

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

)	
In the Matter of the Complaint Of:)	
Whatcom Community College,)	DOCKET NO. UT-050770
Complainant)	
)	
v.)	QWEST CORPORATION'S
)	OBJECTION TO PREHEARING
Qwest Corporation,)	CONFERENCE ORDER NO. 1
Respondent)	
.....)	

1. Qwest Corporation (“Qwest”) objects to Prehearing Conference Order No. 1 pursuant to WAC 480-07-430. Qwest makes this objection to preserve its right to review of this issue by the Commission prior to entry of a final order.

2. Qwest objects to the denial of its motion to strike regarding the allegations in the Complaint that Qwest made an offer in compromise of the dispute in this proceeding.¹ Order No. 1 failed to address or discuss the basis of Qwest’s motion, and it analyzed and addressed an issue that Qwest did not raise as the grounds for denying the motion. Qwest’s motion to strike was explicitly based on ER 408 and this Commission’s Alternative Dispute Resolution (ADR) rules, WAC 480-07-700 *et seq.* The Commission’s ADR rules include in the classification of ADR, “any mechanism to resolve disagreements, in whole or in part, without contested hearings.” WAC 480-07-700. The Commission’s informal complaint rule, WAC 480-07-910(3) provides “Commission employees assigned to assist consumers may discuss an

¹ Qwest notes that ¶10 of Order No. 1 states that Qwest had moved to strike references in ¶3.2 of the complaint regarding an offer of partial remuneration in settlement. This is in error. Qwest did not move to strike any part of ¶3.2 of the Complaint. Qwest moved to strike portions of paragraphs 3.10 and 4.5 of the Complaint on the basis that they recounted the substance of an offer in compromise by Qwest of the dispute that is the subject of this proceeding in violation of ER 408.

informal complaint with the affected persons, by correspondence or otherwise. The Commission will try to assist the parties to resolve the informal complaint by agreement without the need for a formal complaint, hearing, and order. The Commission encourages the informal resolution of disputes whenever possible. An informal complaint will not result in a hearing or in an order that compels a person to do something or forbids a person from doing something.” The informal complaint process that the Complainant first invoked for this dispute was within the broad class of ADR activities as “any mechanism to resolve disagreements . . . without contested hearings” and was subject to the Commission’s ADR rule. That ADR rule includes the ER 408 prohibition against use in a subsequent contested proceeding against Qwest, of any offer in compromise made by Qwest during such ADR activities. WAC 480-07-700(4)(b).

3. Order No. 1 analyzed the motion to strike based on a determination that what occurred during the informal complaint process was not mediation as defined in WAC 480-07-710 and that therefore the offer in compromise was not *confidential* pursuant to the Uniform Mediation Act or WAC 480-07-710(4)(g). The confidentiality of the offer in compromise is not an issue that Qwest ever raised in its motion or response to the Complainant’s reply to that motion. Qwest does not contend that the offer in compromise is or was confidential. Qwest simply contends that, as a failed attempt to settle this very dispute, that offer in compromise may not be used against Qwest in this contested proceeding by the Complainant under ER 408. Nowhere did Order No. 1 analyze or address the issue Qwest raised² that ER 408 and the policy of that rule and this Commission’s ADR rules would preclude the Complainant from proving the offer in compromise in this case and that therefore the allegation of such an offer and the substance of it, were improper pleading under the Commission’s pleading rules.

² See, paragraphs 10 and 11 of Qwest’s Response to Reply to Motion to Strike, filed July 27, 2005.

4. For the foregoing reasons, Qwest objects to Order No. 1 and will maintain a continuing objection to being required to respond in pleadings and with evidence to allegations of its having made an offer of settlement to the Complainant in this proceeding and the substance of that offer. Qwest submits that this ruling will have a chilling effect on any future participation by Qwest in the Commission's informal complaint process or in any ADR process under the auspices of the Commission.

Respectfully submitted this 9th day of August, 2005

QWEST CORPORATION

LAW OFFICES OF DOUGLAS N. OWENS

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

Lisa A. Anderl (WSBA 13236)
Associate General Counsel, Qwest Corporation
1600 Seventh Avenue, Room 3206
Seattle, WA 98101
Tel: 206 345 1574
Fax: 206 343 4040

CERTIFICATE OF SERVICE

Docket No. UT-050770

I certify that a copy of the attached Objection to Prehearing Conference Order No. 1 was deposited in the U.S. Mail, postage prepaid and properly addressed on August 9, 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 9th day of August, 2005.

Douglas N. Owens