

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

)	
In the Matter of the Complaint Of:)	
Whatcom Community College,)	DOCKET NO. UT-050770
Complainant)	
)	
v.)	ANSWER, AFFIRMATIVE
)	DEFENSES AND MOTION TO
Qwest Communications,)	STRIKE
Respondent)	
.....)	

Comes now Qwest Corporation and answers, defends and moves to strike portions of the Complaint in the above matter as follows:

1. Parties

1.1 For answer to paragraph 1.1 of the Complaint, Qwest Corporation admits the same.

1.2 For answer to paragraph 1.2 of the Complaint, Qwest Corporation denies that the entity named as respondent has a service area that includes Whatcom Community College, and asserts that Qwest Corporation, which was not named as respondent, has a service area that includes the complainant.

1.3 For answer to paragraph 1.3, Qwest Corporation denies that the respondent named in the complaint is a public service company in Washington and asserts that Qwest Corporation, which was not named as respondent, is a public service company in Washington, and asserts that during some periods alleged in this complaint neither the entity named in the complaint nor Qwest Corporation was a public service

**QWEST CORPORATION'S
ANSWER, AFFIRMATIVE
DEFENSES AND MOTION TO STRIKE**

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company in Washington, but rather Qwest Corporation's predecessor companies named U S WEST Communications, Inc. and Pacific Northwest Bell Telephone Company were public service companies in Washington.

2. Statutes

2.1 For answer to paragraph 2.1 of the complaint, Qwest Corporation states that the statutes and rules of the State of Washington speak for themselves.

2.2 For answer to paragraph 2.2 of the complaint, Qwest Corporation states that the statutes of the State of Washington speak for themselves.

2.3 For answer to paragraph 2.3 of the complaint, Qwest Corporation states that the rules of the State of Washington speak for themselves.

2.4 For answer to paragraph 2.4 of the complaint, Qwest Corporation states that the rules of the State of Washington speak for themselves.

3. Alleged Statement of Facts

3.1 For answer to paragraph 3.1 of the complaint, Qwest Corporation admits the same.

3.2 For answer to paragraph 3.2 of the complaint, Qwest Corporation is without information sufficient to allow it to form a belief as to the truth of the allegation that the complainant vacated the three locations described in the paragraph at any time or times and therefore denies the same. Qwest Corporation denies the allegation that the complainant requested Qwest Corporation or its predecessor companies to disconnect the Off Premises Extension (OPX) circuits identified in this paragraph at any time prior to October 12, 2004. Qwest Corporation is without information sufficient to

allow it to form a belief as to the truth of the allegation of the identity of complainant's telecommunication manager at any time pertinent to this case or the said alleged manager's alleged retirement and the alleged reasons therefore and the alleged former manager's alleged inability to assist complainant in this litigation, and therefore denies the same. Qwest Corporation admits that its records show the circuit identifying numbers associated with the street addresses recited in this paragraph as active circuits prior to October 12, 2004. Qwest Corporation denies each and every other, different or remaining allegation contained in this paragraph.

3.3 For answer to paragraph 3.3 of the complaint, Qwest Corporation admits that as of July, 2004, Qwest Corporation was billing the complainant for the active circuits whose circuit identification numbers appear in paragraph 3.2 of the complaint. Qwest Corporation is without information sufficient to allow it to form a belief as to the truth of the allegation that Northwest Capital Recovery Group (NWCRG) audited complainant's telephone bills at any time or times and therefore denies the same. Qwest Corporation denies each and every other, different or remaining allegation contained in this paragraph, including specifically the allegation that the complainant had prior to July 2004 requested Qwest Corporation or its predecessor companies to disconnect the circuits to which this paragraph refers.

3.4 For answer to paragraph 3.4 of the complaint, Qwest Corporation is without information sufficient to allow it to form a belief as to the truth of the allegations concerning the activities of representatives of an entity named Interconnect Systems, and therefore denies the same. Qwest Corporation is without information sufficient to

allow it to form a belief as to the truth of the allegation that such activities constituted the “next step” as alleged in this paragraph and therefore denies the same. Qwest Corporation denies the allegation that the order number named in this paragraph had anything to do with the complainant. Qwest Corporation admits that a different order number, C93281984 was placed by complainant for a Qwest technician to check the OPX circuits identified in paragraph 3.2 of the complaint at the complainant’s telecommunications room on the complainant’s premises. Qwest Corporation admits that its technician inspected the WCC telecommunications room, and that the results of that inspection were that the OPX circuits identified in paragraph 3.2 of the complaint were shown as working and connected in the Qwest Corporation central office but that the circuits did not appear identifiably in the WCC telecommunications room. Qwest Corporation admits that its technician, Georgeanne Keenan, telephoned Mr. Doughty and reported the results of her inspection to him.

