



EXPERT REPORT OF
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QWEST PENSION PLAN
JULY 3, 2006

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I. Statement of Qualifications

I graduated with an Associate of Applied Science degree in accounting from Westchester College in 1968, a Bachelor of Business Administration degree, *Cum Laude*, from Pace University in 1970, and a Master of Public Administration degree from the University of Georgia in 1976. I have completed courses in the Doctoral Program in Public Administration at the University of Georgia, and completed numerous government and private sector courses relating to employee benefit plans, labor relations, tax law, and management.

From 1983 to 1998, I served as San Francisco Regional Director of the U.S. Department of Labor's Pension and Welfare Benefits Administration ("PWBA"), now known as the Employee Benefits Security Administration ("EBSA"). I was responsible for enforcing Title I of the Employee Retirement Income Security Act of 1974 ("ERISA") in a geographic area covering seven western states (Alaska, Washington, Oregon, Idaho, Utah, Nevada, and California). As Regional Director, I reviewed, approved, and issued investigative findings involving ERISA violations; determined the appropriateness of voluntary compliance and monetary restitution to employee benefit plans; approved the initiation and settlement of civil litigation; and coordinated all San Francisco Region related activities with the Departments of Justice and Treasury, Internal Revenue Service ("IRS"), and other federal and state departments and agencies, including state departments of insurance.

During my fifteen-year tenure as Regional Director, I initiated thousands of employee benefit plan investigations relating to ERISA reporting and disclosure to participants and EBSA, plan loans to participants, the administration of plans, plan participant benefit disputes, the management and investment of plan assets, and the propriety of fees paid to plan service providers. Many of these investigations focused on the administration of defined benefit plans and employee welfare plans, and the services provided to employee benefit plans by insurance

companies, insurance agents, investment advisors, and financial institutions. These investigations involved the application of ERISA's fiduciary standards, the review and interpretation of plan documents, and the implementation of remedies where ERISA violations were uncovered.

In 1999, I founded ERISA Consulting Group ("ECG"). As a principal of ECG, I have provided consulting services to attorneys in numerous legal actions brought under ERISA. I have provided expert advice and consultation to employee pension and welfare benefit plan officials and service providers on ERISA regulatory and compliance issues. In addition, I have served as an independent fiduciary for employee benefit plans. Also, I have served as an independent member of an employee pension benefit committee investigating issues relating to compliance with ERISA.

A detailed description of my professional qualifications and relevant activities is set forth in the curriculum vitae attached hereto as Appendix A. I have not authored any publications within the preceding ten years.

II. Information Considered in Forming Opinions

I have reviewed documents relating to the litigation involving the Qwest Pension Plan (the "Qwest Plan" or "Plan"), and other evidence obtained in the litigation. Also, I have reviewed ECG's database relating to employee benefit plans, including books, news articles, professional journals, government reports, advisory opinions, regulations, memoranda, and files. A list of sources consulted and documents reviewed is attached hereto as Appendix B. This Report is based on my review of documents, my knowledge of ERISA, my experience providing ERISA consulting advice to clients, and my experience as a U.S. Department of Labor ("DOL") government official.

Further evidence provided or discovered in the litigation styled *Edward J. Kerber, et al.*,

v. Qwest Pension Plan, et al., (the “Litigation”) may change or modify the opinions expressed in this Report.

III. Other Expert Testimony and Compensation

In the preceding four years I have provided expert testimony in a deposition in the litigation styled *Jack Kirse, et al., v. Kenneth McCullough, et al.*, Case No. 4:04-CV-01067-50W (U.S. District Court for the Western District of Missouri). I am being compensated at the rate of \$350.00 per hour for trial preparation and consulting services and \$450.00 per hour for preparation of expert reports, depositions, affidavits, and trial testimony as an expert witness.

IV. Issues Considered

For the period before and after January 1, 2004, this Report will consider whether eligible participants and/or retirees of the Qwest Plan or predecessor plans are entitled to Pension Death Benefits (“PDBs”). To render an opinion on eligibility for PDBs the following issues will be considered:

- A. Whether or not PDBs are “ancillary benefits” or “welfare benefits.”**
- B. If the PDBs are and always have been ancillary or welfare benefits, whether or not there was a failure or breach of fiduciary duty on the part of the Plan Sponsor (or others) to comply with ERISA’s requirement that a summary plan description be written in a manner calculated to be understood by the average plan participant, and be sufficiently accurate and comprehensive to reasonably apprise participants and beneficiaries of their rights and obligations under the Plan.**
- C. Whether or not due to four Internal Revenue Code (“IRC”) § 420 transfers, the last of which occurred in late December 2001, all Plan participants or retirees who were then either service pension eligible or receiving disability pension benefits became fully vested in the Plan’s PDBs.**
- D. Whether or not the Qwest Plan Amendment 2003-5 eliminating PDBs as of January 1, 2004, is ineffective as to all persons who were service pension eligible as of the date of the last IRC § 420 transfer in late December 2001, and that the consequent failure by the Plan to provide PDBs to service eligible pension participants and/or retirees after January 1, 2004 is a breach of fiduciary duty under ERISA.**

V. Overview of ERISA and Relevant Provisions of the Internal Revenue Code

A. The Private Pension and Welfare System

In 1974, when ERISA was enacted, Congress declared that the “continued well-being and security of millions of employees and their dependents are directly affected [by employee benefit plans.]” ERISA § 2(a). Congress stated that employee benefit plans had become an increasingly “important factor affecting the stability of employment,” and that inadequate safeguards existed to protect participants and beneficiaries of plans. *Id.* To remedy this situation, Congress determined that it was in the interest of participants and their beneficiaries for federal law to provide disclosure and safeguards in regard to the “establishment, operation, and administration [of employee benefit plans].” *Id.*

At the time ERISA was enacted, Congress recognized that many participants of employee benefit plans were losing promised benefits due to a lack of plan vesting, minimum participation standards, and adequate funding provisions. *Id.* Pension plans were terminating and merging without having funds to pay benefits while plan sponsors or employers were receiving special tax preferences. ERISA and corresponding amendments to the IRC were enacted to assure the “equitable character of such plans and their financial soundness.” *Id.*

In a May 30, 2006 Order in *Hull v. U.S. Department of Labor* (“Hull Order”), a recent Freedom of Information Act case involving the President of the Association of U S WEST/Qwest Retirees (“AUSWER”), Lewis T. Babcock, Chief Judge of the U.S. District Court for the District of Colorado, placed the overall situation confronting employee benefit plans today in proper context. Chief Judge Babcock, quoting Congressional leaders, stated that employee benefit plans are “in crisis” and “consistently in the headlines and rightfully on the minds of American families.” Hull Order at 4 (quoting Press Release, Committee on Education and the Workforce, U.S. House of Representatives, *Nations Editorial Pages Highlight Pension*

Crisis, Citing Growing Urgency for Congress to Act on Reforms, December 1, 2005). Chief Judge Babcock stated that plan sponsors have “terminated their pension plans with severe gaps between the assets of these plans held and the pension promises...made to their employees and retirees.” Hull Order at 4 (quoting *Private Pensions: Revision of Defined Benefit Pension Plan Funding Rules is an Essential Component of Comprehensive Pension Reform, Before the Committee on Finance, United States Senate*, Statement of David M. Walker, Comptroller General of the United States, United States Government Accountability Office, June 7, 2005, page 1, GAO-05-794T). Chief Judge Babcock gave credence to the difficulties encountered by 20,000 members of AUSWR by recognizing the “unrecoverable disasters across the nation with respect to many defined pension plans.” *Id.*

B. ERISA’s Definitions of Employee Benefit Plans

ERISA provides a number of important definitions relating to when an employee benefit plan exists. ERISA § 3(1) defines an “employee welfare benefit plan,” or “welfare plan,” as follows:

[A]ny plan, fund , or program...established or maintained by an employer or by an employee organization...to the extent that such plan, fund, or program was established or maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 302(c) of the Labor Management Relations Act, 1947 (other than pensions on retirement or death, and insurance to provide such pensions).

ERISA § 3(2)(A)¹ defines an “employee pension benefit plan,” or “pension plan,” as follows:

Any [employer or employee organization] plan, fund, or program...to the extent that by its express terms or as a result of surrounding circumstances such plan,

¹ There are certain exceptions to this definition described in ERISA § 3(2)(B) which are not relevant for purposes of this Report.

fund, or program—i) provides retirement income to employees or (ii) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating contributions made to the plan, the method of calculating benefits under the plan or the method of distributing benefits from the plan.

Within the category of pension plans, ERISA creates two subcategories of plans: i) defined contribution plans (or individual account plans); and ii) defined benefit plans. ERISA § 3(34), provides that a defined contribution plan is a plan that creates an individual account for each participant and provides benefits based only on the amount contributed to the account plus or minus investment gains or losses, expenses, and forfeitures. ERISA § 3(35) provides that a defined benefit plan is “a pension plan other than an individual account plan.”²

The term “employee benefit plan” is defined in ERISA § 3(3) to encompass either a pension plan or a welfare plan, or a plan which is both. Thus, ERISA clearly contemplates the existence of a plan which is both a pension and welfare plan.

C. Documents and Instruments Governing the Plan

1. The Plan Document

ERISA § 402(a)(1) requires that every employee benefit plan be established and operated under a written instrument. Such instrument is known as the plan document among ERISA practitioners. ERISA § 402(a)(1) and (2) together require that one or more named fiduciaries “who jointly or severally...have authority to control and manage the operation and administration of the plan,”³ either be named in the plan or named by another fiduciary pursuant to a procedure specified in the plan. ERISA further requires that every employee benefit plan contain “a procedure for amending...[the] plan, and for identifying the persons who have authority to amend the plan.” ERISA § 402(b). The plan document is not required to be

² Again, there are certain limited exceptions set forth in ERISA § 3(35) that are not relevant for purposes of this Report.

³ ERISA § 402(a)(1).

provided to participants or beneficiaries of a plan unless requested. ERISA §§ 104(b)(1) and (4).

2. The Summary Plan Description

A summary plan description (“SPD”) is a written document that must be provided to participants within 90 days of their participation in the plan and to beneficiaries within 90 days after they first receive benefits. ERISA § 104(b)(1)(A). ERISA requires that the SPD be “sufficiently accurate and comprehensive to reasonably apprise...participants and beneficiaries of their rights and obligations under the plan.” ERISA § 102(a). In addition to this general guidance regarding the information that must be included in the SPD, ERISA § 102(b) sets forth specific information required to be included in the SPD. This information includes, but is not limited to, the following:

[T]he plan’s requirements respecting eligibility for participation and benefits; a description of the provisions providing for nonforfeitable pension benefits; circumstances which may result in disqualification, ineligibility, or denial or loss of benefits...

ERISA § 102(b).

Consistent with the purpose of the SPD to communicate a participant or beneficiary’s rights and obligations under his or her plan, ERISA requires that the SPD “be written in a manner calculated to be understood by the average plan participant.” ERISA § 102(b). The legislative history of ERISA reflects the importance Congress placed on the SPD:

An important issue relates to the effectiveness of communication of plan contents to employees. Descriptions of plans furnished to employees should be presented in a manner that an average and reasonable worker participant can understand intelligently. It is grossly unfair to hold an employee accountable for acts which disqualify him from benefits, if he had no knowledge of these acts, *or if these conditions were stated in a misleading or incomprehensible manner in plan booklets*. Subcommittee findings were abundant in establishing that an average participant, even when he has been furnished an explanation of his plan provisions, often cannot comprehend them because of the technicalities and complexity of the language used.

H.R. Rep. No. 93-533, 93d Cong., 1st Sess. (1973), *reprinted in 2 Legislative History of the*

Employee Retirement Income Security Act of 1974 (“Leg. Hist.”) 2355 (1976) (emphasis added). The DOL has indicated that the sophistication and education of typical plan participants as well as the complexity of the plan should be considered by the plan administrator in determining the adequacy of an SPD. 29 C.F.R. § 2520.102-2(a). Further, “consideration of these factors will usually require the limitation or elimination of technical jargon and of long, complex sentences, the use of clarifying examples and illustrations, the use of clear cross references and a table of contents.” *Id.*

In addition, a DOL regulation promulgated on November 21, 2000 provides the following:

For both pension and welfare benefit plans, a statement clearly identifying the circumstances which may result in disqualification, ineligibility, or denial, loss, forfeiture, suspension, offset, reduction, or recovery...of any benefits that a participant or beneficiary might otherwise reasonably expect the plan to provide on the basis of the description of benefits required ...In addition to other required information, plans must include a summary of any plan provisions governing the authority of the plan sponsors or others to terminate the plan or amend or eliminate benefits under the plan and the circumstances, if any, under which the plan may be terminated or benefits may be amended or eliminated...

29 C.F.R. § 2520.102-3(l) (effective January 1, 2003 for plans on a calendar year) (emphasis added). The regulation sets forth the view held by the Department since at least 1984. 70 Fed. Reg. 70225, 70229 (Nov. 21, 2000) (“The Department continues to believe, as it has since the issuance of Technical Release 84-1, that the disclosure of the information relating to the circumstances under which benefits might be eliminated...and the effects of such actions on benefits, is of significant importance to participants and beneficiaries.”).

As a critical document used to communicate rights and obligations to participants in an understandable fashion, courts have recognized that the terms of an SPD take precedent over the terms of a plan document. *E.g., Chiles v. Ceridian Corp.*, 95 F.3d 1505, 1515, 1518-1519 (10th Cir. 1996).

3. Summary of Material Modifications

ERISA §§ 102(a) and 104(b)(1) require the plan administrator to provide a summary of material modifications (“SMM”) to all participants covered by an employee benefit plan and all beneficiaries receiving benefits under the plan within 210 days after the close of the plan year in which a modification or change is adopted. Just as with an SPD, an SMM must be “written in a manner calculated to be understood by the average plan participant.” ERISA § 102(a); 29 C.F.R. § 2520.104b-3(a). An SMM is required to be provided when there is any “material modification” to the terms of a plan and any change in the information required to be provided as part of an SPD (*e.g.*, change in the names, titles, or addresses of trustees). ERISA § 102. Although ERISA does not define the term “material modification,” some courts have determined that a termination in a benefit is not a modification, and is subject to more timely notification requirements than those required by ERISA § 104(b)(1). *E.g.*, *Willett v. Blue Cross & Blue Shield of Alabama*, 953 F.2d 1335, 1340 (11th Cir. 1992); *Rucker v. Pacific FM, Inc.*, 806 F.Supp. 1453, 1459 (N.D. Cal 1992) (“[A] termination of benefits affects a beneficiary's rights to a much greater degree than compared to a mere modification [and t]hus, it makes sense that the employer should be required to ‘promptly’ notify the affected beneficiaries.”).

D. Amendments to Employee Benefit Plans and Reservation of Rights Clauses

Due to the importance of ERISA pension and welfare benefits, Congress, federal courts, and the DOL have devoted considerable attention to when a plan may be properly amended to reduce or eliminate benefits.

As stated above, ERISA § 402(b)(3) requires that the plan document set forth a procedure for amending a plan. The Supreme Court has indicated that ERISA § 402(b) is satisfied with a general statement that “[t]he Company reserves the right at any time and from time to time to modify or amend, in whole or in part, any or all of the provisions of a plan.” *Curtiss-Wright*

Corp. v. Schoonejongen, 514 U.S. 73, 75 (1995). However, compliance with ERISA § 402(b)(3) is only the beginning of an analysis of when a plan amendment is valid.

With respect to amendments that purport to reduce or eliminate benefits, courts have often focused on the following issues:

- Is the benefit a vested pension benefit or welfare benefit (taking into consideration any reservation of rights clause in the plan document or SPD and any communications or actions by the plan sponsor)? *E.g.*, *Pratt v. Petroleum Prod. Mgmt., Inc. Employee Sav. Plan & Trust*, 920 F.2d 651, 661 (10th Cir. 1990) (“Subsequent unilateral adoption of an amendment which is then used to defeat or diminish the plaintiff’s fully vested right under the governing plan document is not only ineffective, but also arbitrary and capricious.”); *Chiles*, 95 F.3d at 1510-1514.
- Have the requirements of ERISA § 204(g), 29 U.S.C. § 1054(g), and IRC § 411(d)(6) been violated with respect to accrued benefits? *e.g.*, *Bellas v. CBS, Inc.*, 221 F.3d 517 (3d Cir. 2000); *Richardson v. Pension Plan of Bethlehem Steel Corp.*, 67 F.3d 1462 (9th Cir.1995); *Ashenbaugh v. Crucible, Inc. 1975 Salaried Ret. Plan*, 854 F.2d 1516 (3d Cir. 1998), *cert. denied*, 490 U.S. 1105 (1989); *Constantino v. TRW, Inc.*, 13 F.3d 969 (6th Cir. 1994).

Both of these subjects are discussed below.

1. Vested Benefits and Reservation of Rights Clauses

A vested benefit is one that may not be forfeited. *Chiles*, 95 F.3d at 1510. Both pension and welfare benefits may become vested. *Id.* ERISA’s legislative history provides the following with respect to welfare (or ancillary) benefits: “[T]o require the vesting of...ancillary benefits would seriously complicate the administration and increase the costs of plans whose primary function is to provide retirement income.” H. Rep. No 807, 93rd Cong., 2d Sess. 60, *reprinted in* 1974 U.S. Code Cong. & Admin. News 4670, 4726. Accordingly, the Tenth Circuit has held that “[a]n employer or plan sponsor may unilaterally modify or terminate welfare benefits unless *it contractually agrees to grant vested benefits.*” *Chiles* 95 F.3d at 1510. (emphasis added). In contrast, this presumption is not applicable to pension benefits, as ERISA § 203, sets forth minimum vesting requirements for pension plans. *See id.* at 1510-1511.

In order to determine whether a benefit is vested, courts have examined the language of the documents and instruments governing the plan and the type of benefit at issue. *E.g.*, *Chiles*, 95 F.3d.at 1510-1512; *DeBoard v. Sunshine Mining and Refining Co.*, 208 F.3d 1228, 1239-1240 (10th Cir. 2000). Thus, a determination of whether a benefit vests requires a review of any representations to participants through the SPD or other communications, and the language of the reservation of rights clause, if any. *Id.* Although a pension plan may not provide for a vesting schedule less favorable than the minimum vesting schedules set forth in ERISA § 203, and welfare plans have no minimum vesting requirements, a plan sponsor may commit to a more favorable vesting than that which is statutorily required. 29 C.F.R. § 2530.203-1 (“Section 203 of ...[ERISA] and section 411(a) of the Code contain minimum vesting standards relating to certain employee pension benefit plans.”); *Esden v. Bank of Boston*, 229 F.3d 154, 173 (2d Cir. 2000). Information in the SPD bears particular emphasis because this is the document contemplated by ERISA to be the primary tool to communicate participant rights. *See id.* at 1515, 1518-1519; 29 C.F.R. § 2520.102-3(l); H.R. Rep. No. 93-533, 93d Cong., 1st Sess. (1973), *reprinted in* 2 Leg. Hist 2355 (1976). The Tenth Circuit has explained that language in an SPD should be interpreted “given the language its common and ordinary meaning as a reasonable person in the position of the [plan] participant, not the actual participant, would have understood the words to mean.” *Chiles*, 95 F.3d. at 1511 (internal quotations and citations omitted).

A death benefit may be provided as part of a welfare plan or it may also be provided as part of a pension plan. A death benefit may be considered a pension benefit or a welfare benefit depending on the facts and circumstances, including, but not limited to, employer representations made in the SPD. *See Deboard*, 208 F.3d at 1239 (“[I]n light of all the surrounding facts and circumstances, a reasonable employee would [have] perceived an ongoing commitment by the employer to provide employee benefits.”) (internal citations and quotations omitted); *Esden*, 229

F.3d at 173 (“[A] pension benefit is defined according to the terms of the plan; but ERISA is quite explicit that those terms are circumscribed by statutory requirements and restrictions.”); *Williams v. International Longshoremen’s Association Board of Trustees*, 36 Employee Benefits Cas. (BNA) 2790, 2797 (S.D. Fla. 2005) (“[S]he was not separately listed as a beneficiary as required for the single death benefit (which was a pension benefit)”).

2. IRC § 411(d)(6) and ERISA § 204(g)

ERISA § 3(23) provides the following definition of “accrued benefit:”

[I]n the case of a defined benefit plan, the individual’s accrued benefit determined under the plan and, except as provided in section 204(c)(3), expressed in the form of an annual benefit commencing at normal retirement age.

The U.S. Department of the Treasury (herein referred to as the IRS) issued a regulation, 26 C.F.R. § 1.411(a)-7(1)(i), that provides the additional definition of accrued benefit: in the event a defined benefit plan does not provide a benefit in the form of an annual benefit commencing at normal retirement age, the accrued benefit is the annual benefit beginning at normal retirement age which is the actuarial equivalent of the accrued benefit under the plan. This regulation was in effect on December 31, 2003.

IRC § 411(d)(6)(A) and ERISA § 204(g)(1)⁴ generally provide that the accrued benefit of a plan participant may not be decreased by any amendment to the plan. IRC § 411(d)(6)(B) further provides the following:

[A] plan amendment which has the effect of— (i) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in regulations), or (ii) eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits.

The IRS has issued an interpretative regulation at 26 C.F.R. § 1.411(d)-4. As of

⁴ IRC § 411(d)(6) and ERISA § 204(g) contain parallel provisions and all the requirements of ERISA § 204(g) are incorporated into IRC § 411(d)(6). Thus, subsequent discussion is only of IRC § 411(d)(6). These statutory provisions are typically referred to as the anti-cutback rule.

December 31, 2003, the regulation at IRC § 1.411(d)-4(d)⁵ provided the following list of ten benefits that are not “section 411(d)(6) protected benefits:”

- (1) Ancillary life insurance protection;
- (2) Accident or health insurance benefits;
- (3) Social security supplements described in section 411(a)(9), except qualified social security supplements as defined in Sec. 1.401(a)(4)-12;
- (4) The availability of loans (other than the distribution of an employee's accrued benefit upon default under a loan);
- (5) The right to make after-tax employee contributions or elective deferrals described in section 402(g)(3);
- (6) The right to direct investments;
- (7) The right to a particular form of investment (e.g., investment in employer stock or securities or investment in certain types of securities, commercial paper, or other investment media);
- (8) The allocation dates for contributions, forfeitures, and earnings, the time for making contributions (but not the conditions for receiving an allocation of contributions or forfeitures for a plan year after such conditions have been satisfied), and the valuation dates for account balances;
- (9) Administrative procedures for distributing benefits, such as provisions relating to the particular dates on which notices are given and by which elections must be made; and
- (10) Rights that derive from administrative and operational provisions, such as mechanical procedures for allocating investment experience among accounts in defined contribution plans.

In addition, 26 C.F.R. § 1.411(a)-7 defines accrued benefits as referring “only to pension or retirement benefits.” The regulation further provides that accrued benefits do not include “ancillary benefits.” According to 26 C.F.R. § 1.411(a)-7, ancillary benefits are the following:

[B]enefits not directly related to retirement benefits such as payment of medical expenses (or insurance premiums for such expenses), disability benefits not in excess of the qualified disability benefit (see section 411(a)(9) and paragraph (c)(3) of this section), life insurance benefits payable as a lump sum, incidental death benefits, current life insurance protection, or medical benefits described in section 401(h).

Thus, the above benefits were not treated as 411(d)(6) protected benefits as of December 31,

⁵ This regulation was initially promulgated on July 8, 1988 and amended 13 times. After December 31, 2003, the IRS issued a new regulation at 26 C.F.R. 1.411(d)-3 relating to what benefits are protected under IRC § 411(d)(6). Although the regulation issued after December 31, 2003 has been reviewed, its application to PDBs is not dispositive because the last Qwest Pension Plan amendments relating to PDBs were issued in 1993 and 2003.

2003.

IRC § 411(d)(6) includes an exception⁶ to the rule for certain retroactive amendments made pursuant to IRC § 412(c)(8) and its corresponding ERISA provision, § 302(c)(8). IRC § 412(c)(8) provides that if an amendment is adopted within two and one-half months after the close of a plan year, the amendment may be made retroactive under the following conditions: i) the amendment may not reduce any accrued benefit determined at the beginning of the first plan year of the applicable amendment; ii) the amendment may not reduce any accrued benefit determined at the time of adoption except “to the extent required by the circumstances;” and iii) pursuant to a notice filed with the Secretary of Labor, the Secretary approves the amendment. Consistent with the meaning of a vested benefit, the Tenth Circuit has also held that a retroactive amendment may not eliminate a benefit that had vested prior to the adoption of the amendment. *Pratt*, 920 F.2d at 661 (“[A]lteration of the plaintiff’s vested rights by retroactive amendment, without the plaintiff’s consent, is ineffective.”) (internal quotation and citation omitted).

E. IRC § 420

ERISA § 403(c)(1), generally prohibits the inurement of any assets of an employee benefit plan to an employer and provides that such assets must be used for the exclusive purpose of providing benefits to plan participants and defraying reasonable expense of the plan. In addition, ERISA and the IRC contain provisions prohibiting certain transactions involving employee benefits plans that would be violated by a reversion of assets to a plan sponsor. ERISA § 406; IRC § 4975. Further, a 20% tax is imposed by IRC § 4980, on the amount of any reversion to an employer from a qualified employee benefit plan.

IRC § 420(a) provides that if its conditions are satisfied, the transfer of excess pension

⁶ There is an additional exception to 411(d)(6) set forth in ERISA § 4281 (relating to plan termination in conjunction with the authority of the Pension Benefit Guaranty Corporation) that is not relevant for purposes of this Report.

assets of a defined benefit plan to a health account are permitted, and such transfer will not violate the prohibited transaction provisions of the IRC or cause a tax under IRC § 4980. Corresponding amendments were made to ERISA § 403(c)(1) and ERISA prohibited transaction provisions to permit IRC § 420 transfers. ERISA §§ 403(c)(1) and 408(b)(13). IRC § 420(c)(2), however, requires the following condition to be satisfied, in order for a transfer to constitute a qualified transfer:

[T]he plan [must] provide...that the accrued pension benefits of any participant or beneficiary under the plan become nonforfeitable in the same manner which would be required if the plan had terminated immediately before the qualified transfer (or in the case of a participant who separated during the 1-year period ending on the date of the transfer, immediately before such separation.)

ERISA § 101(e)(1) provides that the plan administrator must provide a notice not less than 60 days prior to a qualified transfer.

