. SCOTT: W-1.

7 BY MS. SCOTT:

8 Q. Mr. Morton, Exhibit W-1 is a listing of the 56
9 complaints which you speak to in your testimony, correct?

10 A. Yes.

11 Q. These are complaints that were received from
12 the Commission, correct, or to the Commission?

13 A. Yes, they were handled by the Commission from
14 the consumer.

15 Q. Okay. So this exhibit wouldn't include
16 complaints that are made directly to the utility, would
17 it?

18 A. No. If they, if they go to the utility they
19 would bypass the Commission altogether.

20 Q. So there may have been quite a few complaints
21 that were made to the utility itself that you wouldn't be
22 aware of, isn't that correct?

23 A. That's possible, yes.

24 Q. Do you remember the set of questions that
25 Mr. Wetherald asked pertaining to the complaint rates

1 experienced by other carriers?

2 A. Yes.

3 Q. Relative to The Phone Company of Arizona, do
4 you know if, for instance, AT&T serves more customers
5 than --

6 A. Oh, absolutely.

7 MR. WETHERALD: Your Honor --

8 BY MS. SCOTT:

9 Q. How about Qwest?

10 MR. WETHERALD: -- I am going to object to
11 that because I had asked for the information and was told
12 I couldn't have it. And I mean, if we want to get
13 definitive, I think we should be definitive and get a
14 comparative analysis, not speculative.

15 ALJ DION: Yes. I don't, I don't necessarily
16 disagree with that. But I will tell you that the
17 Exhibit W-5, without telling me how many -- you can tell
18 me the number of complaints a company got, but without
19 telling me the number of people they serve, you are asking
20 me to assume things that aren't in evidence.

21 So the, the -- well, I don't know the
22 inference you might have been trying to make in W-5
23 regarding the number of complaints that were received by
24 other companies. While you can compare that to the number
25 of complaints to Phone Company Management Group, that's

1 about all you can do. You can't do anything else.

2 MR. WETHERALD: I don't disagree with that,
3 Your Honor. But if you look at the latter, it was
4 information I asked for and was told by the Commission,
5 Alfonso, Staff it was confidential and couldn't be
6 released.

7 THE WITNESS: The number of customers, what
8 you asked for, is proprietary information and is not given
9 out.

10 ALJ DION: That's correct.

11 MR. WETHERALD: Because I would like to know
12 that myself.

13 ALJ DION: And I am just stating to you the
14 weight of W-5, in an attempt to kind of just quell the
15 line of questioning --

16 MR. WETHERALD: Okay.

17 ALJ DION: -- because it doesn't tell me much
18 more than --

19 MR. WETHERALD: Yes.

20 ALJ DION: -- the number of people who were
21 irate in a certain period of time.

22 MR. WETHERALD: Yes.

23 ALJ DION: Maybe not irate, just unhappy.

24 Ms. Scott, any other questions?

25 MS. SCOTT: No, Your Honor.

1 ALJ DION: Okay. Mr. Morton, I just have a
2 couple.

3

4

EXAMINATION

5 BY ALJ DION:

6 Q. In your questioning, we have used the term
7 Phone Company Management Group and Phone Company of
8 Arizona interchangeably. My question to you is: If
9 somebody called up as The Phone Company of Arizona, did
10 you understand that that was also Phone Company Management
11 Group?

12 A. At the time? No.

13 Q. Okay. How did you discern that information?
14 How did you figure out if somebody was calling up saying I
15 have got a bill from Phone Company of Arizona for one of
16 the issues, perhaps the Colorado charge you talked about,
17 how did you discern who the ultimate provider was?

18 A. I would usually ask the consumer to fax me a
19 copy of the bill.

20 Q. Okay. And did the bill include The Phone
21 Company Management Group information on it?

22 A. No.

23 Q. Okay. So it simply said Phone Company of
24 Arizona, correct?

25 A. Right.

1 Q. How did you get to know that this was Phone
2 Company Management Group? How did you figure it out?

3 A. I didn't.

4 Q. Okay.

5 A. Legal did.

6 Q. Okay. So at some point you had a conversation
7 with your attorney in the Legal Division and it was
8 discerned that this entity, Phone Company of Arizona, was
9 actually or was also known as The Phone Company Management
10 Group, LLC. And so that's how you knew how to contact the
11 regulatory person, is that correct?

12 A. No. Actually we knew how to contact the
13 regulatory person by Phone Company of Arizona.

14 Q. Was it on the bill?

15 A. It was on the bill. And we also have it in
16 our database. The utilities are broken down with a
17 listing of who the regulatory person is.

18 Q. Okay. So when it listed the regulatory
19 person, when you called there, did they answer Phone
20 Company of Arizona or Phone Company Management Group?

21 A. I quite honestly can't answer that. I don't
22 remember.

23 Q. And I am just trying to follow you. If you
24 received the complaint and called the regulatory person,
25 at some point, did it become apparent to you that there

1 was kind of this name change that was going on and is that
2 why you went to legal? Or what impetus was it that you
3 felt you needed to meet with your lawyer to figure out
4 what was happening? Or did you have the meeting with
5 Legal after that conversation when you felt it exceeded
6 your scope and, when you went to Legal through that,
7 that's how that information was discerned?

8 A. It was the initial meeting on September 11th
9 that I felt was beyond my scope, then a subsequent
10 meeting, and I want to say September 27th, at which things
11 started to form. But prior to that, I had no knowledge of
12 Phone Company of Arizona, period.

13 Q. Okay. But after that, you were on notice that
14 Phone Company of Arizona was PCMG, correct?

15 A. Yes.

16 Q. And then what happened sometime in November,
17 when you started working on these complaints and following
18 through with the regulatory agent?

19 A. I actually started right after the
20 September 11th meeting. I did a tally from our database.
21 And from that September 11th time frame, there were eight
22 complaints in the system.

23 Q. For who?

24 A. For Phone Company of Arizona. And at that, at
25 that time I started tracking them, having any incoming

1 calls come directly to me so that there was just one
2 person keeping track of the utilities.

3 Q. And those eight complaints, did you pursue
4 those complaints? Did you start treating them like an
5 active file?

6 A. They were being treated by the individual
7 representatives that took them.

8 Q. Okay. And is that what, well, is it possible
9 that those different individuals acting on that different
10 information might have led to some of the perhaps
11 confusion regarding The Phone Company of Arizona, and who
12 they actually were and under what license they were
13 operating? Do you even know?

14 A. I do not know.

15 Q. Okay. Pursuant to in your experience when
16 companies are granted a CC&N, there are usually conditions
17 associated with that, is that correct?

18 A. Yes, sir.

19 Q. And one of those conditions is to update the
20 Commission about changes such as an address change or a
21 phone number change, is that correct?

22 A. Correct.

23 Q. Additionally, one of the usual conditions is
24 to cooperate with the Commission involving investigations,
25 specifically consumer investigations, is that correct?

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1 A. Yes.

2 Q. Is it your opinion then that, from what I
3 understand your testimony is, that because you couldn't
4 reach Phone Company of Arizona or PCMG, that regulatory
5 person for periods of time, either your phone call wasn't
6 returned or your e-mail was bounced back or the phone
7 number wasn't operative, that that made it difficult for
8 you to pursue the complaints that you were working on?

9 A. Yes.

10 Q. Did those regulatory people ever update you
11 with the new information regarding if it was an address
12 change or a phone number change or an e-mail change?

13 A. The first individual advised me on a few
14 occasions there were technical problems. The only change
15 we ever had was when we went from -- it was Chapman.
16 Ms. Chapman was the first person. When Yvette Woods took
17 over, she called and notified us that she was now the
18 contact person.

19 Q. Was there a new number that she gave you,
20 though, to contact her?

21 A. I don't remember if there was a change in
22 number.

23 Q. But there were times, you are telling me, that
24 you would call the regulatory contact person and either
25 the phones weren't answered or your phone call wasn't

1 returned for a period of time?

2 A. Yes.

3 Q. And you said number of days, I think is what
4 your testimony was, is that right?

5 A. Yes.

6 Q. And that, to you, is what was not necessarily
7 upsetting, it is out of the norm and it is the basis for
8 your testimony today?

9 A. Yes.

10 ALJ DION: Okay. I don't have any more
11 questions for Mr. Morton.

12 Mr. Morton, you are excused. You may be
13 recalled in this matter. I don't know. But for the time
14 being you are excused. Thank you.

