BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Complaint Of:	)	
Whatcom Community College,	)	DOCKET NO. UT-050770
Complainant	)	
v.	)	RESPONSE TO REPLY TO
	)	MOTION TO STRIKE AND
Qwest Communications,	)	RESPONSE TO MOTION TO
Respondent	)	AMEND COMPLAINT
……..	)	

1. Comes now Qwest Corporation (hereinafter "Qwest") and responds to Complainant's Reply to Respondent's Answer and Motion to Strike portions of the Complaint (hereinafter "Reply") pursuant to the Notice of Opportunity issued June 23, 2005, and responds to the Complainant's motion to amend the Complaint in the above matter as follows:

2. At page 2 of the Reply the Complainant asserts with respect to Qwest's Answer paragraph 3.2 that "since [WCC] received no service on the lines that Qwest or its predecessors billed WCC for, Qwest's and its predecessors' charges were excessive and exorbitant since they were levied for Off Premises Extension (OPX) circuit services that did not exist, were not functional, and were not capable of carrying voice communications." Qwest denies that the circuits identified in paragraph 3.2 of the Complaint were, until they were disconnected by Qwest at the Complainant's request on or about October 12, 2004, not providing service, nonexistent, non functional and not capable of carrying voice communications, and denies that

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its or its predecessors' charges for the circuits in question were excessive or exorbitant.[1]

3. Complainant has presented no allegations that support any conclusion other than that Complainant at some time (or times) unknown to Qwest, disconnected its customer premise equipment (CPE) from Qwest's OPX circuits, and simply failed to notify Qwest that it was discontinuing its use of the service and desired that the circuits be disconnected. The CPE would include items such as its telephones and PBX. No reasonable user of services would expect that billing for service would stop just because the user pulled the plug on its CPE from the jack, without telling the provider of service that the user desired disconnection of the service. No reasonable user of service would contend that because it pulled the CPE plugs from the jacks connecting that CPE to the OPX circuits without telling Qwest that it desired service to be disconnected, that meant that Qwest was no longer providing service and its charges thereby became excessive and exorbitant.

4. At page 2 of the Complainant's Reply, Complainant has answered Qwest's motion to strike the allegations in paragraph 4.3 of the complaint by asserting that allowing the litigation of the allegations in this paragraph "will demonstrate that the circumstances giving rise to WCC's complaint here in [sic] is [sic] not an isolated incident." In this purported reply, the Complainant has actually expanded the allegations in the original complaint, and has failed to address the basis of the motion to strike.

5. The original complaint paragraph 4.3 merely alleged that a lack of adequate records "had surfaced" in three alleged instances, one of which involved Verizon, in which the companies involved were alleged to have refused refunds. The reply to the motion to strike actually

[1] In the interest of brevity, where the context indicates, as events involved Qwest's predecessors and not Qwest itself, the use of the name "Qwest" in this Response should be understood as referring to the appropriate predecessor that existed at the time.

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purports to amend the complaint by alleging that Qwest has agreed to make refunds for charges gained for services not provided to other consumers, based on records other than those available from Qwest. This new matter presents several issues. The original paragraph 4.3 of the Complaint alleged that Verizon was refusing to refund to its customers the Lummi Indian Tribe. The new matter in the Reply alleges that the three instances in paragraph 4.3 of the Complaint, including that of Verizon and the Lummi Indian Tribe, represent Qwest's agreement to refund to other customers on the basis of records other than those available from Qwest. The Reply does not explain how Qwest could allegedly make refunds to Verizon's customers, the Lummi Indian Tribe, who are not also Qwest's customers.

6. Complainant's failure to reply to the motion to strike with regard to the allegation concerning Verizon should be seen as a concession that the motion should be granted as to that allegation. The Complainant's allegation in paragraph 4.3 of the Complaint that Verizon is refusing to refund charges to the Lummi Indian Tribe is nonsensical in connection with this case. The Complainant has not, in its reply, shown how, if it is permitted to litigate this claim against Qwest, it will have established any fact entitling it to refunds for the nine circuits identified in paragraph 3.2 of the Complaint.

7. Qwest submits that it is improper to answer a motion to strike by implicitly amending the allegations that are the subject of the motion, but Qwest will in this Response, answer the new allegations. With regard to the allegation that the three claims in paragraph 4.3 of the Complaint represent instances in which "Qwest has previously agreed to make refund for charges gained for services not provided to other consumers, based on records other than those available from Qwest," as alleged in the Reply at p. 2, Qwest denies the allegation with regard to the claim concerning Longview Surgical Group for account 206 T51-3973 686 and denies

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the allegation with regard to the claim concerning Verizon and its account 360-662-1239 with the Lummi Indian Tribe. With regard to the allegation concerning the Complainant and its account 360 S01-0480, as Qwest answered in paragraph 3.9 of the Answer, this was not "another consumer" as alleged in this new matter but was the Complainant itself and so Qwest denies the allegation to that extent. Also as Qwest stated in the Answer this was a completely different situation in which a contemporaneous written record existed of Complainant's request to the connecting carrier, in this case Verizon, to disconnect jointly provided service, and when that record was belatedly provided to Qwest, Qwest refunded charges it had collected. No such contemporaneous written record has been alleged to exist by Complainant, nor has any such record been provided to Qwest by Complainant for the nine circuits at issue in this case.[2] With respect to the allegation on page 2 of the Reply that the allegations in paragraph 4.3 of the Complaint as amended in the Reply "will demonstrate that the circumstances giving rise to WCC's complaint here in [sic] is [sic] not an isolated incident," Qwest is without information sufficient to form an opinion as to the truth of the allegation and therefore denies the same. Qwest submits that the question of whether the alleged circumstances are an "isolated incident" has nothing to do with the relief sought by the Complainant.