F. Summary of ERISA's Reporting Requirements

Pursuant to ERISA § 103(a)(1)(A), and the regulation promulgated thereunder, 29 C.F.R. § 2520.103-1, the plan administrator must file a report known as a "Form 5500" containing detailed information regarding the plan (*e.g.*, information relating to the plan's financial condition, coverage, funding, expenses, and changes from the previous year). Filings must be made within seven months of the close of the plan year, unless an extension for up to two and a half months is granted. ERISA § 104(a)(1); 29 C.F.R. § 2520.104a-5(a)(2).

The Form 5500 requires detailed information to be provided about the plan. 29 C.F.R. § 2520.103-1(b). This information includes, but is not limited to, a description of the type of employee benefit plan that the plan constitutes. Certain schedules are required to be attached to the Form 5500. *Id.* A defined benefit plan is required to attach a Schedule B which provides actuarial information on the plan. *Id.* Schedule B is required to be signed by an enrolled actuary who must affirm the following statement:

To the best of my knowledge, the information supplied in this schedule and on the accompanying schedules, statements, and attachments, if any, is complete and accurate, and in my opinion each assumption, used in combination, represents my best estimate of anticipated experience under the plan. Furthermore, in the case of a plan other than a multiemployer plan, each assumption, used (a) is reasonable (taking into account the experience of the plan and reasonable expectations) or (b) would, in the aggregate, result in a total contribution equivalent to that which would be determined if each such assumption were reasonable.

Schedule B (Form 5500) Actuarial Information at <http://www.dol.gov/ebsa/pdf/2001-5500-Schedule-B-mp.pdf>. In addition, the Form 5500 requires an individual signing as plan administrator to declare under the penalty of perjury that he or she has examined the report, including the schedules, statements, and other attachments, and that the information is true, correct, and complete to the best of the administrator's knowledge. *2001 Form 5500* at <http://www.dol.gov/ebsa/pdf/2001-5500mp.pdf>.

G. ERISA's Fiduciary Duties

An entity or individual is a fiduciary with respect to an ERISA plan:

[T]o the extent that (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation..., or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan.

ERISA § 3(21)(A). In addition to this functional definition, a fiduciary may also be explicitly named as such in plan documents. *See e.g.*, ERISA § 402(a); *Landry v. Air Line Pilots Ass'n Intern., AFL-CIO*, 901 F.2d 404, 418 (5th Cir. 1990); *In re Enron Corp. Sec., Derivative & ERISA Lit.*, 284 F. Supp. 2d 511, 544 (S.D. Tex. 2003). The DOL has explained that certain positions, such as plan administrator, by their very nature involve the functions set forth in ERISA § 3(21)(A). 29 C.F.R. § 2509.75-8, D-3.

ERISA § 404(a) sets forth four broad fiduciary responsibilities relating to employee benefit plans: i) the duty of loyalty; ii) the duty of prudence; iii) the duty to diversify

investments, unless it is clearly prudent not to do so; and iv) the duty to act in accordance with plan documents unless such documents are inconsistent with ERISA. ERISA’s fiduciary duties have appropriately been described by some courts as “the highest known to the law.” *Donovan v. Bierwirth*, 680 F.2d 263, 272 n.8 (2d Cir.), *cert. denied*, 459 U.S. 1069 (1982); *Bussian v. RJR Nabisco Inc.*, 223 F.3d 286, 294 (5th Cir. 2000). The duties of loyalty and prudence, as well as the duty to act in accordance with plan documents, are described below.

1. The Duty of Loyalty – ERISA § 404(a)(1)(A)

ERISA § 404(a)(1)(A) provides the following:

[A] fiduciary shall discharge his duties...solely in the interest of the participants and beneficiaries and...for the exclusive purpose of: (i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan.

Although properly referred to as the duty of loyalty, ERISA § 404(a)(1)(A) sets forth more specific requirements relating to employee benefit plans than the duty of loyalty under the common law of trusts. *See Restatement of the Law Third, Trusts, Prudent Investor Rule*, § 170, Chapter 7, p. 139.

2. The Duty of Prudence – ERISA § 404(a)(1)(B)

By its plain language, ERISA § 404(a)(1)(B) holds fiduciaries to the same standard of conduct that a “prudent man acting in like capacity and familiar with such matters would use in...an enterprise of a like character and with like aims.” In a seminal ERISA case, the Fifth Circuit Court of Appeals observed that “a pure heart and empty head are not enough” to comply with ERISA’s prudence requirements. *Donovan v. Cunningham*, 716 F.2d 1455, 1467 (5th Cir. 1983).

3. Duty to Act In Accordance with Plan Documents – ERISA § 404(a)(1)(D)

ERISA § 404(a)(1)(D) provides that a fiduciary must act “in accordance with the

documents and instruments governing the plan” so long as such documents and instruments are consistent with ERISA. Although a definition is not provided for “documents and instruments governing the Plan,” the term includes, but is not limited to, the plan documents, amendments to the plan documents, summary plan descriptions, and statements of investment policy. *See* 29 C.F.R. § 2509.94-2.

VI. Background of The Qwest Pension Plan

A. Philosophy and History

PDBs were initially provided by Qwest Communications, Inc. (the “Plan Sponsor” or “Qwest”) or predecessor companies⁷ beginning in 1913 as part of the Bell System Pension Plan. Because the Plan Sponsor did not offer life insurance or survivor annuities, the PDBs were initially designed to take the place of a life insurance policy. (Kerber et al/ Qwest Document Production 08266).⁸ PDBs were paid to beneficiaries of active and retired employees who died from job related accidents or sickness. (KQ 08266).

When a Plan Sponsor active employee was a participant in the Qwest Plan, sickness death benefits were paid to beneficiaries from accumulated pension funds. Similarly, death benefits paid to beneficiaries of retirees were also paid from accumulated pension funds. The Qwest Plan also provided for disabled retiree beneficiaries to receive death benefits; however, these benefits were paid as an operating expense of the Plan Sponsor. In addition, the Qwest Plan paid accidental death benefits partially from Plan Sponsor operating expenses and partially from life insurance company policies. (*Id.*).

⁷ Since January 1, 1979, the Qwest Plan has been sponsored by American Telephone and Telegraph Company and other Bell System Companies, U S WEST, and subsidiary companies and Qwest and its subsidiaries and affiliates. (Appendix C of this Report, herein referred to as “Appendix C”). On or about July 1, 2000, U S WEST merged into Qwest Communications International, Inc. (“Qwest”) and Qwest became the Plan Sponsor and the Company (but not a Participating company until January 1, 2001) (Qwest Pension Plan at 2).

⁸ All “Kerber et al/ Qwest Document Production” will be identified in this Report with the letters “KQ.”

Documents produced in the Litigation by the Defendants identify the advantages and one disadvantage of the death benefits paid by the Qwest Plan. In summary, the advantages are: i) PDBs are funded through the Plan and therefore eliminate life insurance premiums; ii) the Plan Sponsor receives tax preferences due to the tax exempt status of the Plans; and iii) employees and presumably retirees do not pay taxes on any income that is imputed from PDBs. The only disadvantage with respect to PDBs is that beneficiaries are taxed on the proceeds received from the death benefits. (*Id.*).

B. Plan Operation and Changes

From 1913 to the present, there have been many changes to the operation of the Qwest Plan. (KQ 08267-08272, 3543-3661, 5662-5704, 1127-1144, Appendix C). These changes have occurred for many reasons, including, but not limited to: plan sponsor mergers and acquisitions, deregulation of the telephone industry, management philosophies, communication industry competition, plan mergers, amendments to the IRC, and the passage of ERISA and other federal laws, and amendments thereof.

From 1978 to 2001, PDBs have been provided through five primary predecessor Qwest Plans. These plans were:

- The American Telephone and Telegraph Company Plan for Employees' Pensions, Disability Benefits and Death Benefits;⁹
- The Bell System Pension Plan;
- The Bell System Management Pension Plan;
- The U S WEST Management Pension Plan; and
- The U S WEST Pension Plan.

Effective January 1, 2001, PDBs have been provided by the Qwest Plan. (Appendix C).

⁹ Copy cat versions of this Plan sponsored by "Ma Bell" were utilized throughout the Bell System by the numerous "Baby Bells" including The Mountain States Telephone and Telegraph Company Plan for Employees' Pensions, Disability Benefits and Death Benefits.

The 1984 deregulation of the telephone industry and the impact of this deregulation on participant benefits under these Plans are described in Appendices A through F of the U S WEST Management Pension Plan SPD, effective January 1, 1984, as revised January 1, 1987. (KQ 5662, 5695-5704). In summary, the deregulation agreement and congressional legislation obligated the Plans and Plan Sponsors to pay future pension benefits and mandated pension service credit portability for all employees employed by “participating companies or former affiliates on December 31, 1983.” (KQ 5695). Further, the deregulation required pension fund assets of these Plans to be transferred to the pension plan of the “New Employing Company.” (KQ 1130, 5695). Section 2 of the Qwest Pension Plan Amendment 2003-5 recognizes the terms of employment established by the deregulation of the telephone industry in 1984.

A concise summary of relevant Plan provisions relating to PDBs and changes that have occurred under the various plans from 1978 to 2004 is attached to this Report as Appendix C.¹⁰ The Appendix includes descriptions of Plan and SPD provisions relating to PDBs, reservation of rights clauses, funding policies, benefit classifications, beneficiary designations, plan and benefit termination arrangements, participant rights, and other information relating to PDBs.

For the period 1978 to at least 1996, the Qwest Plan was classified as both a pension plan and welfare plan as defined by ERISA §§ 3(1) and 3(2). SPDs distributed to participants and effective January 1, 1990 and January 1, 1994¹¹ state that the Plan is a “defined benefit plan...for payment of certain sickness death benefits upon the death of a Pension Plan participant.” However, the Qwest Plan is a welfare plan for disability and death benefits, presumably funded through Plan Sponsor assets or insurance contracts. (KQ 1127, 1138, 0403, 0515, 0593, Appendix C).

¹⁰ The information in Appendix C is derived from Plan documents and other data provided for this engagement. The specific sources of the information are identified in Appendix C by bates numbers or document references.

¹¹ The SPD effective January 1, 1994 does not indicate that it was distributed to retirees or participants that left the employment of the Plan Sponsor. (KQ 0517-0521).

Generally, Plan documents and SPDs before January 1, 1989 provide that although the Plan may be changed and/or terminated, any “such change or termination shall not affect the future rights of any employee without his consent, to any benefit or pension to which he may have previously become entitled hereunder.” (KQ 1078, 1524, 1560, 1580-1581, 3158, 3220, 3361, 3542, 3830, 5666, and Bell Systems Pension Plan SPD, effective October 1, 1980 at 1). Plan documents and SPDs from January 1, 1989 to January 1, 1991 do not provide a provision for changes to PDBs; however they do provide the Plan Sponsor (i.e., U S WEST) a right to terminate the Plan. (KQ 738, 772, 1129, 1139). Although the Plan Sponsor reserved the right to terminate the Plan, “termination would not affect a pension benefit to which [a participant] had become entitled prior to termination, to the extent the benefit was then funded.” (KQ 1139, Appendix C). In essence, until at least January 1, 1991, regardless of whether the Plan terminated, an eligible participant was entitled to receive stated Plan benefits, including PDBs, if such benefits had been funded under the “trust fund.” (KQ 1139).

Confirmation that the Plan’s PDBs had to be funded and these benefits accrued for both service pension eligible employees/participants and retirees, at least until 1991, is evidenced by affidavits from two former EBC Chairpersons, Barbara B. Doherty and Richard A. Remington. (See Appendix D of this Report). Ms. Doherty, former Vice President-Human Resources at U S WEST, states in her Affidavit that “Just like a service pension benefit, the Pension Death Benefit was always treated by the EBC ... as an entitlement for those employees who had met the required term of employment service. The EBC maintained the position that [PDBs] was an earned right, not a benefit that could be taken away.” (Appendix D, Doherty Affidavit at 2). Further, Ms. Doherty states that the Plan Sponsors “right to change benefits for employees was strictly limited to changes which did not adversely affect the service pension and [PDBs] to which he or she had already earned based upon his or her term of employment and earnings to

date.” (*Id.* at 3). Ms. Doherty states that while she was EBC Chairperson, the EBC would periodically authorize the Plan Sponsor to send communications to employees saying that PDBs were entitlements. (*Id.*).

Mr. Richardson, who was a Vice President of Human Resources at U S WEST (and EBC Chairperson), until 1989, states in his Affidavit that Plan Sponsor “personnel routinely advised persons who were making retirement decisions that they would always be entitled to [PDBs].” (Appendix D, Richardson Affidavit at 2). Mr. Richardson states that the Plan Sponsor and Plan Administrator always told employees/participants that PDBs were a valuable benefit and quotes from the 1987 SPD that ‘Your qualified beneficiaries are protected by the Plan’s [PDBs] provisions for the entire period of your employment and during your retirement on a service or disability pension.’ (*Id.* at 3). Mr. Richardson states that there was an “implied contract” between retirees and the Plan Sponsor that PDBs would be funded on an actuarial basis and not be taken away, unlike welfare benefits. (*Id.*) Mr. Richardson states that, “Throughout my U S WEST employment, U S WEST never issued a[n] SPD or other publication to employees or retirees that would indicate the [PDBs] was a potential take-a-way benefit. That was never considered.” (*Id.* at 4).

Beginning in July of 1991, Plan documents and SPDs began informing those participants receiving the documents of certain “situations” that could affect their benefit entitlements. (KQ 0361, 0512, 0610, 0792, Appendix C). The Plan SPD dated January 1994 and issued to active employees in a document entitled “Your U S WEST Benefits”¹² states the following:

While the Company expects its plans to continue indefinitely, it reserves the right to end, suspend, or amend its plans at any time, in whole or in part, subject to any applicable collective bargaining agreements. The plans can also be changed retroactively if necessary or appropriate within

¹² The January 1994 SPD informs participants that the Plan document “can be difficult to understand” and that the SPD is written in “non technical language.” (KQ 0519). The SPD advises participants to keep the SPD for reference purposes, along with other information that Qwest may issue in the future. (*Id.*).

applicable legal restrictions.

(KQ 610).

Minute excerpts of the U S WEST, Inc. Board of Directors Meeting held on December 4, 1992 indicate that the U S WEST Management Pension Plan and U S WEST Pension Plan were to be merged effective January 1, 1993; the merged Plans were to be named the U S WEST Pension Plan. (Kaferly v. USW 0001567). These minute excerpts state: i) that all the assets and liabilities of the merging Plans will be combined to provide for participant benefits; ii) that all participants in the merging Plans are entitled to receive pension benefits at least as great as entitlements before the merger; and iii) that U S WEST, Inc., retains “discretion to unilaterally amend [Plan] provisions applicable to management (salaried) employees.” (*Id.*). With respect to PDBs, the minute excerpts state, effective March 1, 1993, the “amount of death benefits” in the merged Plans “shall be frozen based on current pay for active employees as of February 28, 1993.” (*Id.*). In addition, the minutes state that, effective March 1, 1993, PDBs in the merged Plans “shall be eliminated for employees hired on or after that date [March 1, 1993].” (*Id.*).

I understand that there are no formal U S WEST Board of Directors Meeting Minutes, and the only document reflecting any Board meeting of December 4, 1992 is the above minute excerpts. This raises an issue as to whether or not the purported 1993 amendment to the Plan is a legitimate Plan amendment made in accordance with the documents and instruments governing the Plan. (Letter dated June 6, 2006 from Curtis L. Kennedy to Leonard L. Garofolo at 1-2).

Some active employees/participants of the Plan were first informed in March 1993 of changes to the PDBs. They were informed by a six-line summary document that stated PDBs had been eliminated for all employees hired after March 1, 1993. Item G of the summary emphasized that “if you are a participant [of the Plan] as of 2-28-93 you will always remain

eligible to a death benefit.” (Document identified as U S WEST Pension Plan, RIF-103, March 1993, item G Death Benefits).

Additional participants were next informed in July of 1993 of the changes to the Plan’s PDBs that resulted from the purported December 4, 1992 Board of Directors Meeting. In a document entitled “U S WEST Retirement Plans Bulletin,” under the caption “Summary of Plan Modifications,” active employees were told that the amount of “lump sum” PDBs had been frozen based on their pay as of February 28, 1993. (U S WEST Retirement Plans Bulletin at 1). The document further states that “Employees hired on or after March 1, 1993 are not entitled to the lump sum death benefit.” (*Id.*). At the time employees were being provided this information, the Plan allowed PDBs to be paid in a lump sum or in installments. (Form 5500 filed for Plan year 1993, Actuarial Report at II-10).

The restated U S WEST Pension Plan document implementing the purported Board of Directors December 4, 1992 action was executed on December 29, 1994,¹³ but made retroactive to January 1, 1993. (KQ 4228, 4232, 4283, 4298). Section 11.4 of the Plan document provides that any amendments to the Plan “may not diminish the accrued benefit of any Participant as of the effective date of such amendment or divert any funds in the Trust to purposes other than the exclusive benefit of Participants and their beneficiaries.” (KQ 4290). Section 13.3 of the Plan states:

It is the intention of [the Plan Sponsor] that it shall be impossible for any part of the Trust Fund ever to be used for or diverted to purposes other than for the exclusive benefit of its Employees and their beneficiaries, that all assets of the Trust Fund shall be used solely for pension purposes in an equitable manner consistent with the purposes of the Plan, and that this Plan shall be construed to follow the spirit and intent of the [IRC] and ERISA.

(KQ 4295).

¹³ Although the signature page of this document (KQ 4298) is undated, Plaintiff’s counsel states that the document was executed on December 29, 1994, and this fact has been stipulated to by counsel for U S WEST in prior litigation involving the Pension Plan. (*Unger v. U S WEST* and *Jarvis v. U S WEST*).

In addition to the January 1994 SPD issued to employees, the Plan Sponsor throughout 1994 issued two page summaries to explain Plan benefits. One summary issued in September 1994 informed employees that if they had an employment date before March 1, 1993, they would always be eligible for PDBs if they had an eligible beneficiary. (Document identified as U S WEST Pension Plan, RIF 104, September 1994, item G Death Benefits).

The Plan SPD, effective January 1, 1996, like the Plan SPD, effective January 1, 1994, includes statements that the Plan Sponsor has the right to amend the Plan for all active participants and retirees. These SPDs state that the Plan Sponsor is not required to provide “prior notice to or consultation with any participants.” (KQ 0519, 0358).

The restated Plan document effective January 1, 1997, which was executed January 25, 1998 (KQ 4143), provides in Sections 7.1, 7.3, and 7.5 that active and retired participants will be paid PDBs in a lump sum payment. (KQ 4113-4115). However, these Plan provisions are qualified by Section 7.11 which indicates that PDBs will only be paid to active employees and retirees who were first employed before March 1, 1993. (KQ 4117). Similar to prior Plan documents and SPDs,¹⁴ Section 11.4 of the 1997 Plan provides a provision reserving the right of the Plan Sponsor to amend the Plan without notice; however, expressly stating that no amendments can “diminish the accrued benefit (as defined in Section 411(d)(6) of the Code) of any Participant as of the effective date of such amendment.” (KQ 4128-4129).¹⁵

Documents obtained in this Litigation indicate that there were two Plan SPDs in 1999. (KQ 0001-0077, 5532-5610). One of the SPDs (herein called the “1999 Internal SPD”) was for “Confidential-Internal Use Only,” was apparently not distributed to active participants or retirees, and was effective January 1, 1999. (KQ 5532, 5607). The other SPD (herein called the

¹⁴ Appendix C, pages 29-32 provides a summary of the evolution of the Plan Sponsor reservation of rights clauses from October 1, 1980 through the Qwest Plan effective January 1, 2001.

¹⁵ Section 1.0 of the 1997 Plan defines accrued benefit to exclude PDBs under Article VII of the Plan and any benefit excluded under IRC § 411(d)(6). (KQ 3998, 4011, 4031).

“1999 Handbook SPD”) apparently was issued in August of 1999 as part of the “U S WEST Benefits Handbook,” was distributed only to active employees, and was effective January 1, 1999. (KQ 0001, 0009). The differences and similarities between the 1999 Internal SPD and 1999 Handbook SPD, relative to PDBs, are described in Appendix C at 25-26.

With respect to termination of employment, both SPDs indicate that benefit eligibility is determined based on Plan rules in effect at the time of termination. (KQ 0009, 5532). However, the 1999 Internal SPD also states that “many of the rules in this SPD do not apply to [participants].” (KQ 5532). The 1999 Internal SPD states that management Plan benefits were changed as of January 1, 1997; however, the “new rules do not apply to former Management Participants who terminate before 1997.” (*Id.*).

The 1999 Internal SPD changed the Plan classification wording of PDBs from SPDs issued prior to 1996. The 1999 Internal SPD states that the Plan is both a pension plan and welfare plan under ERISA; however, the Plan is a welfare plan “solely to the extent it provides certain disability pensions...and certain other death benefit payments directly out of [Plan Sponsor] operating expenses.”¹⁶ (KQ 5598).

The 1999 Handbook SPD issued in August of 1999 states that the Plan is classified as: i) a pension plan; ii) a welfare plan; and iii) an excess plan under ERISA. The 1999 Handbook SPD states that retirement benefits are “determined by a formula based on factors such as compensation, age and service,”¹⁷ and the Plan is a pension plan or defined benefit plan. (KQ 0066). The SPD states that the Plan is a welfare plan for purposes of “disability pensions...and certain other death benefit payments” (*id.*) and is silent on how these other death benefit

¹⁶ The use of the words “solely” and “directly” indicate that PDBs are not welfare plan benefits, but are pension benefits because PDBs are paid from Plan assets.

¹⁷ Under the Plan, PDBs are determined based on formula factors that include compensation, age, and service of participants and retirees. In addition, PDBs are separate “from any benefit payable under [a] Group Life Insurance Plan.” (KQ 0043).

payments are funded. With respect to the Plan being an excess benefit plan, the 1999 Handbook SPD implies that an “excess plan” is the same as defined by ERISA § 3(36) and that excess plan benefits are paid out of Plan Sponsor operating expenses. (*Id.*)

Both the 1999 Internal SPD and the 1999 Handbook SPD, under the vesting portions of the SPDs, provide “special rules” for the transfer of excess plan assets to the Plan Sponsor for the purpose of assisting in the payment of retiree health benefits. (KQ 0053,-0054, 5534-5536). The transfer of excess plan assets is called a “420 Transfer”¹⁸ under these SPDs and a “Qualified Transfer” under Article XIV of the Qwest Plan, effective January 1, 2001, and the predecessor U S WEST Pension Plan. The SPDs were intended to inform Plan participants that certain excess assets of the Plan would or might be diverted. (KQ 0053, 5535, Qwest Pension Plan at 178-183).

Although the 1999 Internal SPD and 1999 Handbook SPD, relative to 420 Transfers are very similar, there are some differences. The Internal SPD, which was not distributed to employees or retirees, states with specificity that the Plan “is expected that on December 15, 1998, the plan will transfer a small portion of [Plan] excess assets to the [Plan Sponsor].” (KQ 5535). The 1999 Handbook SPD, which was distributed only to active employees, states that “the Plan may transfer a small portion of excess assets to special accounts in the plan to help pay retiree health care expenses.” (KQ 0053). Both SPDs state that any active participant or former participant (*i.e.*, retiree) who was employed on the date of a 420 Transfer or was separated from service one year on the date of a transfer “will be vested in his or her accrued benefit...regardless of...years of vested services.” (KQ 0053, 5535). Neither the 1999 Internal SPD nor the 1999 Handbook SPD provides a definition of the meaning of an accrued benefit.¹⁹ (*Id.*).

The Qwest Plan was amended and restated on December 19, 2002, retroactive to January 1, 2001. (Qwest Pension Plan at 1-183). With respect to PDBs, in relevant part, the 2001 Qwest

¹⁸ See Section V of this Report for a summary of IRC § 420.

¹⁹ See footnote 15 of this Report for the definition of accrued benefit under the 1997 Plan.

Plan is similar to the 1997 U S WEST Pension Plan. (Appendix C at 24, 27). As stated above, the 2001 Qwest Plan provides for Qualified Transfers under IRC § 420 similar to the 1999 U S WEST Pension Plan. (Qwest Pension Plan and U S WEST Pension Plan at Article XIV).

The Plan SPD, effective January 1, 2001, was distributed to participants in April of 2003. The 2001 Plan SPD includes amendments made to the Qwest Plan as of January 1, 2003. (KQ 5453-5531). The SPD states that the Plan, “In general is a pension plan...that provides an explicit benefit determined by a formula such as compensation, age and/or service.”²⁰ (KQ 5520). Similar to other SPDs issued in 1999, the 2001 Plan SPD indicates that the Plan is a welfare plan for death benefits paid from insurance policies and an excess benefit plan. (*Id.*). Like the 1999 SPD, the 2001 Plan SPD states that all PDBs are paid from Plan trust assets. (KQ 0066, 5520, Appendix C at 26, 28). Both the 1999 and 2001 SPDs state that if a participant²¹ was employed on or before February 28, 1993, and is qualified for a defined benefit plan pension and elects a lump sum distribution, “the present value of [PDBs] is paid as part of the lump sum distribution. For this purpose the lump sum equivalent uses a factor that assumes that the participant will be survived by a qualified beneficiary.” (KQ 0044, 5495).

The 2001 Plan SPD expressly provides for the right of the Plan Sponsor (*i.e.*, Qwest Communications International, Inc.) to amend the Plan “at any time for any reason” and permits the Qwest Board of Directors or other persons delegated authority by the Board to amend the Plan. (KQ 5520). Consistent with the Article XIV of Qwest Plan document, the 2001 Plan SPD informs participants that the Plan may make a 420 Transfer and that if such transfer is made, participants will be immediately vested to the extent of their accrued benefits. (KQ 5547-5548).

²⁰ For management participants benefits are calculated based on a Defined Lump Sum (“DLS”) formula. (KQ 5520, 5527).

²¹ Unlike the 2001 SPD, the 1999 SPD does not use the word “participant”, but instead uses the words “management employee.” (KQ 0044, 5495).

C. Plan Amendment 2003-5

The Qwest Plan, effective January 1, 2001, was amended (except as otherwise stated) effective December 1, 2003 by Amendment 2003-5. The amendment was signed by a three-member Plan Design Committee (the “PDC”) appointed by the Plan Sponsor under Section 8.5 of the Qwest Pension Plan.²² The three-member PDC signed Amendment 2003-5 on November 24, 2003 and December 5, 2003.