15 THE WITNESS: Thank you.

16 (The witness was excused.)

17 ALJ DION: We are going to take our afternoon
18 break now. We will take a 15-minute break. We will be
19 back here quarter to 3:00.

20 Mr. Crockett, you have questions for
21 Mr. Credle?

22 MR. CROCKETT: Your Honor, I will have
23 probably 15 minutes. I am going to sponsor or put him on,
24 offer direct testimony, and two or three things we need to
25 update with respect to that testimony.

1 ALJ DION: Ms. Scott, do you have any idea as
2 to what your --

3 MS. SCOTT: I have very little cross, probably
4 about five minutes.

5 ALJ DION: Then we will go ahead and put him
6 on next. And we will hopefully get to Mr. -- starting at
7 least Mr. Lebrecht later this afternoon. And then once
8 that is accomplished, if you can tell me if you are going
9 to call any other witnesses.

10 So based upon that, Mr. Wetherald, I would say
11 probable tomorrow is looking more likely when you will
12 begin your case.

13 So let's take our break, 15 minutes, be back
14 here quarter to 3:00.

15 (A recess ensued at 2:30 p.m., reconvening at
16 2:47 p.m.)

17 ALJ DION: We are back on the record in the
18 LiveWire matter.

19 It is my understanding, I will just note for
20 the record, that Mr. Crockett has arrived, and that he was
21 actually here for a portion of this afternoon's testimony,
22 essentially after the lunchtime break and Mr. Morton.

23 Good afternoon, Mr. Crockett.

24 MR. CROCKETT: Good afternoon.

25 ALJ DION: I understand you are ready to call

1 Q. Mr. Credle, are you affiliated with an entity
2 known as The Phone Company of Arizona, Limited Liability
3 Partnership?

4 A. Yes, sir, I am.

5 Q. Are you a partner of that partnership?

6 A. Yes, sir.

7 Q. Do you have a management responsibility with
8 the partnership?

9 A. I was elected as one of the five managing
10 partners at the initial meeting of the partners.

11 Q. And do you still hold that title today?

12 A. Yes, sir.

13 Q. Now, are you authorized today to speak on
14 behalf of the partnership?

15 A. Yes, sir.

16 MR. CROCKETT: Your Honor, if I might
17 approach, I have some exhibits that the partnership will
18 be using. I have provided copies of those to the parties
19 in the room.

20 BY MR. CROCKETT:

21 Q. Mr. Credle, do you have in front of you a
22 document that has been marked as LLP-1, which is the
23 prefiled testimony of Travis Credle, is that correct?

24 A. Yes, sir, I do.

25 Q. Do you recognize that document?

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1 A. Yes, sir.

2 Q. Is that your prefiled testimony in this case?

3 A. It is.

4 Q. And was that filed with Docket Control on or
5 about April 21, 2003?

6 A. I believe that's correct.

7 Q. And was that testimony prepared by you or
8 under your direct supervision?

9 A. Yes, it was.

10 Q. Now, Mr. Credle, what, what is the current
11 status of the partnership?

12 A. Essentially at this point, since we never had
13 a business and we don't have any money, we are winding up
14 the affairs of the partnership.

15 Q. I have placed in front of you a document that
16 is labeled LLP-10 with the caption Limited Partnership
17 Cancellation Certificate. Do you recognize that document?

18 A. Yes, sir.

19 Q. And was that, does that document indicate that
20 it was filed on November 24th, 2003 with the Arizona
21 Secretary? If you would look towards the stop, there is a
22 filed stamp.

23 A. Okay. Yes, yes.

24 Q. And, Mr. Credle, is it your understanding that
25 when a partnership files a certificate to cancel the

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1 partnership that that cancellation becomes effective when
2 the partnership has wound up its business?

3 A. That's correct, that's my understanding.

4 Q. And is one of the items of business the
5 partnership needs to wrap up the resolution of the, of
6 this complaint proceeding?

7 A. Yes, sir.

8 Q. And is that the only item of business left for
9 the partnership to wrap up in Arizona?

10 A. I believe it is.

11 Q. And Mr. Credle, the certificate of, or the
12 cancellation certificate is signed by Mr. Roald Haugan; do
13 you see that?

14 A. Yes, sir.

15 Q. And is Mr. Haugan a partner in the
16 partnership?

17 A. Yes, he is, and was managing partner, also.

18 Q. Now, Mr. Credle, you may recall from an
19 earlier prehearing conference in this case that the
20 administrative law judge asked whether or not Mr. Tim
21 Wetherald, one of the respondents in this case, was a
22 partner in the partnership?

23 A. Yes, sir, I remember.

24 Q. And as I recall, that was based on a filing
25 with -- a record with the Arizona Secretary that indicated

1 that Mr. Wetherald was a general partner of the
2 partnership?

3 A. That is correct.

4 Q. And, Mr. Credle, I have placed in front of you
5 what has been marked as LLP-2, which is the sworn
6 affidavit of Travis Credle. Do you have that?

7 A. Yes, sir.

8 Q. And was that document filed with Docket
9 Control on or about April 11th, 2003?

10 A. Yes, sir.

11 Q. And in that affidavit, do you state that
12 Mr. Wetherald does not now nor has he ever been a general
13 partner in The Phone Company of Arizona --

14 A. That is correct.

15 Q. -- Limited Partnership?

16 A. That is correct.

17 Q. And is he any kind of a partner, general or
18 otherwise?

19 A. Not to my knowledge, no, sir.

20 Q. Nor has he ever been?

21 A. No, sir.

22 Q. And insofar as you are aware, any filing with
23 the Arizona Secretary indicating that Mr. Wetherald was a
24 partner, general or otherwise, with the partnership would
25 have been in error?

1 A. Yes, sir.

2 Q. Now, Mr. Credle, also in front of you is a
3 document that is identified as LLP-3, which is a letter to
4 the Arizona Secretary by Mr. George Aucoin. Do you have
5 that?

6 A. Yes, sir.

7 Q. And is Mr. Aucoin an attorney that has also
8 represented the partnership?

9 A. Yes, he is.

10 Q. Okay. And attached to that transmittal letter
11 is there a filing entitled Limited Partnership Amendment
12 to Certificate?

13 A. Yes, there is.

14 Q. Okay. And that, in that document, it states
15 under the line dealing with the amendment to the
16 partnership, it states that pursuant to A.R.S. 29-309(c),
17 the certificate is hereby amended to reflect that Tim
18 Wetherald is not and never has been a general partner or
19 limited partner or managing partner of the Phone Company
20 of Arizona, LLP?

21 A. Yes, sir.

22 Q. And is that a true statement?

23 A. Yes, it is.

24 Q. And this document is signed by, it appears,
25 Steve, Steven Petersen?

1 A. That's correct.

2 Q. And are you acquainted with Mr. Petersen?

3 A. Yes, I am.

4 Q. And it indicates that he is a managing partner
5 of the partnership, is that correct?

6 A. Yes, he is.

7 Q. Now, Mr. Credle, in your direct testimony, I
8 would call your attention to page 4. And on page 4 at
9 line 8, there is a question that asks if you are
10 acquainted with Mr. Wetherald.

11 A. Yes, sir.

12 Q. And in that you state that it is your
13 understanding that Mr. Wetherald owns a 35 percent
14 membership interest in On Systems Technology, LLC. Do you
15 see that?

16 A. Yes, sir.

17 Q. Was that your understanding at the time?

18 A. Yes, it was at the time I filed the prefilled
19 testimony.

20 Q. And do you know today what the percent
21 ownership that Mr. Wetherald has, if any, in On Systems?

22 A. I of course haven't seen any records, written
23 records or transcripts or anything to state that that has
24 changed. But there has been testimony in this proceeding
25 by Mr. Johnson, who, I believe, owned part of On Systems

1 at one time. And he may have transferred some of his
2 interest to Mr. Wetherald.

3 Q. Okay. So for purposes of your testimony, is
4 it fair to say that you, that although you allocated
5 ownership interest, based on your understanding you don't
6 know whether those are accurate today?

7 A. No, sir, I don't.

8 Q. Okay. And, Mr. Credle, if you would turn in
9 your testimony to page 8, 9 and 10. On those pages, there
10 is a discussion about a certificate of deposit that the
11 partnership claimed it owned and that Mr. Wetherald had
12 used to secure a performance bond for The Phone Company
13 Management Group. Do you see that discussion?

