

PC102704-1E32 COVAD ESCALATION November 8, 2004

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Sent by: ebalvin@covad.com

Subject: Covad Escalation PC102704-1

Escalation
Company: Covad
CR#: PC102704-1
Status Code: Submitted

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Description:

Qwest inappropriate initiation of PC102704-1. The governing CMP document states:

14.0 ESCALATION PROCESS Guidelines

Escalations may also involve issues related to CMP itself, including the administration of this CMP. Covad notes Qwest administration of these changes are inappropriate.

History of Item:

Qwest initially initiated a "Regulatory" Systems change request SCR102704-1RG. When numerous CLECs objected, Qwest withdrew the systems change request and re-issued the exact change request via the Product and Process CMP. Please see Covad's comments attached that continue to apply to PC102704-1.

Reason for Escalation / Dispute:

Qwest inappropriate initiation of PC102704-1.

The governing CMP document states:

5.4.5 Level 4 Changes

Level 4 changes are defined as changes that have a major effect on existing CLEC operating procedures or that require the development of new procedures. Level 4 changes will be originated using the CMP CR process and provide CLECs an opportunity to have input into the development of the change prior to implementation.

Level 4 Change Categories are:

- New products, features, services (excluding resale)
- Increase to an interval in Qwest's Service Interval Guide (SIG)
- Changes to CMP
- New PCAT/Tech Pub for new processes
- New manual process
- Limiting the availability and applicability or functionality of an existing product or existing feature
- Addition of a required field on a form excluding mechanized forms that are changed through an OSS Interface CR (See Section 5.1)

For any noticed change that Qwest considers a Level 4 change that does not specifically fit into one of the categories listed above, Qwest shall issue a Level 3 notification with an indication in the notification that Qwest believes the change should be a Level 4 change.

5.4.5.1 Level 4 Process/Deliverables

Qwest will submit a completed Change Request no later than fourteen (14) calendar days prior to the Monthly CMP Product/Process Meeting. At a minimum, each Change Request will include the following information:

- A description of the proposed change

- A proposed implementation date (if known)
 - Indication of the reason for change (e.g., regulatory mandate)
 - Basis for disposition of Level 4
- Qwest will present the Change Request at the Monthly CMP Product/Process Meeting. The purpose of the presentation will be to:
- Clarify the proposal with the CLECs
 - Confirm the disposition level of the Change (see below).
 - Propose suggested input approach (e.g., a 2 hour meeting, 4 meetings over a two week period, etc.), and obtain agreement for input approach
 - Confirm deadline, if change is mandated
 - Provide proposed implementation date, if applicable

5.9 Change Request Designations

In certain circumstances CR numbers will require special suffix designations to identify certain characteristics. Suffixes include:

- “CM” - Changes to the CMP framework
- “DR” - Dispute Resolution Process invoked on a CR
- “ES” - Escalation Process invoked on a CR
- “EX” - Change being implemented utilizing the Exception process
- “IG” - Industry Guideline CR
- “MN” – CR for a manual workaround related to an OSS Interface Change Request
- “RG” - Regulatory CR
- “SC” - Change being implemented as an SCRIP request
- “X” - Crossover CR

While Qwest asserts the change request is due a mandate (“**FCC Triennial Review Order CC 01-338 (TRO), U.S. Court of Appeals for the DC Circuit decision (USTA II) Decision No. 00-1012, and FCC Interim Rules**”) there is no such designation provided. Covad continues to object in that Qwest is attempting to implement such changes based on its legal interpretation of the orders cited without basis (see attached).

Attachment

Covad’s objections to SCR102704-1RG

1. There are a number of pending legal proceedings at the state and federal regulatory level that are addressing the legal issues surrounding access (whether under Section 251, Section 271 or state law) to most, if not all, of the elements listed on Qwest’s change request. At best, therefore, it is premature for Qwest to eliminate access rights unless and until there is a final, non-appealable order out of a regulatory or judicial body that clearly specifies the rights and obligations of Qwest and CLECs. At worst, it is absolutely inappropriate for Qwest to implement its *interpretation* of its legal rights and obligations through change management rather than in the appropriate legal venue.

Qwest’s interpretation (which benefits itself at the expense of CLECs and consumers) is not a substitute for, or anywhere near the same as, a final, binding order of a federal or judicial body. Qwest’s attempt to implement its *interpretation* is nothing more than a shameless backdoor attempt to evade its legal obligations, particularly when the purpose of change management is to provide the “means to address changes that support or affect pre-ordering, ordering/provisioning, maintenance/repair and billing capabilities and associated documentation and production support issues for local services (local exchange services) provided by Competitive Local Exchange Carriers (CLECs) to their end users” and not to debate legal issues.

Further, it is clear within the CMP document itself that any and all legal issues surrounding access, as expressed in interconnection agreements, should be addressed within those agreements and not within CMP. As the scope of the CMP makes clear,

[i]n cases of conflict between the changes implemented through this CMP and any CLEC interconnection agreement (whether based on the Qwest SGAT or not), **the rates, terms and conditions of such interconnection**

agreement shall prevail as between Qwest and the CLEC party to such interconnection agreement. In addition, if changes implemented through this CMP do not necessarily present a direct conflict with a CLEC interconnection agreement, but would abridge or expand the rights of a party to such agreement, the rates, terms and conditions of such interconnection agreement shall prevail as between Qwest and the CLEC party to such agreement.

2. Despite recognizing that many, if not all, of the elements may continue to be available to CLECs under their current interconnection agreements, Qwest seeks to wholly eliminate access via CMP. In effect, therefore, while paying lip service to access requirements that are clearly in place, Qwest nonetheless is trying to deprive all CLECs of access to all of the listed elements (regardless of whether such elements are in their current IAs). At the very least, Qwest's desire to implement systems changes presumably designed to eliminate all together the ability to order the elements listed will ensure the ordering and provisioning of elements available to a CLEC under its current IA are fraught with problems and delay, which is anti-competitive and inappropriate. Qwest's action of eliminating all access while admitting that at least some CLECs continue to have access is tantamount to swatting a fly with a sledgehammer.
3. The CMP clearly specifies that "regulatory changes" are changes that are affirmatively required by the applicable regulatory or judicial body. Contrary to Qwest's assumptions, there is nothing in the TRO, USTA II or the Interim Rules that requires the elimination of access to all of the elements Qwest has listed in its CR. To the contrary, for example, the Interim Rules actually requires access to at least three of the elements on Qwest's list of elements for which it wants to eliminate access. Absent such an affirmative requirement that access not be provided, Qwest has failed to demonstrate that its desired changes are actually mandated changes as defined and understood in the governing CMP document.
4. Qwest has failed to comply with the procedural requirements surrounding submission of a regulatory CR. The governing CMP document requires specific page and paragraph references. Qwest's CR lacks this specification and thus is faulty and must be withdrawn per the agreed-upon CMP requirements for regulatory CRs and CRs generally.

Business Need and Impact:

That Qwest withdraw the proposed change request until a specific mandate is issued.

Desired CLEC Resolution:

Qwest resolve legal interpretation issues outside of CMP. Covad requests change request be withdrawn.

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Lead Submitter:

Name: Liz Balvin

Title: Director - External Affairs

Phone Number: 720-67-2423

E-mail Address: ebalvin@covad.com