Section 3 of Amendment 2003-5 amended Section 7.3 of the Qwest Plan to eliminate PDBs for “any Former Participant who terminates” or dies on or after January 1, 2004. Section 3 of Amendment 2003-5 amended Section 7.3 (c)²³ of the Plan to eliminate lump sum payments to participants who terminate on or before January 1, 2004. Section 4 of Amendment 2003-5 amended Section 7(c) of the Plan to include PDBs for only eligible dependent relatives as defined in Plan Appendix L, which relates to death benefit eligibility. This amendment has the effect of reducing the number of beneficiaries entitled to PDBs.

Prior to the issuance and effective date of Amendment 2003-5, certain leaders of the retiree organization, including named Plaintiffs Edward Kerber and Nelson Phelps, were notified of a letter dated September 2, 2003 executed by Qwest Vice President Jill R. Sanford, that effective October 1, 2003, PDBs would be eliminated. The letter stated that PDBs had been paid for retired participants hired before March 1, 1993. The letter also stated that the elimination of PDBs did not affect the life insurance benefit paid by the “Qwest Group Life Insurance Plan.” (Letter from Jill R. Sanford, Vice President of Human Resources to Qwest Retirees dated September 2, 2003). There is no evidence to indicate that PDBs have been eliminated for Plan

²² Section 11.4 of the 2001 Plan authorizes the Qwest Board of Directors to establish the PDC with powers to amend the Plan. Section 8.5 states that the PDC is not a fiduciary, serves without compensation, and members can be removed by the Plan Sponsor or its delegate.

²³ Section 7.3(c) of the Qwest Plan relates to participants who are eligible for a pension and who elect to receive a lump sum benefit at retirement.

retirees pursuant to the September 2, 2003 letter or that an elimination of PDBs for retirees was made part of Amendment 2003-5. (KQ 6268-6277, KQ #SC 0046-0049, Letter from Felicity O'Herron to Curtis L. Kennedy dated October 22, 2003, Letter from Felicity O'Herron to Curtis L. Kennedy dated May 28, 2004).

D. Funding of Plan Benefits and Actuarial Information

As required by ERISA, the IRC, and Plan documents, the defined benefit plan pension portion of the Plan must be funded by the Plan Sponsor to the extent necessary to pay all vested and accrued benefits under the Plan.²⁴ (Appendix C, KQ 3611-3613). Section 4.1 of the Qwest Pension Plan, at 44, states that the Plan Sponsor “shall pay to the trustee such sums as shall be determined actuarially necessary to fund the benefits for its Participants and their Beneficiaries.” Even though ERISA may not require PDBs to be funded, the Plan Sponsor still must fund PDBs pursuant to the documents and instruments governing the Plan.

For at least Plan years 1992 and 1993, Forms 5500s filed with the DOL state that the Plan is subject to ERISA’s minimum funding standards.²⁵ These 5500 filings, which were the last filings before the merger of the U S WEST Management Pension Plan and the U S WEST Pension Plan, disclose that the actuarial present value of accumulated Plan benefits are:

those future periodic payments that are attributable under the Plan’s provisions to the service which employees have rendered to [the Plan Sponsor]. Accumulated plan benefits include benefits expected to be paid to: a) retired or terminated employees or their beneficiaries, b) beneficiaries of employees who have died, and c) present employees or their beneficiaries.

(U S WEST Pension Plan Notes to Financial Statement to the Form 5500 at 9).

The Forms 5500 further indicate that the benefits for active employees and retirees are calculated based on census information and Plan provisions effective January 1, 1993. (*Id.*).

²⁴ The Plan does not accept employee or participant contributions. (Qwest Pension Plan at 44, KQ 3611-3614). In addition, the PDBs are defined benefits under the Plan. (Qwest Pension Plan at 162).

²⁵ See ERISA §§ 301-308.

The Form 5500 for Plan year ending December 31, 1993 reveals that the U S WEST Pension Plan is a pension benefit plan with 51,627 fully vested active participants, 37,071 retired or separated participants receiving benefits, and 12,661 retired or separated participants entitled to future benefits. (1993 Form 5500 at 2-3). The required Actuarial Report, at 10-11, attached to the 1993 Form 5500 summarizes Plan provisions to include i) pre-retirement lump sum death benefits which are paid in a lump sum equal to current annual pay or payment received in installments, and ii) post-retirement lump sum death benefits which are paid in a lump sum equal to annual pay at retirement or payment received in installments.

The 1993 Actuarial Report, at 10-14, specifically states that pre-retirement death benefits are paid upon the death of an active employee who has a qualified beneficiary, whereas, post-retirement death benefits are paid upon the death of a service pensioner to a qualified beneficiary. The Actuarial Report, at 11, 14, states that there have been no changes to the U S WEST Pension Plan for management and non-management employees since January 1, 1992 and January 1, 1991, respectively.

Evidence obtained through interrogatories in this Litigation reveal that from 2001 to the present,²⁶ Watson Wyatt performed actuarial services for the Plan, and from 1984 to 2001, Towers Perrin provided these services for the Plan. (Defendants Amended Responses to Plaintiffs First Set of Interrogatories No. 9 and 10, herein referred to as “Interrogatory 9” and/or “Interrogatory 10”). Interrogatory 9, at 2-3, states that for the Plan Form 5500 filed with the DOL for 2004, “death benefits were included in the projected liabilities of the [P]lan based on the current [P]lan terms.”

Interrogatory 10, at 5-6, states that the Plan’s present value of vested benefits (“PVVB”) for PDBs payable to active participants and retirees on or before February 28, 1993 include

²⁶ The word “present” is presumed to mean January 10, 2006, the date the interrogatory responses were served. (Interrogatories Nos. 9 and 10 at 7).

PVVB in the amounts provided on the Form 5500. In essence, the Plan filings with the DOL include the present value of accumulated benefits (“PVAB”) for active and retired participants. Interrogatory 10, at 6, provides a chart showing the death PVAB for the years 2001 through 2005 for retired participants, in service active participants, and post-retirement active participants. For these years the death PVAB range from approximately \$477.8 million to \$227.6 million. Under the Qwest Plan, these amounts should have been contributed to the Plan to meet Plan Sponsor contribution obligations. (Qwest Pension Plan at 44).

E. IRC § 420 Transfers

As provided in Plan documents and SPDs, the Plan was authorized to transfer “excess pension assets” to a “health benefit account,”²⁷ (Appendix C at 25-28, Qwest Pension Plan at 178-182). To assist in the payment of a portion of retiree health care benefits, the Plan Sponsor elected to make 420 Transfers for Plan years 1998, 1999, 2000, and 2001 in the total approximate amount of \$354.8 million.

Below is a summary of each 420 Transfer and the notification provided to participants and/or retirees.

1. In an undated and unsigned two page letter, retirees were informed that effective December 15, 1998 a transfer of not more than \$60 million would be made from the U S WEST Pension Plan. The letter states that the transfer is for the purpose of paying retiree health benefits and represents approximately 2% of excess pension assets. Retirees were told that the transfer would not affect their pension benefits. The actual amount transferred was \$55.8 million. (Kerber & Phelps / Qwest 420 Transfer Letters 001).²⁸

2. In an undated and unsigned one page letter, retirees were informed that on

²⁷ The terms “excess pension assets” and “health benefit account” are defined in IRC §§ 420(e)(2) and 420(e)(3). Generally, excess pension assets mean the excess of the fair market value of plan assets over the present value of all plan liabilities with respect to participants and beneficiaries after the payment of all plan expenses.

²⁸ All “Kerber & Phelps / Qwest 420 Transfer Letters” will be identified in this Report with letters “TL.”

November 30, 1999 a transfer of not more than \$120 million would be made from the U S WEST Pension Plan. The letter states that the transfer is for the purpose of paying retiree health benefits and represents approximately 4% of excess pension assets. Retirees were informed that the transfer would not affect their pension benefits and that Plan participants would be fully vested in any pension benefit earned as of November 30, 1999. The actual amount transferred was \$111 million. (TL 003).

3. In an undated one page letter, participants were informed that on December 15, 2000, a transfer of approximately \$100 million would be made from the U S WEST Pension Plan. The letter states that the transfer is for the purpose of paying retiree health benefits and represents approximately 8% of excess pension assets. Participants were told that they would be fully vested in pension benefits earned as of December 15, 2000. The letter was signed by Anne Hilborne, Pension Plan Manager. The actual amount transferred was \$90 million. (TL 004).

4. In a one page letter dated October 15, 2001, participants were informed that not earlier than December 21, 2001, a transfer of not more than \$120 million would be made from the Qwest Plan. The letter states the transfer is to pay retiree health benefits and represents approximately 12% of excess pension assets. Active participants were told that on the date of the transfer they would be automatically vested regardless of the duration of their employment. In addition, a participant terminating employment 12 months prior to the transfer and who was not yet vested would be automatically vested in benefits earned at the date of termination. The letter was signed by Debbie J. Colia, Vice President of Human Resources. The actual amount transferred was \$98 million. (TL 005).

F. Plan Fiduciaries

The governing Plan documents in effect for the period 1984 through 2003, will be used to

identify the Plan fiduciaries responsible for implementing changes to the Plan's PDBs.²⁹ Only the Plan fiduciaries necessary to render an opinion on Issues B and D of Section IV of this Report will be identified. The governing Plan documents in effect for the years 1984, 1993, 1997, and 2001 were reviewed to identify the relevant fiduciaries.

1. The U S WEST Management Pension Plan, effective January 1, 1984, (KQ 3543-3661) states that the Plan Sponsor is the Plan Administrator with the power to appoint an Employee Benefit Committee (the "EBC"), trustees, and investment managers. (KQ 3560). The Plan Sponsor also has the power to establish and carry out the Plan funding policies. (KQ 3561). The EBC has the power to adopt Plan rules and regulations as it deems appropriate, and grant or deny claims for benefits. (KQ 3561-3565). The EBC "shall determine conclusively for all parties all questions arising in the administration of the Plan and any decision...shall not be subject to further review." (KQ 3565). The 1984 Plan document specifically states that the Plan Sponsor and the EBC are named fiduciaries as that term is used in ERISA § 402(a). (KQ 3566). For purposes of Issues B and D of Section IV of this Report, I conclude that the Plan Sponsor and the EBC are Plan fiduciaries according to the 1984 Plan document.

2. The U S WEST Pension Plan, effective January 1, 1993, (KQ 4228-4317) states that the named fiduciaries shall have only the responsibilities delegated by the Plan Sponsor and there shall be "no joint fiduciary responsibility". (KQ 4283). The Plan Sponsor is responsible for selecting and reviewing the performance of fiduciaries and service providers, appointing investment managers, and establishing and implementing a funding policy that is consistent with the goals of the Plan and ERISA. (KQ 4284). The Plan Sponsor is responsible for appointing and removing the members of the EBC, a named fiduciary under the Plan. (*Id.*). The EBC is

²⁹ Although Plan documents are important, and may be decisive, in determining fiduciary responsibility under ERISA § 3(21), other persons or entities may become a plan fiduciary based on plan conduct or plan function performed.

required to administer the Plan and to comply with ERISA. The EBC “shall have all power and authority necessary [to administer the Plan] including...the full discretion and power to interpret the Plan, to determine the eligibility, status and rights of all persons under the plan and in general to decide any dispute.” (*Id.*). The EBC power to decide questions involving Plan administration is not subject to review. (*Id.*). For purposes of Issues B and D of Section IV of this Report, I conclude that the Plan Sponsor and EBC are Plan fiduciaries according to the 1993 Plan document.

3. The U S WEST Pension Plan, effective January 1, 1997, (KQ 3969-4143) states there will be no joint fiduciary responsibility and the named fiduciaries are only responsible for the duties allocated to them. (KQ 4118). The Plan Sponsor has the same responsibilities under the 1997 Plan as the 1993 Plan. (KQ 4283-4284, 4118-4119). Similarly, the EBC has the same responsibilities under the 1997 Plan as the 1993 Plan. (KQ 4284, 4119-41120). For purposes of Issues B and D of Section IV of this Report, I conclude that the Plan Sponsor and EBC are Plan fiduciaries according to the 1997 Plan document.

4. Section 8.1, at 152, of the Qwest Plan, effective January 1, 2001,³⁰ states that there shall be no joint fiduciary responsibility; however, the Plan Sponsor is permitted to “allocate responsibility for the operation and administration of the Plan in accordance with its terms.” Section 8.3, at 152, of the Plan states that the Plan Sponsor or its delegate, acting in its capacity as a Plan Sponsor, is not a Plan fiduciary. Section 8.3 of the Plan provides that the Plan Sponsor is responsible for amending the Plan, appointing and removing service providers (other than fiduciaries), appointing and removing members of the EBC and PDC, and establishing a Plan funding policy. In the absence of the EBC, the Plan Sponsor assumes the duties and responsibilities of the Plan Administrator. (Qwest Pension Plan at 152-153). Sections 8.4 and

³⁰ This Plan document was in effect at the time of Amendment 2003-5.

8.5 provide that the EBC is a named fiduciary of Plan; however, the PDC is not a fiduciary. The PDC is specifically authorized along with the Plan Sponsor, to amend the Plan; however, no amendment can diminish the accrued benefit³¹ of participants as of the date of the amendment. (Qwest Pension Plan at 152-153, 162). Similar to the 1993 and 1997 Plans (KQ 4284, 4119-4120), the EBC has the same duties and responsibilities, including to serve as Plan Administrator, exercise full discretion to interpret the Plan, make eligibility determinations, and decide and settle any disputes without being subject to review. (Qwest Pension Plan at 153-154). To the extent the Plan Sponsor and/or the PDC perform only settlor functions, as opposed to ERISA § 3(21) duties and responsibilities, they would not be Plan fiduciaries for Issues B and D of Section IV of this Report. I conclude that the EBC is a Plan fiduciary for purposes of this Report according to the 2001 Plan document.

VII. Analysis of Issues Considered

A. Pension Death Benefits as Ancillary or Welfare Benefits

In general, IRC § 411(d)(6) and ERISA § 204(g) provide that a participant's accrued benefit with respect to an employee benefit plan cannot be reduced by a plan amendment. Both IRC § 411(d)(6) and ERISA § 204(g) state that any plan amendment that has the effect of eliminating or reducing a retirement benefit or a retirement-type subsidy or an optional form of benefit that is based on service before an amendment is considered a reduction in accrued benefits.

In considering whether PDBs are protected under IRC § 411(d)(6), the U.S. Department of Treasury (herein referred to as the IRS) has issued interpretative regulations at 26 C.F.R. § 1.411(d)-4. Regulation § 1.411(d)-4(d) identifies 10 types of benefits that are not protected by the statutory anti-cutbacks rule. None of the 10 types of benefits listed in the regulation relate to

³¹ Section 8.9(c) of Plan provides that PDC may delegate its responsibilities and "No writing is necessary to effect such appointment."

PDBs.

A review of selected court decisions as to whether PDBs are a protected benefit or an ancillary or welfare benefit (not a protected benefit) is not determinative of the issue. *Bellas v. CBS, Inc.*, 221 F.3d 517 (3d Cir. 2000); *Richardson v. Pension Plan of Bethlehem Steel Corp.*, 67 F.3d 1462 (9th Cir.1995); *Ashenbaugh v. Crucible, Inc. 1975 Salaried Ret. Plan*, 854 F.2d 1516 (3d Cir. 1998), *cert. denied*, 490 U.S. 1105 (1989); and *Constantino v. TRW, Inc.*, 13 F.3d 969 (6th Cir. 1994). None of the cases reviewed directly relate to pension death benefits.

In my opinion, neither the IRC, ERISA, government regulations nor the courts provide specific guidance on whether PDBs are ancillary or welfare benefits under the Qwest Plan or predecessor plans through December 31, 2003. Absent clear guidance on this specific type of benefit under the law, from regulatory authorities, and from the federal courts, if I were serving as Regional Director of DOL's EBSA, I would refer to appropriate documents and instruments governing the Plan to determine whether PDBs are ancillary or welfare benefits.

At least for the period January 1, 1978 to January 1, 1996, the governing Plan documents and SPDs distributed to participants and retirees clearly indicate that PDBs were not classified as welfare benefits. (Appendix C at 1-23). These documents indicate that for the purpose of paying PDBs, these benefits are part of the defined benefit plan.³² Also, the Plan documents clearly indicate that for purposes of providing disability pensions and insured and/or unfunded death benefit payments, these benefits are part of the welfare plan. There is nothing in the Plan documents or SPDs for the period 1978 to 1996 to indicate that PDBs are or are not a benefit protected under IRC § 411(d)(6). (*Id.*).

The documents and instruments governing the Plan from 1997 to 2001 are not consistent.

³² Classifying PDBs as benefits under the defined benefit plan is consistent with Appendix D of this Report, the formula used to calculate PDBs, and the actuarial funding of PDBs. (See Section VI.D. of this Report).

The 1997 and 2001³³ Plan documents indicate that PDBs are not an accrued benefit and are not a protected benefit under IRC § 411(d)(6). These Plan documents tend to indicate that PDBs may be an ancillary or welfare plan benefit. (Appendix C at 24, 27). However, the 1999 SPD³⁴ and 2001 SPD provide that only disability pension benefits and certain other death benefits are paid as part of a welfare plan benefit. In my opinion, the term “other death benefits” refers to those benefits funded through an insurance policy and/or Plan Sponsor assets, not Plan funded PDBs. This interpretation is consistent with prior SPDs. (Appendix C at 2, 4, 6, 9, 11, 14-20, 22-23, 25-26, 28, Appendix D).

Based on the documents and instruments governing the Plan covering the period 1978 through 2001, **it is my opinion that PDBs were not ancillary or welfare plan benefits.** The Plan Sponsor merely saying that PDBs are not protected by IRC § 411(d)(6) does not make them not protected. Further, the applicable SPDs indicate that PDBs are paid as part of the Plan’s pension benefits and are funded like pension benefits.

After considering all the information reviewed for this Report, I conclude that there are two categories of PDBs. The first category consists of pre-retirement PDBs, and the second category consists of post-retirement PDBs. In my opinion, pre-retirement PDBs accrue when active employees become participants in the Plan. Pre-retirement PDBs vest when active employees die before retirement. Similarly, post-retirement PDBs accrue when participants retire. Post-retirement PDBs vest when retirees die. This conclusion that PDBs are protected benefits under IRC § 411(d)(6) and/or ERISA § 204(g) does not mean that the Plan Sponsor (or Settlor) is prohibited from lawfully amending the Plan to prospectively eliminate PDBs that have

³³ The 2001 Qwest Plan document covers the period January 1, 2001 through Amendment 2003-5 or up until at least January 1, 2004.

³⁴ The 1999 Internal SPD, which was not distributed to participants or retirees is consistent with the SPD distributed to active employees on August 1, 1999. (Appendix C at 25-26).

not yet accrued, as long as proper notice is provided.³⁵

B. Disclosure and ERISA Compliance

Section V of this Report provides an overview of ERISA requirements relating to employee benefit plan amendments, reservation of rights clauses, and information that must be disclosed to participants and retirees with respect to any reduction or elimination of plan benefits. Also, Section V of this Report provides an overview of ERISA violations that may result from certain conduct and actions of employee benefit plan fiduciaries.

As more fully described in Section VI and Appendix C of this Report, the Plan made changes, effective in the years 1993 and 2003 that had the effect of reducing and/or eliminating PDBs. Although it is my opinion that PDBs were not ancillary or welfare benefits at any time prior to December 31, 2003, for purposes of this Section, I assume the contrary and analyze whether or not the Plan Sponsor complied with its fiduciary duties with respect to SPDs.

1. SPDs Issued from 1985 through 1993 and Reservation of Rights Clauses

From 1985 through 1993,³⁶ the Plan issued eight SPDs to participants and retirees. Four of the SPDs were issued for the U S WEST Pension Plan and four were issued for the U S WEST Management Pension Plan. (Appendix C at 9, 11, 14-19). The four SPDs effective January 1, 1985 to January 1, 1987 inform participants and retirees that the Plan Sponsor “may from time to time make changes in the Plan...but future changes...will not affect the rights of any individual to any benefit or pension which they may have previously been entitled to receive.” (KQ 1560). Two SPDs effective January 1, 1989 and January 1, 1990 do not provide any provision for the Plan Sponsor to make Plan changes. However, they do provide a Plan Sponsor reservation of

³⁵ This Report does not consider whether or not an ERISA § 204(h) notice was properly provided. In addition, even assuming that the PDBs are a welfare benefit, there is nothing in ERISA or the IRC to preclude PDBs from being a vested benefit for active participants or retirees.

³⁶ This period of time is used because it captures the time frame of most retirees or active participants effected by the 1993 Plan amendment.

rights clause to terminate the Plan. (Appendix C at 16-17)

The two SPDs effective July 1, 1991 for the U S WEST Pension Plan and U S WEST Management Pension Plan inform participants and retirees that the Plan Sponsor “reserves the right to end, suspend or amend its plans at any time...(and the) plans can also be changed retroactively if necessary or appropriate within applicable legal restrictions.” (Appendix C at 18-19). These SPDs were in effect at the time the U S WEST Pension Plan and U S WEST Management Pension Plan merged in January 1, 1993. In addition, these SPDs were in effect when the Plan Sponsor purportedly eliminated PDBs for all employees hired on or after March 1, 1993 and froze PDBs based on current pay for active employees employed as of February 28, 1993. (Kaferly v. USW 0001567). The SPDs effective July 1, 1991 were replaced with a new SPD distributed to only active employees, effective January 1, 1994, which contained a reservation of rights clause similar to the 1991 SPDs. The January 1, 1994 SPD was the first SPD to inform active employees of the Plan changes or amendments to PDBs.

2. SPDs Issued from 1994 through 2003 and Reservation of Rights Clauses

From 1994 through 2003 the Plan Sponsor issued five SPDs.³⁷ The Plan Sponsor issued SPDs to only active employees for Plan years 1994, 1996, and 1999;³⁸ and to only retirees in 1996. The Plan Sponsor issued an SPD to both active employees and retirees for Plan year 2001.³⁹ (Appendix C at 20-28). As stated above, the 1994 SPD contains a Plan Sponsor reservation of rights clause similar to the 1991 SPDs (i.e., the Plan Sponsor has the right to amend the Plan at any time, even retroactively).

The separate 1996 SPDs issued to active employees and retirees contain similar Plan

³⁷ The 1999 Internal SPD was never issued to participants or retirees and is not considered an issued SPD. (Appendix C at 25, KQ 5607).

³⁸ This 1999 SPD was actually issued in August of 1999. (KQ 0009).

³⁹ The 2001 SPD was not distributed to active employees and retirees until April of 2003 and covers Plan amendments through January 1, 2003. (Appendix C at 28).

Sponsor reservation of rights clauses. These SPDs indicate that the Plan Sponsor reserved the right to change or amend the Plan at any time without notice. Unlike the active employees 1996 SPD, the retiree SPD states that the Plan Sponsor's reservation of rights clauses are qualified by other sections of the SPD or Plan. (KQ 0358). The retiree SPD does not specify what the phrase "except where specifically provided otherwise" means. (*Id.*).

The 1999 SPD issued in August of 1999 to only active employees reserves the right of the Plan Sponsor's Board of Directors "to amend the Plan at any time." (KQ 0066). This reservation of rights clause also states that the EBC may amend the Plan if delegated this responsibility by the Board of Directors. (*Id.*). The 1999 SPD states that the Plan Sponsor, although expecting the Plan to continue, "reserves the right to end, suspend, or amend [the Plan] at any time, in whole or in part...retroactive if necessary or appropriate within applicable legal restrictions." (KQ 0077).

The 2001 SPD issued in April of 2003, but effective January 1, 2001, to active employees and retirees states that the Plan Sponsor (i.e., Qwest Communications International, Inc.) "reserves the right to amend the Plan at any time for any reason." (KQ 5520). This SPD specifically informs active employees and retirees that the Plan may be amended to reduce or eliminate "one or more of the Plan's benefit formulas." (*Id.*). The SPD states that the Plan may be amended by the Plan Sponsor's Board of Directors or PDC (or other person(s)) if so delegated by the Board. (*Id.*).

3. Plan 1993 Changes

As more fully summarized in Section VI of this Report, the Plan Sponsor's Board of Directors purportedly amended the Plan to freeze PDBs for active employees as of February 28, 1993, based on current pay, and eliminate PDBs for employees hired on or after March 1, 1993. The Board of Directors' actions with respect to PDBs took place at a December 4, 1992 meeting

and do not expressly effect persons already retired on or before February 28, 1993.

ERISA requires that the SPD serve as the primary vehicle to inform participants and retirees of their rights and obligations under the Plan. In regard to the 1993 Plan amendment, ERISA requires that participants and retirees be informed of the Plan Sponsor's reservation of rights to amend the Plan. In addition, the Plan Sponsor or the EBC had a responsibility through the SPD, to timely communicate the 1993 PDBs amendments in a manner calculated to be understood by the average participant and retiree.

Based on my review of the Plan's SPDs before and at the time of 1993 PDBs amendment, participants and retirees were not properly informed of the Plan Sponsor's right to amend the Plan or the 1993 PDBs amendments. With respect to the Plan Sponsor's reservation of rights, the SPD issued to participants and retirees effective January 1, 1989 and January 1, 1990 do not even contain any language that informs participants or retirees that the Plan can be amended. Even the SPDs, effective July 1, 1991, contained such general reservation of rights provisions so as to be misleading and confusing to the average Plan participant and retiree. It is confusing to the average Plan participant and retirees to tell them that Plan changes can be made if appropriate within applicable restrictions. Surely the average participant and/or retiree is not expected to know what is meant by the words applicable restrictions.

In regard to the timely of notification of participants of the 1993 elimination of PDBs, active employees were not informed of this change until January 1, 1994 with the issuance of the 1994 SPD, even though the amendment was effective March 1, 1993. In addition, retirees were not notified of the 1993 amendments effecting PDBs until January 1, 1996 with the issuance of the 1996 SPD. Active employees should not have to wait more than ten months before being fully informed of the 1993 amendment, and retirees should not have to wait almost three years before being fully informed of the amendment that was effective February 28, 1993. In my

opinion, the Plan Sponsor notices issued to employees and retirees do not meet required fiduciary disclosure under the Plan.