14 A. Yes, sir.

15 Q. And on page 10, at lines 9 through 13, the
16 partnership asks for the Commission to make some findings
17 with regard to that certificate of deposit.

18 A. Yes, sir.

19 Q. Has the partnership and Mr. Wetherald entered
20 into an agreement which resolves the dispute --

21 A. Yes.

22 Q. -- over that?

23 A. Yes, we have.

24 Q. Over that certificate of deposit?

25 A. Correct.

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1 Q. Okay. So at this point in time is there
2 anything that the partnership is asking this Commission to
3 do with respect to that certificate of deposit?

4 A. No, sir.

5 Q. Now, Mr. Credle, backing up to the affidavit,
6 which was marked as LLP-2, attached to that as Exhibit A
7 is the partnership agreement for The Phone Company of
8 Arizona, LLP.

9 A. Yes, sir.

10 Q. And if you would turn in that document to page
11 5 and look at section 7.3, initial managing partner.

12 A. Okay.

13 Q. The first sentence of that section states that
14 the initial managing partner shall be Paul Meyer and Leon
15 Swichkow?

16 A. Okay.

17 Q. Now, other than that -- well, let me back up.
18 Do you recall who prepared this partnership
19 agreement?

20 A. I believe that Telecom Advisory prepared the
21 partnership agreements or they were sent to us by Telecom
22 Advisory.

23 Q. And Telecom Advisory was a promoter that was
24 selling partnership interests in The Phone Company of
25 Arizona, Limited Liability Partnership?

1 Telecom Advisory group?

2 A. Yes, sir.

3 Q. And so your statements regarding whether
4 Mr. Shiner and Mr. Swichkow in fact owned an interest in a
5 partnership are based on the fact that Telecom Advisory
6 group never provided you with anything to indicate that
7 they did own an interest in the partnership?

8 A. That's correct.

9 Q. Moving back to your direct prefiled testimony,
10 Mr. Credle, if I were to, with the exception of the
11 corrections and additions that we have just gone through,
12 if I were to ask you these questions today, would your
13 answers be the same as modified by the discussion that you
14 and I have discussed?

15 A. Yes, they would.

16 Q. Do you have anything else to add to your
17 testimony?

18 A. No, I don't.

19 MR. CROCKETT: Your Honor, at this point I
20 would make Mr. Credle available for cross-examination.

21 ALJ DION: Do you want to enter any of the
22 exhibits?

23 MR. CROCKETT: Thank you, Your Honor. Yes, I
24 would like to enter LLP-1, 2, 3, and 10.

25 ALJ DION: Any objection, Ms. Scott?

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1 MS. SCOTT: No objection.

2 ALJ DION: Mr. Wetherald?

3 MR. WETHERALD: I don't have an objection to
4 necessarily entering it. I would move, however, Your
5 Honor, that the discussion Mr. Credle has about the surety
6 bond on pages 8 through 10 be stricken as they are largely
7 moot since they have come to a settlement and I don't
8 think they are germane to anything related to the
9 complaints.

10 MS. SCOTT: And, Your Honor, I would oppose
11 that. Even though they have entered into a settlement
12 agreement, I think the allegations there are relevant to
13 this proceeding.

14 ALJ DION: Yes, I am going to overrule the
15 objection. But I am certainly going to take under
16 advisement the parties have settled the matter in this
17 case. As to -- well, that's it.

18 I don't have any reason to believe that
19 anything, other than what Mr. Credle said in his sworn
20 testimony when he filed this, there is no indication to me
21 that anything has been changed other than a settlement
22 having been reached. And that settlement may be
23 confidential but certainly the filing in this case is not.
24 Other than a showing that those particular statements are
25 unreliable, I won't exclude them at this time.

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1 But like I said, the matter has been settled
2 between the parties so I am going to overrule with that
3 proviso and I will enter LLP-1, 2, 3, and 10.

4 Ms. Scott, do you have any questions?

5 MS. SCOTT: Yes, I do.

6

7

CROSS-EXAMINATION

8 BY MS. SCOTT:

9 Q. Good afternoon, Mr. Credle.

10 A. Good afternoon.

11 Q. I have just a few questions for you.

12 On page 2 of your testimony, specifically
13 lines 5 through 11, you talk about a Telecom Advisory
14 Services, Inc., correct?

15 A. Yes, ma'am.

16 Q. Can you tell me who that entity was and who it
17 was comprised of?

18 A. Telecom Advisory Services was a group of
19 individuals located in Boca Raton, Florida. They promoted
20 the sales of the various partnerships, telecom
21 partnerships or CLEC partnerships in the listed states.
22 It was comprised originally during the first year, which
23 started in March of 2001, I believe.

24 My main contact was the national partnership
25 director, Frank H. Sutherland. The only other person I

1 was aware of involved in Telecom Advisory Services was
2 Leon Swichkow.

3 Later on, probably in early 2002, I guess
4 around February or early March, we became aware that there
5 was a third person involved in Telecom Advisory or a third
6 principal. And that was Mark David Shiner.

7 Q. Okay. And I note on page 2 of your testimony
8 that you indicate that Telecom Advisory Services was the
9 one that sold investment shares in The Phone Company of
10 Arizona, LLP, the partnership, to you and the other
11 partners, correct?

12 A. Yes, ma'am.

13 Q. Further on page 2 of your testimony, you make
14 a statement that it is your understanding that On Systems
15 Technology, LLC, a Colorado limited liability corporation,
16 was formed for the purpose of owning, operating and
17 managing telecom companies in Arizona, including The Phone
18 Company of Arizona, LLP, is that correct?

19 A. Yes, ma'am.

20 Q. And what led you to that conclusion?

21 A. When these phone companies were formed by
22 Telecom Advisory Services, in their promotional literature
23 they included information about the persons and entities
24 that were going to do the day-to-day managing of the phone
25 companies. The partners provided the capital, start-up

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1 capital to start the companies, funded it. And the
2 promotional literature had information regarding the
3 manager, On Systems, and a brief bio of, I think, around
4 four or five different persons involved in On Systems. So
5 essentially when you bought a unit, the management group
6 had already been selected by Telecom Advisory.

7 MS. SCOTT: Okay. Your Honor, I am going to
8 approach the witness at this point. And what I am going
9 to show him is a response by LiveWireNet, The Phone
10 Company Management Group, On Systems and The Phone Company
11 of Arizona to one of Staff's data requests in this case.
12 This data request was received, or data response was
13 received by the Staff on February 18th, 2003.

14 ALJ DION: Is that a part of S-3?

15 MS. SCOTT: Yes, it is, Your Honor. And I am
16 going to show it to Mr. Wetherald right now.

17 BY MS. SCOTT:

18 Q. Mr. Credle, I am going to ask you to read the
19 answer to the respondents' response to Staff 2-22 into the
20 record.

21 A. The response starting on line 8?

22 Q. Yes, that's correct.

23 A. There is no relationship between Telecom
24 Advisory Services and On Systems Technology, Inc. and/or
25 Tim Wetherald in Arizona, Colorado, Iowa and Minnesota, or

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1 Telecom Advisory Services, though, is that correct?

2 THE WITNESS: No. I don't believe he is an
3 active participant of the Telecom Advisory.

4 ALJ DION: Okay. Where was the, where is the
5 nexus? I am just asking.

6 THE WITNESS: We believe at one point, through
7 two different trusts, that Mr. Swichkow and Mr. Shiner may
8 have purchased part of Telecom -- purchased part of On
9 Systems Technology.

10 ALJ DION: Okay. So the information that you
11 have had is that, rather than Mr. Wetherald being a part
12 of the other entity, meaning Telecom Advisory, at some
13 point Mr. Shiner and Mr. Swichkow had an ownership
14 interest in On Systems, is that correct?

15 THE WITNESS: That's correct.

16 ALJ DION: That's why you disagree with the
17 statement that was read to you in the response?

18 THE WITNESS: That's correct.

19 ALJ DION: Okay. I just wanted to know what
20 you said.

21 All right, Ms. Scott. Thank you.

22 MS. SCOTT: Yes. And I would just like to
23 follow up for a moment.

24 BY MS. SCOTT:

25 Q. Is it also your understanding, or from the

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1 events that occurred in this case, is it the -- is my
2 understanding correct that Telecom Advisory Services,
3 after they sold the partnership interest to you, that they
4 also informed you that On Systems Technology would be the
5 manager of this entity?