3.5 For answer to paragraph 3.5 of the complaint, Qwest Corporation states that the first sentence thereof is unintelligible, but under the assumption that complainant intended to refer to the technician’s site *visit*, Qwest Corporation admits the first sentence. For answer to the second sentence of this paragraph, Qwest Corporation denies the same. For answer to the third sentence of this paragraph, Qwest Corporation is without information sufficient to allow it to form a belief as to the truth of the allegation concerning what unidentified persons who comprise complainant’s telecommunications staff knew at any time or times concerning what would stop billing for OPX service, and therefore denies the same.

3.6 For answer to paragraph 3.6 of the complaint, Qwest Corporation admits with regard to the first sentence thereof that a person identifying himself as Richard Doughty contacted Qwest's contract account service representative Sherwood Robertson by telephone on or about October 12, 2004 and requested that the nine circuits identified in paragraph 3.2 of the complaint be disconnected. Qwest Corporation specifically denies the allegation that its and its predecessor companies' billing of the complainant for such circuits prior to its receipt of the disconnect order on October 12, 2004 was a billing error. Qwest Corporation admits the second sentence of this paragraph. For answer to the third sentence of this paragraph, Qwest Corporation admits that Ms. Robertson told the person who identified himself to her as Mr. Doughty that Qwest Corporation had no record of any previous disconnect request for the nine circuits identified in paragraph 3.2 of the complaint and denies each and every other, different or remaining allegation in said sentence. Qwest Corporation admits the fourth sentence of this paragraph.

3.7 For answer to paragraph 3.7 of the complaint, Qwest Corporation admits with regard to the first sentence thereof that Ms. Robertson received a letter on complainant's letterhead dated November 1, 2004 purporting to be signed by Ray White, but Qwest Corporation denies that said document was proof that complainant had requested Qwest Corporation or its predecessor companies to disconnect any or all of the nine circuits identified in paragraph 3.2 of the complaint at any time prior to October 12, 2004. For answer to the second sentence of this paragraph, Qwest Corporation admits the same. For answer to the third sentence of this paragraph,

Qwest Corporation states that the e-mail that complainant attached to the complaint speaks for itself. For answer to the third and fourth sentences of this paragraph, Qwest Corporation admits the same. For answer to the fifth sentence of this paragraph, Qwest Corporation admits that complainant's consultant Mr. Wildgen told Ms. Robertson that his company wanted to speak to Ms. Robertson's superiors but Qwest Corporation denies each and every other, different, or remaining allegation therein contained, and specifically alleges that Ms. Robertson told Mr. Wildgen that she would provide him contact information for her supervisor, which she did. For answer to the sixth sentence of this paragraph, Qwest Corporation admits the same.

3.8 For answer to paragraph 3.8 of the complaint, Qwest Corporation denies that any person named Rick Henderson participated in any call as alleged in this paragraph. Qwest Corporation states that its contract account service manager Ms. Martin erroneously provided Mr. Wildgen with the telephone number and date and time of a conference call between Qwest managers including Mr. Rick Hendrickson, but that Mr. Hendrickson did not know that anyone but Qwest employees and contract account service personnel would be on the call. Qwest Corporation states that when the complainant's representatives identified themselves on the call, the error by the contract account service manager in inviting them to join this call became apparent to Mr. Hendrickson and he determined that it was inappropriate at that time for him to discuss the matter with the persons then participating. Qwest Corporation states that Patricia Winckler, Qwest's National Account Manager, who reports to Mr. Hendrickson, did respond at Mr. Hendrickson's request to Mr. Wildgen several times

by telephone and in writing after November 11, 2004 and prior to December 8, 2004 concerning the issues in the complaint.

