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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION**

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In the Matter of the Complaint of:

Whatcom Community College,
Complainant

v.

Qwest Corporation,
Respondent

No. UT-050770

ANSWER TO QWEST'S
OBJECTION TO PREHEARING
CONFERENCE ORDER NO. 1

Comes now Whatcom Community College (WCC), represented by Rob McKenna, Attorney General for the State of Washington, and Wendy Bohlke, Senior Counsel, and responds to Qwest Corporation's Objection to Prehearing Conference Order No. 1 (hereinafter referred to as the "Objection") as follows:

1. Respondent Qwest has objected to the denial of its motion to strike stating that the ruling failed to address or discuss the basis for its motion, namely ER 408 and the Commission's Alternative Dispute Resolution (ADR) rules. Complainant WCC responds that ER 408 and all of the Washington Rules of Evidence are limited in scope to govern proceedings in the courts of the state of Washington as explicitly stated in Evidence Rule 101 (Scope). WAC 480-07-470 (5) and WAC 480-07-495 (1) control the admission of evidence in UTC hearings and allow the presiding officer broad discretion in evidentiary rulings.

1 2. WAC 480-07-470 (5) affords discretion to “receive evidence as provided by
2 RCW 34.05.452.” In turn, RCW 34.05.452 grants the presiding officer discretion to
3 admit evidence if “it is the kind of evidence on which reasonably prudent persons are
4 accustomed to rely in the conduct of their affairs.” The statute only requires the exclusion
5 of evidence on the basis of constitutional, statutory, or privilege provisions. ER 408 falls
6 within the relevancy provisions of the Rules of Evidence (see Title IV. Relevancy and its
7 Limits) which RCW 34.05.452 allows to be operative as a matter of discretion.
8 Specifically, RCW 34.05.452 states that “[t]he presiding officer may exclude evidence
9 that is irrelevant,...”. (Emphasis added.)
10

11 3. WAC 480-07-495(1), in part, similarly states, that:
12

13 All evidence is admissible if the presiding officer believes it is the best evidence
14 reasonably obtainable, considering its necessity availability, and trustworthiness.
15 The presiding officer will consider, but is not required to follow, the rules of
16 evidence governing general civil proceedings in non-jury trials before Washington
17 superior courts when ruling on the admissibility of evidence.

18 Qwest’s reliance on ER 408 as a basis for its motion to strike lacks merit and the
19 speculative later exclusion of the evidence does not mandate the striking of the
20 allegations of paragraph 3.10 (mistakenly referenced as paragraph 3.2 of the complaint in
21 Prehearing Conference Order No.1 at paragraph 10).


22 4. Complainant WCC also answers Respondent’s Objection by reliance on the
23 Prehearing Conference Order’s observation that a motion to strike is to be filed separately
24 in accord with WAC 48-07-375(2) and not to be interjected into a party’s Answer. (See
25 fn. 2 of the Prehearing Conference Order).
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Dated this 24th day of August, 2005.

Respectfully submitted,

ROB MCKENNA
Attorney General of Washington

By 
WENDY K. BOHLKE
Senior Counsel
WSBA # 8085
Attorney for Whatcom
Community College

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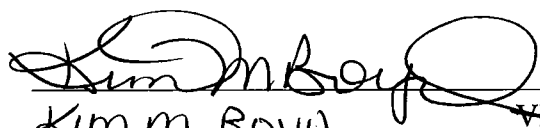
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_____ I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 24~~th~~ day of August, 2005, at Bellingham, Washington.



 Kim M. Boyd ~~VIRGINIA J. SMITH~~