6 A. Yes, ma'am.

7 Q. Okay. Referring you to page 5 of your
8 testimony, there is a statement that appears on lines 22
9 through 25 --

10 A. Yes, ma'am.

11 Q. -- on page 5. And it is, and I will just read
12 it verbatim: Rather, Mr. Wetherald took steps to advance
13 the interest of On Systems Technology, LLC, and The Phone
14 Company Management Group, LLC, to the detriment of the
15 Phone Company of Arizona, LLP. Is that correct?

16 A. Yes, ma'am.

17 Q. Can you tell me, Mr. Credle, what is your
18 understanding of Mr. Wetherald's relationship with The
19 Phone Company Management Group, LLC?

20 A. Mr. Wetherald was, according to the
21 partnership agreement, was supposed to be the manager.
22 And he was supposed to acquire the various licenses and
23 bring the company into compliance so that phone customers
24 could be signed up. And he was supposed to do that on
25 behalf of The Phone Company of Arizona, LLP.

1 To this date, we have never had a CLEC
2 license. We have never had an interconnect agreement with
3 any carrier. And essentially we have never had any
4 business, we have never derived any profits from any
5 business venture and essentially have had no control over
6 the activities of the Phone Company Management Group in
7 Arizona.

8 Q. And it is your testimony that On Systems
9 Technology, of which Mr. Wetherald held a substantial
10 interest, owned all of The Phone Company Management Group,
11 correct?

12 A. That is correct.

13 Q. Did the Arizona partnership of which you were
14 a part own any part of the Phone Company Management Group,
15 LLC?

16 A. No, we did not.

17 Q. And from your prior testimony you believe that
18 there were two trusts that held an ownership interest in
19 On Systems Technology, LLC, is that correct?

20 A. That's correct.

21 Q. And that those trusts were held by Leon
22 Swichkow and perhaps Mark David Shiner?

23 A. Yes, ma'am.

24 Q. And those two persons you earlier testified
25 are members or owned Telecom Advisory Services, correct?

1 A. Yes, ma'am.

2 MS. SCOTT: Okay. I am going to approach the
3 witness again. And I am going to ask him to look at again
4 a response that was submitted by LiveWireNet, The Phone
5 Company Management Group, On Systems, and The Phone
6 Company of Arizona to a Staff data request, specifically
7 it is Staff's second set of data requests. And it is on
8 page 6 of their response.

9 ALJ DION: What is the date on that?

10 MS. SCOTT: It is February 18th.

11 BY MS. SCOTT:

12 Q. And I am going to ask you, Mr. Credle, just to
13 read into the record the reply here to Staff 2-20.

14 MR. WETHERALD: I am missing page 6.

15 THE WITNESS: The response is PCMG does not
16 know the principals and/or shareholders at Telecom
17 Advisory Services.

18 BY MS. SCOTT:

19 Q. Would you agree with that statement?

20 A. No, I wouldn't.

21 Q. Okay.

22 MR. WETHERALD: I guess I am going to object
23 to that on the basis of hearsay unless he can show a
24 foundation as to why he would disagree.

25 ALJ DION: Yes. I am going to ask why,

1 MS. SCOTT: This was filed on February 18th,
2 2003.

3 ALJ DION: Okay. So you are saying that prior
4 to February 18th, 2003, you were on phone calls in which
5 Mr. Wetherald was present as well as Mr. Swichkow and
6 Mr. Shiner?

7 THE WITNESS: Yes, sir, that's correct.

8 ALJ DION: And you are telling me that either
9 Mr. Swichkow or Mr. Shiner told you the name Tim Wetherald
10 would be the manager of the telecom company prior to that
11 February 2003 date?

12 THE WITNESS: That's correct.

13 ALJ DION: Okay. Any other questions,
14 Ms. Scott?

15 MS. SCOTT: Yes, Your Honor. I have just a
16 few.

17 BY MS. SCOTT:

18 Q. So, Mr. Credle, if I could just summarize a
19 few other portions of your testimony to make sure I
20 understand your testimony correctly.

21 The Phone Company of Arizona, LLP, which is
22 the partnership that you had an interest in, never owned
23 any interest in On Systems Technology, Inc.?

24 A. No, ma'am.

25 Q. And The Phone Company of Arizona, LLP never

1 owned any ownership interest in The Phone Company
2 Management Group?

3 A. No, ma'am.

4 Q. The Phone Company of Arizona, LLP never had
5 any ownership interest in LiveWireNet?

6 A. No, ma'am.

7 Q. The joint venture that was subsequently set up
8 involving your partnership --

9 A. Yes, ma'am.

10 Q. -- who was that joint venture with?

11 A. The joint venture was with On Systems. They
12 were 30 percent owner of the joint venture. The partners
13 had a 70 percent ownership.

14 Q. Was The Phone Company Management Group also a
15 part of the joint venture?

16 A. The license was going to be acquired for the
17 joint venture, I believe, from The Phone Company
18 Management Group.

19 Q. But was The Phone Company Management Group,
20 which Mr. Wetherald alleges to be an affiliate or
21 subsidiary of On Systems, was that entity specifically
22 part of the joint venture?

23 A. No, ma'am.

24 Q. Okay. Mr. Credle, do you have a copy of
25 Mr. Bostwick's direct testimony that was filed on

1 March 28, 2003?

2 A. I don't believe I do, unless it is --

3 MS. SCOTT: Your Honor, could I approach the
4 witness with a copy of that?

5 ALJ DION: Okay.

6 Mr. Credle, just before we do that, let's put
7 to rest anything else. Were there any management
8 crossovers between the LLP or On Systems or Phone Company
9 Management Group or LiveWire?

10 THE WITNESS: No, sir.

11 ALJ DION: None of the partners had any
12 interest in those three companies or were managers or
13 employees in any way of those three companies, right?

14 THE WITNESS: No, sir.

15 MR. CROCKETT: Your Honor, if I could
16 interject, I think Mr. Credle testified earlier that he
17 was not sure whether Mr. Shiner and Mr. Swichkow were ever
18 partners in the Phone Company of Arizona, LLP. He just
19 doesn't know.

20 I don't think he knows. He doesn't believe
21 they were, but he doesn't know the answer. If it turns
22 out they were partners and turns out they also had an
23 ownership interest in On Systems through a trust
24 arrangement, then there would be a nexus.

25 ALJ DION: I guess my -- and I understand

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1 about?

2 A. I believe one of our attorneys had told us
3 about this publication.

4 MR. WETHERALD: I am going to object. This is
5 well beyond the scope of his direct testimony. And
6 bringing in somebody else's exhibit, I am not sure
7 that --

8 ALJ DION: Well, no, he can use other people's
9 exhibits. And this is, would be considered actually
10 Ms. Scott's direct testimony because -- as a witness
11 offered by Mr. Crockett. So now this is her chance, if
12 you will, for direct testimony.

13 But I am going to ask, where are we going with
14 this, Ms. Scott? What part of the counts are we?

15 MS. SCOTT: Well, Your Honor, the only thing I
16 am trying to establish with this, it was my understanding
17 from yesterday's testimony and questioning by
18 Mr. Wetherald and in the November 3rd transcript, that he
19 was questioning the validity of this article. And so I
20 was just trying to establish how it came about, and
21 whether Mr. Credle felt it was an accurate representation
22 of his interview with this individual.

23 MR. WETHERALD: I think that's a
24 mischaracterization what I did on November 3rd, Your
25 Honor. My questions to Mr. Bostwick were what steps he

1 took to make sure it was in fact accurate. His answer was
2 nothing.

3 ALJ DION: I understand that and I think we
4 can accomplish this in just a question or two.

5 Mr. Credle, you are familiar with that
6 article?

7 THE WITNESS: Yes, I am.

8 ALJ DION: In the areas in which the quotes or
9 messages are attributable to you, are those accurate in
10 your opinion?

11 THE WITNESS: Yes, sir, they are.

12 ALJ DION: You can't speak to anybody else in
13 the article, can you?

14 THE WITNESS: No, I can't.

15 ALJ DION: But in your opinion that's
16 essentially either quoted what you said to the reporter or
17 it was kind of the gist of what you were saying, is that
18 right?