In my opinion, the Plan Sponsor and the EBC failed to comply with their fiduciary duties and responsibilities to timely and adequately inform participants and retirees of the 1993 amendment that reduced and eliminated certain PDBs. As the DOL stated in Technical Release 84-1 and later in regulations, it is important to participants and beneficiaries of plans to know the circumstances under which benefits might be eliminated and the effects such actions have on benefits. While the SMM is required to be provided within seven months of the close of the Plan year, it is my opinion that the spirit of ERISA and the Plan documents required prompt notice to participants even if ancillary or welfare benefits were being eliminated. *See Willett*, 953 F.2d 1335; *see also Rucker*, 806 F. Supp. 1453.

4. Plan Amendment 2003-5

Section VI of this Report provides a summary of Plan Amendment 2003-5, which was effective January 1, 2004. This amendment had the effect of eliminating PDBs for certain participants who die after January 1, 2004, eliminated lump sum PDBs for participants who terminate after January 1, 2004, and reduces the number of qualified beneficiaries entitled to PDBs.

C. IRC § 420 Transfers

Section V of this Report provides the statutory provisions relating to IRC § 420 transfers of excess pension assets to retiree health accounts and an overview of ERISA violations that may result from certain conduct and actions of employee benefit plan fiduciaries. Section VI and Appendix C of this Report provide relevant details on the Plan's four IRC § 420 transfers.

As more specifically described in Section IV.C of this Report, the only issue to be decided with respect to the Plan's four IRC § 420 transfers is whether Plan participants or

retirees, at the time of these transfers, who were service pension eligible or receiving disability benefits became fully vested in the Plan's PDBs. As described in Section VII.A, it is my opinion that PDBs for both pre-retirement and post-retirement participants are pension benefits that accrue.⁴⁰ There appear to be no issues relating to whether the transfers were qualified transfers or whether the amounts transferred, number of transfers, or use of transferred assets complied with the requirements of the IRC.⁴¹ In addition, there appear to be no issues relating to whether Plan participants and retirees (or beneficiaries) were provided with at least 60 days notice before the date of the transfers.⁴²

IRC § 420(c)(2)(A) provides that for the Plan's transfer of excess pension assets to be "qualified transfer(s),"⁴³ the accrued pension benefits of participants and beneficiaries (i.e., retirees and mandatory beneficiaries under the Plan) must become nonforfeitable in the same manner as when a plan terminates. This IRC section provides that the accrued pension benefits must become nonforfeitable immediately before the transfer of excess pension assets. In addition, IRC § 420(c)(2)(A) states that for participants who terminate or separate from employment within one year of the transfer, they must also become vested in their accrued benefits immediately before separation.

According to the express provisions of IRC § 420(c)(2)(A), only accrued pension benefits of participants and beneficiaries qualify for immediate vesting or nonforfeiting of accrued benefits immediately before the transfer of excess pension assets to a retiree health account. This Report in Section VII.A has already concluded that PDBs are pension benefits under the Plan.

⁴⁰ Pre-retirement PDBs accrue when active employees become participants in the Plan while post-retirement PDBs accrue when participants retire.

⁴¹ See IRC §§ 420(a), (b), and (c).

⁴² See ERISA § 101(e)(1). The evidence reviewed indicates that retirees were notified by letter of the 1998 and 1999 transfers, and participants were notified by letter of the 2000 and 2001 transfers. The notice letters for 1998, 1999 and 2000 are not dated and the 2001 notice letter is dated October 25, 2001 for a transfer which is to occur not earlier than December 21, 2001. The notice letters appear to provide the information required to be given to participants under ERISA § 101(e)(1). (TL 001, 003-005).

⁴³ A qualified transfer is defined in IRC § 420(b).

Based on the IRC statutory language, Plan provisions, and in my opinion as to when pre-retirement participants accrue PDBs, participants receiving disability benefits under the Plan do not qualify for immediate vesting of PDBs. Participants who begin receiving disability pensions are no longer active employees and have, therefore, lost accrued pre-retirement PDBs.

For the Plan years 1998 through 2001, or the years the Plan transferred excess assets, service pension eligible retirees and participants qualified for immediate vesting of PDBs under the Plan. In my opinion, participants and retirees eligible for PDBs immediately preceding the IRC § 420 transfers are entitled to be fully vested because PDBs are a form of accrued pension benefits under the Plan. If the Plan has not fully vested the PDBs in the years of the transfers, the transfers would not be qualified transfers under IRC § 420(c)(2)(A).

With respect to certain separated employees who are service pension eligible, it is my view that these employees also qualify for immediate full vesting in their accrued pension benefits and PDBs each of the years (i.e., 1998 through 2001) the Plan made IRC § 420 transfers. The notice letters provided to employees immediately before the transfers of excess assets confirm the automatic vesting of these employees for pension purposes, regardless of their duration of employment.

Section 11.2 of the 2001 Plan establishes a priority for the distribution of Plan assets in the event of a Plan termination. The Plan states that the first obligation of the Plan is to pay benefits in accordance with ERISA § 4044. In the event there is a surplus of Plan assets after meeting the requirements of ERISA § 4044, the Plan states that Plan assets will be first used to pay the full amount of service pensions, second to pay PDBs, and third to pay deferred vested pensions.

In my opinion, IRC § 420 requires that in the years of a qualified transfer of Plan excess assets to a retiree health account, all accrued PDBs will immediately vest for all service eligible

pre-retirement employees and post-retirement retirees. Any surplus assets remaining after the Plan meets its obligations under ERISA § 4044 must be used to pay accrued and vested Plan benefits, including PDBs. In my view, no surplus assets of the Plan can revert to the Plan Sponsor until the Plan pays the accrued and vested benefits established by the documents and instruments governing the Plan.

D. Amendment 2003-5 and IRC § 420 Transfers

As stated in the previous section of this Report, the provisions relating to IRC § 420 transfers and the relevant details of the Plan's transfers are described in Sections V and VI and Appendix C of this Report. The only issue to be decided in this section of the Report is whether the Plan's Amendment 2003-5, which eliminated PDBs as of January 1, 2004 is void for all service pension eligible participants or retirees or their beneficiaries. If the amendment was void, did the plan fiduciaries fail to consider the impact and consequences of the elimination of PDBs.

Consistent with the opinion expressed in Sections VII.A and VII.C of this Report, pre-retirement PDBs are accrued for service pension eligible participants and post-retirement PDBs are accrued for retirees. Thus, regardless of whether a § 420 transfer was made, such benefits that accrued prior to January 1, 2004 could not be reduced or eliminated. The IRC § 420 transfers caused these accrued benefits to become vested.

To the extent that Plan fiduciaries have improperly applied IRC § 420 and/or Amendment 2003-5, the fiduciaries have not acted in the sole interest of Plan participants and beneficiaries, not acted prudently in the administration of the Plan, and not acted in accordance with documents and instruments governing the Plan. (*See* Section V.D of this Report).

VIII. Summary of Conclusions

Below is a brief summary of the opinions expressed in Section VII of this Report.

A. Pension Death Benefits as Ancillary or Welfare Benefits

For the period 1978 to December 31, 2003, PDBs were not ancillary or welfare benefits under the Plan. In fact, affidavits of former EBC members, the Form 5500 actuarial schedules, and SPDs support the conclusion that PDBs are pension benefits under the Plan.

B. Disclosure and ERISA Compliance

Even assuming that PDBs were ancillary or welfare benefits, the Plan SPDs in effect when Plan participants retired prior to 1997 did not adequately inform participants and retirees of the Plan Sponsor's right to eliminate or take away PDBs.

C. IRC § 420 Transfers

Participants receiving Plan disability benefits (ancillary or welfare benefits) are not eligible to become fully vested in PDBs as a result of any IRC § 420 transfers because participants who began receiving disability pensions are no longer active employees and have, therefore, lost accrued pre-retirement PDBs. Service pension eligible participants and retirees at the time of any IRC § 420 transfers are entitled to become fully vested in the Plan's PDBs. Participants who terminated or separated from Plan Sponsor employment within one year of an IRC § 420 transfer must become fully vested in their accrued benefits immediately before separation.

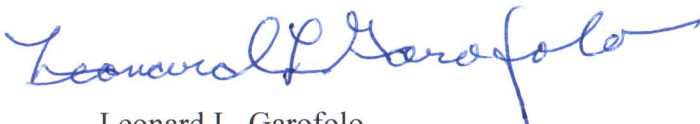
D. Amendment 2003-5 and IRC § 420 Transfers

Pre-retirement PDBs are accrued for service pension eligible participants and post-retirement PDBs are accrued for retirees. Thus, regardless of whether a § 420 transfer was made, such benefits that accrued prior to January 1, 2004 could not be reduced or eliminated. The §

420 transfers also caused these accrued benefits to become vested. To the extent Plan fiduciaries improperly implemented Amendment 2003-5, the fiduciaries did not act in accordance with Plan documents, did not act prudently, and did not act in sole interest of participants and beneficiaries.

As stated in Section II of this Report, additional evidence provided in this Litigation may change or modify the opinions expressed in this Report. The opinions and conclusions expressed in this Report are based on my experience interpreting plan documents as a former DOL Regional Director.

Submitted by:



Leonard L. Garofolo

Date: July 3, 2006

APPENDIX A

APPENDIX A

CURRICULUM VITAE

LEONARD L. GAROFOLO

June 2006

EXPERIENCE

ERISA Consulting Group

(Walnut Creek, CA) 1999-Current

Principal

- Provide expert advice on Employment Retirement Income Security Act (“ERISA”) and Internal Revenue Code employee benefit plan compliance and regulatory issues.
- Serve as independent member on employee benefit plan advisory committees.
- Select and monitor plan service providers and conduct plan compliance reviews and fiduciary liability audits.
- Serve as independent fiduciary for plans and expert witness on plan related matters.

U.S. Department of Labor, Pension and Welfare Benefits Administration

(San Francisco, CA) 1983-1998

Regional Director

- Supervised professional staff of over 65 employees conducting audits and investigations of ERISA plans.
- Approved initiation of all lawsuits, voluntary compliance settlements, and litigation settlements.
- Coordinated all ERISA related activities with the Departments of Justice and Treasury, Internal Revenue Service, Pension Benefit Guaranty Corporation, and other federal and state departments and agencies.

U.S. Department of Labor, Pension and Welfare Benefits Administration

(Washington, D.C.) 1978-1983

Regional Coordinator

- Served as ERISA staff advisor to Assistant Secretary of Labor for Employee Benefit Programs and field enforcement offices.
- Reviewed field employee benefit plan investigations for enforcement and regulatory issues having nationwide impact.
- Provided advice on PWBA advisory opinions, regulations, and exemption applications.
- Conducted ERISA training for field and national offices professional staff.

U.S. Department of Labor, Pension and Welfare Benefits Administration

(Los Angeles, CA) 1976-1978

Group Supervisor

- Supervised professional staff of 14 employees conducting audits and investigations of ERISA plans.
- Conducted ERISA training for field office investigators and auditors.

U.S. Department of Labor, Pension and Welfare Benefits Administration

(Atlanta, GA) 1970-1976

Compliance Officer/Investigator

- Conducted investigations under the Welfare and Pensions Plans Disclosure Act.
- Conducted investigations under the Labor-Management Reporting and Disclosure Act.
- Conducted investigations under ERISA after its passage in 1974.

ERISA RELATED TRAINING

A partial list of ERISA related training includes the following:

- International Foundation of Employee Benefit Plan Trustee and Professional Institute
- Prentice Hall ERISA Litigation
- Prentice Hall ESOP Update
- PWBA Criminal Enforcement
- PWBA Basic and Advanced ERISA Training
- Prentice Hall ERISA and Internal Revenue Code Litigation
- DOL National Office Training LMRDA and WPPDA
- DOL Regional Office Training – ERISA Investigative Skills
- DOL Regional Office Training – Employee Benefit Plans
- Course I and II (Legal Environment of Employee Welfare and Pension Plans), CEBS Program
- DOL ERISA Fiduciary Training
- International Foundation of Employee Benefit Plans Benefit Administration Institute

PROFESSIONAL HONORS, COMMENDATIONS AND AWARDS

A partial list of ERISA honors, commendations and awards:

- DOL Awards for Sustained Superior Performance
- DOL Special Achievement Awards
- DOL Performance of Work Commendations
- DOL Superior Performance Commendations
- Commendation Letter from Denmark Minister of Labor

- Member of Federal Senior Executive Service
- DOL Distinguished Achievement Award
- Letter and Career Certificate of Appreciation from the Secretary of Labor (April 4, 1998)

PRESENTATIONS/ PUBLIC SPEAKING

- Speaker for International Business Forum on ERISA compliance issues
- Speaker for Western Pension and Benefits Conference on ERISA compliance issues
- Speaker for International Foundation of Employee Benefit Plans enforcement issues
- Speaker for California Bankers Association enforcement issues
- Panelist for ABA on ERISA employee benefit plan investment issues
- Taught advanced ERISA classes at California State University at Fullerton

DEGREES AND LICENSES

- Master of Public Administration, University of Georgia
- Bachelor of Business Administration, Pace University
- Associate Applied Science (Accounting), Westchester College
- California Real Estate Broker

ACADEMIC HONOR AND ACHIEVEMENTS

- Elected for inclusion into 1969-1970 edition of “Who’s Who Among Students in American Universities and Colleges.”
- Received academic scholarship for all years attending Westchester College and Pace University.
- Elected an Executive Officer of the Day Student Government Association at Pace University.
- Graduated with honors from Pace University (Cum Laude).
- Invitation to Phi Kappa Phi Honor Society (MPA Degree).

PROFESSIONAL ASSOCIATIONS/MEMBERSHIPS

- Western Pension and Benefits Conference
- National Center for Employee Ownership
- International Foundation of Employee Benefit Plans
- American Society of Pension Professionals and Actuaries
- ERISA Fiduciary Guild
- National Association of Realtors
- Society for Human Resource Management

APPENDIX B

APPENDIX B

Expert Report of Leonard L. Garofolo

Information Considered

Qwest Pension Plan

Litigation Documents Considered

- Second Amended Class Action Complaint for Proposed Class Action Relief Under ERISA, *Edward J. Kerber, et al. v. Qwest Pension Plan, et al.*, Civil Action No. 05-cv-00478-MSK-PAC
- IRS Letter dated March 2, 1995
- US West Pension Plan Form 5500 for 1993
- US West Management Pension Plan, Effective 1/1/84, KQ 3543-3661
- US West Management Pension Plan SPD, Effective 1/1/84, KQ 5662-5704
- US West Pension Plan SPD, Effective 1/1/90, KQ 1127-1144
- US West Pension Plan Notes to Financial Statements
- Letter dated 3/26/90 to US West Retirees, KQ 6397
- Email dated 2/23/06 to Kiovsky and Quinn from Kennedy
- Letter dated 3/13/06 to Kennedy from Kiovsky
- Notice of Appearance of Counsel Kaplan
- Interrogatory No. 9 and 10
- Philosophy of Death Benefit Plan, KQ 08266-08272
- Mountain Bell SPD Effective 1/1/78
- Bell System Pension Plan SPD Effective 1/1/80
- Letter dated 6/6/06 from Kennedy to Garofolo
- Excerpt Board of Directors Meeting 12/4/92, *Kaferly v. USW 001567*

- US West Pension Plan RIF-103 March 1993
- US West Pension Plan Retirement Plan Bulletin July 1993
- Letter dated 9/2/03 to Qwest Retiree
- Email dated 6/2/06 to Kiovsky from Kennedy
- Benefits and Compensation News 11/26/86
- Fax Cover dated 6/9/06 Kennedy to Garofolo with attachments
- Amendment 2003-5
- Letter dated 9/26/03 Kennedy to Allen and Dobis, KQ 6268-6270
- Qwest Employee Benefit Committee Agenda 12/18/03, KQ 6271-6274
- Letter dated 12/22/03 Herron to Kennedy, KQ 6275-6277
- Letter dated 3/5/04 Kennedy to Allen and Dobis, KQ SC 0046-0049
- Letter dated 5/28/04 Herron to Kennedy
- US West Pension Plan RIF-104 September 1994
- US West Pension Plan 1991 SPD issued January 1994, KQ 0515-0637
- US West Pension Plan Effective 1/1/93, KQ 4228-4317
- US West Pension Plan 1996 SPD, KQ 0435-0514
- US West Pension Plan Retiree SPD for 1996, KQ 0352-0408
- US West Pension Plan Effective 1/1/97, KQ 3989-4143
- US West Benefits 1999 SPD, KQ 0001-0079
- US West Pension Plan 1999 SPD, KQ 5532-5610
- Qwest Pension Plan Effective 1/1/01
- Qwest Pension Plan 2001 SPD, KQ 5444-5531
- Letter dated 9/9/05 to Kennedy from Kiovsky attaching four letters relating to IRC § 420 transfers, TL 001-005
- Letter dated 2/01 to Retirees from Ziskin

- Letter dated 9/22/99 to Retirees and Employees from Trujillo
- Letter dated 7/23/99 to Retiree from Ozeroff with attachment
- Emails from Curtis L. Kennedy to Leonard L. Garofolo dated: 5/2/06, 5/3/06, 5/8/06, 5/12/06, 5/15/06, 5/24/06, 5/30/06, 5/31/06, 6/1/06, 6/2/06, 6/5/06, 6/6/06, 6/7/06, 6/8/06, 6/9/06, 6/12/06, 6/13/06, 6/14/06, 6/20/06, 6/21/06, 6/29/06, 6/30/06
- Emails from Leonard L. Garofolo to Curtis L. Kennedy dated: 5/7/06, 5/17/06, 6/8/06, 6/9/06, 6/29/06, 7/2/06
- Form 5500, DOL website www.dol.gov/ebsa
- Affidavit of Richard A. Remington
- Affidavit of Barbara B. Doherty

Statutory and Regulatory Authority Considered

- The Employee Retirement Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. 1001, *et seq.*
- Various ERISA regulations and proposed regulations including, but not limited to, 29 C.F.R. §§ 2520.102, 2520.104, 2509.94-2, 2550.408
- Department of Labor Technical Release 84-1, 70 Fed. Reg. 70225, 70229 (Nov 21, 2000)
- The Internal Revenue Code of 1986, as amended (the “IRC”), IRC § 401, *et seq.*
- Various IRC regulations, including, but not limited to 26 C.F.R. §§ 1.401(a)-4(e), 1.411(d)-4, 1.411(a)-7
- Various Department of Labor Advisory Opinions
- H.R. Rep. No. 93-533, 93rd Cong., 1st Sess. (1973), reprinted in 2 Legislative History of the Employee Retirement Income Security Act of 1974 (“Leg. Hist.”) 2355 (1976)
- H.R. Rep. No. 807, 93rd Cong., 2nd Sess. 60, reprinted in 1974 U.S. Code Cong. & Admin. News 4670, 4726
- S. Rep. No. 98-575 at 30 (1984) reprinted, 1984 U.S.C.C.A.N. 2547, 2576

Cases Considered

- *Ashenbaugh v. Crucible, Inc. 1975 Salaried Ret. Plan*, 854 F.2d 1516 (3d Cir. 1998), *cert. denied*, 490 U.S. 1105 (1989)
- *Bellas v. CBS, Inc.*, 221 F.3d 517 (3d Cir. 2000)
- *Bussian v. RJR Nabisco Inc.*, 223 F.3d 286, 294 (5th Cir. 2000)
- *Chiles v. Ceridian Corp.*, 95 F.3d 1505 (10th Cir. 1996)
- *Constantino v. TRW, Inc.*, 13 F.3d 969 (6th Cir. 1994).
- *DeBoard v. Sunshine Mining and Refining Co.*, 208 F.3d 1228 (10th Cir. 2000)
- *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73 (1995)
- *Donovan v. Bierwirth*, 680 F.2d 263 (2d Cir.), *cert. denied*, 459 U.S. 1069 (1982)
- *Donovan v. Cunningham*, 716 F.2d 1455, 1467 (5th Cir. 1983).
- *Esden v. Bank of Boston*, 229 F.3d 154 (2d Cir. 2000)
- *In re Enron Corp. Sec., Derivative & ERISA Lit.*, 284 F. Supp. 2d 511 (S.D. Tex. 2003).
- *Landry v. Air Line Pilots Ass'n Intern., AFL-CIO*, 901 F.2d 404 (5th Cir. 1990)
- *Mary M. Hull v. United States Department of Labor*, Civil Action No. 04-cv-01264-LTB-PAC, Order issued May 30, 2006 (U.S. District Court for the District of Colorado)
- *Pratt v. Petroleum Prod. Mgmt., Inc. Employee Sav. Plan & Trust*, 920 F.2d 651 (10th Cir. 1990)
- *Richardson v. Pension Plan of Bethlehem Steel Corp.*, 67 F.3d 1462 (9th Cir.1995)
- *Rucker v. Pacific FM, Inc.*, 806 F.Supp. 1453, 1459
- *Willett v. Blue Cross & Blue Shield of Alabama*, 953 F.2d 1335 (11th Cir. 1992)
- *Williams v. International Longshoremen's Association Board of Trustees*, 36 Employee Benefits Cas. (BNA) 2790, 2797 (S.D. Fla. 2005)

Other Resources Considered

- *Handbook on ERISA Litigation*, Second Edition, Jordan, Pflepsen, Jr., Goldberg, Aspen Publishers, Inc., 2006
- *ERISA Law Answer Book*, Fifth Edition, Buckley, Aspen Publishers, 2006
- *ERISA Litigation*, Zanglein, Stablile, The Bureau of National Affairs, Inc., 2003
- *Restatement of the Law Third, Trusts, Prudent Investor Rule*, § 170, Chapter 7
- *ERISA Fiduciary Law*, Fourth Printing, Serota, BNA Books, 1999
- *Pension and Employee Benefit Law*, Third Edition, Langbein, Wolk, Fountain Press, 2000
- *ERISA Related Statutes*, Lewis, Kushner, BNA Books, 1995
- *ERISA Practice and Procedure*, Second Edition, Cooke, West-Thompson, 2004
- *Employee Benefits Treatise, Employee Benefits Law*, Second Edition, BNA 2000 and 2004 Supplement
- *The 2006 Pension Answer Book*, Krass, Aspen Publishers, 2006
- *ERISA Fiduciary Answer Book*, Fifth Edition, Ferrera, Aspen Publishers, 2006

APPENDIX C

APPENDIX C

Summary of Governing Plan Documents and SPDs (1980-2004)

