



BEFORE THE ARIZONA CORPORATION COMMISSION

TIES DIVISION STAFF,

Complainant,

vs.

IRENET OF ARIZONA, LLC;
PHONE COMPANY MANAGEMENT
, LLC; THE PHONE COMPANY
IZONA JOINT VENTURE dba
PHONE COMPANY OF ARIZONA;
STEMS TECHNOLOGY, LLC,
es principals, TIM
WETHERALD, FRANK TRICAMO AND
DAVID STAFFORD; THE PHONE
COMPANY OF ARIZONA, LLP and
its members,

DOCKET NOS.:
T-038899A-02-0796
T-04125A-02-0796
T-04125A-02-0577
T-038899A-02-0578
T-038899A-03-0152
T-038899A-03-0202

Respondents.

AND OTHER RELATED MATTERS.

PREHEARING

At: Phoenix, Arizona

Date: October 29, 2003

Filed: NOV 18 2003

REPORTER'S TRANSCRIPT OF PROCEEDINGS

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BEFORE THE ARIZONA CORPORATION COMMISSION

UTILITIES DIVISION STAFF,

Complainant,

vs.

LIVEWIRENET OF ARIZONA, LLC;
THE PHONE COMPANY MANAGEMENT
GROUP, LLC; THE PHONE COMPANY
OF ARIZONA JOINT VENTURE dba
THE PHONE COMPANY OF ARIZONA;
ON SYSTEMS TECHNOLOGY, LLC,
and its principals, TIM
WETHERALD, FRANK TRICAMO AND
DAVID STAFFORD; THE PHONE
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1 BEFORE THE ARIZONA CORPORATION COMMISSION

2 UTILITIES DIVISION STAFF,)
3)
4 Complainant,)

5 vs.)

6 LIVEWIRENET OF ARIZONA, LLC;)
7 THE PHONE COMPANY MANAGEMENT)
8 GROUP, LLC; THE PHONE COMPANY)
9 OF ARIZONA JOINT VENTURE dba)
10 THE PHONE COMPANY OF ARIZONA;)
11 ON SYSTEMS TECHNOLOGY, LLC,)
12 and its principals, TIM)
13 WETHERALD, FRANK TRICAMO AND)
14 DAVID STAFFORD; THE PHONE)
15 COMPANY OF ARIZONA, LLP and)
16 its members,)

17 Respondents.)

18 AND OTHER RELATED MATTERS.)

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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 3:04 p.m. on the 29th of October, 2003.

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BEFORE: PHILIP J. DION, III, Administrative Law Judge

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APPEARANCES:

10

For the Complainant:

11

Mr. Gary H. Horton
Staff Attorney, Legal Division
1200 West Washington Street
Phoenix, Arizona 85007-2927

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For Respondents LiveWireNet of Arizona, LLC; The Phone
Company Management Group, LLC; Tim Wetherald; Frank
Tricamo; David Stafford Johnson; On Systems Technology:

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SHUGHART THOMSON & KILROY
By Mr. Michael Glaser
1050 17th Street, Suite 2300
Denver, Colorado 80265
(Appearing telephonically)

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For the Respondent The Phone Company of Arizona, LLP:

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Phoenix, Arizona 85004

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1 APPEARANCES:

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For Shughart Thomson & Kilroy and Michael Glaser, Esq.

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QUARLES & BRADY STREICH LANG, LLP

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By Mr. Edward F. Novak
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Phoenix, Arizona, 85004

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6

and

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SHUGHART THOMSON & KILROY

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By Ms. Kelly Flood
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Phoenix, Arizona 85012

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10 For Intervenor Qwest Corporation:

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FENNEMORE CRAIG

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By Mr. Patrick Black
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1 ALJ DION: All right. Good afternoon,
2 everyone, and welcome to the Arizona Corporation
3 Commission. My name is Phil Dion. I will be presiding
4 over the prehearing in this case.

5 The case is a complaint filed by the Utilities
6 Division Staff against a number of defendants:
7 LiveWireNet of Arizona, LLC; The Phone Company Management
8 Group, LLC; The Phone Company of Arizona Joint Venture
9 d/b/a The Phone Company of Arizona; On Systems Technology,
10 LLC, and its principals, Tim Wetherald, Frank Tricamo and
11 David Stafford, and The Phone Company of Arizona, LLP.
12 Again, those are the respondents in this matter.

13 The Docket No. in this case, there are a
14 number of docket numbers. I will give you the first one,
15 T-03889A-02-0796. There are approximately five or six
16 other Docket Nos. I am not going to go through them.
17 They were consolidated in an earlier case, or, excuse me,
18 earlier point in this proceeding.

19 I have set this prehearing to address a number
20 of motions that were filed since the last time we all got
21 together which was October 7th. I note a couple of
22 things. Mr. Johnson has filed a motion to dismiss.
23 Additionally, Mr. Glaser and his law firm have renewed
24 their motion to withdraw and Mr. Wetherald had filed a
25 motion to continue. Last time we were together I had

1 instructed him to do that by October 7th and it appears
2 that on October 10th he did file that document.
3 Additionally, there are some outstanding issues regarding
4 discovery that I wanted to address this afternoon.

5 However, before we get started, it has come to
6 my attention, I have received a letter from Mr. Credle and
7 I am going to pass this to Mr. Horton for dissemination to
8 the parties. I have made some copies. I just wanted to
9 inform the parties that Mr. Credle had written a letter
10 and that is going to be passed around. And while we are
11 doing that we can go ahead and take appearances.

12 And I will begin with Staff.

13 MR. HORTON: Gary Horton on behalf of
14 Commission Staff, Your Honor.

15 ALJ DION: On behalf of LiveWireNet also known
16 as Phone Company Management Group?

17 MR. GLASER: Michael Glaser on the line, still
18 counsel in the case.

19 ALJ DION: On behalf of The Phone Company of
20 Arizona, LLP?

21 MR. CROCKETT: Jeff Crockett for the
22 partnership.

23 ALJ DION: Can you pull the microphone over
24 towards you, Mr. Crockett?

25 MR. CROCKETT: Yes, Your Honor.

1 ALJ DION: Okay. Again.

2 MR. CROCKETT: Jeff Crockett with the law firm
3 Snell & Wilmer appearing on behalf of The Phone Company of
4 Arizona, LLP.

5 ALJ DION: On behalf of Qwest?

6 MR. BLACK: Patrick Black from the law firm
7 Fennemore Craig on the behalf of Qwest Corporation.

8 ALJ DION: And on behalf of Mr. Glaser and his
9 firm, Shughart Thomson & Kilroy?

10 MR. NOVAK: Ed Novak representing Shughart
11 Thomson & Kilroy. With me is Kelly Flood of the firm.
12 And on the phone is Michael Glaser.

13 ALJ DION: Thank you.

14 Okay. I have handed you all a letter that I
15 received from Mr. Credle indicating that Mr. Credle did
16 not receive the motion to continue that was filed by
17 Mr. Wetherald. Have all parties received that motion to
18 continue.

19 I will start with Staff.

20 MR. HORTON: Staff did receive it, Your Honor.

21 ALJ DION: And, Qwest, did you receive a
22 motion to continue?

23 MR. BLACK: Yes, we did, Your Honor.

24 ALJ DION: It is my understanding,
25 Mr. Crockett, you may not have received that motion to

1 continue.

2 MR. CROCKETT: That's correct. I did not but
3 I have a copy of it now.

4 ALJ DION: Okay. Mr. Wetherald, just so you
5 know, in this case, if you choose to represent yourself
6 and you make a filing, besides docketing it with -- the
7 original and the appropriate number of copies with docket
8 control, you are obligated to send a copy to each of the
9 parties in this case. That would be Staff, the LLP, and
10 Qwest.

11 Now, you don't have to send a copy to each
12 individual, which is Mr. Credle's complaint, rather just a
13 copy to their representative. So you would just need to
14 send a copy to, one copy to the LLP to the attention of
15 Mr. Crockett. And you can obtain his name and information
16 and make sure that you have the correct information, as it
17 appears that you were able to get the appropriate
18 information to Staff and to Qwest. But I just wanted to
19 make sure that you understand that.

20 Okay, Mr. Wetherald?

21 MR. WETHERALD: Yes, I do.

22 ALJ DION: Additionally, just for the record,
23 I received it from Mr. Credle. Mr. Credle is represented
24 by Mr. Crockett. And so I will say for the benefit of the
25 record and the parties, direct contact with the Hearing

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1 Division is frowned upon for a number of issues. If you
2 are represented by an attorney, please go through that
3 attorney and have him or her make the appropriate filings.
4 I really think that only, of everybody in the room, that
5 only applies to Mr. Petersen as Mr. Glaser and Mr. --
6 excuse me -- Mr. Wetherald and Mr. Johnson may represent
7 themselves. I just wanted to make that clear.

8 Do you understand that, Mr. Petersen?

9 MR. PETERSEN: Yes.

10 ALJ DION: Okay. Additionally, when you talk
11 on the phone, I think I have introduced you and your
12 responses have been easy to follow. But if you would
13 identify yourself for the record, I would appreciate that.

14 So moving along. I have a, I had a motion
15 filed by Mr. Johnson. Staff, did you file a response to
16 Mr. Johnson's motion?

17 MR. HORTON: No, we did not file a response,
18 Your Honor.

19 ALJ DION: Do you have a response?

20 MR. HORTON: Yes, Your Honor. Like with many
21 issues in this case, we now have conflicting information.
22 We have filed in Docket 0577, which is The Phone Company
23 of Arizona Joint Venture's application for a CC&N, we have
24 an attachment for that application which lists Mr. Johnson
25 as a member of The Phone Company Management Group. We

1 relied on that in naming Mr. Johnson as a defendant.