19 THE WITNESS: Yes, sir.

20 ALJ DION: Do you have any other questions,
21 Ms. Scott?

22 MS. SCOTT: I don't.

23 ALJ DION: Mr. Wetherald, do you have some
24 cross-examination for Mr. Credle?

25 MR. WETHERALD: Oh, yes.

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1 CROSS-EXAMINATION

2 BY MR. WETHERALD:

3 Q. First, Mr. Credle, let's start with: When was
4 the initial meeting, the initial meeting of the Arizona
5 LLP?

6 I am going to use the Arizona LLP instead of
7 the Phone Company of Arizona just for brevity.

8 ALJ DION: You can refer to it as the LLP. I
9 believe we have been doing that.

10 BY MR. WETHERALD:

11 Q. All right. When was the initial meeting of
12 the LLP?

13 A. I believe it was sometime in the late winter
14 or early spring of 2002.

15 Q. Can you tie it down any more specific? April,
16 May, June, March?

17 A. I think it may have been May.

18 Q. So can we maybe just say it was sometime in
19 April, May time frame?

20 A. I think that's a fair assessment.

21 Q. Of 2002?

22 A. 2002.

23 Q. Were you involved in any of the management
24 issues or formation issues, operational issues prior to
25 the formation of the partnership --

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1 other than your own mere speculation leads you to believe
2 that that is an accurate statement?

3 A. What portion of it?

4 Q. Formed for the purpose of owning, operating
5 and managing telecommunication companies in Colorado,
6 Arizona, Washington, Minnesota, Iowa, Nebraska, Texas and
7 Oregon.

8 A. In the promotional literature that we received
9 there was a biographical sketch of yourself, Frank
10 Tricamo, several other people connected with On Systems.
11 Mr. Swichkow told us that On Systems would be the
12 day-to-day manager of the various CLECs in these states.

13 Q. I understand that. But that's a different
14 question than I just asked you. Okay?

15 You have made a statement that the purpose
16 that On Systems was formed was to do this stuff. What
17 have you seen that tells you that that was the purpose of
18 why On Systems was formed?

19 A. I am not sure exactly what your purpose was
20 when you formed On Systems.

21 Q. So you don't know what the purpose was when we
22 formed On Systems, do you?

23 A. No, I don't.

24 Q. Do you know when On Systems was formed?

25 A. I think it was purchased out of the bankruptcy

1 of Voice Networks, Inc., or VNI.

2 Q. And that assumption is based on exactly what?

3 A. I believe Voice Networks, Inc. went out of
4 business in the year roughly 2000, in about 2000, and the
5 remnants of it were turned into On Systems.

6 Q. And that's based on what evidence, what
7 investigation, what documents, what other than
8 speculation?

9 A. Looking at the documents concerning the show
10 cause hearing and complaint by the Colorado public utility
11 complaint against Voice Networks, Inc. for toll bridging
12 and their relationship with US West.

13 Q. So somewhere in those documents the Colorado
14 PUC found that On Systems Technology was the predecessor
15 entity of Voice Networks, Inc.?

16 A. Not the predecessor, no.

17 Q. It basically found that it had purchased the
18 CC&N from Voice Networks, Inc.; isn't that what it found?

19 A. It may have. I am not totally sure.

20 Q. But that's entirely different, is it not, than
21 the statement that On Systems Technology is an offshoot or
22 somehow related to Voice Networks, Inc.?

23 A. It is my understanding that On Systems came
24 about after the demise of Voice Networks, Inc.

25 Q. And why do you have that understanding?

1 A. Essentially the document by the PUC.

2 Q. Does the document of the PUC ever disclose
3 when Voice Networks was demised and when On Systems was
4 formed?

5 A. I can't recall.

6 Q. Isn't it true, Mr. Credle, that you surmise
7 and speculate a lot with almost no concrete evidence about
8 anything?

9 MR. CROCKETT: Objection; argumentative.

10 ALJ DION: Yes. I am going to sustain that.

11 MR. WETHERALD: Okay.

12 BY MR. WETHERALD:

13 Q. Have you ever seen a document that would lead
14 you to believe that On Systems Technology was formed after
15 the demise of Voice Networks?

16 MR. CROCKETT: Objection; asked and answered.

17 THE WITNESS: No.

18 BY MR. WETHERALD:

19 Q. Do you know when the demise of Voice Networks
20 was?

21 ALJ DION: Hold on, Mr. Wetherald. It I might
22 behoove you.

23 Best of my recollection is that Mr. Credle
24 couldn't, that information about formation of On Systems
25 and the demise of Voice Networks was in the California PUC

1 and that he couldn't recall dates. So I am going to
2 sustain the objection. But I will clarify.

3 Was that your testimony, Mr. Credle?

4 THE WITNESS: Yes. It was Colorado PUC
5 instead of California.

6 ALJ DION: So you don't know the dates?

7 THE WITNESS: No, I don't.

8 ALJ DION: So it is possible that On Systems
9 was created prior to the demise of this Voice Networks, is
10 that possible?

11 THE WITNESS: Possible.

12 ALJ DION: Okay. It is possible. It was
13 possible it was created afterwards, correct?

14 THE WITNESS: Right.

15 ALJ DION: You just don't know?

16 THE WITNESS: Don't know.

17 ALJ DION: All right. Mr. Wetherald?

18 BY MR. WETHERALD:

19 Q. But yet, in light of the fact you don't know,
20 Mr. Credle, you still testify here and make the definitive
21 statement as to why On Systems was created, don't you?

22 A. I say the purpose, yes.

23 Q. But you don't know what that purpose was, do
24 you?

25 A. No, sir. It was essentially told to us by

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1 Leon Swichkow that On Systems would be the manager of the
2 phone companies.

3 Q. But isn't that a different statement as to
4 what the purpose of it was originally formed for?

5 A. Mr. Swichkow did not give us any details on
6 when or exactly why On Systems was formed. But we were
7 led to believe that On Systems would be the manager. So
8 our assumption was that On Systems was formed to manage
9 the phone companies of the various partnerships.

10 Q. So really what it comes down to Mr. Credle is
11 that you were told what On Systems would be doing for your
12 partnership and, from that, you made an assumption as to
13 why On Systems was formed; is that a correct statement?

14 A. Correct.

15 Q. But you have absolutely no foundation other
16 than that leap or assumption to make the statement that
17 you made here that the purpose of On Systems was formed
18 for this purpose?

19 A. That could be true, yes.

20 MR. WETHERALD: In which case, Your Honor, I
21 move that we strike lines 12 through 17 of this testimony
22 since there is no foundation for the statement.

23 ALJ DION: Well, I think the key part of the
24 statement is that, to my understanding, and it is, it was
25 Mr. Credle's state of mind as to what he did. And I think

1 unreal, but something, I think the word you used tangible.

2 Is there something tangible, concrete, is
3 there a document you can point to?

4 THE WITNESS: I have never seen any document
5 transferring ownership between Mr. Wetherald and
6 Mr. Shiner and Swichkow. I know Mr. Shiner had an office
7 at On Systems for quite awhile in the year 2002, shared
8 office space and was there quite a bit, along with his
9 son, Brian Shiner, who was an employee of On Systems.

10 ALJ DION: Okay. In fact, your only, and I
11 thought I went through this, really the only thing that
12 leads you to believe that there is a connection is the
13 fact that Mr. Wetherald's name was mentioned as the person
14 who would be managing the telecom company along with his
15 company, On Systems, by Mr. Swichkow, correct?

16 THE WITNESS: Correct.

17 ALJ DION: And the other thing is what you
18 read in the SEC complaint regarding the possibility that
19 Mr. Swichkow or Mr. Shiner might be involved in trusts
20 that might have an interest in On Systems, is that right?

21 THE WITNESS: That's correct.

22 ALJ DION: That's it.

23 THE WITNESS: That's correct.

24 ALJ DION: Okay. You don't have those trusts
25 with you?

1 would know that information?

2 A. No tangible proof.

3 Q. Is that speculation that I would know, or your
4 assertion with Ms. Scott's cross that you disagreed with
5 my answer saying that I didn't know, based on the fact
6 that I have a relationship with Mark and Leon?

7 A. There was roughly seven and a half million
8 dollars raised by Telecom Advisory, which roughly half of
9 it went to On Systems for the formation of various phone
10 companies. So they had some type of relationship. I
11 don't think somebody would have written a check for three
12 and a half million dollars to somebody they weren't
13 dealing with.