3.9 For answer to paragraph 3.9 of the complaint, Qwest Corporation admits the first sentence thereof. For answer to the second sentence of this paragraph, Qwest Corporation admits that Ms. Gix processed a refund request for complainant but denies that the problem that Ms. Gix resolved as alleged in this paragraph was similar to that presented by the complaint. Qwest Corporation states that for the four Foreign Exchange lines described in this paragraph, WCC presented proper contemporaneous documentary evidence that the disconnect order had been placed with and received by a connecting company, namely Verizon, some four years prior to the complainant's request for a refund. No such evidence has been presented in this case. For answer to the third and fourth sentences of this paragraph, Qwest Corporation admits the same, assuming that the complainant intended to refer to Ms. Gix instead of Ms. Robertson in the third sentence and the "me" in the fourth sentence is intended by the complainant to refer to its alleged consultant and verifier of the complaint, Mr. Doughty.

3.10 For answer to paragraph 3.10 of the complaint, Qwest Corporation states that, as discussed above, Mr. Hendrickson's representative, Ms. Winckler, responded to the complainant's consultants several times by telephone and in writing during the period between November 11, 2004 and December 8, 2004 concerning the nine circuits identified in paragraph 3.2 of the complaint and the complainant's demand for a refund. Qwest Corporation admits that it received from the WUTC on December 20,

2004 written assertions purportedly from Mr. Doughty that include many of the same claims and arguments that appear in the complaint, and it admits that the WUTC notified Qwest Corporation of the existence of an informal complaint against it in connection with the circuits identified in paragraph 3.2 of this complaint. Qwest Corporation admits that the informal complaint was in the nature of a mediation with the WUTC in the role of mediator to attempt to effect a settlement of the issues between complainant and Qwest Corporation. Qwest Corporation is without information sufficient to allow it to form a belief as to the truth of the allegations that Ms. Chamberlin made some alleged fact clear to some unknown person or persons and documented her efforts in a file, and therefore denies the same. Qwest Corporation admits that since no evidence of a disconnect request for the nine circuits identified in paragraph 3.2 of this complaint prior to October 12, 2004 was presented to Qwest in the course of the informal complaint, Qwest Corporation did not change its position during that proceeding. Qwest is without information sufficient to allow it to form a belief as to the truth of the allegation that Ms. Chamberlin issued an e-mail as alleged in this paragraph and therefore denies the same. Qwest Corporation states that the material quoted in this paragraph of the complaint from the alleged WUTC staff e-mail as to an alleged offer of partial remuneration by Qwest Corporation constitutes an account of an offer in compromise of a disputed claim and the complainant's use of that matter in its allegations in this complaint is clearly improper. Qwest Corporation moves to strike the same on the basis that as a matter of law such an offer may not be

a fact that may be proven or alleged in support of the existence of the underlying claim and it does not therefore meet the requirement of WAC 480-07-370(1)(a)(ii)(C).

3.11 For answer to paragraph 3.11 of the complaint, Qwest Corporation is without information sufficient to allow it to form a belief as to the truth of the allegation of the reasons why the complainant paid its bills for the services Qwest Corporation and its predecessors rendered, and it therefore denies the same. Qwest Corporation denies the allegation that the complainant ever notified Qwest Corporation or its predecessor companies to disconnect any of the nine circuits identified in paragraph 3.2 of the complaint prior to October 12, 2004. Qwest Corporation denies the allegation that its billing description of the OPX service is incomprehensible or in violation of any legal requirement. Qwest Corporation states that according to its records, no representative of the complainant ever requested that Qwest Corporation or its predecessor companies provide any itemized statements of charges for the nine circuits identified in paragraph 3.2 of the complaint, as provided in WAC 480-120-161(7). Qwest Corporation admits that Attachment 6 is a partial copy of the complainant's bill for services, and that page two thereof includes the charges for the nine circuits identified in paragraph 3.2 and for other services. Qwest Corporation denies each and every other, different or remaining allegation contained in this paragraph.