2 We now have a filing -- by the way, that
3 application was signed by Mr. Wetherald and was sent under
4 the cover of the letterhead of Lottner Rubin Fishman Brown
5 & Saul, signed by Tad Miller, a paralegal I believe for
6 Mr. Glaser. Mr. Glaser can correct me if I am wrong.

7 MR. GLASER: No, you are correct, he was a
8 paralegal working with me at the time.

9 MR. HORTON: Okay, thank you.

10 Now, attached to Mr. Johnson's motion to
11 dismiss, are affidavits from Mr. Wetherald and Mr. Miller
12 now stating that he did not in fact have an interest in
13 Phone Company Management Group. So I guess it is just a
14 question of which document we are going to lend credence
15 to. And it is interesting to Staff that Mr. Wetherald
16 would have signed an application showing Mr. Johnson as a
17 15.38 percent membership, percentage of ownership in a
18 company which he was the manager. If Mr. Johnson was not
19 a member, it is a mystery who owned that 15 percent,
20 because the percentage of ownership is clearly delineated
21 and equals hundred percent between Tricamo, Wetherald and
22 Johnson.

23 I guess what the court has to do is just
24 decide which of these filings it is going to give the most
25 credence to.

1 Now, Mr. Johnson also argues that, regardless
2 of the fact that whether or not he had an interest in
3 Phone Company Management Group or not, that staff has
4 stated a claim under which relief can be granted. And
5 Staff is not convinced that that is true.

6 I think -- excuse me. Staff believes that it
7 may be prudent for the Commission to at least for some
8 period of time see that the parties that are responsible
9 for what has happened here do not come to Arizona to run
10 public utilities again. And I think that's a result that
11 Staff is certainly going to advocate. If Mr. Johnson is
12 indeed a member of Phone Company Management Group and at
13 one time of On Systems as well, then I think that would be
14 a result that Staff would seek.

15 ALJ DION: Mr. Johnson, do you have a
16 response, sir?

17 MR. JOHNSON: Well, yes, I do, Your Honor.
18 First let me address the issue whether or not I was a
19 member of Phone Company Management Group. I think it is
20 unequivocal --

21 ALJ DION: You are getting to get dangerously,
22 you are going to get dangerously close to testifying
23 rather than arguing a motion.

24 MR. JOHNSON: Fair enough.

25 ALJ DION: I am going to warn you of that and

1 I am not going to listen to that.

2 MR. JOHNSON: All right.

3 ALJ DION: I will listen to your argument as
4 to why your motion should prevail, but I am not going to
5 take, you know, testimony regarding that.

6 MR. JOHNSON: Fair enough. I will get on to
7 the actual motion itself, then.

8 It is my understanding, Your Honor, and I
9 certainly will be willing to be corrected, that this
10 Commission has jurisdiction over two entities, first the
11 public service corporation and, secondly, any person who
12 failed to serve or comply with any rule or requirement of
13 the Commission.

14 And I believe certainly there never has been
15 ever an allegation I was a public service corporation.
16 And I have to surmise then that the only way that this
17 court and Commission are arguing for subject matter
18 jurisdiction over me is because I would have arguably
19 violated an order and rule of the Commission.

20 And, Your Honor, I go back to the original
21 complaint. I look at the amended complaint. I look at
22 the testimony that has been submitted by Staff, both by
23 Mr. Bostwick and the latest supplemental testimony. And
24 not once in any of those complaints in any of those
25 materials filed with the Commission has my name ever even

1 come up in the context of any count alleged for any
2 violation of any rule, order or requirement of the
3 Commission. The Staff has had ample opportunity to
4 identify any noncompliance since October of last year.

5 If you will recall the complaint itself, I was
6 never named in the action. And I was named as a
7 respondent only because, as alleged, I was a member of On
8 Systems. Material submitted subsequent to that indicated
9 that I was not a member of On Systems in October of 2002.
10 In Mr. Bostwick's direct testimony, I was never implicated
11 in any action that might be considered noncompliance.
12 Mr. Bostwick made five findings, none of which even
13 mentioned my name.

14 In Staff's response to my initial motion to
15 dismiss, I was again never accused of any violation, I was
16 simply linked, or arguably linked, to On Systems in the
17 amended complaint, Your Honor. I was never again named in
18 any count. There was no recommended action concerning,
19 concerning me. And finally, in the supplemental testimony
20 recently submitted, I was again never named in anything.
21 My name in fact never appears in that supplemental
22 testimony, and no action is recommended that concerns me.

23 I guess I am concerned that I have been placed
24 in a very tenable position. I am being asked to defend
25 myself as a respondent in the matter where I have never

1 been accused of anything and no action has ever been
2 recommended or even mentions my name.

3 And even if this Commission would like to set
4 aside the notion that I must have done something wrong, to
5 even be before you today, I am placed in the equally
6 untenable position to try and guess why I am here.

7 As I said, Staff at no time has made any
8 effort to contact me to inquire about the facts before
9 this Commission that has been relayed to me. The fact
10 that the Staff in its amended complaint states that
11 respondents Tim Wetherald and On Systems and its
12 principals conducted the affairs of PCMG and Phone Company
13 of Arizona as their alter ego, well, I have never seen a
14 definition in any material submitted to this Commission
15 that defines who Staff believes are principals. In fact,
16 the only testimony and the only statement I have ever seen
17 in material submitted by staff are that submitted my
18 Mr. Bostwick where he alleges that Mr. Wetherald is the
19 principal of On Systems. He also states that management
20 is apparent by one man, referring to Mr. Wetherald.

21 Again, Your Honor, I am in a position where I
22 don't know what I am accused of and it is extremely
23 difficult as a respondent in this matter to respond to
24 something where there has never been an accusation made.

25 ALJ DION: Mr. Johnson, based on what

1 Mr. Horton told me today regarding that filing which may
2 or may not be true, and you can certainly present evidence
3 at the hearing, it is my understanding that there is some
4 indication that you may have had a membership interest in
5 The Phone Company Management Group, which I don't believe
6 there has been an allegation or an argument contrary that
7 it operated phone service in the state of Arizona.
8 Thereby it is a public service corporation.

9 In that particular situation, it is my
10 understanding that Staff has filed a complaint against
11 LiveWire doing business as Phone Company Management Group,
12 and that it is Staff's allegation that you had some
13 ownership interest that, thereby asserted jurisdiction,
14 not for simply an order of the Commission that was not,
15 that was not followed, but as the management team and an
16 owner of a public service corporation in the state of
17 Arizona.

18 Additionally, regarding your principal's
19 definition, right in the caption, it says On Systems,
20 comma, and et cetera, principals, and it names you. So I
21 am confused as to how --

22 MR. JOHNSON: Where -- go ahead, sir.

23 ALJ DION: In the caption of the complaint,
24 the very first piece of paper you would have received, it
25 says in there, it lists a bunch of names and it says On

1 Systems Technology, LLC, comma, and its principals, Tim
2 Wetherald, Frank Tricamo and David Stafford. Now -- well,
3 David Stafford Johnson.

4 So it clearly says principals. If they
5 have -- they are an alter ego, they are alleging that that
6 particular entity and its principals were operating or
7 trying to hide behind a corporate structure to operate a
8 public service corporation. And they have made many
9 allegations about that public service corporation. So I
10 fail to see and/or understand your argument regarding
11 notice.

12 Additionally, I have in this particular case a
13 set of facts, at least certainly one fact, to determine
14 regarding your participation in Phone Company Management
15 Group especially in a situation where items were docketed
16 with this Commission indicating that you had that
17 association. So I don't think that things are that clear.
18 I think that there are certainly an arguable set of facts
19 as to what your involvement is and I think that's a
20 situation that can only be resolved at the course of the
21 hearing.

22 MR. JOHNSON: With all due respect, the issue
23 of subject matter jurisdiction applies to personal service
24 corporations and individual, or public service
25 corporations and individuals who are alleged to have done

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1 something wrong.

2 The alter ego theory, I submit, does not apply
3 here in the sense, if there is ultimately a decision made
4 by the Commission that holds On Systems or PCMG is liable
5 or fines assessed or sanctions assessed and then that
6 Commission or the Staff decides to pursue alter ego
7 theories to go through the corporation to the potential
8 members or members of those corporations, then indeed
9 alter ego theories can be brought forth.

10 The jurisdiction of this court applies to
11 public service corporations and individuals accused of
12 doing something wrong. I have never ever been accused of
13 doing anything wrong in the course of this matter before
14 this court.

15 ALJ DION: Correct me if I am wrong,
16 Mr. Horton, but my understanding is that PCMG is a public
17 service corporation.

18 Do you disagree with that, Mr. Johnson?

19 MR. JOHNSON: I do not disagree with that.

20 ALJ DION: And therefore the Commission has
21 jurisdiction over that. Do you also agree?

22 MR. JOHNSON: The corporation indeed.

23 ALJ DION: And there is some indication that
24 you had a membership interest in that corporation; is that
25 also fair to say?

1 MR. JOHNSON: That is an inaccurate
2 representation but indeed some representation.

3 ALJ DION: And you are telling me it is
4 inaccurate and it is something you can show to me that you
5 did not have any involvement with that particular entity,
6 especially in the membership interest?

7 MR. JOHNSON: Well, material submitted to this
8 court that has already been established. I believe it was
9 a burden of the Staff to show that I was a member.

10 ALJ DION: We would do it in a hearing and
11 cross-examination, not just through somebody submitting
12 one piece of information as a sworn affidavit without
13 being subject to cross-examination or any of the other
14 things that we go through in order to determine the
15 veracity of an issue.

16 And that is the hangup. That's the problem.
17 I have two sides telling me two different things. And I
18 don't have a record to base my decision on.