14 Q. You don't? Do you write checks to vendors?
15 Let me ask you this: You own a business, don't you?

16 A. Yes, I do.

17 Q. Do you deal with a number of suppliers?

18 A. Yes, I do.

19 Q. Do you, with some of those suppliers, pay them
20 lots of money?

21 A. Fair amount.

22 Q. Do you do work for people?

23 A. Yes, I do.

24 Q. And I take it that you take the time to, if
25 there is going to be a substantial amount of money to

1 invest, if there is credit or whatever, whether you would
2 extend it, correct?

3 A. Rephrase that, please.

4 Q. It was a bad question. I will withdraw it.
5 It was confusing when it came out, so I imagine it was
6 probably even worse when you heard it.

7 Mr. Credle, do you know all of the ownership
8 structures of the companies who provide you services to
9 the company?

10 A. I don't know all the principal owners of,
11 let's say, Martin Marietta, no, I don't.

12 Q. So it is conceivable that two companies can
13 enter into a business relationship where money is passed
14 and that there would not be a need to go do research and
15 ask the questions as to who owns what?

16 A. If I am dealing with a small supplier or the
17 company is comprised of one or two or three or four
18 individuals, I don't customarily send them a check for 20,
19 \$30,000 without knowing who they are.

20 Q. Okay. If you were getting a check from
21 somebody for 20 or \$30,000, would you go find out who they
22 were?

23 A. I know who they are.

24 Q. Do you always know the, well, I don't know
25 what business you are in exactly, but do you do work for

1 corporations or individuals?

2 A. Individuals and public service people.

3 Q. That's probably a little different then. But
4 isn't it possible that people can have a business
5 relationship where money is exchanging hands and never
6 necessarily get into ownership structures of the company?

7 A. Anything is possible.

8 Q. Okay. So the fact that On Systems was
9 contracted to do work for the partnerships by Telecom
10 Advisory or some other entity does not necessitate or mean
11 that On Systems, myself or PCMG has any real knowledge as
12 to what the ownership structure of that company is, does
13 it?

14 A. Whether or not you know the structure of
15 Telecom Advisory or whether or not the Telecom Advisory
16 knows On Systems'?

17 Q. Whether or not On Systems knows the ownership
18 structure of Telecom Advisory.

19 A. Definitively, I would have to agree with you
20 that you may not know the total ownership of Telecom
21 Advisory, like many other people.

22 Q. As a matter of fact, I wasn't even paid by
23 Telecom Advisory, was I?

24 A. That's of some debate.

25 Q. Well, but the money raised came from the

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1 partnerships to On Systems, not from Telecom Advisory,
2 didn't it?

3 A. Each individual partner who invested in these
4 phone companies wrote a check for approximately \$19,975
5 per unit. That check was sent to Lewis B. Stinson, the
6 escrow agent. Lewis B. Stinson distributed that money, we
7 believe, to Telecom Advisory. And Telecom Advisory was
8 supposed to distribute a portion of those proceeds to On
9 Systems.

10 Q. There was an escrow agreement that Lewis
11 Stinson operated under?

12 A. We have never seen the agreement. Lewis
13 Stinson doesn't turn over any information for us. We
14 never have gotten an accounting from him.

15 Q. So you don't know whether it was an agreement
16 or not?

17 A. Agreement between Telecom Advisory?

18 Q. Between the partnerships and Lewis Stinson as
19 escrow agent.

20 A. The receipt that we received from Lewis
21 Stinson was in the form of a letter on his letterhead
22 essentially saying that he is escrow agent of funds that
23 were received for each unit purchased in the phone
24 company.

25 Q. So do you know if the money received that was

1 raised was deposited into a Telecom Advisory account or
2 into a partnership account?

3 A. Like I said, we have never been able to get an
4 accounting on the Telecom Advisory, from you or from Lewis
5 Stinson on how the money was distributed and handled.

6 Q. So you don't know definitively that I was paid
7 anything by Telecom Advisory?

8 A. In the promotional literature there was a
9 breakdown based on percentage in terms of advertising,
10 printing costs. And a portion of those proceeds, I
11 believe around 45 percent, were to be forwarded to On
12 Systems for the formation of those phone companies.

13 Q. But all of this presupposes that your
14 assumption that the money went to Telecom Advisory as
15 opposed to the partnership is accurate, doesn't it?

16 A. The investment money from the individual
17 partners went to Telecom Advisory? It went to Lewis
18 Stinson.

19 Q. And Lewis Stinson acted as an escrow agent for
20 who?

21 A. Telecom Advisory.

22 Q. Are you sure?

23 A. He said so in his letter.

24 Q. Did he act as escrow agent for the
25 partnerships?

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1 A. He was acting as escrow agent who collected
2 the funds for distribution, we assumed, to Telecom
3 Advisory since they were promoting the telecom.

4 Q. Once again, Mr. Credle, I guess I am extremely
5 disturbed by the fact we believe, we assume an awful lot.
6 What do you know is concrete fact?

7 MR. CROCKETT: Objection. That's a very broad
8 question. I think he probably knows that the world is
9 round, but I am not sure that's what we are getting at
10 here.

11 MR. WETHERALD: That's a fair, that's a fair
12 objection.

13 ALJ DION: I am going to kind of, again, cut
14 this line of questioning short.

15 Mr. Credle, it is my understanding that you
16 invested some money and your understanding was that Mr. --
17 there was a Mr. Stinson, is that correct, was the escrow
18 agent?

19 THE WITNESS: Correct.

20 ALJ DION: As to how Mr. Stinson distributed
21 money, and on behalf of whom, you don't know, is that
22 right?

23 THE WITNESS: I don't know

24 ALJ DION: So in regards to the relationship
25 between Telecom Advisory associates, Mr. Wetherald and/or

1 On Systems, you don't know if the money was distributed to
2 Telecom Advisory and then on to On Systems and
3 Mr. Wetherald, or if it was directly deposited with On
4 Systems and never went through Telecom Advisory, is that
5 correct?

6 THE WITNESS: That is correct.

7 ALJ DION: Okay. Mr. Wetherald, do you have
8 more questions?

9 MR. WETHERALD: I do actually.

10 BY MR. WETHERALD:

11 Q. Going back to your testimony, Mr. Credle --

12 ALJ DION: Mr. Wetherald, why don't you take a
13 second.

14 We are going to continue until around the 4:30
15 hour. So if anybody needs a break before then, let me
16 know and we will take a couple minutes break. But I just
17 wanted to let the parties know generally we would be
18 taking a break in about 10 or 15 minutes, but I am going
19 to try and go until at least the 4:30 hour today.

20 So, Mr. Wetherald, please continue.

21 BY MR. WETHERALD:

22 Q. First of all, let me clarify something. Did
23 you ever talk to me prior to the formation of the
24 partnerships?

25 A. Formation of all of the partnerships?

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1 Q. No, formation of the par -- well, you invested
2 first in Mile High, right?

3 A. That's correct.

4 Q. Did you talk to me prior to the formation of
5 Mile High?

6 A. No, I didn't.

7 Q. So did you talk to me during the sales process
8 at all during the purchase of the Arizona partnership
9 units?

10 A. I had spoken to you I believe after I invested
11 in Mile High and prior to my investment in Arizona.

12 Q. But that was in relation to Mile High, was it
13 not?

14 A. I can't definitively say that the Arizona
15 partnership was not balled up in some type of discussion.

16 Q. And they may have been. But I guess my point
17 is: Do you remember ever talking to me in regards to
18 whether or not you should or shouldn't purchase units in
19 partnerships?

20 A. No, I don't.

21 Q. I was hired, however, to operate the
22 partnerships, or On Systems Technology, rather, was hired
23 to operate the partnerships?

24 A. Correct, and you were the manager.

25 Q. Right, okay. Well, let's be careful about

1 that statement, too. Was I the manager or was On Systems
2 Technology the manager of the partnership?

3 A. You were the manager of the On Systems
4 Technology.

5 Q. But who was the manager of the partnership?

6 A. You were not the manager of the partnership.

7 Q. Correct. Okay.

8 And in that, I had some things that I was to
9 do. And one of them was to -- well, let me rephrase this
10 a little bit.

11 Is it fair to say that prior to the formation
12 of the Arizona partnership or LLP, that I would be taking
13 operational directions from one of the two initial
14 managing partners?