4. Alleged Summary

4.1 For answer to paragraph 4.1 of the complaint, Qwest Corporation states that this paragraph consists of argument that seeks to reverse the burden of proof rather than allegations of fact and Qwest moves to strike the same on the grounds that WAC

480-07-370(1)(a)(ii)(C) requires allegations of fact rather than argument in a complaint. In the event the motion is not granted, Qwest Corporation admits that it conducted a reasonable search of its records and that on the three separate but unspecified (by date) occasions, separated by many years, when complainant claims to have ordered circuits disconnected, it found no record of such orders. Qwest Corporation admits that it treated complainant in the same way it treats all other customers who claim that they have been mistakenly billed for service that has been the subject of an alleged disconnect request, namely that if there is a contemporaneous written record of such a request, Qwest Corporation credits the payments made after the request, otherwise Qwest Corporation does not credit such payments. Qwest Corporation admits that pursuant to standard operating procedures for circuits such as those identified in paragraph 3.2 of the complaint, it and its predecessor companies had no way of knowing, besides receiving an actual request for disconnection, that the complainant was no longer using the nine circuits identified in paragraph 3.2 of the complaint at any time prior to October 8, 2004, if that were the case, and that Qwest Corporation's and its predecessor companies' facilities were dedicated to the use of the complainant and remained so dedicated until Qwest Corporation received and processed the disconnect request on or about October 12, 2004. Qwest Corporation admits that its and its predecessor companies' service representatives are and were, respectively, trained to record electronically, verbal or written requests for changes in service when they are received from customers or their representatives, including requests for disconnection, which records constitute business records created in the

ordinary course of business. Qwest Corporation admits that in the ordinary course of business, it relies on the said business records and will consider other contemporaneous written records, if offered by a customer, to determine whether or not a customer made a prior disconnect request in connection with a claim of mistaken billing for service that is the subject of a claimed prior disconnect order. Qwest Corporation admits that it refused to discriminate in favor of the complainant by granting complainant a refund when under similar circumstances other customers would not receive a refund. Qwest Corporation admits that typically when customers seek and obtain refunds for billing errors due to prior disconnect orders not being reflected in billing they provide contemporaneous documentary evidence of such disconnect orders rather than unsupported assumptions such as those in Attachment 2 to the complaint. Qwest Corporation denies each and every other, different or remaining allegation in this paragraph and it specifically denies that complainant requested from it, records of the initial requests for service for the circuits identified in paragraph 3.2 of the complaint.

4.2 For answer to paragraph 4.2 of the complaint which repeats the allegation in paragraph 3.7, Qwest Corporation repeats its answer to the allegation in paragraph 3.7 concerning the letter of November 1, 2004, namely Qwest Corporation admits that it received the letter but denies that such letter is proof of any disconnect request by complainant to Qwest Corporation or any of its predecessor companies for any of the nine circuits identified in paragraph 3.2 of the complaint, prior to October 12, 2004.

4.3 For answer to paragraph 4.3 of the complaint, Qwest Corporation moves to strike this paragraph on the grounds that the paragraph does not contain facts that constitute the basis of the complaint as required by WAC 480-07-370(1)(a)(ii)(C). This paragraph has nothing to do with whether in fact the complainant actually made a request for disconnection of the nine circuits identified in paragraph 3.2 of the complaint prior to October 12, 2004. As a matter of law the complainant cannot demonstrate entitlement to relief as to the nine circuits identified in paragraph 3.2 of the complaint by evidence concerning Qwest Corporation's actions concerning other circuits and other customers, and indeed an unrelated telecommunications company's actions with regard to other circuits and other customers. In the event that its motion is not granted, Qwest Corporation denies the allegation that its records are inadequate and admits that it initially refused to refund charges to complainant for account 360 S01-0480 but that, as discussed above in paragraph 3.9, when it was presented with a contemporaneous written record of a request by complainant for disconnection of the connecting circuit with Verizon, even though Qwest Corporation had no contemporaneous written record of the request for disconnection, it applied a refund for the four intercompany Foreign Exchange circuits; no such contemporaneous written record of a disconnect request has been presented to Qwest Corporation in this case. Qwest Corporation denies the allegations with regard to Longview Surgical Group. Qwest Corporation is without knowledge sufficient to allow it to form a belief as to the truth of the allegation that Verizon is refusing to refund charges to the Lummi Indian Tribe and it therefore denies the same.

4.4 For answer to paragraph 4.4 of the complaint, Qwest Corporation denies the allegation that its billing has been unjustified, and it denies the allegation that the OPX services identified in paragraph 3.2 of the complaint had been disconnected by Qwest Corporation until some time after October 12, 2004, and it denies the repetitive allegation that its billing did not include a plain language description of the service. Qwest Corporation denies each and every other, different or remaining allegation contained in this paragraph.