19 MR. JOHNSON: Well, Your Honor, I have been
20 given the position of this court. I am a bit confused
21 about your rules, Your Honor. The rules state that you do
22 have authority jurisdiction over public service
23 corporations and individuals who may own interest in those
24 corporations if they are accused of doing something wrong.

25 I go back to the argument that that has never

1 been an allegation in any material submitted to this
2 Commission, anywhere in this matter, where I have been
3 accused of doing anything wrong. So even if, even if I
4 was a member of PCMG, if I had not been accused of doing
5 anything wrong and this court, the Commission doesn't have
6 jurisdiction over me --

7 ALJ DION: As an owner of PCMG, you don't feel
8 that, if PCMG is named, that you have not been accused of
9 doing anything wrong?

10 MR. JOHNSON: If Qwest is accused of doing
11 something, you can go after every shareholder of Qwest?
12 Is that the position of the Commission? I don't believe
13 it is.

14 ALJ DION: Is a shareholder of a corporation,
15 is that a little bit different than the makeup of an LLC?

16 MR. JOHNSON: I don't believe so, not if you
17 are not a manager of the corporation or a board member or
18 anything else.

19 ALJ DION: Fair enough.

20 MR. JOHNSON: Material submitted to this court
21 would show that I had never ever been accused of doing
22 anything wrong.

23 ALJ DION: And I said fair enough regarding
24 the member management situation. But, again, I don't
25 have, I do not have that information in front of me. I

1 cannot rely on a sworn piece of an affidavit without it
2 being subject to cross-examination, especially in light of
3 the fact that Staff has conflicting information as to what
4 you did.

5 MR. JOHNSON: That conflicting information has
6 been established as a mistake by the very people who put
7 it together. And that material and affidavit has been
8 submitted to this court and is on record.

9 ALJ DION: I think -- I disagree with you. I
10 think that the conflicting information Mr. Horton gave me
11 was regarding your membership, not only in On Systems,
12 which they may have an alter ego claim about and we
13 haven't talked about that yet, but regarding your
14 membership in PCMG.

15 Mr. Horton, I have done a lot of talking. Is
16 there anything else you want to tell me?

17 MR. HORTON: I think that Mr. Stafford's -- or
18 excuse me -- Mr. Johnson's argument would lead to kind of
19 an absurd conclusion if you took it all the way out. If
20 we have no jurisdiction over the members or the
21 individuals that form an LLC, then we would have no
22 authority to order that they did not conduct business in
23 this state again and they could just appear as another
24 corporation or another LLC. And that to me seems an
25 absurd result.

1 the affidavit you provided?

2 MR. JOHNSON: That's correct, Your Honor.

3 ALJ DION: I just wanted to make sure I didn't
4 miss anything.

5 I reviewed that. I believe there are a series
6 of facts here that need to be resolved and can only be
7 resolved at the hearing, specifically Mr. Johnson's
8 involvement in this case. I think that is the crux of the
9 matter. Mr. Johnson indicated that nowhere in the notice
10 has it specifically stated he did anything wrong. But I
11 find that as a member of, potential member of the PCMG, as
12 well as a member of, On Systems and Staff's alter ego
13 theory that he is sufficiently on notice regarding Staff's
14 allegations of wrongdoing by PCMG.

15 However, I will state that, if Staff is not
16 able to establish that nexus, then certainly there will be
17 very strict scrutiny applied to Mr. Johnson's situation
18 regarding his responsibility in this matter.

19 Let's go ahead and move to the other thing I
20 wanted to cover, well, one of two we still need to cover.
21 And that is the renewed motion to withdraw that was filed.

22 I have read the filing. Mr. Novak, do you
23 have anything else you wish to state to me?

24 MR. NOVAK: No, Your Honor. Do you have any
25 questions of me?

1 ALJ DION: I do. In reviewing this motion, I
2 will state for the record that, once again, I have ordered
3 Mr. Tricamo, and have now for the first time ordered
4 Mr. Beecher's presence to be rather, at this prehearing,
5 and neither has complied. I have used the, in sending out
6 the procedural orders, in sending this prehearing and the
7 October 7th prehearing, I used the address that
8 Mr. Tricamo provided when he filed a letter with this
9 Commission, additionally, that match that address that
10 Mr. Glaser has been sending a number of items to.

11 I asked Staff to contact Mr. Beecher who is
12 allegedly an attorney for Mr. Tricamo regarding this
13 matter and received a filing from Staff on that. I also
14 was able to get Mr. Beecher's address and send the same
15 procedural order.

16 I have no explanation. It is now 3:30. This
17 was set for 3:00. I have no explanation as to why neither
18 individual has shown but they have certainly had notice
19 regarding this hearing.

20 Going to, now that I have stated that for the
21 record, Mr. Novak, moving to your motion, at page 3, in
22 addressing Mr. Tricamo's situation, which I think is the
23 situation that we are trying to wrestle with in this case,
24 I have here an indication that, from Mr. Tricamo in this
25 Docket, although there was no affidavit filed as I had

1 requested, it is my understanding that Mr. Glaser made a
2 number of attempts to contact Mr. Tricamo and obtain
3 information requested.

4 MR. NOVAK: Correct.

5 MR. GLASER: Yes.

6 ALJ DION: I am asking Mr. Novak, Mr. Glaser.

7 MR. GLASER: I am sorry.

8 ALJ DION: No problem.

9 And that was a yes, correct, Mr. Novak?

10 MR. NOVAK: Yes, Your Honor.

11 ALJ DION: And in this case, besides the
12 letter that was docketed, there has been no other
13 communication either with this Commission or your client,
14 Mr. Novak, is that also true?

15 MR. NOVAK: I believe that's correct.

16 ALJ DION: Okay. And that letter specifically
17 states that essentially he could not release Mr. Glaser
18 nor his firm from his representation until he was fully
19 prepped as to what has taken place. Isn't that what
20 Mr. Tricamo said?

21 MR. NOVAK: That's what Mr. Tricamo said.

22 ALJ DION: Okay.

23 MR. NOVAK: And in response to that, Judge, if
24 I may, both Mr. Tricamo and Mr. Beecher were provided with
25 copies of all pleadings in the matter by Mr. Glaser.

1 ALJ DION: That was my understanding in the
2 last prehearing. Mr. Glaser informed me that he had
3 forwarded that information on to Mr. Beecher and to
4 Mr. Tricamo, or once Mr. Tricamo informed him that
5 Mr. Beecher was representing him.

6 MR. NOVAK: Yes, Your Honor.

7 ALJ DION: Mr. Beecher is also causing me a
8 quandary because, when I asked Staff to contact him, Staff
9 made a filing regarding that Mr. Beecher would neither
10 confirm nor deny whether he represents Mr. Tricamo in this
11 matter. And I really don't have any evidence of the fact
12 other than Mr. Glaser saying that. I have no filing. I
13 have no notice of appearance. I have nothing like that.

14 Is that fair to say, Mr. Novak?

15 MR. NOVAK: Well, yes. But in addition, Your
16 Honor, the Staff has served the complaint on Mr. Tricamo.
17 That complaint was served in, I believe, early September
18 and remains unanswered.

19 ALJ DION: Okay. But, again, as far as my
20 personal knowledge, in order -- in attempting to follow
21 the rules and getting the written consent of a client and,
22 when that was impossible, to move on or when a client is
23 not represented by another individual, or, excuse me,
24 another attorney, there is certain information that is
25 generally presented to the court. That information is not

1 here today, is that true?

2 MR. NOVAK: That's true. Mr. Tricamo and
3 Mr. Beecher have prevented this court from having that
4 information, yes.

5 ALJ DION: Okay. Now, in your motion, you
6 argue to me that Mr. Tricamo, after contact was made with
7 Mr. Tricamo, Mr. Tricamo has effectively indicated that he
8 was represented by counsel but before then simply stopped
9 contacting your client, is that correct, Mr. Novak?

10 MR. NOVAK: Yes.

11 ALJ DION: And although a letter to the
12 contrary regarding his, meaning Mr. Tricamo's, desire not
13 to release Mr. Glaser or his firm, your argument is
14 implicitly, by not talking to his attorney, he has
15 effectively consented to the withdrawal of Mr. Glaser,
16 correct?

17 MR. NOVAK: Yes. And by interposing
18 Mr. Beecher, he has prevented Mr. Glaser from having
19 further direct contact with Mr. Tricamo because to do so
20 would violate ER 4.2.

21 ALJ DION: Okay. In the situation of the
22 noncontact, that leaves me in sort of an ironic area,
23 wouldn't you admit, Mr. Novak? And this lack of
24 communication seems to have gone both ways.

25 There is a lack of communication for a period

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1 of six months between your client and Mr. Tricamo. And
2 then suddenly, when almost, not necessarily turnabout is
3 fair play, but when Mr. Tricamo doesn't communicate with
4 your client, at that point your client raises his hands in
5 the air and says I can't do anything. Isn't that, I mean
6 isn't that a bit rich?

7 MR. NOVAK: I don't think that
8 characterization is quite accurate, Your Honor.

9 We readily acknowledge that there was no
10 communication between Mr. Glaser and Mr. Tricamo in the
11 first half of 2003. That is because Mr. Glaser was
12 operating on the understanding that Mr. Wetherald was the
13 principal spokesperson for the group of individuals and
14 entities with respect to whom he filed a notice of
15 appearance and in response in this case.