Date	Bates Nos:	Governing Document Name:	Classification of Benefits:	Pension Death Benefits Explained:	Reservation of Rights Language and Termination Priorities:	Rights to Pension or Benefits:	Miscellaneous Terms:
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<p>January 1, 1978</p>	<p>No Bates Nos.</p>	<p>SPD - The Mountain States Telephone and Telegraph Company Plan for Employees' Pensions, Disability Benefits and Death Benefits (Including Amendments Effective 1/1/1978)</p>	<p><u>TYPE OF PLAN</u> (pg. 24 - <i>no</i> Bates No.)</p> <p>The Plan is classified as both a pension plan and a welfare plan under the definitions of ERISA. It is a “defined benefit plan” for Service and Deferred Vested Pension purposes and for payment of certain Sickness Death Benefits at the death of a Pension Plan participant. The Plan is a “welfare plan” for purposes of providing certain other death benefit payment and disability benefit payments.</p> <p><u>PLAN IDENTIFICATION NUMBERS</u> (pg. 22- <i>no</i> Bates No.)</p> <p>The Plan is identified by the following numbers under Internal Revenue Service rules.</p> <p>#001 - assigned by the Company.</p>	<p>See generally, pp. 18-19 - <i>no</i> Bates Nos.</p> <p><u>DEATH BENEFITS</u></p> <p>Death Benefits are designed to help your family financially in case of your death before or after retirement. Benefits are payable to qualified family members if you should die while an active employee or while you are receiving a Service or Disability Pension.</p> <p><u>Sickness Death Benefit</u> . . . A benefit equal to one year’s pay at retirement will be paid to the qualified beneficiary on the death of an employee who retires with a Service or Disability Pension.</p>	<p>(pg. i - <i>no</i> Bates Nos.)</p> <p>[Note: Unlike subsequently issued SPDs, <i>nothing</i> is mentioned or disclosed about any reservation of rights to make changes.] The Plan, commonly known as the Benefit Plan, provides financial protection and security for you and your family all during your active career and after you retire.</p> <p><u>Plan Continuance</u> (pg. 30 - <i>no</i> Bates No.)</p> <p>[Note: Unlike subsequently issued SPDs, <i>nothing</i> is mentioned or disclosed about any rights of plan participants upon a possible termination of the pension plan. There is no stated order of priorities, etc.]. The Company intends to continue the Plan in accordance with applicable bargaining agreements. However, if the Plan should be terminated or contributions completely discontinued, Plan members will be fully vested in their rights under the Plan to the extent then funded, in the order of priority specified in the Plan or by law.</p>	<p><u>Subsection 8.1 Rights to Pension or Benefits</u> (pg. 48 - Bates 3207)</p> <p>Neither the action of the Board of Directors in establishing this Plan for Employees’ Pensions, Disability Benefits and Death Benefits, nor any action taken by the Board or the Committee shall be construed as giving to any officer, agent or employee. . . any right or claim to any pension or other benefit or allowance after discharge from the service of the Company, unless the right to such pension or benefit has accrued prior to such discharge. Except in the event of termination of the Plan, no employee or annuitant shall have any right to a service or deferred vested pension unless he meets the conditions specified in Paragraph 1(a) or 1(b) of Section 4 of these Regulations, nor any right in the Pension Fund unless a pension authorized by the Committee under the Plan has not been paid, nor any right against the Company to any benefit under the Plan other than the amount to which the employee or annuitant has theretofore become entitled and which the Committee has directed to be paid to the employee or annuitant under the Plan.</p>	<p><u>Section 4.8 Pension Funding Policy and Method</u> (pg. 27 - Bates 3186)</p> <p>The Pension Fund [and the Second Pension Fund] shall be held by a trustee or trustees or an insurance company or companies as permitted by law for [respectively] pension and death benefit purposes only and shall be distributed as directed by the Company from time to time. The Company undertakes to preserve the integrity of the Pension fund [and the Second Pension Fund] as a fund held in trust or by an insurance company or companies as permitted by law to be applied solely to pension and death benefit purposes and to take such action as may be necessary or appropriate to insure the application of the entire fund [or funds] to such purposes.</p>
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<p>January 1, 1979</p>	<p>3159-3220</p>	<p>Governing Document - American Telephone and Telegraph Company Plan for Employees' Pensions, Disability Benefits and Death Benefits (Including Amendments of 1/1/1979)</p>		<p><u>Section 7.3.a, Pensioner Death Benefit Amount</u> (pg. 41 -3200)</p> <p>In the event of the death of any persons who at the time of death is receiving a pension granted under Paragraph 1(a) [Service Pension] or 1(c) [Disability Pension] of Section 4 of these Regulations, the Committee in its discretion, but subject to the following provisions of this Paragraph 3, may authorize a Death Benefit to the spouse or dependent relatives of the pensioner. . .</p> <p><u>Section 7.4.a, Mandatory Beneficiaries</u> (pg. 42 - Bates 3201)</p> <p>In the event of death on or after July 18, 1974, by accident, the maximum Accident Death Benefit specified in Paragraph 1 of this Section, or in the event of death by sickness, the maximum Sickness Death Benefit specified in Paragraph 2 of this Section, shall be paid, subject to the provisions of Subparagraph (c) of this Paragraph 4, to the spouse of the deceased employee if living with him at the time of his death, or to the unmarried child or children of the deceased employee under the age of 23 years. . . or a dependent parent who lives in the same household with the employee or who lives in a separate household in the vicinity which is provided for the parent by the employee.</p>	<p><u>Section 10 Changes in Plan</u> (pg 61- Bates 3220) The Committee. . . may from time to time make changes in the Plan set forth in these Regulations, and the Company may terminate said Plan, but such changes or termination shall not affect the rights of any employee, without his consent, to any benefit or pension to which he may have previously become entitled hereunder.</p> <p><u>Section 2 Definitions</u> (pg. 2 - Bates 3161) The word "Employees" shall mean those persons who receive a regular and stated compensation from the Company other than a pension or retainer.</p> <p><u>Section 4.10 Pension Plan Termination Arrangements</u> (pg. 31 - Bates 3190) . . . Second: To making provision. . . for the payment of death benefits attributable to deaths occurring prior to the date of termination which would have been payable from the [Second] Pension Fund, and for the payment, upon the death of retired employees who are on the pension roll as of the date of termination and of employees eligible as of that date for retirement at their own request, of death benefits. . . .</p>	<p><u>Subsection 8.1 Rights to Pension or Benefits</u> (pg. 48 - Bates 3207)</p> <p>Neither the action of the Board of Directors in establishing this Plan for Employees' Pensions, Disability Benefits and Death Benefits, nor any action taken by the Board or the Committee shall be construed as giving to any officer, agent or employee. . . any right or claim to any pension or other benefit or allowance after discharge from the service of the Company, unless the right to such pension or benefit has accrued prior to such discharge. Except in the event of termination of the Plan, no employee or annuitant shall have any right to a service or deferred vested pension unless he meets the conditions specified in Paragraph 1(a) or 1(b) of Section 4 of these Regulations, nor any right in the Pension Fund unless a pension authorized by the Committee under the Plan has not been paid, nor any right against the Company to any benefit under the Plan other than the amount to which the employee or annuitant has theretofore become entitled and which the Committee has directed to be paid to the employee or annuitant under the Plan.</p>	<p><u>Section 4.8 Pension Funding Policy and Method</u> (pg. 27 - Bates 3186)</p> <p>The Pension Fund [and the Second Pension Fund] shall be held by a trustee or trustees or an insurance company or companies as permitted by law for [respectively] pension and death benefit purposes only and shall be distributed as directed by the Company from time to time. The Company undertakes to preserve the integrity of the Pension fund [and the Second Pension Fund] as a fund held in trust or by an insurance company or companies as permitted by law to be applied solely to pension and death benefit purposes and to take such action as may be necessary or appropriate to insure the application of the entire fund [or funds] to such purposes.</p>
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<p>October 1, 1980</p>	<p>No Bates Nos.</p>	<p>SPD - Bell System Pension Plan</p> <p>(With Amendments Effective October 1, 1980)</p>	<p><u>TYPE OF PLAN</u> (pg. 26 - <i>no</i> Bates No.)</p> <p>The Plan is classified as both a pension plan and a welfare plan under the definitions of ERISA. It is a “defined benefit plan” for service and deferred vested pension purposes and for payment of certain sickness death benefits upon the death of a Pension Plan participant. The Plan is a “welfare plan” for purposes of providing disability pensions and other death benefit payments.</p> <p><u>PLAN IDENTIFICATION NUMBERS</u> (pg. 27- <i>no</i> Bates No.)</p> <p>The Plan is identified by the following numbers under Internal Revenue Service rules.</p> <p>#005 - assigned by the Company for pensions and certain death benefits paid from the Trust fund.</p>	<p>See generally, pp. 19-21 - <i>no</i> Bates Nos.</p> <p><u>DEATH BENEFITS</u></p> <p>Your qualified beneficiaries are protected by the Plan’s sickness and accident death benefit provisions for the entire period of your employment and during your retirement on service or disability pension.</p> <p><u>Sickness Death Benefit</u> . . . A benefit equal to one year’s pay at retirement will be paid to the mandatory beneficiary of an employee who dies after retirement while receiving a service or disability pension.</p> <p>. . . Death benefit payments may be made in lump sum or installments at the Committee’s discretion.</p>	<p><u>INTRODUCTION</u> (pg. 2 - <i>no</i> Bates Nos.)</p> <p>the American Telephone and Telegraph Company may from time to time make changes in the Plan, but future changes will not affect the rights of any individual to any benefit or pension which he or she may have previously become entitled to receive.</p> <p><u>Plan Continuance</u> (pg. 27 - <i>no</i> Bates No.)</p> <p><u>Note:</u> Unlike subsequently issued SPDs, <i>nothing</i> is mentioned or disclosed about any rights of plan participants upon a possible termination of the pension plan. There is no stated order of priorities, etc.]. The Participating Companies intend to continue the Plan. However, if the Plan should be terminated or contributions completely discontinued, Plan participants will receive full benefits computed as of the date of such termination or complete discontinuance, to the extent such benefits are then funded, in the order of priority specified in the Plan or by applicable law.</p>		
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<p>October 1, 1980</p>	<p>No Bates Nos.</p>	<p>Governing Document - Bell System Management Pension Plan</p> <p>American Telephone and Telegraph Company and Other Bell System Participating Companies</p> <p>(Effective October 1, 1980)</p>		<p><u>Section 5.3.a Pensioner Death Benefit Amount</u> (pg. __ - no Bates No.)</p> <p>In the event of the death of any persons who at the time of death is receiving a pension granted under Paragraph 1(a) [Service Pension] or 1(c) [Disability Pension] of Section 4 of this Plan or any Predecessor Plan, the Committee or a Participating Company Committee, as applicable, in its discretion, but subject to the following provisions of this Paragraph 3, may authorize a Death Benefit to the spouse or dependent relatives of the pensioner. . .</p> <p><u>Section 5.4.a Mandatory Beneficiaries</u> (pg. __ - no Bates No.)</p> <p>In the event of death by accident, the maximum Accident Death Benefit specified in Paragraph 1 of this Section, or in the event of death by sickness, the maximum Sickness Death Benefit specified in Paragraph 2 of this Section, shall be paid, subject to the provisions of Subparagraph (c) of this Paragraph 4, to the spouse of the deceased employee if living with him at the time of his death, or to the unmarried child or children of the deceased employee under the age of 23 years. . . or a dependent parent who lives in the same household with the employee or who lives in a separate household in the vicinity which is provided for the parent by the employee.</p>	<p><u>Section 8 Changes in Plan</u> (pg __ No Bates No.) The Committee. . . may from time to time make changes in the Plan set forth in this document, and the Company may terminate said Plan, but such changes or termination shall not affect the rights of any employee, without his consent, to any benefit or pension to which he may have previously become entitled hereunder.</p> <p><u>Section 2.6 Definitions</u> (pg. __ - no Bates No.) The word "Employee" shall mean. . . who receives a regular and stated compensation, other than a pension or retainer. . .</p> <p><u>Section 4.10 Pension Plan Termination Arrangements</u> (pg. __ - no Bates No.) . . . Second: To making provision for the payment of death benefits attributable to deaths occurring prior to the date of termination which would have been payable from the Bell System Management Pension Fund, and for the payment, upon the deaths of retired employees who are on the pension roll as of the date of termination and of employees eligible as of that date for retirement, of death benefits. . .</p>	<p><u>Subsection 6.1 Rights to Pensions or Benefits</u> (pg. __ - no Bates No.)</p> <p>Neither the action of the Board of Directors in establishing this Plan nor any action taken by the Board or the Committee shall be construed as giving to any officer, agent or employee. . . any right or claim to any pension or other benefit or allowance after discharge from the service of any Participating Company, unless the right to such pension or benefit has accrued prior to such discharge. Except in the event of termination of the Plan, no employee or annuitant shall have any right to a service or deferred vested pension unless he meets the conditions specified in Paragraph 1(a) or 1(b) of Section 4 of these Regulations, nor any right in the Bell System Management Pension Fund unless a pension authorized by the Committee or a Participating Company Committee, as applicable, under the Plan has not been paid, nor any right against any Participating Company to any benefit under the Plan other than the amount to which the employee or annuitant has theretofore become entitled and which the Committee or a Participating Company Committee, as applicable, has directed to be paid to that employee or annuitant under the Plan.</p>	<p><u>Section 4.8 Pension Funding Policy and Method</u> (pg. 22 - no Bates No.)</p> <p>The Bell System Management Pension Fund shall be held by a trustee or trustees or an insurance company or companies as permitted by law for pension and death benefit purposes only and shall be disbursed as directed by the Company or any other Participating Company, as applicable, from time to time. The Company undertakes to preserve the integrity of the Bell System Management Pension Fund as a fund held in trust or by an insurance company or companies as permitted by law to be applied solely to pension and death benefit purposes and to take such action as may be necessary or appropriate to insure the application of the entire fund to such purposes.</p>
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<p>October 1, 1980</p>	<p>No Bates Nos.</p>	<p>SPD - Bell System Management Pension Plan</p> <p>(With Amendments Effective October 1, 1980)</p>	<p><u>TYPE OF PLAN</u> (pg. 21 - <i>no</i> Bates No.)</p> <p>The Plan is classified as both a pension plan and a welfare plan under the definitions of ERISA. It is a “defined benefit plan” for service and deferred vested pension purposes and for payment of certain sickness death benefits upon the death of a Pension Plan participant. The Plan is a “welfare plan” for purposes of providing disability pensions and other death benefit payments.</p> <p><u>PLAN IDENTIFICATION NUMBERS</u> (pg. 22- <i>no</i> Bates No.)</p> <p>The Plan is identified by the following numbers under Internal Revenue Service rules.</p> <p>#006 - assigned by the Company for pensions and certain death benefits paid from the Trust fund.</p>	<p>See generally, pp. 15-16 - <i>no</i> Bates Nos.</p> <p><u>DEATH BENEFITS</u></p> <p>Your qualified beneficiaries are protected by the Plan’s sickness and accident death benefit provisions for the entire period of your employment and during your retirement on service or disability pension.</p> <p><u>Sickness Death Benefit</u> . . . A benefit equal to one year’s pay at retirement will be paid to the mandatory beneficiary of an employee who dies after retirement while receiving a service or disability pension.</p> <p>. . . Death benefit payments may be made in lump sum or installments at the Committee’s discretion.</p>	<p><u>INTRODUCTION</u> (pg. 2 - <i>no</i> Bates Nos.)</p> <p>the American Telephone and Telegraph Company may from time to time make changes in the Plan or may terminate the Plan, but future changes will not affect the rights of any individual to any benefit or pension which he or she may have previously become entitled to receive.</p> <p><u>Plan Continuance</u> (pg. 22 - <i>no</i> Bates No.)</p> <p>[Note: Unlike subsequently issued SPDs, <i>nothing</i> is mentioned or disclosed about any rights of plan participants upon a possible termination of the pension plan. There is no stated order of priorities, etc.]. The Participating Companies intend to continue the Plan. However, if the Plan should be terminated or contributions completely discontinued, Plan participants will receive full benefits computed as of the date of such termination or complete discontinuance, to the extent such benefits are then funded, in the order of priority specified in the Plan or by applicable law.</p>		
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<p>October 1, 1982</p>	<p>3066-3158</p>	<p>Governing Document -</p> <p>Bell System Management Pension Plan</p> <p>American Telephone and Telegraph Company and Other Bell System Participating Companies</p> <p>Includes Special Increases in Pensions Amendment Effective 10-1-82</p>		<p><u>Section 5.3.a Pensioner Death Benefit Amount</u> (pg. __ - Bates 3127)</p> <p>In the event of the death of any persons who at the time of death is receiving a pension granted under Paragraph 1(a) [Service Pension] or 1(c) [Disability Pension] of Section 4 of these Regulations, the Committee in its discretion, but subject to the following provisions of this Paragraph 3, may authorize a Death Benefit to the spouse or dependent relatives of the pensioner. . .</p> <p><u>Section 5.4.a Mandatory Beneficiaries</u> (pg. __ - Bates 3129)</p> <p>In the event of death by accident, the maximum Accident Death Benefit specified in Paragraph 1 of this Section, or in the event of death by sickness, the maximum Sickness Death Benefit specified in Paragraph 2 of this Section, shall be paid, subject to the provisions of Subparagraph (c) of this Paragraph 4, to the spouse of the deceased employee if living with him at the time of his death, or to the unmarried child or children of the deceased employee under the age of 23 years. . . or a dependent parent who lives in the same household with the employee or who lives in a separate household in the vicinity which is provided for the parent by the employee.</p>	<p><u>Section 8 Changes in Plan</u> (pg __ Bates 3158) The Committee. . . may from time to time make changes in the Plan set forth in these Regulations, and the Company may terminate said Plan, but such changes or termination shall not affect the rights of any employee, without his consent, to any benefit or pension to which he may have previously become entitled hereunder.</p> <p><u>Section 2.5 Definitions</u> (pg. __ - Bates 3070) The word “Employee” shall mean. . . who receives a regular and stated compensation, other than a pension or retainer. . .</p> <p><u>Section 4.10 Pension Plan Termination Arrangements</u> (pg. _ - Bates 3119) . . . Second: To making provision for the payment of death benefits attributable to deaths occurring prior to the date of termination which would have been payable from the Bell System Management Pension Fund, and for the payment, upon the deaths of retired employees who are on the pension roll as of the date of termination and of employees eligible as of that date for retirement, of death benefits. . .</p>	<p><u>Subsection 6.1 Rights to Pensions or Benefits</u> (pg. __ - Bates 3139)</p> <p>Neither the action of the Board of Directors in establishing this Plan nor any action taken by the Board or the Committee shall be construed as giving to any officer, agent or employee. . . any right or claim to any pension or other benefit or allowance after discharge from the service of any Participating Company, unless the right to such pension or benefit has accrued prior to such discharge. Except in the event of termination of the Plan, no employee or annuitant shall have any right to a service or deferred vested pension unless he meets the conditions specified in Paragraph 1(a) or 1(b) of Section 4 of these Regulations, nor any right in the Bell System Management Pension Fund unless a pension authorized by the Committee or a Participating Company Committee, as applicable, under the Plan has not been paid, nor any right against any Participating Company to any benefit under the Plan other than the amount to which the employee or annuitant has theretofore become entitled and which the Committee or a Participating Company Committee, as applicable, has directed to be paid to that employee or annuitant under the Plan.</p>	<p><u>Section 4.8 Pension Funding Policy and Method</u> (pg. __ - Bates 3115)</p> <p>The Bell System Management Pension Fund shall be held by a trustee or trustees or an insurance company or companies as permitted by law for pension and death benefit purposes only and shall be disbursed as directed by the Company or any other Participating Company, as applicable, from time to time. The Company undertakes to preserve the integrity of the Bell System Management Pension Fund as a fund held in trust or by an insurance company or companies as permitted by law to be applied solely to pension and death benefit purposes and to take such action as may be necessary or appropriate to insure the application of the entire fund to such purposes.</p>
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<p>January 1, 1984</p>	<p>3543-3661</p>	<p>Governing Document -</p> <p>U S WEST Management Pension Plan</p> <p>U S WEST, Inc. and Such of its Subsidiary Companies which are Participating Companies</p> <p>Effective January 1, 1984</p>		<p><u>Section 5.3.a Pensioner Death Benefit Amount</u> (pg. __ - Bates 3632)</p> <p>In the event of the death of any persons who at the time of death is receiving a pension granted under Paragraph 1(a) [Service Pension] or 1(c) [Disability Pension] of Section 4 of this Plan or any Predecessor Plan, the Committee or a Participating Company Committee, as applicable, in its discretion, but subject to the following provisions of this Paragraph 3, may authorize a Death Benefit to the spouse or dependent relatives of the pensioner. . .</p> <p><u>Section 5.4.a Mandatory Beneficiaries</u> (pp. __-__ - Bates 3635-3636)</p> <p>In the event of death by accident, the maximum Accident Death Benefit specified in Paragraph 1 of this Section, or in the event of death by sickness, the maximum Sickness Death Benefit specified in Paragraph 2 of this Section, shall be paid, subject to the provisions of Subparagraph (c) of this Paragraph 4, to the spouse of the deceased employee if living with him at the time of his death, or to the unmarried child or children of the deceased employee under the age of 23 years. . . or a dependent parent. . .</p>	<p><u>Section 9 Changes in Plan</u> (pg. __ - Bates 3661)</p> <p>The Committee. . . may from time to time make changes in the Plan set forth in this document, and the Company may terminate said Plan, but such changes or termination shall not affect the rights of any employee, without his consent, to any benefit or pension to which he may have previously become entitled hereunder.</p> <p><u>Section 4.10 Pension Plan Termination Arrangements</u> (pg. __ - Bates 3620)</p> <p>. . . Second: To making provisions for the payment of death benefits attributable to deaths occurring prior to the date of termination which would have been payable from the U S WEST Management Pension Fund, and for the payment, upon the death of retired employees who are on the pension roll as of the date of termination and of employees eligible as of that date for retirement, of death benefits. . . .</p>	<p><u>Subsection 6.1 Rights to Pensions or Benefits</u> (pg. __ - 3650)</p> <p>Neither the action of the Board of Directors in establishing this Plan nor any action hereafter taken by the Board or the Committee or any Participating Company shall be construed as giving to any officer, agent or employee. . . any right or claim to any pension or other benefit or allowance after discharge from the service of any Participating Company, unless the right to such pension or benefit has accrued prior to such discharge. Except in the event of termination of the Plan, no employee or annuitant shall have any right to a service or deferred vested pension unless he meets the conditions specified in Paragraph 1(a) or 1(b) of Section 4 or the provisions of Section 7 of the Plan, nor any right in the U S WEST Management Pension Fund unless a pension authorized by the Committee or a Participating Company Committee, as applicable, under the Plan has not been paid, nor any right against any Participating Company to any benefit under the Plan other than the amount to which the employee or annuitant has theretofore become entitled and which the Committee or a Participating Company Committee, as applicable, has directed to be paid to that employee or annuitant under the Plan.</p>	<p><u>Section 4.8. Pension Funding Policy and Method</u> (pg. __ - Bates 3613)</p> <p>The U S WEST Management Pension Fund shall be held by a trustee or trustees or an insurance company or companies as permitted by law for pension and death benefit purposes only and shall be disbursed as directed by the Company or any other Participating Company, as applicable, from time to time. The Company undertakes to preserve the integrity of the U S WEST Management Pension Fund as a fund held in trust or by an insurance company or companies as permitted by law to be applied solely to pension and death benefit purposes and to take such action as may be necessary or appropriate to insure the application of the entire fund to such purposes.</p>
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<p>January 1, 1985</p>	<p>1521-1557</p>	<p>SPD -</p> <p>U S WEST Pension Plan</p> <p>(With Amendments Effective January 1, 1985)</p>	<p><u>TYPE OF PLAN</u> (pg. 20 - Bates 1542)</p> <p>The Plan is classified as both a pension plan and a welfare plan under the definitions of ERISA. It is a “defined benefit plan” for service and deferred vested pension purposes and for payment of certain sickness death benefits upon the death of a Pension Plan participant. The Plan is a “welfare plan” for purposes of providing disability pensions and other death benefit payments.</p> <p><u>PLAN IDENTIFICATION NUMBERS</u> (pg. 21- Bates 1543)</p> <p>The Plan is identified by the following numbers under Internal Revenue Service rules.</p> <p>#005 - Plan Number assigned by U S WEST for pensions and certain death benefits paid from the Trust fund.</p>	<p>See generally, pp. ___ - Bates 1539-1541</p> <p><u>DEATH BENEFITS</u></p> <p>Your qualified beneficiaries are protected by the Plan’s sickness and accident death benefit provisions for the entire period of your employment and during your retirement on a service or disability pension.</p> <p><u>Sickness Death Benefit</u> . . . A benefit equal to one year’s pay at retirement will be paid to the mandatory beneficiary (if any) of an employee who dies after retirement while receiving a service or disability pension.</p>	<p><u>INTRODUCTION</u> (pg. 2 - Bates 1524)</p> <p>U S WEST may from time to time make changes in the Plan or may terminate the Plan, but future changes or termination will not affect the rights of any individual to any benefit or pension which he or she may have previously become entitled to receive.</p> <p><u>PLAN TERMINATION</u> (pp. 21-22 - Bates 1543-1544)</p> <p>. . . Essentially, in the event of a Plan termination, the assets of the Plan Trust fund would first be allocated to pay benefits to participants and beneficiaries who are already receiving benefits under the Plan at the time of termination or who had the right to immediately receive such benefits if they had retired prior to such time. . . . After benefits are provided to participants or beneficiaries in this highest priority, remaining assets would be allocated to other participants or beneficiaries in certain other priority categories. . .</p>		
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<p>January 1, 1985</p>	<p>3388-3542</p>	<p>Governing Document -</p> <p>U S WEST Management Pension Plan</p> <p>U S WEST, Inc. and Such of its Subsidiary Companies which are Participating Companies</p> <p>Effective January 1, 1984</p> <p>As Amended Effective January 1, 1985</p>		<p><u>Section 5.3(a), Pensioner Death Benefit Amount</u> (pg. 80 - Bates 3478)</p> <p>In the event of the death of any persons who at the time of death is receiving a pension granted under Paragraph 1(a) [Service Pension] or 1(c) [Disability Pension] of Section 4 of this Plan or any Predecessor Plan, the Committee or a Participating Company Committee, as applicable, in its discretion, but subject to the following provisions of this Paragraph 3, may authorize a Death Benefit to the spouse or dependent relatives of the pensioner. . .</p> <p><u>Section 4.a Mandatory Beneficiaries</u> (pg. 82-83 - Bates 3480-3481)</p> <p>In the event of death by accident, the maximum Accident Death Benefit specified in Paragraph 1 of this Section, or in the event of death by sickness, the maximum Sickness Death Benefit specified in Paragraph 2 of this Section, shall be paid, subject to the provisions of Subparagraph (c) of this Paragraph 4, to the spouse of the deceased employee if living with him at the time of his death, or to the unmarried child or children of the deceased employee under the age of 23 years. . . or a dependent parent. . .</p>	<p><u>Section 10, Changes in Plan</u> (pg.137 - Bates 3542)</p> <p>The Committee. . . may from time to time make changes in the Plan set forth in this document, and the Company may terminate said Plan, but such changes or termination shall not affect the rights of any employee, without his consent, to any benefit or pension to which he may have previously become entitled hereunder.</p> <p><u>Section 4.10, Pension Plan Termination Arrangements</u> (pg. 72 - Bates 3469)</p> <p>. . . Second: To making provisions for the payment of death benefits attributable to deaths occurring prior to the date of termination which would have been payable from the U S WEST Management Pension Fund, and for the payment, upon the death of retired employees who are on the pension roll as of the date of termination and of employees eligible as of that date for retirement, of death benefits. . . .</p>	<p><u>Section 6.1 Rights to Pensions or Benefits</u> (pg. 92 - Bates 3493)</p> <p>Neither the action of the Board of Directors in establishing this Plan nor any action hereafter taken by the Board or the Committee or any Participating Company shall be construed as giving to any officer, agent or employee. . . any right or claim to any pension or other benefit or allowance after discharge from the service of any Participating Company, unless the right to such pension or benefit has accrued prior to such discharge. Except in the event of termination of the Plan, no employee or annuitant shall have any right to a service or deferred vested pension unless he meets the conditions specified in Paragraph 1(a) or 1(b) of Section 4 or the provisions of Section 7 of the Plan, nor any right in the U S WEST Management Pension Fund unless a pension authorized by the Committee or a Participating Company Committee, as applicable, under the Plan has not been paid, nor any right against any Participating Company to any benefit under the Plan other than the amount to which the employee or annuitant has theretofore become entitled and which the Committee or a Participating Company Committee, as applicable, has directed to be paid to that employee or annuitant under the Plan.</p>	<p><u>Section 4.8 Pension Funding Policy and Method</u> (pg. 63-64 - Bates 3459-3460)</p> <p>The U S WEST Management Pension Plan shall be held by a trustee or trustees or an insurance company or companies as permitted by law for pension and death benefit purposes only and shall be disbursed as directed by the Company or any other Participating Company, ad applicable, from time to time. The Company undertakes to preserve the integrity of the U S WEST Management Pension Plan as a fund held in trust or by an insurance company or companies as permitted by law to be applied solely to pension and death benefit purposes and to take such action as may be necessary or appropriate to insure the application of the entire fund, to such purposes.</p>
