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AZ CORP COMMISSION

BEFORE THE ARIZONA CORPORATION COMMISSION

JUL 22 4 46 PM '99

1
2 CARL J. KUNASEK
Chairman
3 JAMES M. IRVIN
Commissioner
4 WILLIAM MUNDELL
Commissioner
5

DOCUMENT CONTROL

6 IN THE MATTER OF THE APPLICATION
7 OF U S WEST COMMUNICATIONS, INC.,
8 A COLORADO CORPORATION, FOR A
9 HEARING TO DETERMINE THE EARNINGS
10 OF THE COMPANY, THE FAIR VALUE OF
11 THE COMPANY FOR RATEMAKING
PURPOSES, TO FIX A JUST AND
REASONABLE RATE OF RETURN THEREON
AND TO APPROVE RATE SCHEDULES
DESIGNED TO DEVELOP SUCH RETURN.

DOCKET NO. T-01051B-99-0105

MOTION TO EXCLUDE
PARTICIPATION OF KLAYTON
FOSTER FENNELL

12 U S WEST Communications, Inc. ("U S WEST") moves the Arizona
13 Corporation Commission to exclude AT&T employee Klayton Foster
14 Fennell ("Fennell") from reviewing proprietary documents or
15 acting as an expert in this proceeding. Fennell worked for U S
16 WEST as a Docket Manager — a position similar to that of a
17 paralegal.

18 In Arizona, the statutory attorney-client privilege
19 preserves client confidences in the litigation setting. Ariz.
20 Rev. Stat. § 12-2234. "[T]he protection of a client's
21 confidences through this statutory privilege has been extended to
22 apply to paralegals as well as secretaries, based on the law's
23 recognition of the necessary role of nonlawyer assistants in
24 modern litigation practice." Smart Indus. Corp. v. Superior
25 Court, 179 Ariz. 141, 146, 876 P.2d 1176, 1181 (App. 1994); see
26

1 A.R.S. § 12-2234(A). To preserve client confidences, an
2 "employee should not work on any matter on which the employee
3 worked for the prior employer or respecting which the employee
4 has information relating to the representation of the client of
5 the former employee." Smart Indus., 179 Ariz. at 149-50, 876
6 P.2d at 1184-85 (quoting ABA Informal Opinion 88-1526 (June 22,
7 1988): Imputed Disqualification Arising From Change in Employment
8 By Nonlawyer Employees).

9 Counsel for AT&T designated Fennell as an expert in this
10 proceeding in a letter sent to U S WEST counsel on June 25, 1999,
11 along with Fennell's executed Exhibit A. (Attached as Exhibit
12 1). Fennell formerly worked as a Docket Manager for U S WEST
13 from March 23 to July 23, 1998. As a Docket Manager at U S WEST,
14 Fennell's responsibilities would have included, but not been
15 limited to, project management, compliance filings, identifying
16 witnesses, developing testimony and exhibits, implementing state
17 regulatory decisions and docketing projects to meet legally
18 mandated time frames.

19 It would be unduly prejudicial to U S WEST for Fennell to
20 review U S WEST's proprietary documents and appear as an expert
21 against U S WEST. Moreover, Fennell owes U S WEST a continuing
22 duty of confidentiality. The duty he owes to his current
23 employer, AT&T, is inherently irreconcilable with his continuing
24 duty of confidentiality to U S WEST. Thus, Fennell would violate
25 the confidences of U S WEST by participating in this matter.

26

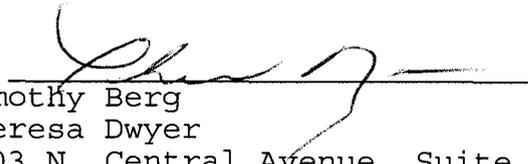
1 For all the foregoing reasons, U S WEST respectfully
2 respects that the Arizona Corporation Commission enter an order,
3 excluding Klayton Foster Fennell from reviewing proprietary
4 documents or acting as an expert in this proceeding.

5 DATED this 22nd day of July, 1999.

6 U S WEST COMMUNICATIONS, INC.
7 Law Department
8 Thomas Dethlefs

9 and

10 FENNEMORE CRAIG

11 By 
12 Timothy Berg
13 Theresa Dwyer
14 3003 N. Central Avenue, Suite
15 2600
16 Phoenix, Arizona 85012-2913
17 Attorneys for U S West
18 Communications, Inc.

19 ORIGINAL and 10 copies of the
20 foregoing hand-delivered for
21 filing this 22nd day of
22 July, 1999, to:

23 Docket Control
24 ARIZONA CORPORATION COMMISSION
25 1200 West Washington
26 Phoenix, Arizona 85007

27 COPY of the foregoing hand-delivered
28 this 22nd day of July, 1999, to:

29 Maureen Scott
30 ARIZONA CORPORATION COMMISSION
31 Legal Division
32 1200 West Washington
33 Phoenix, Arizona 85007

1 Ray Williamson
Director, Utilities Division
2 ARIZONA CORPORATION COMMISSION
1200 West Washington
3 Phoenix, Arizona 85007

4 Jerry L. Rudibaugh, Chief Hearing Officer
Hearing Division
5 Arizona Corporation Commission
1200 W. Washington
6 Phoenix, AZ 85007

7 COPY of the foregoing faxed and mailed
this 22nd day of July, 1999, to:

8 Richard S. Wolters
9 AT&T
1875 Lawrence St., Suite 1575
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11 COPY of the foregoing mailed
this 22nd day of July, 1999, to:

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Dana Poole