16 When the court asked for an affidavit of each
17 of the individuals, then Mr. Glaser made his attempt to
18 reach Mr. Tricamo and you have been I think deluged with
19 information with respect to those efforts, there was some
20 communication, the letter that Mr. Tricamo sent to the
21 Commission but did not copy Mr. Glaser on. And there was
22 communication between Mr. Glaser and Mr. Beecher. And
23 there has been no further communication, nor has there
24 been further attempt on Mr. Glaser's part once he sent
25 copies of all the pleadings to both Mr. Beecher and

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1 Mr. Tricamo, because it is very clear to the law firm,
2 Shughart Thomson & Kilroy, that Mr. Tricamo by his action
3 does not want to be represented by Shughart Thomson &
4 Kilroy.

5 It is also very clear, if I may for just a
6 minute, very clear to us that Mr. Tricamo is using the
7 current circumstances to disadvantage this Commission. I
8 think Mr. Tricamo and Mr. Beecher understand that they
9 have you, or they think they have this Commission in
10 something of a jurisdictional box.

11 I think they are wrong. I think when Staff
12 served the complaint in early September, they started the
13 time clock all over again. And the fact that Mr. Tricamo
14 has not responded gives Staff the opportunity, and I
15 suggested this to Mr. Horton in a phone call a week or two
16 ago, to move to default Mr. Tricamo. Staff has chosen not
17 to do that, and I don't know the reason.

18 But I think you have jurisdiction over
19 Mr. Tricamo. And with the appropriate motion for default
20 or the presentation of evidence at a hearing, you can make
21 whatever recommendations you wish and the Commission can
22 rule as it sees fit.

23 ALJ DION: What communication? You said
24 communication, and that's where I wanted to stop you,
25 Mr. Novak. Was that communication simply the letters?

1 Was there a telephone conversation? Was there some
2 substantive either face-to-face or live contact that you
3 would like to tell me about?

4 MR. NOVAK: It is my recollection, and
5 Mr. Glaser is on the phone so he can correct me if I'm
6 wrong, but that there was a telephone conversation between
7 Mr. Beecher and Mr. Glaser. And since my recollection is
8 obviously not as pristine, I would like to defer -- may we
9 inquire of Mr. Glaser?

10 ALJ DION: Yes. Before we do that, I have a
11 question for Staff. There are some outstanding, getting
12 to the other issue regarding Mr. Wetherald and
13 Mr. Johnson, there are some outstanding served data
14 requests, is that correct, Mr. Horton?

15 MR. HORTON: That's correct.

16 ALJ DION: What are you missing?

17 MR. HORTON: We are missing information from
18 our second set of data requests, Your Honor. They go to
19 the books and records asking for audited financials, Phone
20 Company Management Group's, those kinds of things,
21 basically trying to follow the money trail from the
22 consumer to the company.

23 ALJ DION: Okay. And that was information
24 that I ordered to be provided, correct?

25 MR. HORTON: Yes, it was.

1 ALJ DION: Okay. Regarding my orders,
2 Mr. Novak, I had conditioned withdrawal on Mr. Wetherald
3 and Mr. Johnson contingent on some filings that I had
4 expected to be made sooner than later. Obviously not all
5 of them have been forthcoming.

6 Is it your client's position that, I mean and
7 it is certainly -- well, I don't want to, I don't want to
8 presuppose anything for you, but that is information that
9 has been ordered to be produced.

10 Without getting into any privileges or
11 confidences, is that information being held by Mr. Glaser
12 or his firm?

13 MR. NOVAK: No, Your Honor. Shughart Thomson
14 & Kilroy does not have possession or control of that
15 information.

16 ALJ DION: So the financial information is not
17 in their possession?

18 MR. NOVAK: That's correct. And I am not
19 sure, Your Honor, with respect to audited financial
20 statements, there are any that are even in existence.

21 ALJ DION: And that may be, that may be so.
22 But certainly, the information that was ordered regarding
23 financial information would include a list of things, one
24 of them being financial, audited, I am assuming one of
25 them would also be unaudited, or any other type of

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1 financial information. I believe that is my recollection
2 of what was being requested.

3 But that is not something that your client
4 possesses; is that fair to say, Mr. Novak?

5 MR. NOVAK: That's right. And I am not trying
6 to be clever when I talk about the audited financial
7 statements. We have not even been in the possession of
8 any documents which would satisfy the outstanding data
9 request.

10 ALJ DION: I have a couple questions for your
11 client. And I want to know if you object. I am
12 particularly interested in the notice area regarding what
13 Mr. Glaser did with Mr. Beecher. I think that is an
14 important thing. That is something I would like
15 Mr. Glaser to answer.

16 Mr. Glaser?

17 MR. GLASER: Yes, sir.

18 ALJ DION: Your attorney has told me something
19 and I am going to ask you these questions. I can tell you
20 I can take your avowal or swear you in. What do you want
21 me to do?

22 MR. GLASER: Whatever your Your Honor wishes.
23 I am at the court's wishes and you can ask me anything and
24 I will certainly take your oath.

25 ALJ DION: I'm willing to take the avowal,

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1 fair enough.

2 MR. GLASER: Fair enough.

3 ALJ DION: Your understanding, there are no
4 documents either in your possession or your law firm's
5 possession regarding the second set of data requests, is
6 that correct?

7 MR. GLASER: There are no documents in our
8 possession concerning any data requests.

9 ALJ DION: Okay. It is also my understanding
10 that you provided copies of the original complaint, the
11 amended complaint, and subsequent information to a
12 gentleman by the name of Beecher, is that correct?

13 MR. GLASER: Yes, sir.

14 ALJ DION: Can you tell me his full name for
15 the record?

16 MR. GLASER: Norman Beecher, B double
17 E-C-H-E-R.

18 ALJ DION: And he is an attorney in Colorado,
19 is that correct?

20 MR. GLASER: Yes, sir.

21 ALJ DION: If you will give me a moment.
22 To the best of your recollection, is he
23 associated with the firm called Edwards & Taylor?

24 MR. GLASER: Yes, he is.

25 ALJ DION: And that's in Aurora, Colorado?

1 MR. GLASER: Yes.

2 ALJ DION: I have an address 2851 South Harper
3 Road, Suite 1200. Is that familiar?

4 MR. GLASER: That's the address I have.

5 ALJ DION: Okay, thank you. And, again, it is
6 my understanding that you forwarded all that information,
7 the original complaint, the amended complaint, and other
8 information in your case file to Mr. Beecher, is that
9 correct?

10 MR. GLASER: Yes, sir.

11 ALJ DION: Why did you do that?

12 MR. GLASER: He asked me for it.

13 ALJ DION: Okay.

14 MR. GLASER: I had a conversation with
15 Mr. Beecher. And during the course of that conversation,
16 I informed him that I had sent the material to Mr. Tricamo
17 and he asked me to send it to him.

18 ALJ DION: How did you come to contact
19 Mr. Beecher?

20 MR. GLASER: He contacted me.

21 ALJ DION: Okay. Before that, did you have
22 any inkling from Mr. Tricamo that Mr. Beecher represented
23 Mr. Tricamo?

24 MR. GLASER: No, I did not.

25 ALJ DION: Okay. So when did this

1 conversation take place?

2 MR. GLASER: It took place in August. If you
3 give me a minute, I will tell you exactly, the exact date.

4 One of the attachments to the renewed motion
5 to dismiss, I wrote a letter to Mr. Beecher and it refers
6 to the date of our telephone conversation. If Your Honor
7 will give me a minute, I will direct Your Honor's
8 attention to the attachment.

9 It would be Attachment F, Exhibit 1 to
10 Attachment F. I spoke with Mr. Beecher on Thursday,
11 August 7th, 2003.

12 ALJ DION: Okay. And he contacted you,
13 correct?

14 MR. GLASER: That's correct.

15 ALJ DION: All right. And he explained that
16 he represented Mr. Tricamo?

17 MR. GLASER: He told me he was calling on
18 behalf of Mr. Tricamo. He didn't say I am his counsel or
19 he said I am representing. He said I am calling for Frank
20 Tricamo.

21 ALJ DION: Okay. How did you -- did you
22 figure out that he was an attorney when he -- did you
23 recognize --

24 MR. GLASER: I knew of Mr. Beecher before. He
25 is a member of the communication law section of the

1 Colorado Bar of which I am co-chairman and he is an active
2 member.

3 ALJ DION: Okay. And it is my understanding
4 that, since the letters that you sent to Mr. Tricamo you
5 have had no contact with Mr. Tricamo, is that correct?

6 MR. GLASER: Not since I sent the letters to
7 him, no, I have not.

8 ALJ DION: Okay.

9 MR. GLASER: I had, we had some e-mail
10 correspondence. And I don't recall the exact date but I
11 don't think anything was, the last e-mail correspondence I
12 recall with Mr. Tricamo occurred in the month of July.

13 ALJ DION: Okay.

14 MR. GLASER: 2003.

15 ALJ DION: At any time besides what you have
16 told me regarding his noncommunication with you and
17 Mr. Beecher contacting you, any point in the discussion
18 regarding your representation of Mr. Tricamo in which
19 Mr. Tricamo indicated that he no longer wanted you to
20 represent him?

21 MR. GLASER: Yes, to give him a recommendation
22 and name of an attorney in Arizona. That's all I recall
23 that he said about it.

24 ALJ DION: Okay. And did that take place? Is
25 that the conversation you had regarding you requesting to

1 withdraw from this case?

2 MR. GLASER: I am sorry. I didn't understand
3 your question, Your Honor.

4 ALJ DION: It is my understanding that you had
5 some contact, the last contact, substantive contact,
6 certainly with the exception of some e-mails, was
7 regarding when you contacted Mr. Tricamo about your motion
8 to withdraw that was pending before this Commission,
9 right? Is that the last time you had substantive contact
10 with him?