8. Aside from the new matter, the reply to the motion to strike Paragraph 4.3 of the Complaint fails to address the basis of the motion which was that the allegations concerning other customers or other companies or other circuits for the Complainant could not meet the standard of WAC 480-07-370(1)(a)(ii)(C) because the complainant could not show entitlement to relief

[2] The nine circuits at issue in this case do not involve jointly provided service with another carrier. There was not, in the case of the jointly provided service between Qwest and Verizon, any proof that the Complainant ever submitted the disconnection request to Qwest at or near the time it submitted the request to Verizon. Thus there is no fact to support a finding that Qwest's records were "inadequate" in connection with Complainant's account 360 S01-0480.

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for the nine circuits identified in this complaint by showing what happened to other circuits or to other customers including customers of other companies. Having failed to address the basis of the motion, the Reply should be taken as conceding that the motion to strike should be granted.

9. At page 2 of the Reply, the Complainant has made an argument responding to Qwest's motion to strike allegations in paragraph 4.5 of the Complaint that Qwest made an offer in compromise of the dispute in this case, stating that if "the other dispute" is relevant, that evidence should be considered, but it has failed to address the basis of the motion to strike. In the event that the "other dispute" refers to the matters discussed above in connection with paragraph 4.3 of the Complaint, plainly as argued in Qwest's motion to strike and in this Response, those matters are not relevant and therefore the Reply does not support the denial of Qwest's motion.

10. The Reply also clearly mistakes the basis of Qwest's motion to strike. The motion was not based on relevance. Qwest moved to strike on the basis of the policy in ER 408 as embodied in this Commission's ADR rules, that "Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible."

11. It was Qwest's offer in compromise of the very dispute at issue in the Complaint that is the subject of the motion to strike. This offer took place in the context of compromise negotiations in this Commission's informal complaint process. Qwest's offer in compromise

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was rejected because the Complainant filed its formal complaint. The answer fails to address the basis of the motion which was that WAC 480-07-370(1)(a)(ii)(C) would not permit the fact of an offer in compromise to be proven in this case. This failure is inexplicable. The policy of the law against use of evidence of unaccepted offers in compromise in subsequent litigation is very strong. Qwest's motion should be granted.

12. At page 2 of the Reply the Complainant replies to Qwest's motion to strike paragraph 4.6 of the Complaint by arguing that the paragraph "sets out the factual assertion that charges were levied for no services provided, which is excessive and exorbitant." In fact the paragraph does, as Qwest pointed out in its motion, contain argument devoted to anticipating Qwest's affirmative defense of the statute of limitations. It is therefore not proper pleading under the Commission's rules. Qwest's motion should be granted. Also, this paragraph of the "summary" portion of the Complaint refers to allegations that at most support a conclusion that the Complainant pulled its connections to Qwest's OPX circuits but did not notify Qwest of its desire to discontinue using the service. These allegations do not support a conclusion that Qwest was not providing service even though the Complainant may not have been using the service.

13. Qwest has no objection to the motion to amend the complaint to name it as the respondent, as Complainant requests on pages 1 and 2 of the Reply.[3]

[3] By agreeing to the motion to amend the complaint to substitute itself for the nonexistent named respondent, Qwest does not agree with the superfluous allegations in paragraph 1.2 of the Complainant's Reply concerning the alleged difficulty that Complainant and other unidentified consumers have supposedly experienced in contacting Qwest in the event of a question or dispute due to changes in the corporate name over time. Attachment 6 to the Complaint which is Qwest's bill provides a toll free contact number for customers to call in case of questions about the bill. Qwest submits that these allegations are unnecessary to decide in light of Qwest's agreement that it should be substituted as the real party in interest. Qwest also submits that its proper designation is Qwest Corporation, not "Quest Corporation," as appears at several places in the Reply. Qwest's predecessor was US WEST Communications, Inc., not "U.S. West Communications, Inc." as appears in the Reply.

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14. At page 3 of the Reply, Complainant replies to Qwest's affirmative defense of the limitation of claims in RCW 80.04.240 for recovery of overcharges to the period of two years prior to May 18, 2005, by arguing that it does not seek "recovery of asserted overcharges but .. reimbursement for monies paid where no services were provided at all, which WCC asserts is excessive and exorbitant." In response, Qwest raises the additional affirmative defense of the limitation of claims in RCW 80.04.240 for recovery of reparations for excessive and exorbitant charges of six months, making the potential recovery period the six months prior to May 18, 2005, the date the complaint was filed. Since Qwest disconnected the circuits at issue at Complainant's request on or about October 12, 2004 and ceased billing for those circuits effective September 30, 2004, there are no amounts of alleged reparations for excessive and exorbitant charges that are within the recovery period of six months prior to May 18, 2005, pursuant to the statute of limitations. Therefore the complaint as amended should be dismissed and the Complainant should take nothing.

Respectfully submitted this 27th day of July, 2005

QWEST CORPORATION

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CERTIFICATE OF SERVICE

Docket No. UT-050770

I certify that a copy of the attached Response to Reply to Motion to Strike and Response to Motion to Amend Complaint was deposited in the U.S. Mail, postage prepaid and properly addressed on July 27, 2005, to the following party:

Wendy K. Bohlke Senior Counsel Washington Attorney General's Office 103 E Holly Street #310 Bellingham, WA 98225	

Dated this 27th day of July, 2005.

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