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<p>January 1, 1985</p>	<p>1558-1590</p>	<p>SPD -</p> <p>U S WEST Management Pension Plan</p> <p>(With Amendments Effective January 1, 1985)</p>	<p><u>TYPE OF PLAN</u> (pg. 21 - Bates 1579)</p> <p>The Plan is classified as both a pension plan and a welfare plan under the definitions of ERISA. It is a “defined benefit plan” for service and deferred vested pension purposes and for payment of certain sickness death benefits upon the death of a Pension Plan participant. The Plan is a “welfare plan” for purposes of providing disability pensions and other death benefit payments.</p> <p><u>PLAN IDENTIFICATION NUMBERS</u> (pg. 22- Bates 1580)</p> <p>The Plan is identified by the following numbers under Internal Revenue Service rules.</p> <p>#006 - Plan Number assigned by U S WEST for pensions and certain death benefits paid from the Trust fund.</p>	<p><u>DEATH BENEFITS</u> (See generally, pp. 19-20 - Bates 1577-1578)</p> <p>Your qualified beneficiaries are protected by the Plan’s sickness and accident death benefit provisions for the entire period of your employment and during your retirement on a service or disability pension.</p> <p><u>Sickness Death Benefit</u> . . . A benefit equal to one year’s pay at retirement will be paid to the mandatory beneficiary (if any) of an employee who dies after retirement while receiving a service or disability pension.</p> <p>. . . Death benefit payments may be made in lump sum or installments at the Committee’s discretion.</p>	<p><u>INTRODUCTION</u> (pg. 2 - Bates 1560)</p> <p>U S WEST may from time to time make changes in the Plan or may terminate the Plan, but future changes or termination will not affect the rights of any individual to any benefit or pension which he or she may have previously become entitled to receive.</p> <p><u>PLAN TERMINATION</u> (pp. 22-23 - Bates 1580-1581)</p> <p>. . . Essentially, in the event of a Plan termination, the assets of the Plan Trust fund would first be allocated to pay benefits to participants and beneficiaries who are already receiving benefits under the Plan at the time of termination or who had the right to immediately receive such benefits if they had retired prior to such time. . . After benefits are provided to participants or beneficiaries in this highest priority, remaining assets would be allocated to other participants or beneficiaries in certain other priority categories. . .</p>		
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<p>January 1, 1986</p>	<p>3662-3830</p>	<p>Governing Document -</p> <p>U S WEST Pension Plan</p> <p>U S WEST, Inc. and Such of its Subsidiary Companies which are Participating Companies</p> <p>Effective January 1, 1984</p> <p>As Amended Effective January 1, 1986</p>		<p><u>Section 5.3(a) Pensioner Death Benefit Amount</u> (pg. 103 - Bates 3774)</p> <p>In the event of the death of any persons who at the time of death is receiving a pension granted under Paragraph 1(a) [Service Pension] or 1(c) [Disability Pension] of Section 4 of this Plan or any Predecessor Plan, the Committee or a Participating Company Committee, as applicable, in its discretion, but subject to the following provisions of this Paragraph 3, may authorize a Death Benefit to the spouse or dependent relatives of the pensioner. . .</p> <p><u>Section 4.a Mandatory Beneficiaries</u> (pg. 105-106 - Bates 3776-3777)</p> <p>In the event of death by accident, the maximum Accident Death Benefit specified in Paragraph 1 of this Section, or in the event of death by sickness, the maximum Sickness Death Benefit specified in Paragraph 2 of this Section, shall be paid, subject to the provisions of Subparagraph (c) of this Paragraph 4, to the spouse of the deceased employee if living with him at the time of his death, or to the unmarried child or children of the deceased employee under the age of 23 years. . . or a dependent parent. . .</p>	<p><u>Section 10, Changes in Plan</u> (pg.152 - Bates 3830)</p> <p>The Committee. . . may from time to time make changes in the Plan set forth in this document, and the Company may terminate said Plan, but such changes or termination shall not affect the rights of any employee, without his consent, to any benefit or pension to which he may have previously become entitled hereunder.</p> <p><u>Section 4.10, Pension Plan Termination Arrangements</u> (pp. 94-95 - Bates 3764-3765)</p> <p>. . . Second: To making provisions for the payment of death benefits attributable to deaths occurring prior to the date of termination which would have been payable from the U S WEST Management Pension Fund, and for the payment, upon the death of retired employees who are on the pension roll as of the date of termination and of employees eligible as of that date for retirement, of death benefits. . . .</p>	<p><u>Section 6.1 Rights to Pensions or Benefits</u> (pg. 114 - Bates 3788)</p> <p>Neither the action of the Board of Directors in establishing this Plan nor any action hereafter taken by the Board or the Committee or any Participating Company shall be construed as giving to any officer, agent or employee. . . any right or claim to any pension or other benefit or allowance after discharge from the service of any Participating Company, unless the right to such pension or benefit has accrued prior to such discharge. Except in the event of termination of the Plan, no employee or annuitant shall have any right to a service or deferred vested pension unless he meets the conditions specified in Paragraph 1(a) or 1(b) of Section 4 or the provisions of Section 7 of the Plan, nor any right in the U S WEST Pension Fund unless a pension authorized by the Committee or a Participating Company Committee, as applicable, under the Plan has not been paid, nor any right against any Participating Company to any benefit under the Plan other than the amount to which the employee or annuitant has theretofore become entitled and which the Committee or a Participating Company Committee, as applicable, has directed to be paid to that employee or annuitant under the Plan.</p>	<p><u>Section 4.8 Pension Funding Policy and Method</u> (pg. 85-86 - Bates 3755-3756)</p> <p>The U S WEST Pension Plan shall be held by a trustee or trustees or an insurance company or companies as permitted by law for pension and death benefit purposes only and shall be disbursed as directed by the Company or any other Participating Company, ad applicable, from time to time. The Company undertakes to preserve the integrity of the U S WEST Pension Plan as a fund held in trust or by an insurance company or companies as permitted by law to be applied solely to pension and death benefit purposes and to take such action as may be necessary or appropriate to insure the application of the entire fund, to such purposes</p>
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<p>January 1, 1986</p>	<p>3881-3988</p>	<p>Governing Document -</p> <p>U S WEST Management Pension Plan</p> <p>U S WEST, Inc. and Such of its Subsidiary Companies which are Participating Companies</p> <p>Effective January 1, 1984</p> <p>As Amended Effective January 1, 1986</p>		<p><u>Section 5.3(a) Pensioner Death Benefit Amount</u> (pg. 80 - Bates 3921)</p> <p>In the event of the death of any persons who at the time of death is receiving a pension granted under Paragraph 1(a) [Service Pension] or 1(c) [Disability Pension] of Section 4 of this Plan or any Predecessor Plan, the Committee or a Participating Company Committee, as applicable, in its discretion, but subject to the following provisions of this Paragraph 3, may authorize a Death Benefit to the spouse or dependent relatives of the pensioner. . .</p> <p><u>Section 4.a Mandatory Beneficiaries</u> (pg. 82-83 - Bates 3923-3924)</p> <p>In the event of death by accident, the maximum Accident Death Benefit specified in Paragraph 1 of this Section, or in the event of death by sickness, the maximum Sickness Death Benefit specified in Paragraph 2 of this Section, shall be paid, subject to the provisions of Subparagraph (c) of this Paragraph 4, to the spouse of the deceased employee if living with him at the time of his death, or to the unmarried child or children of the deceased employee under the age of 23 years. . . or a dependent parent.</p>	<p><u>Section 11, Changes in Plan</u> (pg.140 - Bates 3988)</p> <p>The Committee. . . may from time to time make changes in the Plan set forth in this document, and the Company may terminate said Plan, but such changes or termination shall not affect the rights of any employee, without his consent, to any benefit or pension to which he may have previously become entitled hereunder.</p> <p><u>Section 4.10, Pension Plan Termination Arrangements</u> (pg. 72 - Bates 3913)</p> <p>. . . Second: To making provisions for the payment of death benefits attributable to deaths occurring prior to the date of termination which would have been payable from the U S WEST Management Pension Fund, and for the payment, upon the death of retired employees who are on the pension roll as of the date of termination and of employees eligible as of that date for retirement, of death benefits. . . .</p>	<p><u>Subsection 6.1 Rights to Pensions or Benefits</u> (pg. 92 - Bates 3934)</p> <p>Neither the action of the Board of Directors in establishing this Plan nor any action hereafter taken by the Board or the Committee or any Participating Company shall be construed as giving to any officer, agent or employee. . . any right or claim to any pension or other benefit or allowance after discharge from the service of any Participating Company, unless the right to such pension or benefit has accrued prior to such discharge. Except in the event of termination of the Plan, no employee or annuitant shall have any right to a service or deferred vested pension unless he meets the conditions specified in Paragraph 1(a) or 1(b) of Section 4 or the provisions of Section 7 of the Plan, nor any right in the U S WEST Management Pension Fund unless a pension authorized by the Committee or a Participating Company Committee, as applicable, under the Plan has not been paid, nor any right against any Participating Company to any benefit under the Plan other than the amount to which the employee or annuitant has theretofore become entitled and which the Committee or a Participating Company Committee, as applicable, has directed to be paid to that employee or annuitant under the Plan.</p>	<p><u>Section 4.8 Pension Funding Policy and Method</u> (pg. 63-64 - Bates 3904-3905)</p> <p>The U S WEST Management Pension Plan shall be held by a trustee or trustees or an insurance company or companies as permitted by law for pension and death benefit purposes only and shall be disbursed as directed by the Company or any other Participating Company, ad applicable, from time to time. The Company undertakes to preserve the integrity of the U S WEST Management Pension Plan as a fund held in trust or by an insurance company or companies as permitted by law to be applied solely to pension and death benefit purposes and to take such action as may be necessary or appropriate to insure the application of the entire fund, to such purposes</p>
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<p>January 1, 1987</p>	<p>1074-1126</p>	<p>SPD - U S WEST Pension Plan</p> <p>(With Amendments Effective January 1, 1987)</p>	<p><u>TYPE OF PLAN</u> (pg. 27 - Bates 1103)</p> <p>The Plan is classified as both a pension plan and a welfare plan under the definitions of ERISA. It is a “defined benefit plan” for service and deferred vested pension purposes and for payment of certain sickness death benefits upon the death of a Pension Plan participant. The Plan is a “welfare plan” for purposes of providing disability pensions and other death benefit payments.</p> <p><u>PLAN IDENTIFICATION NUMBERS</u> (pg. 28- Bates 1104)</p> <p>The Plan is identified by the following numbers under Internal Revenue Service rules.</p> <p>#005 - Plan Number assigned by U S WEST for pensions and certain death benefits paid from the Trust fund.</p>	<p><u>DEATH BENEFITS</u> (See generally, pp. 23-25 - Bates 1099-1101)</p> <p>Your qualified beneficiaries are protected by the Plan’s sickness and accident death benefit provisions for the entire period of your employment and during your retirement on a service or disability pension.</p> <p><u>Sickness Death Benefit</u> . . . A benefit equal to one year’s pay at retirement will be paid to the mandatory beneficiary (if any) of an employee who dies after retirement while receiving a service or disability pension.</p> <p>. . . Death benefit payments may be made in lump sum or installments at the Committee’s discretion.</p>	<p><u>INTRODUCTION</u> (pg. 2 - Bates 1078)</p> <p>U S WEST may from time to time make changes in the Plan or may terminate the Plan, but future changes or termination will not affect the rights of any individual to any benefit or pension which he or she may have previously become entitled to receive.</p> <p><u>PLAN TERMINATION</u> (pp. 28-29 - Bates 1104-1105)</p> <p>. . . Essentially, in the event of a Plan termination, the assets of the Plan Trust fund would first be allocated to pay benefits to participants and beneficiaries who are already receiving benefits under the Plan at the time of termination or who had the right to immediately receive such benefits if they had retired prior to such time. . . After benefits are provided to participants or beneficiaries in this highest priority, remaining assets would be allocated to other participants or beneficiaries in certain other priority categories. . .</p>		
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<p>January 1, 1987</p>	<p>5662-5704</p>	<p>SPD -</p> <p>U S WEST Management Pension Plan</p> <p>With Amendments Effective January 1, 1987</p>	<p><u>TYPE OF PLAN</u> (pg. 27 - Bates 1103)</p> <p>The Plan is classified as both a pension plan and a welfare plan under the definitions of ERISA. It is a “defined benefit plan” for service and deferred vested pension purposes and for payment of certain sickness death benefits upon the death of a Pension Plan participant. The Plan is a “welfare plan” for purposes of providing disability pensions and other death benefit payments.</p> <p><u>PLAN IDENTIFICATION NUMBERS</u> (pg. 24- Bates 5688)</p> <p>The Plan is identified by the following numbers under Internal Revenue Service rules.</p> <p>#006 - Plan Number assigned by U S WEST for pensions and certain death benefits paid from the Trust fund.</p>	<p><u>DEATH BENEFITS</u> (See generally, pp. 20-22 - Bates 5684-5686)</p> <p>Your qualified beneficiaries are protected by the Plan’s sickness and accident death benefit provisions for the entire period of your employment and during your retirement on a service or disability pension.</p> <p><u>Sickness Death Benefit</u> . . . A benefit equal to one year’s pay at retirement will be paid to the mandatory beneficiary (if any) of an employee who dies after retirement while receiving a service or disability pension.</p> <p>. . . Death benefit payments may be made in lump sum or installments at the Committee’s discretion.</p>	<p><u>INTRODUCTION</u> (pg. 2 - Bates 5666)</p> <p>U S WEST may from time to time make changes in the Plan or may terminate the Plan, but future changes or termination will not affect the rights of any individual to any benefit or pension which they may have previously been entitled to receive.</p> <p><u>PLAN TERMINATION</u> (pp. 24-26 - Bates 5688-5690)</p> <p>. . . Essentially, in the event of a Plan termination, the assets of the Plan Trust fund would first be allocated to pay benefits to participants and beneficiaries who are already receiving benefits under the Plan at the time of termination or who had the right to immediately receive such benefits if they had retired prior to such time. . . After benefits are provided to participants or beneficiaries in this highest priority, remaining assets would be allocated to other participants or beneficiaries in certain other priority categories. . .</p>		
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<p>January 1, 1989</p> <p>Note: Distributed <i>after</i> July 1, 1989</p>	<p>No Bates Nos.</p>	<p>SPD -</p> <p>U S WEST Management Pension Plan</p> <p>(With Amendments Effective January 1, 1989)</p>	<p><u>TYPE OF PLAN</u> (pg. 10 - no Bates No.)</p> <p>The Plan is classified as both a pension plan and a welfare plan under the definitions of ERISA. It is a “defined benefit plan” for service and deferred vested pension purposes and for payment of certain sickness death benefits upon the death of a Pension Plan participant. The Plan is a “welfare plan” for purposes of providing disability pensions and other death benefit payments.</p> <p><u>PLAN IDENTIFICATION NUMBERS</u> (pg. 11- no Bates No.)</p> <p>The Plan is identified by the following numbers under Internal Revenue Service rules.</p> <p>#006 - Plan Number assigned by U S WEST for pensions and certain death benefits paid from the Trust fund.</p>	<p><u>DEATH BENEFITS</u> (See generally, pp. 9-10 - no Bates No.)</p> <p>This Plan may pay your qualified beneficiaries a death benefit due to sickness or accident..</p> <p><u>Sickness Death Benefit</u> . . . If you should die after retirement while receiving a service or disability pension, a benefit equal to one year’s pay at retirement will be paid to the mandatory beneficiary (if any).</p> <p>. . . Death benefit payments may be made in lump sum or installments at the Committee’s discretion.</p>	<p><u>INTRODUCTION</u> (pg. 1 - no Bates No.)</p> <p>[Note: Unlike prior SPDs, <i>nothing</i> is mentioned or disclosed about any right of U S WEST to make any changes from time to time There is <i>only</i> a disclosed reservation of right to terminate the plan].</p> <p><u>PLAN TERMINATION</u> (p. 11 - Bates 1139)</p> <p>. . . Essentially, in the event of a Plan termination, the assets of the Plan Trust fund would first be allocated to pay benefits to participants and beneficiaries who are already receiving benefits under the Plan at the time of termination or who had the right to immediately receive such benefits if they had retired prior to such time. . . After benefits are provided to participants or beneficiaries in this highest priority, remaining assets would be allocated to other participants or beneficiaries in certain other priority categories. . .</p>		
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<p>January 1, 1990</p> <p>Note: Distributed <i>after</i> December 1, 1990</p>	<p>1127-1144</p>	<p>SPD - U S WEST Pension Plan</p> <p>(With Amendments Effective January 1, 1990)</p>	<p><u>TYPE OF PLAN</u> (pg. 10 - Bates 1138)</p> <p>The Plan is classified as both a pension plan and a welfare plan under the definitions of ERISA. It is a “defined benefit plan” for service and deferred vested pension purposes and for payment of certain sickness death benefits upon the death of a Pension Plan participant. The Plan is a “welfare plan” for purposes of providing disability pensions and other death benefit payments.</p> <p><u>PLAN IDENTIFICATION NUMBERS</u> (pg. 10- Bates 1138)</p> <p>The Plan is identified by the following numbers under Internal Revenue Service rules.</p> <p>#005 - Plan Number assigned by U S WEST for pensions and certain death benefits paid from the Trust fund.</p>	<p><u>DEATH BENEFITS</u> (See generally, pp. 23-25 - Bates 1099-1101)</p> <p>This Plan may pay your qualified beneficiaries a death benefit due to sickness or accident..</p> <p><u>Sickness Death Benefit</u> . . . If you should die after retirement while receiving a service or disability pension, a benefit equal to one year’s pay at retirement will be paid to the mandatory beneficiary (if any).</p> <p>. . . Death benefit payments may be made in lump sum or installments at the Committee’s discretion.</p>	<p><u>INTRODUCTION</u> (pg. 2 - Bates 1129)</p> <p>[Note: Unlike prior SPDs, <i>nothing</i> is mentioned or disclosed about any right of U S WEST to make any changes from time to time There is <i>only</i> a disclosed reservation of right to terminate the plan].</p> <p><u>PLAN TERMINATION</u> (p. 11 - Bates 1139)</p> <p>. . . Essentially, in the event of a Plan termination, the assets of the Plan Trust fund would first be allocated to pay benefits to participants and beneficiaries who are already receiving benefits under the Plan at the time of termination or who had the right to immediately receive such benefits if they had retired prior to such time. . . After benefits are provided to participants or beneficiaries in this highest priority, remaining assets would be allocated to other participants or beneficiaries in certain other priority categories. . .</p>		
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<p>July 1, 1991</p>	<p>0747- 0781 and 782- 795</p>	<p>SPD - U S WEST Pension Plan (With Amendments Effective January 1, 1990)</p>	<p><u>TYPE OF PLAN</u> (pg. 279 - Bates 771)</p> <p>The Plan is classified as both a pension plan and a welfare plan under the definitions of ERISA. It is a “defined benefit plan” for service and deferred vested pension purposes and for payment of certain sickness death benefits upon the death of a Pension Plan participant. The Plan is a “welfare plan” for purposes of providing disability pensions and other death benefit payments.</p> <p><u>PLAN IDENTIFICATION NUMBERS</u> (pg. 300 - Bates 789)</p> <p>005 524 572</p>	<p><u>DEATH BENEFITS</u> (See generally, pp. 275-277 - Bates 767-769)</p> <p>This Plan may pay your qualified beneficiaries a death benefit due to sickness or accident. . .</p> <p><u>Sickness Death Benefit</u> . . . If you should die after retirement while receiving a service or disability pension, a benefit equal to one year’s pay at retirement will be paid to the mandatory beneficiary (if any).</p> <p>. . . Death benefit payments may be made in lump sum or installments at the Committee’s discretion.</p>	<p><u>Situations Affecting Your Benefits</u> (pg. 303 - Bates 0792)</p> <p>If Plans End Or Change While the Company expects its plans to continue indefinitely, it reserves the right to end, suspend, or amend its plans at any time, in whole or in part, subject to any applicable collective bargaining agreements. The plans can also be changed retroactively if necessary or appropriate within applicable legal restrictions</p> <p><u>PLAN TERMINATION</u> (p. 280 - Bates 772)</p> <p>. . . Essentially, in the event of a Plan termination, the assets of the Plan Trust fund would first be allocated to pay benefits to participants and beneficiaries who are already receiving benefits under the Plan at the time of termination or who had the right to immediately receive such benefits if they had retired prior to such time. . . After benefits are provided to participants or beneficiaries in this highest priority, remaining assets would be allocated to other participants or beneficiaries in certain other priority categories. . .</p>		
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<p>July 1, 1991</p>	<p>0713- 0746 and 782- 785</p>	<p>SPD - U S WEST Management Pension Plan (With Amendments Effective January 1, 1990)</p>	<p><u>TYPE OF PLAN</u> (pg. 247 - Bates 737)</p> <p>The Plan is classified as both a pension plan and a welfare plan under the definitions of ERISA. It is a “defined benefit plan” for service and deferred vested pension purposes and for payment of certain sickness death benefits upon the death of a Pension Plan participant. The Plan is a “welfare plan” for purposes of providing disability pensions and other death benefit payments.</p> <p><u>PLAN IDENTIFICATION NUMBERS</u> (pg. 300 - Bates 789)</p> <p>006 525 572</p>	<p><u>DEATH BENEFITS</u> (See generally, pp. 243-245 - Bates 733-735)</p> <p>This Plan may pay your qualified beneficiaries a death benefit due to sickness or accident. . .</p> <p><u>Sickness Death Benefit</u> . . . If you should die after retirement while receiving a service or disability pension, a benefit equal to one year’s pay at retirement will be paid to the mandatory beneficiary (if any).</p> <p>. . . Death benefit payments may be made in lump sum or installments at the Committee’s discretion.</p>	<p><u>Situations Affecting Your Benefits</u> (pg. 303 - Bates 0792)</p> <p>If Plans End Or Change While the Company expects its plans to continue indefinitely, it reserves the right to end, suspend, or amend its plans at any time, in whole or in part, subject to any applicable collective bargaining agreements. The plans can also be changed retroactively if necessary or appropriate within applicable legal restrictions</p> <p><u>PLAN TERMINATION</u> (p. 248 - Bates 738)</p> <p>. . . Essentially, in the event of a Plan termination, the assets of the Plan Trust fund would first be allocated to pay benefits to participants and beneficiaries who are already receiving benefits under the Plan at the time of termination or who had the right to immediately receive such benefits if they had retired prior to such time. . . After benefits are provided to participants or beneficiaries in this highest priority, remaining assets would be allocated to other participants or beneficiaries in certain other priority categories. . .</p>		
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<p>January 1, 1994</p> <p>Note:</p> <p>This version of the January 1, 1994 SPD was placed in the “Your U S WEST Benefits” handbook distributed only to active U S WEST Employees</p> <p>See pg. A3 - Bates 0521</p>	<p>0515-0637</p>	<p>SPD - U S WEST Pension Plan</p> <p>(With Amendments Effective January 1, 1990)</p>	<p><u>Plan Classification</u> (pg. L59 - Bates 0593)</p> <p>The plan is classified as both a pension plan and a welfare plan under the definitions of ERISA. It is a “defined benefit plan” for service and deferred vested pension purposes and for payment of certain sickness death benefits upon the death of a pension plan participant. The plan is a “welfare plan” for purposes of providing disability pensions and other death benefit payments.</p> <p><u>PLAN IDENTIFICATION NUMBERS</u> (pg. M6 - Bates 606)</p> <p>005 512 524</p>	<p><u>DEATH BENEFITS</u> (pg. L5- Bates 0539) Effective February 28, 1993, the lump-sum death benefit provided by the U S WEST Pension Plan for the eligible beneficiaries of active employees and retirees was frozen based on pay in effect on that date. Death benefits were eliminated for employees hired on or after March 1, 1993.</p> <p><u>Sickness And Accident Frozen Death Benefit</u> (pg. L50-L53 - Bates 0584-0587)</p> <p>This Plan may pay your qualified beneficiaries a death benefit which is equal to one year’s pay for your death due to sickness or accident. Effective February 28, 1993, the death benefit for active employees was frozen based on their eligible pay as of that date. . . As a retire with a TOE date of February 28, 1993 or earlier, your eligible beneficiaries are eligible to receive this benefit. If your TOE date is February 28, 1993 or earlier, your eligible beneficiaries are entitled to this benefit. . . The death benefit is payable in a lump sum payment. There are no other payment options available.</p> <p>Sickness Frozen Death Benefit Your qualified beneficiary, if any, will receive the frozen death benefit if: * You die as an active employee or retiree as a result of illness or injury, including an on-the-job accidental injury; and * You have a TOE date of February 28, 1993 or earlier.</p> <p>Beneficiaries For Frozen Death Benefit Mandatory beneficiaries for this benefit are: * Your spouse if living with you at the time of your death; * Your unmarried, dependent children up to age 23, or age 23 and older if disabled and incapable of self-support; or * A dependent parent living with you or in a separate household that you provide.</p>	<p><u>Important Provisions</u> (pg. A1 - Bates 0519)</p> <p>The following legal provisions need to be considered when reading and using this handbook:</p> <p>* Amendments and termination. The Company and any of its affiliates reserve the right to amend or terminate any of the plans – with respect to all participant classes, retired or otherwise – without prior notice to or consultation with any participants, subject to applicable collective bargaining agreements.</p> <p><u>Plan Termination</u> (pg. L60-L62 - Bates 0594-0596)</p> <p>. . . Essentially, in the event of a plan termination, the assets of the plan trust fund would first be allocated to pay benefits to participants and beneficiaries who are already receiving benefits under the plan at the time of termination or who had the right to receive such benefits immediately if they had retired prior to such time. . . After benefits are provided to participants or beneficiaries in this highest priority, remaining assets would be allocated to other participants or beneficiaries in certain other priority categories. . .</p>	<p>Situations Affecting Your Benefits (pg. M10 - Bates 0610)</p> <p>If Plans End Or Change</p> <p>While the Company expects its plans to continue indefinitely, it reserves the right to end, suspend, or amend its plans at any time, in whole or in part, subject to any applicable collective bargaining agreements. The plans can also be changed retroactively if necessary or appropriate within applicable legal restrictions.</p>	<p><u>Important Provisions</u> (pg. A1 - Bates 0519)</p> <p>Because the legal documents upon which this handbook are based can be difficult to understand, an effort has been made to write this in non-technical language. You will want to keep this handbook where it will be readily available as a reference. You should also keep copies of Benefits Bulletins and Company newspaper articles on benefits which are distributed from time to time when certain aspects of your plan change or need additional clarification</p>
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<p>December 29, 1994</p> <p>Note:</p> <p>This plan document was not executed until December 29, 1994 and the U S WEST's effort was to make it retroactive to January 1, 1993</p> <p>See pg. 67 - Bates 4298</p>	<p>4228-4317</p>	<p>Governing Document -</p> <p>U S WEST PENSION PLAN</p> <p>Amended and Restated Effective January 1, 1993</p>		<p><u>Section 7.3(a) Death After Retirement</u> (pg. 49 - Bates 4280) If a Former Participant who is receiving a service pension. . . or a disability pension. . . dies while receiving such pension [a "Pensioner"]. . . the Committee, in its discretion, but subject to the following provisions of this Section 7.3, may authorize a Death Benefit to the spouse or dependent relatives of the Pensioner. . .</p> <p><u>Section 7.4.(b) Mandatory Beneficiaries</u> (pg. 50 - Bates 4281) The Participant's (1) surviving Spouse if living with the Participant at the time of his death, (2) the unmarried child or children who are under the age of 23 years. . . or (3) a dependent parent who lives in the same household with the Participant or who lives in a separate household provided for the parent by the Participant shall receive the Accidental or Sickness Death Benefit provided for in this Article VII.</p> <p><u>Section 7.5 Method of Payment</u> (pg. 50 - Bates 4281) <u>Payment on Death of Employee or Pensioner.</u> The Accidental or Sickness Death Benefit may be paid in a lump sum or installments (which need not be equal), at the discretion of the Committee.</p> <p><u>Section 7.11 Termination of Death Benefits</u> (pg. 52 - Bates 4283) Effective February 28, 1993, the provisions of this Article VII shall not apply to individuals first hired on or after March 1, 1993. . . Individuals who have a Term of Employment that includes any period prior to March 1, 1993. . . shall be entitled to a frozen benefit under this Article VII as of February 28, 1993.</p>	<p><u>Section 11.4 Amendment by U S WEST</u> (pp. 58-59 - Bates 4289-4290)</p> <p>U S WEST expects this Plan to be permanent, but as future conditions cannot be foreseen it reserves the right to amend the Plan at any time, without prior notice to anyone. The Plan may be amended by a writing. . . Amendments may modify the rights and interests of Employees who are Participants in the Plan at the time thereof as well as future Participants but amendments may not diminish the accrued benefit of any Participant as of the effective date of such amendment. . .</p> <p><u>Section 11.2 Distribution on Termination</u> (pg. 56 - Bates 4287)</p> <p>. . .(ii) To make provision for the payment of death benefits attributable to deaths occurring prior to the date of termination which would have been payable from the Trust Fund, and for the payment, upon the death of retired employees who are on the pension roll as of the date of termination and of employees eligible as of that date for retirement, of death benefits which would have been payable from the Trust Fund, had the Plan not been so terminated.</p>	<p><u>Section 13.1 Right to Dismiss Employees</u> (pg. 63 - Bates 4294)</p> <p>U S WEST or any of its subsidiaries may terminate the employment of any Employee s freely and with the same effect as if this Plan were not in existence. Participation in this Plan by an Employee shall not constitute an express or implied contract of employment between an Employee and U S WEST or any of its subsidiaries.</p> <p><u>Section 13.3 Exclusive Benefit</u> (pg. 64 - Bates 4295)</p> <p>It is the intention of U S WEST and each Participating Company that it shall be impossible for any part of the Trust Fund ever to be used for or diverted to purposes other than for the exclusive benefit of its Employees and their beneficiaries, that all of the assets of the Trust Fund shall be used solely for pension purposes in an equitable manner consistent with the purposes of the Plan, and that this Plan shall be construed to follow the spirit and intent of the Internal Revenue Code and ERISA.</p>	<p><u>Section 1.0</u> (pg. 1 - Bates 4232)</p> <p>[Note: A new term - a definition for "Accrued Benefit"]</p> <p>"Accrued Benefit" means as to Occupational Employees, the benefit to which a Participant is entitled in accordance with Article V-A as of the applicable date of calculation, and as to Management Employees, the benefit to which a Participant is entitled under Article V-B, using Final Average Compensation and Pension Calculation as of the applicable date of calculation.</p>