11 MR. GLASER: It was after my motion to
12 withdraw. I filed that back in April.

13 ALJ DION: Right. And you sent a series of
14 letters to him requesting an affidavit, correct?

15 MR. GLASER: Correct.

16 ALJ DION: Okay. And during that time period,
17 is that when Mr. Tricamo requested the name of an Arizona
18 attorney?

19 MR. GLASER: Yes, sir.

20 ALJ DION: Okay. Okay.

21 MR. JOHNSON: This is Mr. Johnson.

22 I heard my name come up in the context of data
23 requests that had been submitted and gone unanswered. I
24 have never received any data request from the Staff.

25 ALJ DION: I don't believe that was the case,

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1 Mr. Johnson. And if it was, somebody spoke in error.

2 Staff, that's not the case, is it?

3 MR. HORTON: No, Your Honor.

4 MR. JOHNSON: Thank you for clarifying.

5 ALJ DION: You are welcome.

6 Okay. I think I have gotten enough
7 information to make a ruling.

8 I am going to grant Mr. Glaser and his firm's
9 request to withdraw in this matter regarding Mr. Wetherald
10 and Mr. Johnson. They have provided the affidavits
11 necessary.

12 Additionally, it is my understanding that,
13 although the information which was ordered by the
14 Commission has not been fully docketed and/or submitted to
15 Staff, that information is not in the possession of
16 Mr. Glaser nor his firm and, therefore, to hold them
17 accountable based on that condition would be inequitable.
18 So I am granting the motion to withdraw in that regard.

19 Additionally, in regards to the motion to
20 withdraw with Mr. Tricamo, this presents more -- it is
21 stickier. And that's the best way to explain this.

22 It, based upon the information presented to
23 me, specifically the contact between Mr. Glaser and
24 Mr. Beecher, as well as the fact that Mr. Beecher did not
25 deny that he represents Mr. Tricamo, leads me to believe

1 that, in lieu of the affidavit in which I required that
2 Mr. Tricamo is being represented by another attorney and
3 it would be a violation for Mr. Glaser to attempt to
4 contact him and/or represent him in this matter, I do
5 agree somewhat with Mr. Novak's statement that Mr. Tricamo
6 is, and I will put it in my own words, trying to gain the
7 system.

8 He has been given notice, fair notice a number
9 of times regarding this case. It is evident, as he sent a
10 letter to this Commission which was docketed regarding his
11 situation with Mr. Glaser, he has evidently employed
12 another attorney. And, additionally, he has, he has, or
13 at least his attorney on behalf of Mr. Tricamo, made a
14 request for documents, has received the complaint and the
15 amended complaint and the various other materials in this
16 matter.

17 So it is quite clear that Mr. Tricamo has
18 notice of this hearing and, additionally, that he will be
19 expected to appear at the hearing in this matter, and that
20 his decision to prolong this motion as originally filed by
21 Mr. Glaser and his firm as well as the situation of
22 refusing to answer questions and/or his attorney's refusal
23 to answer questions will only work to his detriment and he
24 will be expected to be present and defend himself. And a
25 request for a continuance based upon the fact that he has

1 had to, quote, unquote, retain new counsel will be looked
2 upon and will be frowned upon by this Commission.

3 And so that decision in attempting to, as I
4 said, gain the system will not work to the benefit of
5 Mr. Tricamo. If there is another reason to file a motion
6 to continue, I am certainly willing to listen to it, and
7 having another prehearing in this particular case, as this
8 case is replete with prehearings and denying one now would
9 simply be absurd, but it is something that I would
10 entertain at the hearing which is still currently set for
11 November 3rd until we get to Mr. Wetherald's motion.

12 But based upon that, I am finding that
13 Mr. Glaser's withdrawal is appropriate. Regarding the
14 argument as to Mr. Tricamo's lack of communication, I
15 don't need to come to a result in that situation.
16 However, as I stated, I find it extremely ironic that I
17 have a situation where an attorney is stating that his
18 client hasn't talked to him for a period of one or two
19 months, when he did not converse with him for a period of
20 well over six months. That situation is untenable.

21 Getting to that, I still have an issue
22 regarding that issue. That issue has been brought before
23 this tribunal and it will be resolved by this tribunal.
24 And I don't know if Mr. Novak is prepared to argue this,
25 but I am faced with a situation where I have a potential,

1 speaking of violation, a potential violation of ER 1.4
2 regarding the communication and the lack of communication.
3 And I am strongly considering filing a Bar complaint as
4 well as removing the pro hac vice status of Mr. Glaser.

5 Is that something you are prepared to talk to
6 me about at this point, Mr. Novak?

7 MR. NOVAK: I have a suggestion, Your Honor,
8 if I might.

9 As in the normal case when a contempt like
10 this incidence occurs, usually the courts reserve ruling
11 on those and hearing on those matters until the
12 substantive matter itself has been concluded. I would
13 suggest to you that, when the hearing in this matter has
14 been concluded, that would be the appropriate time to take
15 up this issue if you still feel it necessary to do so.
16 And I will be happy to respond on behalf of the law firm
17 of Mr. Glaser.

18 ALJ DION: Even in a case where I have
19 essentially allowed the party to withdraw? He is no
20 longer going to be part of a proceeding in November.

21 MR. NOVAK: I think Mr. Glaser has an
22 interest, and his firm certainly has an interest, whether
23 or not you believe some action on your part is necessary
24 with respect to Mr. Glaser's conduct in this matter. So
25 we would be happy to come back and address it with you.

1 ALJ DION: Well, I will consider that. But, I
2 mean, I believe the record is fairly clear that it was
3 conceded earlier in this hearing that there was no contact
4 between your client and at least Mr. Tricamo; I am not
5 sure about Mr. Johnson's situation. And the rule is
6 fairly clear. It states that a lawyer shall keep a client
7 reasonably informed about the status of a matter. 1.4B:
8 Lawyer shall explain a matter to the extent reasonably
9 necessary.

10 I fail to see how, in a situation where
11 representing multiple individuals, not talking to one can
12 be possibly seen as keeping that person reasonably
13 informed.

14 MR. NOVAK: If I might suggest, Your Honor,
15 you will recall that it was Mr. Wetherald who was the
16 point of contact with Mr. Glaser. And while I don't
17 necessarily agree with Mr. Glaser's initial decision to
18 have no contact with Mr. Johnson or Mr. Tricamo way back
19 at the onset of this representation in fall, late fall of
20 '02, I do find it reasonable for Mr. Glaser to conclude
21 that Mr. Wetherald could act as the spokesperson for the
22 group.

23 This is an LLC. These individuals may or may
24 not be members or managers of the LLC. If we were talking
25 about a partnership, where there is a very clear, clearly

1 denominated interest on the part of the partners, I don't
2 think you would expect that Mr. Glaser would have had
3 contact with all of the partners when he has contact with
4 the principal spokesperson for the partnership, whether
5 that is the managing partner or not.

6 I do, as I said, have some trouble myself with
7 Mr. Glaser's failure in the first instance to have no
8 either voice or eyeball contact with Mr. Tricamo. I do
9 not, however, think it unreasonable for Mr. Glaser to have
10 presumed, pursuant to 1.4, that Mr. Wetherald was the
11 principal client contact and that it was only
12 Mr. Wetherald that Mr. Glaser need communicate with.

13 ALJ DION: Well, and this is something that I
14 am going to need to mull over and, you know, especially in
15 the situation where, as I understand it, some of the
16 members were fired from the operation, and they retained
17 their member status but they did not retain their
18 operating status. It is clearly a situation that is
19 replete with conflicts and dangers and is a situation in
20 which not only was the partnership or LLC named but three
21 individuals were specifically named in the complaint.

22 So your arguments might have some merit if the
23 partnership was itself named in the complaint and the
24 lawyer talks to the principal and/or managing partner as
25 to what the partnership would like to do, presuming that

1 the partners get together and vote on those things, and,
2 relying on that, that might be an assumption that someone
3 might want to make. But if it goes so far as to name
4 individuals besides the partnership, it certainly would
5 behoove that attorney to contact those individuals
6 separately especially from the partnership, besides the
7 individuals, as they may have conflicts of interest. And
8 relying and assuming that your information is being
9 disseminated to those three people, although they were
10 specifically named in the complaint, is fraught with
11 error.

12 Don't you agree, Mr. Novak?

13 MR. NOVAK: I think there is potential for
14 danger there, yes. And I agree with Your Honor, that in
15 the first instance, Mr. Glaser should have had some
16 contact with Mr. Tricamo.

17 If I might suggest, you know, it is not,
18 again, unreasonable for Mr. Glaser to have relied upon
19 Mr. Wetherald's serving as the principal point of contact
20 throughout the course of this litigation. I think that
21 happens quite often.

22 ALJ DION: That doesn't mean it is right. I
23 mean, you could have a married couple and you could
24 represent the married couple and you could talk to the
25 husband or wife, and something gets done with the husband

1 and the wife says whoa, wait a minute, that is not, that's
2 not how I understood it, and then perhaps off to divorce
3 court we go, which is a whole separate tribunal. But that
4 may be done, but I am saying that it is done in error.
5 And it is a situation where it says you shall keep a
6 client, and in this particular case I think it is fairly
7 clear, that you shall keep a client reasonably informed
8 about the status of a matter and promptly comply with
9 reasonable requests for information.

10 To say six months after filing an appearance
11 in front of the Corporation Commission that I want to
12 withdraw from representing you, that certainly does not
13 appear to be keeping a client reasonably informed of the
14 status of the case, as is apparent from the letter that I
15 received from Mr. Tricamo saying whoa, I didn't even know
16 this was going on. And the only dispute and the only
17 evidence that you have to dispute that is, well, I talked
18 to Mr. Wetherald and he told Mr. Tricamo. You have
19 third-party, secondhand information of which those two
20 individuals are part of a complaint case and which may
21 point fingers at each other. I mean that -- I don't even
22 get in the second instance where that is a, that is a
23 decision that is a good decision, especially in light of
24 the situation where you know one of those individuals was
25 fired from the firm and just had a membership interest. I

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1 closer to you and if everybody would concentrate on
2 speaking into the microphone.

