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ARIZONA CORPORATION COMMISSION
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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner

In the matter of:

21st CENTURY SATELLITE
COMMUNICATIONS, INC.
14910 Winding Creek Court, Suite 101A
Tampa, Florida 33613

HOWARD S. BALDWIN
5926 E. Lewis Av.
Scottsdale, AZ 85257

GLENN A. LIBERATORE FINANCIAL
SERVICES
165 W. Canyon Crest Rd., Suite 305
Alpine, UT 84004

GLENN A. LIBERATORE
165 W. Canyon Crest Rd., Suite 305
Alpine, UT 84004,

Respondents.

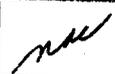
DOCKET NO. S-03449A-01-0000

**MOTION TO ALLOW
TELEPHONIC TESTIMONY**

Arizona Corporation Commission

DOCKETED

MAR 18 2002

DOCKETED BY 

The Securities Division ("Division") of the Arizona Corporation Commission hereby moves for
leave to present the telephonic testimony of Division witnesses Marian Seaman and William Smith

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1 during the hearing of the above-referenced matter, scheduled to begin on April 1, 2002. This Motion is
2 supported by the attached Memorandum of Points and Authorities.

3 RESPECTFULLY submitted this 18th day of March, 2002.

4 JANET NAPOLITANO
5 Attorney General
6 Consumer Protection & Advocacy Section

7 By: 

8 MARK DINELL
9 Special Assistant Attorney General
10 MOIRA A. MCCARTHY
11 Assistant Attorney General
12 Attorneys for the Securities Division of
13 The Arizona Corporation Commission
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MEMORANDUM OF POINTS AND AUTHORITIES

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I.

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FACTS

5 The Division anticipates calling Marian Seaman and William Smith as witnesses in this
6 hearing. Both are Arizona residents who invested in Respondent 21st Century Satellite
7 Communications, Inc.'s promissory notes, offered by Respondents. They both may testify on their
8 investment, the disclosures and information given them and the consequences of their loss. Their
9 testimony will be germane to the issues presented by the Notice of Opportunity in this case.
10 However, Ms. Seaman will be traveling out-of-state during the week of the scheduled hearing and
11 will only be available by telephone. Mr. Smith recently suffered a severe medical condition and will
12 not be able to travel to the Commission to testify in person. Travel to the Commission, with the
13 inherent time and stress of such travel, may be unduly burdensome and detrimental to his health.
14 However, he is available to give his testimony telephonically.
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II.

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ARGUMENT

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19 The purpose of administrative proceedings is to provide for the fair, speedy and cost effective
20 resolution of administratively justiciable matters. To effectuate that purpose, the legislature provided
21 for streamlined proceedings and relaxed application of the formal rules of evidence. Specifically,
22 A.R.S. § 41-1062(A)(1) provides for informality in the conduct of contested administrative cases.
23 The evidence submitted in an administrative hearing need not rise to the level of formality required in
24 a judicial proceeding, as long as it is "substantial, reliable and probative." In addition, the
25 Commission promulgated rules of practice and procedure to ensure just and speedy determination of
26 all matters presented to it for consideration. *See, e.g.,* A.A.C. R14-3-101(B); R14-3-109(K).

1 Allowing Ms. Seaman and Mr. Smith to testify by telephone retains all indicia of reliability and
2 preserves Respondents' right to cross-examination.

3 Courts in other states have acknowledged that telephonic testimony in administrative and civil
4 proceedings is permissible and consistent with the requirements of procedural due process. See
5 *Babcock v. Employment Division*, 72 Or. App. 486, 696 P.2d 19 (1985) (court approved Oregon
6 Employment Division's procedure to conduct entire hearing telephonically); *W.J.C. v. County of*
7 *Vilas*, 124 Wis. 2d 238, 369 N.W. 2d 162 (1985) (court permitted telephonic expert testimony in
8 commitment hearing). Both of these courts concluded that fundamental fairness weighed in favor of
9 permitting telephonic testimony.

10 Public policy considerations also militate towards allowing Ms. Seaman and Mr. Smith to
11 testify telephonically. Through this form of testimony, the Division can better allocate its limited
12 resources to better serve and protect the Arizona investing public.

13
14 **III.**

15 **CONCLUSION**

16 Permitting Ms. Seaman and Mr. Smith to testify telephonically at the hearing allows the
17 Division to present relevant witness evidence that is expected to be reliable and probative, is
18 fundamentally fair, and does not compromise Respondents' due process rights. Therefore, the

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1 Division respectfully requests that its motion for leave to present the telephonic testimony of Ms.
2 Seaman and Mr. Smith be granted.

3 JANET NAPOLITANO
4 Attorney General
5 Consumer Protection & Advocacy Section

6
7 By: 
8 MARK DINELL
9 Special Assistant Attorney General
10 MOIRA A. MCCARTHY
11 Assistant Attorney General
12 Attorneys for the Securities Division of
13 The Arizona Corporation Commission

14 ORIGINAL AND TEN (10) COPIES of the foregoing
15 filed this 18th day of March, 2002, with:

16 Docket Control
17 Arizona Corporation Commission
18 1200 West Washington
19 Phoenix, AZ 85007

20 COPY of the foregoing mailed this
21 18th day of March, 2002, to:

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