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<p>January 1, 1996</p> <p>Note:</p> <p>This version of the January 1, 1996 SPD was placed in the “Your U S WEST Benefits” handbook distributed only to active U S WEST Employees during July 1996</p>	<p>0429-0514</p>	<p>SPD -</p> <p>U S WEST Pension Plan</p> <p>(With Plan Amendments Through December 31, 1995)</p>	<p>Plan Classification (pg. L63 - Bates 0493)</p> <p>The plan is classified as both a pension plan and a welfare plan under the definitions of ERISA. It is a “defined benefit plan” for service and deferred vested pension purposes and for payment of certain sickness death benefits upon the death of a pension plan participant. The plan is a “welfare plan” for purposes of providing disability pensions and other death benefit payments.</p> <p>PLAN IDENTIFICATION NUMBERS (pg. M6 - Bates 508)</p> <p>005 512 524</p>	<p>Sickness And Accident Frozen Death Benefit (pp. L53-L56 - Bates 0483-0486)</p> <p>This Plan may pay your qualified beneficiaries a death benefit which is equal to one year’s pay for your death due to sickness or accident. Effective February 28, 1993, the death benefit for active employees was frozen based on their eligible pay as of that date. . . As a retire with a TOE date of February 28, 1993 or earlier, your eligible beneficiaries are eligible to receive this benefit. If your TOE date is February 28, 1993 or earlier, your eligible beneficiaries are entitled to this benefit. . . The death benefit is payable in a lump sum payment. There are no other payment options available.</p> <p>Sickness Frozen Death Benefit Your qualified beneficiary, if any, will receive the frozen death benefit if: * You die as an active employee or retiree as a result of illness or injury, including an on-the-job accidental injury; and * You have a TOE date of February 28, 1993 or earlier.</p> <p>Beneficiaries For Frozen Death Benefit Mandatory beneficiaries for this benefit are: * Your spouse if living with you at the time of your death; * Your unmarried, dependent children up to age 23, or age 23 and older if disabled and incapable of self-support; or * A dependent parent living with you or in a separate household that you provide.</p>	<p>Important Provisions (pg. A1 - Bates 0519 - January 1994 Handbook); and (pg. A1 - Bates 6635 - July 1997 Supplement to January 1996 Handbook)</p> <p>The following legal provisions need to be considered when reading and using this handbook: * Amendments and termination. The Company and any of its affiliates reserve the right to amend or terminate any of the plans – with respect to all participant classes, retired or otherwise – without prior notice to or consultation with any participants, subject to applicable collective bargaining agreements.</p> <p>Plan Termination (pp. L64-L66 - Bates 0494-0596)</p> <p>. . . Essentially, in the event of a plan termination, the assets of the plan trust fund would first be allocated to pay benefits to participants and beneficiaries who are already receiving benefits under the plan at the time of termination or who had the right to receive such benefits immediately if they had retired prior to such time. . . After benefits are provided to participants or beneficiaries in this highest priority, remaining assets would be allocated to other participants or beneficiaries in certain other priority categories. . .</p>	<p>Situations Affecting Your Benefits (pg. M10 - Bates 0512)</p> <p>If Plans End Or Change</p> <p>While the Company expects its plans to continue indefinitely, it reserves the right to end, suspend, or amend its plans at any time, in whole or in part, subject to any applicable collective bargaining agreements. The plans can also be changed retroactively if necessary or appropriate within applicable legal restrictions.</p>	<p>Important Provisions (pg. A1 - Bates 0519 - January 1994 Handbook); and (pg. A1 - Bates 6635 - July 1997 Supplement to January 1996 Handbook)</p> <p>Because the legal documents upon which this handbook are based can be difficult to understand, an effort has been made to write this in non-technical language. You will want to keep this handbook where it will be readily available as a reference. You should also keep copies of Benefits Bulletins and Company newspaper articles on benefits which are distributed from time to time when certain aspects of your plan change or need additional clarification.</p>
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<p>January 1, 1996</p> <p>Note:</p> <p>This version of the January 1, 1996 SPD was distributed to U S WEST Retirees during July 1996</p>	<p>0352-0408</p>	<p>SPD - U S WEST Pension Plan (With Plan Amendments Through December 31, 1995)</p>	<p>Plan Classification (pg. 46 - Bates 0403)</p> <p>The plan is classified as both a pension plan and a welfare plan under the definitions of ERISA. It is a “defined benefit plan” for service and deferred vested pension purposes and for payment of certain sickness death benefits upon the death of a pension plan participant. The plan is a “welfare plan” for purposes of providing disability pensions and other death benefit payments.</p> <p>PLAN IDENTIFICATION NUMBERS (pg. M6 - Bates 508)</p> <p>005 512 524</p> <p>Type of Plan:</p> <p>Defined Benefit and Welfare</p>	<p>Sickness And Accident Frozen Death Benefit (pp. 40-42 - Bates 0497-0499)</p> <p>This Plan may pay your qualified beneficiaries a death benefit which is equal to one year’s pay for your death due to sickness or accident. Effective February 28, 1993, the death benefit for active employees was frozen based on their eligible pay as of that date. . . As a retire with a TOE date of February 28, 1993 or earlier, your eligible beneficiaries are eligible to receive this benefit. If your TOE date is February 28, 1993 or earlier, your eligible beneficiaries are entitled to this benefit. . . The death benefit is payable in a lump sum payment. There are no other payment options available.</p> <p>Sickness Frozen Death Benefit Your qualified beneficiary, if any, will receive the frozen death benefit if: * You die as an active employee or retiree as a result of illness or injury, including an on-the-job accidental injury; and * You have a TOE date of February 28, 1993 or earlier.</p> <p>Beneficiaries For Frozen Death Benefit Mandatory beneficiaries for this benefit are: * Your spouse if living with you at the time of your death; * Your unmarried, dependent children up to age 23, or age 23 and older if disabled and incapable of self-support; or * A dependent parent living with you or in a separate household that you provide.</p>	<p>Important Provisions (pg. 1 - Bates 0358)</p> <p>The following legal provisions need to be considered when reading and using this handbook: * Amendments and termination: Except where specifically provided otherwise, the Company and any of its affiliates reserve the right to amend or terminate any of the plans – with respect to all participant classes, retired or otherwise – without prior notice or consultation with any participants, subject to applicable collective bargaining agreements.</p> <p>Plan Termination (pp. 47-48 - Bates 0404-0405)</p> <p>. . . Essentially, in the event of a plan termination, the assets of the plan trust fund would first be allocated to pay benefits to participants and beneficiaries who are already receiving benefits under the plan at the time of termination or who had the right to receive such benefits immediately if they had retired prior to such time. . . After benefits are provided to participants or beneficiaries in this highest priority, remaining assets would be allocated to other participants or beneficiaries in certain other priority categories. . .</p>	<p>IF Plans End Or Change (pg. 4 - Bates 0361)</p> <p>While the Company expects its plans to continue indefinitely, it reserves the right to end, suspend, or amend its plans at any time, in whole or in part, subject to any applicable collective bargaining agreements. The plans can also be changed retroactively if necessary or appropriate within applicable legal restrictions.</p>	<p>Important Provisions (pg. 1 - Bates 0358)</p> <p>Because the legal documents upon which this handbook are based can be difficult to understand, an effort has been made to write this in non-technical language. You will want to keep this handbook where it will be readily available as a reference. You should also keep copies of Benefits Bulletins and Company newspaper articles on benefits which are distributed from time to time when certain aspects of your plan change or need additional clarification.</p> <p>The collective bargaining units negotiate benefits for active employees. Any negotiated changes to the U S WEST Pension Plan apply only to active employees – retirees and the associated retiree benefits are not subject to collective bargaining agreements.</p>
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<p>January 1, 1997</p> <p>Note:</p> <p>This plan document was not executed until January 25, 1998 and the U S WEST's effort was to make it retroactive to January 1, 1997</p> <p>See pg. 147 - Bates 4143</p>	<p>3989-4227</p>	<p>Governing Document -</p> <p>U S WEST PENSION PLAN</p> <p>Amended and Restated Effective January 1, 1997</p>		<p><u>Section 7.3(a) Death After Retirement</u> (pg. 117-118 - Bates 4113-4114)</p> <p>If a Former Participant dies while such person is receiving (i) a service pension. . . or . . . (iii) a disability pension. . . dies while receiving such pension [a "Pensioner"]. . . the Committee, shall authorize a Death Benefit to be paid to the Beneficiary of the Pensioner. . .</p> <p><u>Section 7.4.(b) Mandatory Beneficiaries</u> (pg. 119 - Bates 4115)</p> <p>The Participant's (1) surviving Spouse if living with the Participant at the time of his death, (2) the unmarried child or children who are under the age of 23 years. . . or (3) a dependent parent who lives in the same household with the Participant or who lives in a separate household provided for the parent by the Participant shall receive the Accidental or Sickness Death Benefit provided for in this Article VII.</p> <p><u>Section 7.5 Method of Payment</u> (pg. 119 - Bates 4115) <u>Payment on Death of Employee or Pensioner.</u> The benefits under this Article VII shall be paid in a lump sum.</p> <p><u>Section 7.11 Termination of Death Benefits</u> (pg. 121 - Bates 4117) Notwithstanding any other provision of this Article VII, effective February 28, 1993, the provisions of this Article VII shall not apply to individuals first hired on or after March 1, 1993. . . Individuals who have a Term of Employment that includes any period prior to March 1, 1993. . . shall be entitled to a frozen benefit under this Article VII as of February 28, 1993.</p>	<p><u>Section 11.4 Amendment by U S WEST</u> (pp. 132-133 - Bates 4128-4129)</p> <p>U S WEST expects this Plan to be permanent, but as future conditions cannot be foreseen it reserves the right to amend the Plan at any time, without prior notice to anyone. The Plan may be amended by a writing. . . Amendments may modify the rights and interests of Employees who are Participants in the Plan at the time thereof as well as future Participants but amendments may not diminish the accrued benefit (as defined in Section 411(d)(6) of the Code) of any Participant as of the effective date of such amendment.</p> <p><u>Section 11.2 Distribution on Plan Termination</u> (pp. 128-131 - Bates 4124-4127) . . .(ii) To make provision for the payment of death benefits attributable to deaths occurring prior to the date of termination which would have been payable from the Trust Fund, and for the payment, upon the death of retired employees who are on the pension roll as of the date of termination and of employees eligible as of that date for retirement, of death benefits which would have been payable from the Trust Fund, had the Plan not been so terminated.</p>	<p><u>Section 13.1 Right to Dismiss Employees</u> (pg. 139 - Bates 4135)</p> <p>U S WEST or any of its subsidiaries may terminate the employment of any Employees freely and with the same effect as if this Plan were not in existence. Participation in this Plan by an Employee shall not constitute an express or implied contract of employment between an Employee and U S WEST or any of its subsidiaries.</p>	<p><u>Section 1.0</u> (pg. 3 - Bates 3998)</p> <p>[Note: A more specific definition for "Accrued Benefit"]</p> <p>"Accrued Benefit" means as to Occupational Employees, the benefit to which a Participant is entitled in accordance with Article V-A as of the applicable date of calculation, and as to Management Employees, the benefit to which a Participant is entitled under Article V-B, using Final Average Compensation and Pension Calculation as of the applicable date of calculation. . . Accrued Benefits shall not include any benefits under Article VII [i.e., Pension Death Benefit] or under Appendix J or any benefit which is not an accrued benefit under Section 411(d)(6) of the Code.</p>
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<p>January 1, 1999</p> <p>Note: This SPD was labeled for internal use only</p> <p>See pg. 76 - Bates 5607</p> <p>"Confidential - Internal Use Only Disclose and Distribute solely to U S WEST Employees. . . Last Update: January 1, 1999"</p>	<p>5532-5610</p>	<p>SPD - U S WEST Pension Plan</p> <p>(With Plan Amendments Through January 1, 1999)</p> <p>Note: (p. 1- Bates 5532)</p> <p>"If you terminated employment before then [i.e., before January 1, 1999] the rules of the plan in effect at the time your employment ended govern your pension benefits. Your benefits are described in the SPD in effect at the time you terminated; thus, many of the rules in this SPD do not apply to you."</p>	<p>Plan Classification (pg. 67 - Bates 5598)</p> <p>The plan is classified as both a pension plan and a welfare plan under the definitions of ERISA. In general it is a pension plan, specifically a "defined benefit plan." The Plan is also a "welfare plan" solely to the extent it provides certain disability pensions / MDPP [i.e., Modified Disability Pension Program] payments and certain other death benefit payments directly out of operating expenses of the Participating Companies.</p> <p>Defined Benefit Plan A "defined benefit plan" is a retirement plan that provides an explicit benefit determined by a formula based on factors such as compensation, age and service.</p> <p><u>PLAN IDENTIFICATION NUMBERS</u> (pg. M6 - Bates 508)</p> <p>005 512 524</p>	<p>Sickness and Accidental Death Benefits (pg. 62-63 - Bates 5593-5594)</p> <p>If you have a TOE date before March 1, 1993, the plan may pay an additional sickness or accidental death benefit when you die if you are survived by a qualified beneficiary. . .</p> <p><u>Sickness Death Benefits</u> (pg. 63 - Bates 5594)</p> <p>If you are receiving a service pension as a monthly annuity and have a TOE date of February 28, 1993 or earlier, your qualified beneficiaries are eligible to receive a sickness death benefit of up to one year's pay. . .</p> <p><u>Lump Sum: Rollover Rules.</u> (pp 63-64 - Bates 5594-5595)</p> <p>The sickness death benefit (and accidental death benefit described below) is payable in a lump-sum payment. There are no other payment options available.</p>	<p>Plan Amendments (pg. 68 - Bates 5599)</p> <p>U S WEST, Inc., reserves the right to amend this plan at any time. The plan may be amended by the Board of Directors of U S WEST. It may also be amended by the Employee Benefits Committee or other person(s) to the extent amendment authority has been delegated by the Board of Directors.</p> <p>Plan Termination (pp. 68-69 - Bates 5599-5600)</p> <p>. . . Essentially, subject to ERISA, in the event of a plan termination, the assets of the plan trust fund would first be allocated to pay benefits to Participants and beneficiaries who are already receiving benefits under the plan at the time of termination or who had the right to receive such benefits immediately if they had retired prior to such time. . . After benefits are provided to participants or beneficiaries in this highest priority, remaining assets would be allocated to other Participants and beneficiaries in certain other priority categories. . .</p>	<p>Special Rule: (pg. 4 - Bates 5535)</p> <p>It is expected that on December 15, 1998, the plan will transfer a small portion of its excess assets to the Company to help pay retiree health care expenses, as permitted by Section 420 of the Internal Revenue Code and Section XIV of the Plan (a "420 Transfer"). Any active participant in the plan who is employed on the date of the 420 Transfer or any former participant who separated from service during the one-year period ending on the date of the 420 Transfer will become vested in his or her accrued benefit under the plan regardless of the participant's years of vesting service. If a participant's accrued benefit becomes vested as a result of a 420 Transfer, any additional accrued benefits which the participant earns thereafter will also be fully vested. . .</p> <p>[NOTE: This SPD contained a <i>new</i> section entitled]:</p> <p>DEFINITIONS - U S WEST PENSION PLAN (pg. 71-76 - Bates 5602-5607))</p> <p>Set forth below are summaries of some important definitions as used in the plan.</p> <p>(NOTE: There is no definition to explain what an "accrued" benefit is).</p>	
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<p>August 1, 1999</p> <p>Note:</p> <p>This version of the August 1, 1999 SPD was placed in the “U S WEST Benefits” Handbook distributed only to active U S WEST Employees</p>	<p>0001-0079</p>	<p>SPD - U S WEST Pension Plan</p> <p>(With Plan Amendments Through January 1, 1999)</p> <p>Note: (p. 175 - Bates 0009)</p> <p>“If you terminated employment before then [i.e., before January 1, 1999] the rules of the plan in effect at the time your employment ended govern your pension benefits.”</p>	<p>What type of plan is the Pension Plan? (pg. 232 - Bates 0066)</p> <p>The Plan is classified as a pension plan, a welfare plan and an excess plan under the definitions of ERISA. In general it is a pension plan, specifically a “defined benefit plan.” A “defined benefit plan” is a retirement plan that provides an explicit benefit determined by a formula based on factors such as compensation, age and service. The Plan is a “welfare plan” to the extent it provides certain disability pensions, MDPP [i.e., Modified Disability Pension Program] and certain other death benefit payments. The Plan is an “excess plan” to the extent it provides certain benefits in excess of certain IRS limits directly out of operating expenses of the Participating Companies.</p> <p><u>PLAN IDENTIFICATION NUMBERS</u> (pg. M6 - Bates 508)</p> <p>005 512 524</p>	<p>Who is eligible for a Sickness Death Benefit? (pg. 209 - Bates 0043)</p> <p>If you meet the age and service eligibility criteria listed in the following table (the “Modified Rule of 75”) and have a TOE date before March 1, 1993, you may be eligible for a sickness death benefit from the Plan. . .</p> <p>If you die solely as a result of sickness or injury while you are an active employee, or while you are receiving a service pension as a monthly annuity, your <u>qualified</u> beneficiaries are eligible to receive a sickness death benefit of up to one year’s pay (frozen as of March 1, 1993).</p> <p>How is the Sickness Death Benefit paid? (pg. 210 - Bates 0044)</p> <p>The Sickness Death Benefit is payable in a lump-sum payment after your death. There are no other payment options available unless you are a Management Employee who meets the Modified Rule of 75.</p> <p>What payment options are available under the Sickness Death Benefit if I am a Management Employee who is service pension eligible? If you are a Management Employee with a TOE of February 28, 1993 or earlier, meet the Modified Rule of 75, and elect a lump-sum or annuity/lump-sum distribution of your pension benefit at termination of employment, the present value (based on certain assumptions set forth in the plan) of the Sickness Death Benefit is paid as part of the lump-sum distribution. For this purpose, the lump sum equivalent uses a factor that assumes that the participant will be survived by a qualified beneficiary.</p>	<p>Can the Plan be amended? (pg.232 - Bates 0066)</p> <p>U S WEST, Inc., reserves the right to amend this Plan at any time. The Plan may be amended by the Board of Directors of U S WEST. It may also be amended by the Employee Benefits Committee or other person(s) to the extent amendment authority has been delegated by the Board of Directors.</p> <p>What happens if the Plan is terminated? (pg. 233 - Bates 0067)</p> <p>. . . Essentially, subject to ERISA, in the event of a Plan termination, the assets of the Plan trust fund would first be allocated to pay benefits to Participants and beneficiaries who are already receiving benefits under the plan at the time of termination or who had the right to receive such benefits immediately if they had retired prior to such time. . . After benefits are provided to participants or beneficiaries in this highest priority, remaining assets would be allocated to other Participants and beneficiaries in certain other priority categories. . .</p>	<p>Situations Affecting Your Benefits (pg. 243 - Bates 0077)</p> <p>If Plans End Or Change</p> <p>While the Company expects its plans to continue indefinitely, it reserves the right to end, suspend, or amend its plans at any time, in whole or in part, subject to any applicable collective bargaining agreements. The plans can also be changed retroactively if necessary or appropriate within applicable legal restrictions.</p> <p>What special rules apply to section 420 transfers? (pg. 219 - Bates 0053)</p> <p>The Plan may transfer a small portion of its excess assets to special accounts in the plan to help pay retiree health care expenses, as permitted by Section 420 of the Internal Revenue Code and Section XIV of the Plan (a “420 Transfer”). Any active participant in the plan who is employed on the date of the 420 Transfer or any former participant who separated from service during the one-year period ending on the date of the 420 Transfer will become vested in his or her accrued benefit under the plan regardless of the participant’s years of vesting service. If a participant’s accrued benefit becomes vested as a result of a 420 Transfer, any additional accrued benefits which the participant earns thereafter will also be fully vested. . .</p>	
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<p>January 1, 2001</p> <p>Note:</p> <p>This plan document was not executed until December 19, 2002 and the QWEST's effort was to make it retroactive to January 1, 2001</p> <p>See pg. 183 - no Bates No.</p>	<p>no Bates Nos.</p>	<p>Governing Document - QWEST PENSION PLAN</p> <p>Amended and Restated Effective January 1, 2001</p>		<p><u>Section 7.3(a) Death After Retirement</u> (pg. 117-118 - Bates 4113-4114)</p> <p>If a Former Participant dies while such person is receiving (i) a service pension. . . . (iii) a disability pension. . . the Committee, shall authorize a Death Benefit to be paid to the Beneficiary of the Pensioner. . .</p> <p><u>Section 7.4.(b) Mandatory Beneficiaries</u> (pg. 149 - no Bates No.)</p> <p>The Participant's (1) "eligible surviving Spouse," (2) "eligible dependent children," or (3) "eligible dependent parent," as each of those terms is defined in Appendix L, shall receive the Accidental or Sickness Death Benefit provided for in this Article VII.</p> <p><u>Section 7.5 Method of Payment</u> (pg. 149 - no Bates No.)</p> <p><u>Payment on Death of Employee or Pensioner.</u> The benefits under this Article VII shall be paid in a lump sum.</p> <p><u>Section 7.11 Termination of Death Benefits</u> (pg. 151 - no Bates No.)</p> <p>Notwithstanding any other provision of this Article VII, effective February 28, 1993, the provisions of this Article VII shall not apply to individuals first hired on or after March 1, 1993. . . Individuals who have a Term of Employment that includes any period prior to March 1, 1993. . . shall be entitled to a frozen benefit under this Article VII as of February 28, 1993.</p>	<p><u>Section 11.4 Amendment by the Company</u> (pg. 162 - no Bates No.)</p> <p>The Company expects this Plan to be permanent, but as future conditions cannot be foreseen it reserves the right to amend the Plan at any time, without prior notice to anyone. The Plan may be amended by a writing. . . Amendments may modify the rights and interests of Employees who are Participants in the Plan at the time thereof as well as future Participants but amendments may not diminish the accrued benefit (as defined in Section 411(d)(6) of the Code) of any Participant as of the effective date of such amendment.</p> <p><u>Section 11.2 Distribution on Plan Termination</u> (pp. 158-159 - no Bates No.)</p> <p>. . .(ii) To make provision for the payment of death benefits attributable to deaths occurring prior to the date of termination which would have been payable from the Trust Fund, and for the payment, upon the death of retired employees who are on the pension roll as of the date of termination and of employees eligible as of that date for retirement, of death benefits which would have been payable from the Trust Fund, had the Plan not been so terminated.</p>	<p><u>Section 13.1 Right to Dismiss Employees</u> (pg. 169 - no Bates No.)</p> <p>the Company or any of its subsidiaries may terminate the employment of any Employee as freely and with the same effect as if this Plan were not in existence. Participation in this Plan by an Employee shall not constitute an express or implied contract of employment between an Employee and the Company and any of its subsidiaries.</p>	<p><u>Section 1.0</u> (pg. 4 - no Bates No.)</p> <p>[Note: An even more specific definition for "Accrued Benefit"]</p> <p>"Accrued Benefit" means (1) as to Occupational Employees, the benefit to which a Participant is entitled in accordance with Article V-A as of the applicable date of calculation, and (2) as to Management Employees, the benefit to which a Participant is entitled under Article V-B, V-D and/or V-E, using Final Average Compensation and Pension Calculation Service, Percentage Credits, Compensation Credits and Interest Credits as of the applicable date of calculation. . . Accrued Benefits shall not include any benefits under Article VII [i.e., Pension Death Benefit] or under Appendix J, under Appendices M, O, P, Q, R, S or T (or any similar appendix) or any benefit which is not an accrued benefit under Section 411(d)(6) of the Code.</p>
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<p>January , 2001</p> <p>Note:</p> <p>This SPD Was Not Distributed until April 2003</p>	<p>5444-5531</p>	<p>SPD - Qwest Pension Plan</p> <p>(With Plan Amendments Through January 1, 2003)</p> <p>Note: (p. 2 - Bates 5453)</p> <p>“If you terminated employment before January 1, 2001, the rules of the Plan in effect at the time your employment ended govern your pension benefits.”</p>	<p>What type of plan is the Plan? (pg. 69 - Bates 5520)</p> <p>In general, it is a pension plan, specifically a “defined benefit plan.” A “defined benefit plan” is a retirement plan that provides an explicit benefit determined by a formula based on factors such as compensation, age and/or service. The DLS formula is a pension equity formula and the Account Balance formula is a cash balance formula. The Plan document also contains a “welfare plan” to the extent certain death benefit payments from insurance policies. The Plan document also contains an “excess plan” to the extent it provides certain benefits in excess of certain IRS limits directly out of operating expenses of the Participating Companies.</p> <p>Plan Number: (pg. 2 - Bates 5453)</p> <p>005 512</p>	<p>Who is eligible for a Sickness Death Benefit? (pg. 44 - Bates 5495)</p> <p>If you meet the age and service eligibility criteria listed in the following table (the “Modified Rule of 75”) and have a TOE date before March 1, 1993, you may be eligible for a sickness death benefit from the Plan. . .</p> <p>If you die while you are an active employee . . . or while you are receiving a service pension as a monthly annuity (unless you elected a partial lump sum option), your <u>qualified</u> beneficiaries are eligible to receive a Sickness Death Benefit equal to one year’s pay (frozen as of March 1, 1993).</p> <p>How is the Sickness Death Benefit paid? (pg. 44 - Bates 5495)</p> <p>Except as described below, the Sickness Death Benefit is payable in a lump-sum payment after your death. There are no other payment options available.</p> <p>What happens if I am service pension eligible and elect a lump sum (or partial lump sum) pension benefit? (pg. 44- Bates 5495)</p> <p>If you are a Participant with a TOE of February 28, 1993 or earlier, qualify for a service pension (or meet the Modified Rule of 75), and elect a lump-sum or annuity/lump-sum distribution of your pension benefit at termination of employment, the present value (based on certain assumptions set forth in the Plan) of the Sickness Death Benefit is paid as part of the lump-sum distribution. For this purpose, the lump sum equivalent uses a factor that assumes that the participant will be survived by a qualified beneficiary. No further Sickness Death Benefit is payable at the time of death or if you are reemployed [by Qwest].</p>	<p>Introduction (pg. 1 - Bates 5452)</p> <p>. . . The Company has the right to change, modify, discontinue or terminate the Plan and the benefits under the Plan at any time without prior notice.</p> <p>Can the Plan be amended? (pg. 69 - Bates 5520)</p> <p>Qwest Communications International, Inc. as Plan sponsor, reserves the right to amend this Plan at any time. for any reason, including changing, reducing or eliminating or more fo the Plan’s benefit formulas. The Plan may be amended by the Board of Directors of Qwest Communications International Inc. It may also be amended by the Plan Design Committee or other person(s) to the extent amendment authority has been delegated by the Board of Directors.</p> <p>What happens if the Plan is terminated? (pg. 70 - Bates 5521)</p> <p>. . . Essentially, subject to ERISA, in the event of a Plan termination, the assets of the Plan trust fund would first be allocated to pay benefits to Participants and beneficiaries who are already receiving benefits . . . After. .remaining assets would be allocated to other Participants and beneficiaries in certain other priority categories. . .</p>	<p>How do section 420 transfers impact vesting? (pg. 7 - Bates 5458)</p> <p>The Plan may transfer a small portion of its excess assets to special accounts in the Plan to help pay retiree health care expenses, as permitted by Section 420 of the Internal Revenue Code and Section XIV of the Plan (a “420 Transfer”). Any Active Participant in the plan who is employed on the date of the 420 Transfer or any former participant who separated from service during the one-year period ending on the date of the 420 Transfer will become vested in his or her accrued benefit under the Plan regardless of the participant’s years of vesting service. If a participant’s accrued benefit becomes vested as a result of a 420 Transfer, any additional accrued benefits that the participant earns thereafter will also be fully vested. . .</p> <p>[NOTE: This SPD also contains]: DEFINITIONS - QWEST PENSION PLAN (pg. 75-79 - 5526-5530)</p> <p>Set forth below are summaries of some important definitions as used in the Plan.</p> <p>(NOTE: There is no definition to explain what an “accrued” benefit is).</p>	
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The Evolution of the 'Reservation of Rights' Clause - In the Master/Governing Plan Document