3 I am not going to take this too much further.
4 But the flaw is, if there is a malpractice suit filed
5 against ABC law firm, yes, maybe everybody in ABC isn't
6 going to know, but the managing partner is going to know
7 and the individual who is, whether it is A, B or C, is
8 certainly going to know. And the lawyer that is
9 representing ABC law firm may not be the same person that
10 is representing lawyer B.

11 In other words, the name -- there may be two
12 different attorneys representing the law firm and the
13 lawyer who is associated with that law firm because there
14 are conflicts of interest. Even if it is the same lawyer,
15 which is certainly possible and done all the time, that
16 lawyer would have the responsibility of informing the
17 lawyer, not just the law firm, of what was going on
18 because the lawyer is also his client.

19 And that is the crux. That is the situation
20 that I am having the most difficulty with. Even though
21 you say that there are these situations and that
22 Mr. Glaser could reasonably rely on Mr. Wetherald, I am
23 not convinced that, in so doing, he is reasonably
24 informing his client. He may do so at his peril and it
25 may be done. But it is also done at that peril. And I

1 have indications on the record that from January to June,
2 there was no contact, although Mr. Glaser represented to
3 this Commission that he was representing, among others,
4 Mr. Tricamo.

5 And that is the crux of this. And that is
6 where I am in the situation. And it is something that
7 either I or the Commission will decide. Whether or not
8 there will be a subsequent hearing or not, I won't assure
9 you of that at all.

10 There has been enough been said on the record,
11 and I have taken some argument from both Mr. Glaser, his
12 firm and now you in regarding this matter. But to tell me
13 that I can deal with this after the substantive motion,
14 excuse me, after the substance of the hearing, that is
15 something that I could do, but I have just excused
16 Mr. Wetherald (sic) and so his participation in the
17 hearing is no longer, it is just not going to happen
18 anymore, so I don't necessarily know how the result of
19 that hearing is going to affect the decision on
20 Mr. Glaser's representation.

21 MR. NOVAK: You know, I wasn't trying to delay
22 or create more work for Your Honor or the Commission. The
23 thought that went through my mind, and perhaps I was
24 simply inarticulate, there may be facts that develop
25 during the course of the hearing that play on these issues

1 that give, that may give Your Honor some additional
2 information with which to analyze the situation. And thus
3 it may be better post hearing for you to review it than
4 prehearing. That's all.

5 ALJ DION: And I will consider that, although
6 I don't know what better information than the information
7 presented to me at the October 7th hearing where
8 Mr. Glaser admitted to me that he didn't talk to
9 Mr. Tricamo.

10 MR. NOVAK: But you will -- I am sorry.

11 ALJ DION: I mean, that seems to be, you know.

12 MR. NOVAK: But you will have an opportunity
13 at the hearing to listen to the examination and
14 cross-examination and ask your own questions of
15 Mr. Wetherald with respect to his communications with
16 Mr. Glaser and Mr. Johnson with respect to his
17 communications and perhaps, if Mr. Tricamo shows,
18 Mr. Tricamo's recollections. That's all I was trying to
19 suggest.

20 ALJ DION: Okay. I appreciate that. Again, I
21 have granted the motion. So Mr. Glaser is no longer
22 required --

23 MR. NOVAK: Thank you.

24 ALJ DION: -- to appear at the hearing which
25 is currently set November 3rd, which leads us to

1 Mr. Wetherald's motion to continue.

2 Staff was the only entity and/or party to
3 respond in this case. None of the other parties responded
4 so I assume there is no objection. Mr. Wetherald, do you
5 have anything to add?

6 MR. WETHERALD: To my motion?

7 ALJ DION: Yes.

8 MR. WETHERALD: Well, no, I don't. But in all
9 fairness, we did get an order saying to the Commission the
10 trial next week is continued. That came out yesterday, I
11 believe.

12 MR. NOVAK: Your Honor, may we be excused?

13 MR. WETHERALD: I still ask for a continuance
14 because I have been trying to prepare for that for the
15 last two weeks. But in fairness to Your Honor, I wanted
16 him to know that it did.

17 ALJ DION: I know that. I contacted the
18 court.

19 MR. WETHERALD: Okay.

20 ALJ DION: And I have in front me the minute
21 entry indicating that your motion to continue was granted.

22 I have to say that nowhere in your motion did
23 you tell me that you had a pending motion to continue in
24 the Securities and Exchange Commission case and you make
25 it sound that it was eminent and it was going to happen.

1 Additionally, I called your lawyer,
2 Mr. Merrick, and asked him some questions, and nor did he
3 divulge to me that there was a pending motion to continue
4 before Judge Zloch in the United States District Court in
5 Florida.

6 So I have to say that your requests regarding
7 a continuance in this case, the fact that this has been
8 set for so long and the fact that you have left a lot of
9 information out that was really going to be relevant to
10 me, your request is really going to fall on deaf ears,
11 Mr. Wetherald.

12 You are not going to interrupt me,
13 Mr. Wetherald. This is --

14 MR. WETHERALD: Can I --

15 ALJ DION: This is nobody saying anything. I
16 am talking.

17 This sort of stuff has gone on long enough,
18 talking about gaining the system, these delays, these
19 transactions. I am, I have gone on long enough.

20 I was told in October, the last time we got
21 together on October 7th, by Mr. Wetherald that he had a
22 pending case set for the exact same time I set, even
23 though I set it in September, therefore there was a
24 conflict. I told Mr. Wetherald, if that's the case, file
25 a motion and give me the information.

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1 The information was given to me that this
2 Securities and Exchange Commission case was going to take
3 place on November 3rd, which was the date that I had it
4 scheduled for. Nowhere in the explanation is, oh, by the
5 way, I have filed a motion to continue in this case and
6 that may be granted and you may want to, you may want to
7 consider that when you make your decision. Instead, I was
8 led to believe that this case was proceeding as it was set
9 forth in the motion.

10 Additionally, in my contact with this
11 individual by the name of Glenn Merrick, I also asked him
12 what was the likelihood that this case would proceed to
13 hearing. He said that they, as far as he knew, it was
14 going, ongoing. Again there was no mention regarding the
15 pendency of a motion to continue before that court.

16 So your coming clean so to speak, so to speak,
17 that you have gotten a motion to continue granted, it is,
18 it is late. I mean I should have been informed that there
19 was this motion. I could have granted your request not
20 knowing this, and essentially granted a motion to continue
21 based on information that was incomplete, incomplete
22 because I did not know there was a motion to continue
23 pending in the SEC case, assuming that case was going to
24 proceed. Then I would set my hearing, and chances are, in
25 this particular hearing, that would fall on the same exact

1 date that the SEC case has been refiled to, again refiled
2 unbeknownst to me except that I called the judge and I
3 found out what was going on. I found out about the
4 motion. I waited to make my decision because it was
5 pending. Once the judge made his motion, he was kind
6 enough to inform me of that. I have a copy of the order.

7 So to request a continuance in this case based
8 upon the fact that you were working on another case while
9 you had a motion to continue pending, the fact that this
10 matter has been set for months is unacceptable and it will
11 not be tolerated. And I am not continuing this case.

12 MR. WETHERALD: Your Honor, first of all --

13 ALJ DION: This case has gone on long enough.

14 MR. WETHERALD: You were told in a motion that
15 we were asking for a continuance in this case. To say you
16 didn't know -- it is even referenced in Staff's
17 response -- for you to say it was not mentioned to you is
18 not accurate. You were told that there was a motion being
19 requested.

20 He also started out, you know what, Your
21 Honor, and it is my understanding from Glenn Merrick in
22 his conversation with you, that you were told that we
23 filed a motion to continue but didn't know what the
24 outcome would be.

25 ALJ DION: Can you direct me to which

1 paragraph you are talking about?

2 MR. WETHERALD: I don't have it. I am looking
3 for it myself.

4 ALJ DION: Are you finding it? Do you have
5 it, Mr. Wetherald, now?

6 MR. WETHERALD: I am looking for a letter I
7 sent to you.

8 ALJ DION: Anybody else looking at this that
9 can help me?

10 MR. NOVAK: I didn't receive a copy of it,
11 Your Honor.

12 ALJ DION: I appreciate that, Mr. Novak. I
13 guess you are also out of the case, so... We are trying
14 to cut costs around here. Budget crisis.

15 Mr. Horton, can you help me, sir?

16 MR. HORTON: I am rereading Mr. Wetherald's
17 letter. I reread my response. I don't see anything about
18 a pending continuance. If Mr. Wetherald is required to be
19 in district court as currently is the case based on the
20 court's order filed by Mr. Wetherald, then this proceeding
21 should be continued for a period of time no longer than
22 two weeks.

23 ALJ DION: I am sorry, Mr. Horton, go ahead.

24 MR. HORTON: Then I said: While it appears
25 possible that the district court case will not proceed on

1 November 3rd -- then went on from there.

2 MR. WETHERALD: I would like to clarify at the
3 time that I wrote that letter I don't believe the motion
4 to continue had been filed yet by my attorneys. I asked
5 them to do so but I don't believe it had been filed.

6 ALJ DION: I am looking at the copy for the
7 judge that was issued, got a Docket stamp of October 9th
8 2003, 10:00 a.m., the filing of a motion to continue trial
9 in state proceedings for separate file were for
10 certificate compliance with S.D. and it gives S, period,
11 D, period, Florida, that's abbreviated FLA, period,
12 capital L, period, capital R, period, 7.1.