4.5 For answer to paragraph 4.5 of the complaint, Qwest Corporation denies the allegation that its billing was misleading and Qwest Corporation moves to strike the allegation in this paragraph that Qwest Corporation made an offer in compromise because this paragraph is an improper attempt to use evidence of an offer by Qwest Corporation in compromise of a disputed claim in subsequent litigation, which offer was not accepted by the complainant because the complainant filed its formal complaint in this proceeding. This paragraph therefore does not meet the requirement of WAC 480-07-370(1)(a)(ii)(C) because the fact of such an offer may not as a matter of law be used to prove the underlying obligation.

4.6 For answer to paragraph 4.6 of the complaint, Qwest Corporation states that this paragraph is argument rather than a statement of alleged facts and moves to strike the same on the basis that WAC 480-07-370(1)(a)(ii)(C) requires the allegation of facts in a complaint, not the making of argument. In the event that the motion is not granted, Qwest Corporation states with regard to the first sentence thereof that Qwest Corporation is without knowledge sufficient to allow it to form a belief as to the truth

of the allegation that the complainant at any time or times before October 8, 2004 put itself in a position in which it was not capable of receiving the service Qwest Corporation continued to provide through the nine circuits identified in paragraph 3.2 of the complaint and therefore denies the same. Qwest Corporation denies that the complaint has alleged a factual basis to toll the statute of limitations. With regard to the second, third and fifth sentences of this paragraph Qwest Corporation denies the same. With regard to the fourth sentence of this paragraph Qwest Corporation states that the rules of the State of Washington speak for themselves.

4.7 For answer to paragraph 4.7 of the complaint, Qwest Corporation denies the same.

4.8 For answer to paragraph 4.8 of the complaint, Qwest Corporation denies the same.

4.9 For answer to the prayer for relief, Qwest Corporation denies that the complaint presents facts entitling the complainant to any relief and Qwest Corporation specifically denies that the WUTC is authorized to award attorneys' fees.

WHEREFORE, having fully answered, Qwest Corporation respectfully requests that the complaint be dismissed and the complainant take nothing.

5. FIRST AFFIRMATIVE DEFENSE: LACK OF JURISDICTION

5.1 Qwest Corporation realleges the matters contained in paragraphs 1.1 through 4.8 above as if set forth in full.

5.2 There is no such entity as the named respondent, Qwest Communications, doing business in the State of Washington. The complainant has failed to file a complaint with the WUTC pursuant to RCW 80.04.110 naming as respondent the real party in interest, Qwest Corporation, and the WUTC therefore has no jurisdiction over the said real party in interest.

WHEREFORE, having fully defended, Qwest Corporation respectfully requests that the complaint be dismissed and the complainant take nothing.

6. SECOND AFFIRMATIVE DEFENSE: STATUTE OF LIMITATIONS

6.1 Qwest Corporation realleges the matters contained in paragraphs 1.1 through 5.2 above as if set forth in full.

6.2 The face of the complaint discloses that it seeks relief for events including those that occurred more than two years prior to the May 18, 2005 filing of the complaint. To the extent the complaint states any claim for relief, such relief is barred by the applicable statute of limitations in RCW 80.04.240 for periods more than two years prior to the filing of the complaint.

WHEREFORE, having fully defended, Qwest Corporation respectfully requests that the complaint be dismissed as to claims pertaining to periods prior to May 18, 2003, which is two years prior to the filing of the complaint, and complainant take nothing as to such claims.

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Respectfully submitted this 20th day of June, 2005

QWEST CORPORATION

LAW OFFICES OF DOUGLAS N. OWENS

Douglas N. Owens (WSBA 641)
Counsel for Qwest Corporation

CERTIFICATE OF SERVICE

Docket No. UT-050770

I certify that a copy of the attached Answer, Affirmative Defenses and Motion to Strike was deposited in the U.S. Mail, postage prepaid and properly addressed on June 20, 2005, to the following party:

Wendy K. Bohlke Senior Counsel Washington Attorney General's Office 103 E Holly Street #310 Bellingham, WA 98225	
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Dated this 20th day of June, 2005.

Douglas N. Owens