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BEFORE THE ARIZONA CORPORATION COMMISSION

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CARL J. KUNASEK
Chairman
JAMES M. IRVIN
Commissioner
WILLIAM MUNDELL
Commissioner

Arizona Corporation Commission

DOCKETED

AZ CORP COMMISSION
DOCUMENT CONTROL

AUG 09 1999

DOCKETED BY *ycm*

IN THE MATTER OF THE APPLICATION
OF U S WEST COMMUNICATIONS, INC.,
A COLORADO CORPORATION, FOR A
HEARING TO DETERMINE THE EARNINGS
OF THE COMPANY, THE FAIR VALUE OF
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

REPLY IN SUPPORT OF U S
WEST'S MOTION TO EXCLUDE
PARTICIPATION OF KLAYTON
FOSTER FENNEL

The Arizona Corporation Commission ("Commission") must grant
U S WEST Communications, Inc.'s ("U S WEST") motion to exclude
AT&T employee, Klayton Foster Fennell ("Fennell"), from reviewing
proprietary documents or acting as an expert in this proceeding.
Fennell cannot serve in a confidential and fiduciary capacity on
both sides of the same case.

The issues raised in U S WEST's motion are sufficiently
serious to fall outside the short deadline for objections imposed
by the Protective Agreement. Additionally, U S WEST attempted to
informally resolve this matter with AT&T during July 1999 and
received assurances from AT&T that U S WEST had an extension to
object to proposed witnesses under the Protective Agreement. U S
WEST filed its Motion to Exclude Klayton Fennell on July 22,
1999, within the extension granted by AT&T.

1 As a Docket Manager, Fennell was involved in the original
2 strategic planning of the 1999 rate case. See Smart Industries
3 Corp. v. Superior Court, 179 Ariz. 141, 143, 876 P.2d 1176, 1178
4 (App. 1994) (paralegal's participation included "strategic
5 planning for a cooperative defense"). Additionally, he has
6 extensive knowledge about U S WEST's corporate policies and
7 strategies in Arizona, including direct involvement in the 271
8 Proceeding. Fennell's claim that his "participation in this
9 docket does not compromise [his] continuing duty to U S WEST"
10 proves nothing. Fennell cannot guarantee that he will not use
11 the proprietary and confidential information he gained during his
12 employment with U S WEST for the benefit of AT&T in the rate
13 case. Under the conflict rules, disqualification is mandated; a
14 former employer or "client" is not required to rely on such
15 guarantees.

16 U S WEST does not seek an order excluding Fennell "from all
17 case related work at AT&T." (Response at 5). U S WEST does
18 contend, however, that Fennell has a per se conflict with working
19 for both U S WEST and AT&T in fiduciary capacities when those
20 entities are in litigation and Fennell is directly involved in
21 the litigation. Fennell cannot review and analyze U S WEST's
22 proprietary information and testify adverse to U S WEST when, by
23 virtue of his employment with U S WEST as a Docket Manager, he
24 owes a fiduciary duty to U S WEST.

25 For all the foregoing reasons, U S WEST respectfully
26 respects that the Commission enter an order, excluding Klayton

1 Foster Fennell from reviewing proprietary documents or acting as
2 an expert in this proceeding.

3 DATED this 9th day of August, 1999.

4 U S WEST COMMUNICATIONS, INC.
5 Law Department
6 Thomas Dethlefs

7 and

8 FENNEMORE CRAIG

9 By 
10 Timothy Berg
11 Theresa Dwyer
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15 Attorneys for U S West
16 Communications, Inc.

17 ORIGINAL and 10 copies of the
18 foregoing hand-delivered for
19 filing this 9th day of
20 August, 1999, to:

21 Docket Control
22 ARIZONA CORPORATION COMMISSION
23 1200 West Washington
24 Phoenix, Arizona 85007

25 COPY of the foregoing hand-delivered
26 this 9th day of August, 1999, to:

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Phoenix, Arizona 85007
Ray Williamson
Director, Utilities Division
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5 this 9th day of August, 1999, to:

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A handwritten signature in black ink, appearing to be 'J. Poston', is written over a horizontal line. The signature is cursive and somewhat stylized.