13 It goes on to say defendant Timothy Wetherald,
14 through undersigned counsel, respectfully files this
15 motion to continue trial and to stay proceedings. That
16 was October 9th, 2003.

17 Your letter was docketed here on October 10th,
18 2003. This was what it tells me:

19 "Dear Judge Dion: Please accept this letter
20 as my motion and request for a continuance in the above
21 referenced matter. As discussed in the October 7th, 2003
22 hearing, a trial in the case with the Securities and
23 Exchange Commission versus Mark Shiner," then you give the
24 case number, "is scheduled for the week November 3rd and
25 is anticipated to last the entire week. I have enclosed a

1 the above referenced Dockets to any other time in November
2 or December 2003 will not prejudice any other parties in
3 this proceeding or the public interest. PCMG is not
4 currently providing any telecommunications services in
5 Arizona and has voluntarily surrendered its CCN as well as
6 cancelled tariffs. To my knowledge there are no
7 allegations that PCMG is adversely affecting consumers.

8 "I sense that you truly desire to 'get to the
9 bottom' of the issues before you, and strongly believe
10 that the only way for that to happen is for my testimony
11 and evidence to be heard. I believe that once my side has
12 been presented, you will be both convinced and overwhelmed
13 by the truth.

14 "I submit" -- next paragraph: "I submit that
15 the Commission has been unscrupulously used to achieve an
16 end, that would otherwise not have been achievable, by
17 those holding themselves out to be representing the
18 interests of the LLP. In fact I believe that the evidence
19 once presented will show clearly that these individuals
20 have knowingly provided false statements, testimony and
21 sworn declarations not only to this Commission, its Staff
22 and yourself, but have done so on repeated occasions
23 before other utility boards and the SEC. The evidence I
24 will present will also show that these individuals acted
25 without the authority, knowledge or consent of their other

1 partners and are an egregious violation of their fiduciary
2 duties, as well as their responsibility to be honest and
3 forthright with not only the Commission but other
4 regulatory bodies as well.

5 "I understand" -- next paragraph. "I
6 understand that you are both angry and frustrated at the
7 length of time these matters have taken. The delays,
8 however, on my side have largely been dictated by economic
9 circumstances not in my control. At this point I can only
10 commit to you that I will precede in this matter" --
11 excuse me. At this point I can only commit to you that I
12 will proceed in this matter. I assume proceed -- "with
13 the utmost candor and propriety."

14 Next paragraph: "If you wish to speak with my
15 counsel in the SEC matter, his name is Glenn Merrick at
16 the law firm," and you give a law firm. "His phone," you
17 give his phone number. "Glenn can confirm the above trial
18 dates and can speak more definitively about the length of
19 the trial itself.

20 "Sincerely, Tim Wetherald."

21 Nowhere in the letter does it say to me about
22 a motion to continue that was filed by you and your
23 counsel previously to this already being authored. For
24 you to say --

25 MR. WETHERALD: It was not --

1 ALJ DION: For you to say I am inaccurate is
2 highly suspect considering I have just read your entire
3 letter and nowhere in there has there been talk of a
4 motion to continue. We are --

5 MR. WETHERALD: The motion was filed the same
6 day the letter was written. I probably did not know it
7 was filed. But I did probably tell you an --

8 ALJ DION: PCMG was involved in the
9 telecommunication services in Arizona, is that correct?

10 MR. WETHERALD: Yes, it was.

11 ALJ DION: Is that something that could be
12 directed, by phone, fax or otherwise, that information
13 could have been provided to me? That could have happened
14 in a subsequent filing; is that possible?

15 MR. WETHERALD: Yes, it was possible.

16 ALJ DION: Thank you. Your motion is denied.

17 The hearing will take place on the 3rd.
18 Everyone will be expected to attend. There will be no
19 appearances telephonically. Everyone will be expected to
20 attend.

21 Additionally, regarding the dockets -- excuse
22 me -- the documents in the second amended, the second data
23 request or the outstanding data requests that Staff has
24 requested, I have ordered and it has been continually
25 ordered that information be provided to this Commission.

1 That information has continually not been
2 provided to this Commission. It would behoove PCMG, to
3 provide evidence at the hearing as to why they have not
4 complied with that, a statement from their accountant,
5 somebody to tell me why that information has not been
6 provided.

7 If not, based upon the numerous orders made by
8 this Commission to have that information presented, and
9 the lack of compliance without good reason, the Commission
10 can only presume that that information is being hidden
11 because it is detrimental. That is the only conclusion
12 that can be reached in this case regarding lack of
13 information if there is not a reasonable explanation
14 presented at hearing. So I wanted to present that to the
15 parties that that will be required in the hearing, which
16 again will take place as scheduled on November 3rd.

17 I believe that takes care of all of the
18 matters set before the Commission in this preliminary
19 hearing. The exhibits and witness lists should have
20 already been filed along with the testimony. Those will
21 be reviewed by me, and have been reviewed by me for the
22 November 3rd prehearing. I believe that takes care of all
23 the other issues.

24 Staff, is there any other issue?

25 MR. HORTON: No, Your Honor.

1 ALJ DION: Okay. On behalf of the LLP,
2 Mr. Crockett?

3 MR. CROCKETT: Yes, one thing. Mr. Credle,
4 who is the LLP's witness, has recently changed his plans
5 so that he can be here on the 3rd. But his flight does
6 not arrive in Phoenix until around noon on Monday. So I
7 thought if we might discuss briefly the expected schedule
8 of witnesses in this case, who is going to go in what
9 order among the respondents, that will be helpful.

10 ALJ DION: Before I do that, I was going to
11 excuse Mr. Novak earlier but I was in a train of thought.
12 So I will go ahead and do that.

13 Mr. Glaser, you are also excused, sir.

14 MR. GLASER: Okay. Thank you, sir.

15 ALJ DION: You are welcome.

16 MR. NOVAK: Thank you.

17 ALJ DION: Before I do that, anything from
18 Qwest?

19 MR. BLACK: No, Your Honor.

20 ALJ DION: Okay. Staff, how many witnesses
21 are you going to --

22 MR. HORTON: We have three, Your Honor.

23 ALJ DION: How long do you anticipate those
24 witnesses will take?

25 MR. HORTON: Well, we have prefiled testimony.

1 So we will be doing a summary of the testimony. Shouldn't
2 take too long. I think the estimate has to come from the
3 amount of cross that is going to be offered.

4 ALJ DION: Based upon that, Mr. Crockett, do
5 you have an estimate as to how long your cross will be?

6 MR. CROCKETT: Boy, Your Honor. Given the
7 uncertainty regarding the trial date in this case, I don't
8 have an estimate now. There will be some
9 cross-examination of at least two of the witnesses. I
10 would expect probably a couple of hours, not more than a
11 couple of hours.

12 ALJ DION: Okay. Mr. Johnson, you are
13 probably going to have a number of questions for Staff.
14 How long do you anticipate your cross being?

15 MR. JOHNSON: Your Honor, I did not receive
16 from Staff any communication about a list of witnesses or
17 anything. For some reason they haven't got my address
18 correct. The Commission, I got materials from you, Your
19 Honor, but nothing from, nothing from Staff. In fact, I
20 never received the supplemental testimony directly from
21 Staff. I have garnered it from other folks.

22 ALJ DION: You have been able to get that?

23 MR. JOHNSON: I did.

24 ALJ DION: I appreciate that. And I think
25 that clearing up Mr. Glaser's position in this case will

1 help immensely.

2 Now, how long would you estimate that your
3 cross-examination --

4 MR. JOHNSON: I don't believe more than half
5 an hour, Your Honor.

6 ALJ DION: Mr. Wetherald, any idea how long
7 your cross-examination will take?

8 MR. WETHERALD: Well, considering the nature
9 of that, I am going to say, I would say probably a couple
10 days.

11 ALJ DION: Okay. Mr. Wetherald, do you have
12 any witnesses?

13 MR. WETHERALD: I may have at least myself and
14 probably two or three others.

15 ALJ DION: Okay. And, Mr. Johnson, how many
16 witnesses?

17 MR. JOHNSON: There will be no witnesses, Your
18 Honor.

19 ALJ DION: On behalf of the LLP, how many
20 witnesses?

21 MR. CROCKETT: One witness, Your Honor.

22 ALJ DION: And Qwest?

23 MR. CROCKETT: I believe Qwest will have one
24 witness, Your Honor.

25 ALJ DION: And we will get to that probably at

1 the very end.

2 Just, Mr. Black --

3 MR. JOHNSON: Unless I would be considered a
4 witness. Of course I will be testifying. But other than
5 that, I will not have a third-party witness.

6 ALJ DION: Okay. Based upon that, I think
7 this case could go as much as four days. I would bet at
8 the outset it will be somewhere between two to three.

9 Considering that, we will start Monday
10 morning. Staff will present its case and its witnesses.
11 I imagine that that's probably, to be real honest,
12 Mr. Crockett, where will it end up, the direct and
13 cross-examination will take the bulk of the day for
14 Staff's witnesses. Tuesday we will not, we will not be in
15 hearing. We have an open meeting scheduled for that day.
16 Additionally, I can't promise on Wednesday, as the open
17 meeting is scheduled for two days, Tuesday and Wednesday.
18 However, there is a high likelihood that the Wednesday
19 open meeting may not take place. So what I need for the
20 parties to do is to call area code (602) 542-4250 in the
21 afternoon, at Tuesday afternoon, the 4th, to determine
22 whether or not we are starting on Wednesday. If we do, we
23 will start at 9:00. We will go through Wednesday and then
24 through Thursday. If not, the schedule will amend to
25 Monday start time and then Thursday and then Friday.