October 1, 1980 until January 1, 1994 (AT&T - plan sponsor)

Section 4.8 Pension Funding Policy and Method . . . **The Bell System [and Management] Pension Fund shall be held by a trustee or trustees or an insurance company or companies as permitted by law for pension and death benefit purposes only** and shall be disbursed as directed by the Company or any other Participating Company, as applicable, from time to time. The Company undertakes to preserve the integrity of the Bell System Management Pension Fund as a fund held in trust or by an insurance company or companies as permitted by law **to be applied solely to pension and death benefit purposes and to take such action as may be necessary or appropriate to insure the application of the entire fund to such purposes.**

Section 10 Change in Plan. The Committee. . . may from time to time make changes in the Plan set forth in this document, and the Company may terminate said Plan, but such **changes or termination shall not affect the rights of any employee, without his consent, to any benefit or pension to which he may have previously become entitled hereunder.**

January 1, 1984 until December 29, 1994 (U S WEST - plan sponsor)

Section 4.8 Pension Funding Policy and Method . . . **The Company undertakes to preserve the integrity of the U S WEST Pension Fund as a fund held in trust** or by an insurance company or companies as permitted by law **to be applied solely to pension and death benefits purposes** and to take such action as may be necessary or appropriate to insure the application of the entire fund to such purposes.

Section 10 Change in Plan. The Committee, with the consent of the Chairman of the Board or, at any time when there is no Chairman of the Board, the President, and subject to the approval of the Board of Directors (or without such approval in the case of changes which, in the opinion of the Committee, are dictated by the requirements of federal or state statute applicable to the Company or to other Participating Companies or authorized or made desirable by such statutes) may from time to time make changes in the Plan as set forth in this document, and the Company may terminate said Plan, but such **changes or termination shall not affect the rights of any employee, without his consent, to any benefit or pension to which he may have previously become entitled hereunder.**

December 29, 1994 (document was executed December 29, 1994 to be effective January 1, 1993¹) (U S WEST - plan sponsor)

Section 11.4 Amendment by the Company. U S WEST expects this Plan to be permanent, but as future conditions cannot be foreseen it reserves the right to amend the Plan at any time, without prior notice to anyone. The Plan may be amended by a writing approved by U S WEST's Board of Directors and signed on behalf of U S WEST by an officer of U S WEST duly authorized by the Board of Directors. The Plan may also be amended in writing by the Committee to the extent authority to amend the Plan has been delegated to the Committee by the Board of Directors. Each amendment shall be effective on such date as U S WEST or its delegee may determine. No amendment or modification that affects the rights, powers, privileges, immunities or obligations of the Trustee may be made without the consent of the Trustee. **Amendments may modify the rights and interests of Employees who are Participants in the Plan at the time thereof as well as future Participants but amendments may not diminish the accrued benefit of any Participant as of the effective date of such amendment** or divert any funds in the Trust to purposes other than for the exclusive benefit of Participants and their beneficiaries.

Note: *New Definition* - Section 1.0 "Accrued Benefit" means as to Occupational Employees, the benefit to which a Participant is entitled in accordance with Article V-A as of the applicable date of calculation, and as to Management Employees, the benefit to which a Participant is entitled under Article V-B, using Final Average Compensation and Pension Calculation as of the applicable date of calculation.

Note: *New provision about the "Frozen" Pension Death Benefit* - Section 7.11 Method of Payment Effective February 28, 1993, the provisions of this Article VII shall not apply to individuals first hired on or after March 1, 1993. . . Individuals who have a Term of Employment that includes any period prior to March 1, 1993. . . **shall be entitled to a frozen benefit** under this Article VII as of February 28, 1993.

¹ Effective January 1, 1993 the U S WEST Pension Plan and the U S WEST Management Pension Plan were merged into a single pension plan.

January 25, 1998

(document was executed January 25, 1998 to be effective January 1, 1997²)

(U S WEST - plan sponsor)

Section 11.4 Amendment by the Company. The Company expects this Plan to be permanent, but as future conditions cannot be foreseen it reserves the right to amend the Plan at any time, without prior notice to anyone. The Plan may be amended by a writing approved by the Company's Board of Directors and signed on behalf of the Company by an officer of the Company duly authorized by the Board of Directors. The Plan may also be amended in writing by the Committee to the extent authority to amend the Plan has been delegated to the Committee by the Board of Directors. Each amendment shall be effective on such date as the Company or its delegee may determine. No amendment or modification that affects the rights, powers, privileges, immunities or obligations of the Trustee may be made without the consent of the Trustee. **Amendments may modify the rights and interests of Employees who are Participants in the Plan at the time thereof as well as future Participants but amendments may not diminish the accrued benefit (as defined in Section 411(d)(6) of the Code) of any Participant as of the effective date of such amendment.**

Note: Section 1.0 definition of "Accrued Benefit" was modified to state: . . . Accrued Benefits shall not include any benefits under Article VII [i.e., Pension Death Benefits] or under Appendix J or any benefit which is not an accrued benefit under Section 411(d)(6) of the Code.

² Effective January 1, 1997, the pension plan was amended to allow for lump sum distributions, including reduced present value of the Pension Death Benefit.

June 12, 1998

(U S WEST - plan sponsor)

Section 11.4 Amendment by the Company. The Company expects this Plan to be permanent, but as future conditions cannot be foreseen it reserves the right to amend the Plan at any time, without prior notice to anyone. The Plan may be amended by a writing approved by the Company's Board of Directors and signed on behalf of the Company by an officer of the Company duly authorized by the Board of Directors. The Plan may also be amended in writing by the Committee to the extent authority to amend the Plan has been delegated to the Committee by the Board of Directors. Each amendment shall be effective on such date as the Company or its delegee may determine. No amendment or modification that affects the rights, powers, privileges, immunities or obligations of the Trustee may be made without the consent of the Trustee. **Amendments may modify the rights and interests of Employees who are Participants in the Plan at the time thereof as well as future Participants but amendments may not diminish the accrued benefit (as defined in Section 411(d)(6) of the Code) of any Participant as of the effective date of such amendment.**

December 19, 2002

(executed December 19, 2002 to be effective January 1, 2001³)

(Qwest - plan sponsor)

Section 11.4 Amendment by the Company. The Company expects this Plan to be permanent, but as future conditions cannot be foreseen it reserves the right to amend the Plan at any time, without prior notice to anyone. The Plan may be amended by a writing approved by the Company's Board of Directors and signed on behalf of the Company by an officer of the Company duly authorized by the Board of Directors. The Plan may also be amended in writing by the Plan Design Committee or other persons(s) to the extent authority to amend the Plan has been delegated to the Plan Design Committee or such person(s) by the Board of Directors. Each amendment shall be effective on such date as the Company or its delegee may determine. No amendment or modification that affects the rights, powers, privileges, immunities or obligations of the Trustee may be made without the consent of the Trustee. **Amendments may modify the rights and interests of Employees who are Participants in the Plan at the time thereof as well as future Participants but amendments may not diminish the accrued benefit (as defined in Section 411(d)(6) of the Code) of any Participant as of the effective date of such amendment.**

³ Effective January 1, 2001 the pension plan was renamed the Qwest Pension Plan.

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. **05-cv-00478-BNB-PAC**

**EDWARD J. KERBER,
NELSON B. PHELPS,
JOANNE WEST,
NANCY A. MEISTER,
THOMAS J. INGEMANN, JR.,**
Individually, and as Representative of plan participants
and plan beneficiaries of the QWEST PENSION PLAN,

Plaintiffs,

vs.

**QWEST PENSION PLAN,
QWEST EMPLOYEES BENEFIT COMMITTEE,
QWEST PENSION PLAN DESIGN COMMITTEE,
QWEST COMMUNICATIONS INTERNATIONAL, INC.,**

Defendants.

**AFFIDAVIT OF BARBARA B. DOHERTY
(Former U S WEST Employees' Benefit Committee member)**

STATE OF OREGON)
) ss.
COUNTY OF DESCHUTES)

I, BARBARA B. DOHERTY, the Affiant, being duly sworn, under penalty of perjury, do hereby declare and state under oath based upon my personal knowledge, the following:

1. My date of birth is April 30, 1939. I am a resident of the City of Bend, County of Deschutes, State of Oregon. I was employed by the former AT&T and U S WEST companies for approximately 25 years. I retired from U S WEST, Inc., in 1989.
2. Within a year after the June 1982 announcement by the United States Department of Justice and AT&T about an agreed upon resolution of the AT&T antitrust litigation and eventual break-up of AT&T, I was appointed to head-up the human resources department for the newly formed holding company of former "Baby Bell" companies - Mountain

Bell, Northwestern Bell and Pacific Northwest Bell. The new holding company was called U S WEST, Inc., based in Denver, Colorado and lead by Chief Executive Officer Jack MacAllister who was also Chairman of the Board of Directors. I was assigned by Mr. MacAllister to be relocated from my job position as Division Traffic Manager of Pacific Northwest Bell and assume the job position of Vice President - Human Resources at U S WEST in Denver. I started this position in 1983, almost a year before the effective date of the AT&T divestiture.

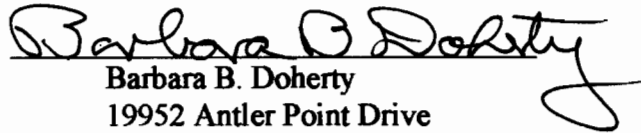
3. In my assignment as Chief Human Resources at U S WEST I was appointed to serve on the Employees' Benefit Committee for the pension plans to be established by U S WEST, which pension plans were to be exact replicas in all respects to the AT&T pension plans in effect at the time of divestiture. The U S WEST Pension Plan for nonmanagement employees was copied from the AT&T Pension Plan for nonmanagement employees. The U S WEST Management Pension Plan was copied from the AT&T Management Pension for management employees. The two U S WEST pension plans were set in place and ready to be effective as of January 1, 1984.
4. During the period January 1, 1984 through at least 1986, I served as the Chairman of the U S WEST Employees' Benefit Committee (EBC). The EBC had two other members. Initially, A. Gary Ames, a senior level officer of U S WEST was an EBC member. And, Jim Travers, another senior level officer of U S WEST was an EBC member. The EBC was named to be the fiduciary of the two pension plans with authority to grant benefits, make interpretations and other administration matters, including carrying out the funding policy.
5. While I served as an EBC member, the two U S WEST pension plans fully funded a benefit then known as the "Sickness Death Benefit" and sometimes referred to as the "Pension Death Benefit". Just like a service pension benefit, the Pension Death Benefit was always treated by the EBC, when I served on the Committee, as an entitlement for those employees who had met the required term of employment service. The EBC maintained the position that this was an earned right, not a benefit that could be taken away, unless there was the dire situation of a termination of the pension plan.
6. To be more precise, when I served on the EBC, both the U S WEST Management Pension Plan and the U S WEST Pension Plan contained an identically worded provision entitled "CHANGE IN PLAN", stating: *"The Committee, with the consent of the Chairman of the Board, or at any time when there is no Chairman of the Board, the President, and subject to the approval of the Board of Directors (or without such approval in the case of changes which, in the opinion of the Committee, are dictated by requirements of federal or state statues applicable to the Company, or other*

Participating Companies or authorized or made desirable by such statutes) may from time to time make changes in the Plan as set forth in the document, and the Company may terminate said Plan, but such changes or termination shall not affect the rights of any employee, without his consent, to any benefit or pension to which he may have previously become entitled hereunder."

7. When I served on the EBC, it was the official position of the Committee that the "CHANGE IN PLAN" provision precluded any amendment to the pension plans that would be adverse to the benefits package given to retirees. The Committee interpreted and understood the Pension Death Benefit, like the service pension, could not be reduced or eliminated after a person retired. Therefore, one of the Committee's responsibilities was to make sure there was always sufficient funding to pay out the service pensions and Pension Death Benefits earned by persons who were service pension eligible. It was unheard of to even consider making any negative changes to service pensions or Pension Death Benefits after a person retired.
8. When I served on the EBC, the Committee's position and interpretation of the aforesaid "CHANGE IN PLAN" position was that it gave the EBC, with the permission of Jack MacAllister, Chairman of the Board of U S WEST, the right only to change benefits with respect to employees, not retirees. And the right to change benefits for employees was strictly limited to changes which did not adversely affect the service pension and Pension Death Benefit to which he or she had already earned based upon his or her term of employment and earnings to date.
9. When I served on the EBC, the Committee authorized Human Resources Department personnel to send out, from time to time, official communications telling employees and retirees who had earned service pensions that, provided they had a qualified mandatory beneficiary at the time of death, the Pension Death Benefit was an entitlement. It was expected that those service pension eligible employees and retirees would rely upon those official communications when making retirement decision and estate planning purposes.
10. I have reviewed the Second Amended Complaint filed as Docket No. 29 in the case of *Kerber v. Qwest*, Civil Action No. 05-cv-00478-BNB-PAC, pending in the United States District Court for the District of Colorado, and specifically execute this Affidavit for use in that pending case. If called as a witness to testify in that case, I will testify in accordance with this Affidavit.

Further Affiant sayeth not. I declare this Affidavit consisting of four (4) pages, inclusive of notary provision, to be true and correct, based upon personal knowledge, under penalty of perjury. I have initialed each page of this Affidavit - "BBD."

EXECUTED this 27th day of February, 2006, at Bend, Oregon.




Barbara B. Doherty
19952 Antler Point Drive
Bend, OR 97702-2091
Tele: 541-382-8698

The foregoing Affidavit of Barbara B. Doherty was acknowledged, subscribed, and sworn to before me this 27th day of February, 2006 by Barbara B. Doherty.

Witness my hand and official seal.

My commission expires on Jan. 29, 2010.


Notary Public



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. **05-cv-00478-BNB-PAC**

EDWARD J. KERBER,
NELSON B. PHELPS,
JOANNE WEST,
NANCY A. MEISTER,
THOMAS J. INGEMANN, JR.,
Individually, and as Representative of plan participants
and plan beneficiaries of the QWEST PENSION PLAN,

Plaintiffs,

vs.

QWEST PENSION PLAN,
QWEST EMPLOYEES BENEFIT COMMITTEE,
QWEST PENSION PLAN DESIGN COMMITTEE,
QWEST COMMUNICATIONS INTERNATIONAL, INC.,

Defendants.

AFFIDAVIT OF RICHARD A. REMINGTON
(Former U S WEST Employees' Benefit Committee member)

STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

I, RICHARD A. REMINGTON, the Affiant, being duly sworn, under penalty of perjury, do hereby declare and state under oath based upon my personal knowledge, the following:

1. My date of birth is September 5, 1935. I am a resident of the City of Arvada, County of Jefferson, State of Colorado. I was employed by the former AT&T and U S WEST companies for just over 26 years. I retired from U S WEST, Inc. in September 1989.
2. In approximately February 1988, I was appointed Vice President Human Resources of U S WEST, Inc. and I held this Chief Human Resources Officer position until mid July 1989.

RAK

3. The Chief Human Resources Officer at U S WEST serves as the Chairman of the Employees' Benefit Committee for the pension plans established by U S WEST, which pension plans were successors to the AT&T pension plans in effect at the time of divestiture. The U S WEST Pension Plan for nonmanagement employees was copied from the Bell System Pension Plan for occupational or nonmanagement employees. The U S WEST Management Pension Plan was copied from the Bell System Management Pension for management employees.
4. During the period February 1988 through sometime in July 1989, I served as the Chairman of the U S WEST Employees' Benefit Committee (EBC). During this period, the EBC had two other members, both senior level U S WEST officers. James T. Anderson, Vice President - Treasury was an EBC member. David I. Brenner, Vice President - Controller was an EBC member. The EBC was named to be the fiduciary of the two pension plans with authority to grant benefits, make interpretations and other administration matters, including carrying out the funding policy.
5. When I served as Chairman of EBC, the two U S WEST pension plans fully funded a benefit then known as the "Sickness Death Benefit" and sometimes referred to as the "Pension Death Benefit." Both the U S WEST Management Pension Plan and the U S WEST Pension Plan contained an identically worded provision entitled "CHANGE IN PLAN", stating: *"The Committee, with the consent of the Chairman of the Board, or at any time when there is no Chairman of the Board, the President, and subject to the approval of the Board of Directors (or without such approval in the case of changes which, in the opinion of the Committee, are dictated by requirements of federal or state statutes applicable to the Company, or other Participating Companies or authorized or made desirable by such statutes) may from time to time make changes in the Plan as set forth in the document, and the Company may terminate said Plan, but such changes or termination shall not affect the rights of any employee, without his consent, to any benefit or pension to which he may have previously become entitled hereunder."* The EBC did not consider the "CHANGE IN PLAN" provision as giving any authority to make changes to the pension plans that would be adverse to the service pension benefits package given to retirees. The EBC's official position was that the package of benefits outlined and stated to the retiree upon his or her retirement was a commitment that could not be changed to make the retiree worse off. Therefore, the EBC understood the Pension Death Benefit, like the service pension, could not be reduced or eliminated after a person retired.
6. One of the EBC's responsibilities was to make sure there was always sufficient funding to pay out the service pensions and Pension Death Benefits earned by persons who were service pension eligible and the EBC acting through U S WEST HR management personnel routinely advised persons who were making retirement decisions that they would always be entitled to the Pension Death Benefit.

7. When I served on the EBC, U S WEST stressed the Pension Death Benefit as a permanent and fixed part of an employee's entire compensation package. For example, the U S WEST pension plans contained an identically worded Section 4.8 stating the pension funds *"shall be held by a trustee or trustees or an insurance company or companies as permitted by law for pension and death benefit purposes only and shall be disbursed as directed by the Company or any other Participating Company, as applicable, from time to time. The Company undertakes to preserve the integrity of the U S WEST Pension Plan as a fund held in trust or by an insurance company or companies as permitted by law to be applied solely to pension and death benefit purposes and to take such action as may be necessary and appropriate to insure the application of the entire fund to such purposes."*
8. When I served on the EBC during 1988, the Pension Death Benefit was always portrayed by U S WEST pension plan administrators and human resources delegated such responsibility as a secure, highly valuable benefit upon which pensioners and their spouses could rely upon when making financial plans for retirement, because that is what U S WEST intended it to be. For example, the January 1, 1987 dated edition of the SPD contained the following text: *"Your qualified beneficiaries are protected by the Plan's sickness and accident death benefit provisions for the entire period of your employment and during your retirement on a service or disability pension. A benefit equal to one year's pay at retirement will be paid to the mandatory beneficiary (if any) of an employee who dies after retirement while receiving a service or disability pension."* It was expected that those service pension eligible employees and retirees would rely upon this official communication when making retirement decision and estate planning purposes.
9. In the course of administering the U S WEST pension plans, U S WEST, both as plan sponsor and plan administrator, acting through the EBC and designated Human Resources management personnel, consistently manifested an intention and recognition that the Pension Death Benefit payable to the qualified beneficiaries of retirees who were receiving service pensions was a fixed element of the retirees' pension package, rather than a welfare benefit that could be taken away at the will of the company. This implied contract was manifested in various ways, such as funding the Pension Death Benefit on an actuarial basis, paying the death benefit out of pension plan assets, providing within the pension plan documents that the Pension Death Benefits would survive a plan termination and be given priority over certain deferred vested benefits, and advising in the SPD that the Pension Death Benefit was part of a defined benefit pension plan.
10. In July 1989, near the end of my term on the EBC, an updated Summary Plan Description (SPD) was sent out to all U S WEST employees and retirees explaining the revisions that had been made in January 1989. The July 1989 SPD gave reassurances that the Pension Death Benefit was an entitlement for someone who was survived by a spouse, dependent children or dependent parents under certain circumstances. Note the use of the word "will" in the SPD when explaining the Sickness Death Benefit, the Pension Death

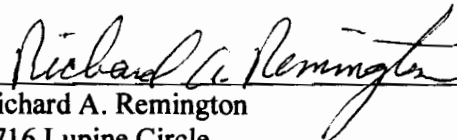
Benefit. Also, at that time, the only reservation of right U S WEST set forth in the SPD was the right to terminate the entire pension plan, if that need arose. Throughout my U S WEST employment, U S WEST never issued a SPD or other publication to employees or retirees that would indicate the Pension Death Benefit was a potential take-a-way benefit. That was never a consideration. Therefore, the SPD issued while I was on the EBC did not contain any reservation of rights to reduce or eliminate the Pension Death Benefit.

11. I made my service pension elections and financial planning confident that the Pension Death Benefit will be provided in the event my spouse survives me and I expect Qwest to honor U S WEST's commitment to provide that benefit payable, now payable from the Qwest Pension Plan.

12. I have reviewed the Second Amended Complaint filed as Docket No. 29 in the case of *Kerber v. Qwest*, Civil Action No. 05-cv-00478-BNB-PAC, pending in the United States District Court for the District of Colorado, and specifically execute this Affidavit for use in that pending case. If called as a witness to testify in that case, I will testify in accordance with this Affidavit.

Further Affiant sayeth not. I declare this Affidavit consisting of four (4) pages, inclusive of notary provision, to be true and correct, based upon personal knowledge, under penalty of perjury. I have initialed each page of this Affidavit - "RAR."

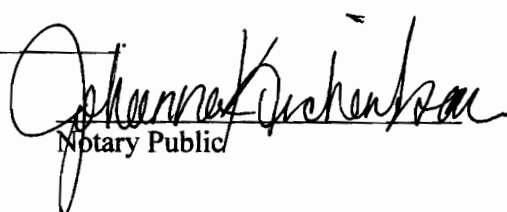
EXECUTED this 3RD day of April, 2006, at ARVADA, Colorado.


Richard A. Remington
6716 Lupine Circle
Arvada, CO 80007-7018

The foregoing Affidavit of Richard A. Remington was acknowledged, subscribed, and sworn to before me this 3rd day of April, 2006 by Richard A. Remington.

Witness my hand and official seal.

My commission expires on 6/15/08


Notary Public

JOHANNA KIRSCHENBAUM
NOTARY PUBLIC
STATE OF COLORADO

My Commission Expires JUNE 15, 2008

RAR