15 A. In Arizona?

16 Q. Correct, prior to its formation.

17 A. I have no way of knowing that.

18 Q. Well, somebody hired me. Was it you and the
19 management committee or was it the initial managing
20 partner?

21 MR. CROCKETT: Could Mr. Wetherald clarify;
22 hired him to do what?

23 MR. WETHERALD: Hired On Systems as a manager
24 of the partnership.

25 MR. CROCKETT: The Arizona partnership?

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1 THE WITNESS: I don't believe you were ever
2 hired as a manager of the Arizona partnership.

3 BY MR. WETHERALD:

4 Q. You don't believe I ever was, did you say
5 that?

6 MR. CROCKETT: Asked and answered.

7 MR. WETHERALD: I am just trying to clarify.

8 ALJ DION: Please hold on because I am really
9 not sure, to be real frank.

10 Mr. Credle, his question, as I understand it,
11 is that at some point On Systems is hired to manage the
12 partnership, right?

13 THE WITNESS: Correct, manage The Phone
14 Company.

15 ALJ DION: The phone -- LLP?

16 THE WITNESS: Correct.

17 ALJ DION: On Systems was associated to manage
18 that entity, correct?

19 THE WITNESS: Yes.

20 ALJ DION: Did you pick them?

21 THE WITNESS: No.

22 ALJ DION: Do you know who did?

23 THE WITNESS: I would have to, once again, say
24 the initial managing partner, Leon Swichkow.

25 ALJ DION: But you don't know?

1 THE WITNESS: No.

2 ALJ DION: Okay.

3 THE WITNESS: It may have been David Shiner or
4 some other person.

5 ALJ DION: Okay.

6 BY MR. WETHERALD:

7 Q. But you don't deny that at some point,
8 Mr. Credle, the partnership, Arizona LLP, and On Systems
9 Technology entered into a management agreement?

10 A. That's correct.

11 Q. They did?

12 A. Yes.

13 Q. And part of that management agreement gave me
14 the responsibility to do certain things, is that also
15 correct?

16 ALJ DION: I am going interject. You keep
17 saying "me."

18 MR. WETHERALD: Okay. On Systems Technology,
19 you are right.

20 ALJ DION: Thank you.

21 BY MR. WETHERALD:

22 Q. On Systems Technology to do certain things?

23 A. Correct.

24 Q. And one of the things that they were supposed
25 to do was to acquire operating authority to do business,

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1 with, in Colorado that the joint venture had to be formed
2 because the utilities commission did not want investors to
3 own a certificate of necessity and convenience, that it
4 had to be jointly held between the day-to-day manager and
5 the investor. So therefore a joint venture or some other
6 structure similar to a joint venture had to be formed.
7 And we were told by you that pertained to all the various
8 other states. So the formation of the original joint
9 venture in Colorado would be used as a template to form
10 the joint ventures in the other states.

11 Q. Are you absolutely dead certain, Mr. Credle --
12 I don't doubt that somebody told you that information --
13 but are you really certain it was me that told you that
14 information?

15 A. Yes, I am.

16 Q. I said those words?

17 A. Yes.

18 Q. Okay. And you are absolutely certain?

19 MR. CROCKETT: Your Honor, I think we have had
20 the answer, that would be the third or fourth time.

21 ALJ DION: Yes. I will sustain the objection.

22 MR. WETHERALD: I am going to basically hand
23 Mr. Credle a document and I have not marked this yet.

24 ALJ DION: This document will be referred to
25 as W-6.

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1 BY MR. WETHERALD:

2 Q. Now, Mr. Credle, do you recognize the top page
3 of this as an e-mail from Roald Haugan?

4 A. Yes. It says from Roald Haugan.

5 Q. And who is Roald Haugan?

6 A. He is one of the managing partners of the
7 Arizona phone company.

8 Q. Okay. And attached to this e-mail on the
9 following pages, could you tell us what that is?

10 A. It appears to be an evaluation done by Nancy
11 Polois, an attorney that reviewed the joint venture
12 agreement.

13 Q. Okay. Now, you just testified that you were
14 told by me that the reason I wanted these joint ventures
15 was because I represented that it was a requirement of
16 regulatory bodies in various states. Would that be a fair
17 assumption?

18 A. That's correct.

19 Q. Can you find -- and I am assuming that, if you
20 had an opportunity to look this over, that you would have
21 shared with her my concerns about that issue -- can you
22 find where she addresses that issue in here?

23 A. Without reading the entire document, no, I
24 can't.

25 Q. Why don't you take a few minutes and read it.

1 ALJ DION: Would you like to point it out to
2 him, Mr. Wetherald?

3 MR. WETHERALD: Well, it is not there, Your
4 Honor. I want him to acknowledge the fact that that was
5 not something that was addressed by their attorney.

6 MR. CROCKETT: Your Honor, I am sorry, could
7 Mr. Wetherald repeat what it is he thinks is not in this
8 letter?

9 MR. WETHERALD: The issue of regulatory issues
10 as to the purpose of this joint venture.

11 MR. CROCKETT: Well, I think, I think
12 Mr. Credle had testified that you told him there needed to
13 be a joint venture. And help me understand the connection
14 between him saying that he heard that from you and this
15 letter.

16 MR. WETHERALD: Well, because I think that
17 Mr. -- it seems to me if you are going to have a document
18 reviewed by an attorney, and the purpose of that is stated
19 as being the answer to regulatory issues, that you would
20 want that attorney addressing those issues in their
21 review.

22 MR. CROCKETT: Your Honor, I think --

23 MR. WETHERALD: Oddly enough, it was never
24 addressed by her. My contention is because that's not a
25 statement I ever made for Mr. Credle for the reason for

1 BY MR. WETHERALD:

2 Q. Would you --

3 MR. WETHERALD: Well, Your Honor, maybe we can
4 cover this in a little different way with different
5 people, but I would like to offer it for the purpose of
6 demonstrating that the partnership did in fact have an
7 attorney review these documents before they signed them
8 and that it wasn't just something that I conned them into.
9 They had an opportunity to have legal counsel and discuss
10 them and negotiate them and look at the terms.

11 ALJ DION: I don't think the allegation has
12 ever been made --

13 MR. WETHERALD: Well, kind of makes it in the
14 testimony.

15 MR. CROCKETT: Your Honor, if I might raise
16 another objection at this point, I think Mr. Wetherald is
17 at times crossing over the line of cross-examination and
18 getting into the realm of testifying using Mr. Credle. So
19 I would ask Your Honor to instruct Mr. Wetherald to stick
20 to cross-examination.

21 ALJ DION: Well, I will do that. But it is
22 incumbent on the parties to object when a person, either
23 an attorney or someone representing the company, in the
24 situation when Mr. Wetherald crosses that line, that it is
25 incumbent upon the parties to make those objections.

1 And those are some of the things we run into
2 sometimes when individuals represent themselves and the
3 company and things like that. The questions are more
4 statements. So I will ask you to phrase things in the
5 form of questions.

6 Regarding W-6, do you have an objection to
7 this, Mr. Crockett?

8 MR. CROCKETT: Well, I guess if I, I guess my
9 concern with this document is I am not sure that
10 Mr. Credle has seen the document. I just don't know.

11 If Mr. Credle has seen this document and can
12 attest that was in fact a document that was sent to the
13 partnership, received by the partners by this attorney, I
14 wouldn't object to its introduction to show that the
15 partnership had an attorney look at the joint venture
16 agreement. But absent that, I don't think there is anyone
17 to establish any foundation for this document and,
18 therefore, I would object to its introduction.

19 ALJ DION: Okay. Ms. Scott, anything to add
20 to that?

21 MS. SCOTT: I would join in that.

22 ALJ DION: All right. Mr. Credle, have you
23 ever seen this letter before?

24 THE WITNESS: I think I viewed portions of it.
25 They were e-mailed, copied to me, yes, sir.

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1 ALJ DION: Okay. And currently you are the
2 managing partner so to speak for the LLP, is that correct?

3 THE WITNESS: Yes, sir.

4 ALJ DION: So you would have access to all
5 their files and supposedly know the contents of those
6 files; is that fair to say?