1 On Thursday, I would anticipate getting to
2 Mr. Johnson's and Mr. Wetherald's witnesses.

3 MR. JOHNSON: Did you say on Tuesday, Your
4 Honor?

5 ALJ DION: No, no, on either Wednesday or
6 Thursday. Tuesday is obviously wrong. Wednesday or
7 Thursday getting to Mr. Wetherald or Mr. Johnson's.

8 And then I believe at that time, Mr. Crockett,
9 we probably would get to any witnesses from LLP and Qwest
10 and any rebuttal witnesses. And that should conclude the
11 hearing in this case.

12 Did you have something, Mr. Crockett?

13 MR. CROCKETT: Yes, Your Honor. Mr. Wetherald
14 said he might have a couple other witnesses. I would
15 appreciate it if he could identify who he thinks they may
16 be at this time.

17 ALJ DION: Mr. Wetherald, would you do that?

18 MR. WETHERALD: Yes. I do believe and I
19 believe I may want Steve Petersen, Roald Haugan, and
20 possibly Jeffrey Moore, possibly Bernie Bachne, all
21 partners of the Arizona LLP. And my understanding is most
22 of them were or are on the management committee.

23 MR. CROCKETT: We have not received any kind
24 of subpoenas for that testimony at this point. I know --
25 Mr. Petersen, are you still on the line?

1 MR. PETERSEN: Yes.

2 MR. CROCKETT: I know you are planning to
3 attend that week. When do you get to town?

4 MR. PETERSEN: I haven't booked yet. I was
5 waiting to hear what was going to take place here.

6 MR. CROCKETT: But you will be available,
7 correct?

8 MR. PETERSEN: Correct.

9 MR. CROCKETT: And Mr. Credle will be in town.
10 With respect to these other folks, I have not had any
11 discussions with them and I am quite certain that they are
12 not aware that they are expected to or that Mr. Wetherald
13 would expect them to attend the hearing next week.

14 ALJ DION: Okay. Mr. Wetherald, just so you
15 know, what you are going to want to do is contact the
16 executive secretary's office here at the Commission. And
17 the executive secretary can, on behalf of you, issue
18 subpoenas.

19 MR. WETHERALD: Okay.

20 ALJ DION: Okay? And that is going to need to
21 be done. However, you know, the ability of the Commission
22 quite honestly at this late time and notice to make sure
23 that those are served is going to be questionable. I want
24 you to understand that.

25 I mean, you know, again, this hearing has been

1 scheduled for awhile. And, you know, it is a situation
2 that subpoenas could have been issued. And even if the
3 case would have been continued, those subpoenas would
4 remain in effect. It is just that they would have, the
5 hearing would occur on a different day.

6 So I can make no promise on this late date
7 regarding the Corporation Commission's ability to
8 effectively serve those subpoenas. So you are going to
9 want to, as soon as we are done, get in contact with the
10 executive secretary as soon as possible. I don't have
11 that phone number for you, but if you call that phone
12 number I gave for the Hearing Division, they will be able
13 to get you to that.

14 MR. WETHERALD: Is that the 542-4250?

15 ALJ DION: Yes. If you call that number, they
16 will be able to, they will be able to proceed. I think
17 that --

18 Is there anything from Qwest, Mr. Black?

19 MR. BLACK: Your Honor, just to clarify, I
20 believe at the last procedural conference, Qwest was given
21 permission to provide their witness telephonically.

22 ALJ DION: That's correct. The parties and
23 the named parties need to be here. I need to evaluate
24 their testimony. And that's something that I am not going
25 to, I am not going to budge on.

1 People on the periphery, however, who are not
2 witnesses, if the parties have no objection, then they may
3 appear telephonically and we will accommodate that.

4 Qwest's situation is unique in that I may have
5 questions for Qwest, who is just an intervenor in this
6 case, and may request Qwest to provide a witness. And so
7 in that case, I would be willing to allow that witness to
8 testify, as I just have procedural questions for the most
9 part for them, not necessarily substantive questions and
10 the demeanor and things like that is not as important as
11 is the process Qwest went through in this particular case.
12 But if the parties agree and people can appear
13 telephonically, that's fine.

14 However, the principals should appear. And I
15 understand from the LLP that there will be sufficient
16 representation, so that is acceptable.

17 MR. BLACK: And, Your Honor, I would also like
18 to ask Mr. Wetherald whether he intends to subpoena any
19 Qwest witnesses.

20 ALJ DION: Mr. Wetherald, any Qwest witnesses
21 that you can think to subpoena?

22 MR. WETHERALD: You know, I am not even sure
23 what Qwest is bringing to the table to testify about. So,
24 you know, at this point, I can only say possibly when we
25 get into it I might want to call someone as a rebuttal

1 witness but I don't even know where to start with that
2 until I know what is on the table.

3 ALJ DION: So at this point, Mr. Black, it
4 doesn't appear to --

5 MR. HORTON: Excuse me, sir.

6 ALJ DION: My questions were more about the
7 process rather than this particular case.

8 Mr. Horton?

9 MR. HORTON: We do have information that we
10 will want to offer that is in the form of responses from
11 Qwest to data requests. I know in the usual course of
12 events we would present them to the witness that could
13 verify to their accuracy and so on. And if they are not
14 actually in the courtroom, I am just wondering if there is
15 some other arrangements we can make to do that.

16 ALJ DION: I would encourage the parties to
17 stipulate to as many of the exhibits as possible. If
18 there is an impasse regarding a particular exhibit,
19 foundationally or otherwise, then we are going to go
20 through the normal process and we are going to have to
21 find out who wrote it and why they wrote it and all those
22 other things, unless it is something I can take judicial
23 notice of. But, again, if it has to do with Qwest
24 policies or procedures or something like that, it is
25 certainly something that perhaps the parties can agree

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1 that that is Qwest's policy and that is what they do and
2 there is really no dispute about it.

3 However, if it is a situation that is
4 different than that, I can see where the parties may want
5 to have foundationally those exhibits entered into
6 evidence the old fashion way. But if there are exhibits,
7 Mr. Johnson and Mr. Wetherald and LLP and Staff, that you
8 can agree on in the beginning, and Qwest as well, but I
9 understand Qwest isn't offering any exhibits --

10 MR. WETHERALD: Your Honor, I have a
11 procedural question.

12 ALJ DION: Sure.

13 MR. WETHERALD: I had sent the missing data
14 requests for two yesterday. They won't get there
15 until tomorrow. Do I need to docket those? Because I
16 only sent them to Maureen Scott and Gary Horton.

17 ALJ DION: No. They are a response to a data
18 request? No, you do not need to docket those. However, I
19 am sure Mr. Horton and Mr. Black for Qwest today would be
20 interested in the information.

21 Is that, if it is going to be used,
22 Mr. Horton, certainly it is something that I am sure they
23 want to see.

24 MR. HORTON: I believe that we have a data
25 request for Mr. Crockett instructing us to provide him

1 with any responses to anything that we propound, so he
2 certainly would get them.

3 ALJ DION: Mr. Wetherald, sounds like the
4 parties have kind of taken care of it. If you sent it to
5 Staff, Staff should receive it. It will be sent to
6 Mr. Crockett. And if Qwest and Mr. Black want to request
7 that, they will get a copy as well. But other than that,
8 no, it does not need to be docketed. And then from that,
9 you can, meaning you the parties, can determine which
10 and/or all of those items you would like me to consider at
11 the hearing.

12 Any other procedural questions? Nothing,
13 okay.

14 Staff, anything in conclusion? Did I miss
15 anything?

16 MR. HORTON: I have nothing further, Your
17 Honor. Thank you.

18 ALJ DION: Anything from Mr. Wetherald?

19 MR. WETHERALD: Not at this time.

20 ALJ DION: Mr. Johnson?

21 MR. JOHNSON: Documents that have been
22 submitted and attachments as part of previous motions in
23 this matter, will these become exhibits automatically or
24 will we have to resubmit those at the hearing?

25 ALJ DION: Well, because we are going to

1 establish a record, I am going to certainly want, you
2 know, a copy for the court reporter. She will mark it,
3 and then it will become part of the record. If it is
4 something that you have, you know, you have filed before,
5 it is something we could refer to. But it really is a
6 situation where you are kind -- it will get in a situation
7 where everybody is flipping papers and not paying
8 attention to what is going on.

9 So whatever you determine you want, go ahead
10 and bring an original or best copy and have it marked
11 before the hearing and then provide copies to the other
12 parties, if you have not already done so.

13 MR. JOHNSON: Yes, sir.

14 ALJ DION: Okay?

15 Any other questions, Mr. Johnson?

16 MR. JOHNSON: No.

17 ALJ DION: From the LLP, Mr. Crockett?

18 MR. CROCKETT: No, Your Honor.

19 ALJ DION: And on behalf of Qwest, Mr. Black?

20 MR. BLACK: No, Your Honor.

21 ALJ DION: That concludes our prehearing. I
22 will see everyone Monday morning. I will see you as
23 scheduled, Monday, hopefully Wednesday, Thursday and, if
24 needed, Friday.

25 If the open meeting for the Corporation

1 Commission goes beyond the Tuesday and goes into
2 Wednesday, then we will start on Thursday. It is the
3 parties' responsibility to call the Corporation Commission
4 on Tuesday afternoon at (602) 542-4250 to determine
5 whether or not we will begin, whether or not we begin on
6 Wednesday or Thursday. We will start at 9:00. I will go
7 through this again on Monday but I just wanted to get that
8 on the record.

9 Thank you.

10 (The prehearing concluded at 4:36 p.m.)

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1 STATE OF ARIZONA)
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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 15th day of November, 2003.

Colette E. Ross
COLETTE E. ROSS
Certified Court Reporter
Certificate No. 50658