7 THE WITNESS: Yes, that's fair to say.

8 ALJ DION: All right. I will admit it for the
9 purpose that it appears the partnership had an attorney
10 reviewing some of the information that was supplied to it,
11 but really for the purposes of Minnesota law only. It
12 seems to be the caveat that is noted in the second
13 paragraph of this letter. But I will, again, I will take
14 it for what it is worth. So W-6 shall be admitted into
15 evidence.

16 Do you have any more questions, Mr. Wetherald?

17 MR. WETHERALD: I do.

18 ALJ DION: About how many more minutes,
19 Mr. Wetherald?

20 MR. WETHERALD: Well, I mean I would say
21 probably somewhere between, somewhere between 45 and an
22 hour.

23 ALJ DION: It is going to be germane to the
24 counts in this case?

25 MR. WETHERALD: Well, Your Honor, I don't

1 needs to be answered by you, then by all means answer it.

2 MR. WETHERALD: I guess it goes to this: I
3 don't feel that Mr. Credle's testimony has any relevance
4 to the complaints other than they exist, other than they
5 seem to be used by the Staff as an impeachment of
6 character in the fit and proper realm.

7 I don't -- you know, it is kind of one of
8 those catch 22s where I am not necessarily being convicted
9 and tried by what I did as much as who I might be and what
10 the bad press is. And I feel I am compelled to
11 cross-examine Mr. Credle on the veracity of the statements
12 he is making.

13 ALJ DION: And that's fine. I just want to
14 make sure we are, like I said, we are staying within that
15 particular realm. And if you wish to continue, go ahead.

16 We have got about 15 minutes, though, for the
17 rest of the day. So knowing that, is there something that
18 we can cover in about 15 minutes, so is there a good
19 breaking point.

20 MR. WETHERALD: We can cover a few things very
21 quickly.

22 ALJ DION: Okay. Let's go ahead.

23 BY MR. WETHERALD:

24 Q. Mr. Credle, you testified with Ms. Scott that
25 the LLP never acquired a CC&N and was never able to do

1 business, is that correct?

2 A. That's correct.

3 Q. And that was because the joint venture
4 agreement basically was to become the operating entity,
5 not the LLP?

6 A. I believe there were customers that were
7 signed up previous to the joint venture. So the partners
8 expected that there would be a license in place and the
9 regulations observed in order to operate business. And
10 prior to the joint venture, there has been no proof, you
11 know, burden put into any record that the LLP had a
12 license.

13 Q. I am not going to say that the LLP had a
14 license, but there was a license that was to be
15 transferred to the benefit of the LLP into the joint
16 venture, isn't that true?

17 A. That was what we were told.

18 Q. Okay. So the fact that at the end of the day
19 the LLP never had a license is simply because the LLP
20 agreed to have the license that was purchased on their
21 behalf and operate on their behalf transferred to the
22 joint venture and not the LLP, isn't that true?

23 MS. SCOTT: Your Honor, could I ask that he
24 repeat that question? I couldn't follow it at all.

25 ALJ DION: Okay. Why don't we have the court

1 reporter read it back.

2 (The record was read by the reporter as
3 requested.)

4 THE WITNESS: At the end of the day, that
5 statement would probably be true.

6 BY MR. WETHERALD:

7 Q. In fact, isn't that precisely what On Systems
8 was attempting to do in July when it filed its application
9 to discontinue service for PCMG and to get a certificate
10 of authority for the joint venture?

11 A. That was filed in May by Michael Glaser?

12 Q. What was that?

13 A. Was that the filing made by Michael Glaser?

14 Q. Correct. There were actually two filings
15 made, I believe.

16 A. I assume that the filing Michael Glaser made
17 on behalf of the partnership through the joint venture was
18 to acquire a license.

19 Q. For the joint venture?

20 A. For the joint venture.

21 Q. And the partners were a 30 percent owner of
22 the joint -- or 70 percent owner of the joint venture,
23 weren't they?

24 A. Yes, they were.

25 Q. And that would have been in keeping and

1 consistent with the terms of the agreement that the
2 partners and On Systems Technology had entered into, is
3 that correct?

4 MS. SCOTT: Your Honor, could I get a
5 clarification what part of that agreement he is referring
6 to?

7 ALJ DION: Yes.

8 What agreement are you referring to,
9 Mr. Wetherald? Do you have a copy of that?

10 MR. WETHERALD: Well, I thought it was, which
11 I didn't make copies because in flipping through it I
12 thought it was part of the stuff in F-3 -- or S-3, but
13 then when I looked at it just now, that's actually the
14 Mile High operating agreement for the joint venture, not
15 the Arizona operating agreement. I do have a copy of the
16 Arizona operating agreement here but we would need to get
17 copies made for people. But I can certainly give it to
18 him and try to refer to it.

19 ALJ DION: Okay, yes. Ms. Scott, do you
20 have --

21 MS. SCOTT: Yes. I am wondering, though, what
22 portion of this agreement he is agreeing to in asking the
23 witness. I assume it is a multipage agreement that deals
24 with many things.

25 MR. WETHERALD: It is. Specifically it is

1 Exhibit D of the telecommunications services operating
2 agreement, The Phone Company of Arizona Joint Venture
3 between On Systems Technology, LLC and The Phone Company
4 of Arizona, LLP.

5 MS. SCOTT: Well, could we see a copy of
6 Exhibit D? And could the witness also see that so he
7 knows what question he is answering?

8 ALJ DION: Why don't we do this, I think, I
9 think that logistically that is going to take at least ten
10 minutes. Is that something that we can address in the
11 morning, Mr. Wetherald?

12 MR. WETHERALD: Yes.

13 ALJ DION: Why don't we -- why don't you, if
14 you would, make copies for the parties. Also come
15 prepared with one for the court reporter and myself in the
16 morning.

17 MR. WETHERALD: Pardon?

18 ALJ DION: I don't need it this afternoon. I
19 am saying if you could also bring a copy for the court
20 reporter and myself, too. But get copies to the parties
21 this afternoon, would probably be best.

22 Do you have something that you could do in
23 about ten minutes or is this kind of a good breaking
24 point?

25 MR. WETHERALD: This would actually be a good

1 breaking point.

2 ALJ DION: All right. Then we will remain at
3 recess.

4 Here is my proposal. I have a 9:30 hearing
5 tomorrow but it will only take about half an hour. It
6 shouldn't take long at all. But the minute I say that,
7 you know, I will be wrong and jinx myself. But I do
8 anticipate it will go 30 minutes, 45 at the most.

9 So why don't we reconvene tomorrow at 10:15
10 just to be on the safe side. We will reconvene tomorrow
11 at 10:15. We will go throughout the morning to the 12:00
12 noon hour. We will go back an hour, 45 minutes. And then
13 we will reconvene in the afternoon, you know, around 1:00,
14 1:15 again. And then we will go at least to 5:00, if not
15 perhaps later tomorrow evening. But I apologize for that.
16 But that's something that I have to address tomorrow
17 morning. So we will, we are at recess until 10:15.

18 Mr. Credle, you understand, sir, you are still
19 under oath and that you can talk to your attorney but that
20 you shouldn't talk to anybody else regarding your
21 testimony and what you may say and tomorrow morning.

22 THE WITNESS: Correct.

23 ALJ DION: All right. I think we are going to
24 run into a little bit of a problem. Hold on a second.
25 Let's go off the record.

1 (An off-the-record discussion ensued.)

2 ALJ DION: We have had a brief discussion
3 regarding tomorrow's schedule.

4 And we are going to reconvene at 8:00 a.m. and
5 we will push through to either 9:00 or 9:30 which we will
6 have to take a break for half an hour, 45 minutes, and
7 then reconvene around the 10:00, 10:15 hour.

8 So, Mr. Credle, you -- again my warnings still
9 stand. You will be at the stand at 8:00 a.m. And then
10 after that, we will deal with whoever Staff has left.

11 So we are in recess until 8:00 a.m. Thank
12 you.

13 (The hearing recessed at 4:26 p.m.)

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1 STATE OF ARIZONA)
2 COUNTY OF MARICOPA) ss.

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I, COLETTE E. ROSS, Certified Court Reporter No. 50658 for the State of Arizona, do hereby certify that the foregoing printed pages constitute a full, true and accurate transcript of the proceedings had in the foregoing matter, all done to the best of my skill and ability.

WITNESS my hand this 12th day of March, 2004.

Colette Ross
COLETTE E. ROSS
Certified Court Reporter
Certificate No. 50658