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## Tips for Improving Your Next Wireless Agreement

Over the past decade, enterprise customers have enjoyed steady declines in wireline voice and data pricing. However, at the same time that the price of wireline voice minutes has been falling below \$.02, there have been dramatic increases in enterprise spending on wireless services, where voice minutes can cost \$.10 (or more). As a result, increased wireless usage has, at least to some extent, offset the dramatic fall in wireline pricing. In fact, wireless services now comprise an estimated 25% of the average enterprise's telecom expenses.

As a result, enterprise customers are now working hard to gain control of skyrocketing wireless costs. There is, however, a lot more to wireless cost control than just selecting the carriers and the rate plans that match users' traffic profiles. In addition, enterprise customers must develop a coherent wireless procurement strategy that they execute through the terms and conditions of wireless contracts.

The following four principles can help enterprise customers obtain competitive rates, minimize costly surcharges and avoid unforeseen costs:

### Consolidating Carriers

The key to lowering wireless rates is leverage, which comes from the ability to move traffic to a competing vendor. But leverage only works if you have the ability to use it. Otherwise, it's just a hollow threat.

Too many enterprise customers spread their wireless traffic across the four major providers, which reduces customer leverage and diminishes discounts. These days, two carriers (one GSM provider and one CDMA provider) should be adequate. The situation is slightly more complicated for companies with a specialized workforce (such as a fleet of drivers, a team of baggage handlers or large housekeeping staffs). For them, Sprint/Nextel's best-of-breed push-to-talk iDen-based service is hands-down the best choice, which means such customers might have agreements with three carriers.

To see the value of this approach, consider the case of an enterprise customer that has 2,500 corporate-liability users with each of the two CDMA providers, Sprint and Verizon Wireless. If each provider gives the customer a 15% discount off its eligible charges of \$4 million annually, the savings would be \$600,000 per year.

By contrast, consolidating those CDMA users with a single carrier could boost the discount to 20%, increasing annual savings by 33% to \$800,000.

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## Upcoming Event

March 20-21, 2006: 14th Annual Telecom Negotiation Conference: Proven Strategies to Maximize Your Negotiation Leverage, Orlando, FL.

Join LB3 for a comprehensive two-day telecom seminar covering wireline, wireless, and local deals, plus the latest on MPLS, VoIP, international deals and more. For more information, call (866) 620-5938 or [click here](#).

Has it been a while since you visited the LB3 website? Take a look at our redesigned site at [www.lb3law.com](http://www.lb3law.com) for the latest on the telecom megamergers, news articles and other breaking news.

## Tips for Improving Your Next Wireless Agreement

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A subsidiary benefit of this kind of consolidation is that it leaves a competing GSM provider and an alternative CDMA provider waiting in the wings, which increases the customer's negotiating leverage with the incumbent carrier.

Of course such leverage is illusory if the customer has no practical ability to migrate (for example, where the customer is hampered by steep early termination fees, restrictive termination policies or proprietary wireless devices). The next task is to eliminate such obstacles.

### Maintaining Mobility

When wireless local number portability ("LNP") took effect in November 2004, consumers could port their numbers from their incumbent to their new carriers. In practice, however, LNP has not lived up to its billing. The reason is that early termination fees (or "ETFs") make it too costly to switch.

ETFs are an even greater headache for enterprise customers, who must weigh the savings from switching carriers against the ETFs for the end users whose minimum service periods have not expired. ETFs also impose substantial administrative burdens, such as keeping track of expiration dates and managing end users so they do not re-start the minimum-service-period clock.

The better solution is to negotiate relief from ETFs. Although there is little an enterprise customer can do for its individual users who are subject to standard consumer contract terms and conditions, carriers can reduce the bite of ETFs for corporate-liable subscribers in four ways.

Some carriers will waive all ETFs for corporate-liable subscribers. Other carriers will pro-rate ETFs over the minimum service period. Still other carriers will create a waiver pool (*i.e.*, a certain number of "free" early terminations per contract year). Finally, other carriers will agree to let the customer terminate service or lines without liability and reduce its commitment under certain circumstances. These circumstances could include a business downturn, business divestitures, material degradation of service and other events.

### Managing Other Risks

In contrast to conventional wireline services, managing wireless services can be challenging because most of the services are used off the enterprise's premises

(although there is an increase in micro-cell installations on corporate campuses). This makes it more difficult to control usage. Further, handsets can be lost or stolen; end users can incur substantial roaming charges; and lax ordering procedures can quickly result in a large number of users who may not be authorized to have a corporate-liable handset or who may be enrolled in a wasteful calling plan. These challenges, coupled with the hefty average cost per minute of wireless service, make it imperative to manage the unique risks stemming from wireless services.

Consider this anecdote: a financial services firm incurred over \$1 million in unauthorized wireless charges after a rogue employee fraudulently ordered 700 phones under the company's corporate contract and then sold them on the black market. Although the equipment and service charges were billed to the company, it took the company a year to detect and stop the fraudulent charges because the company's telecom group could not manage all their wireless providers and monitor multiple invoices. By focusing only on price and neglecting other contract terms and conditions, the company lost far more money than it saved through the rate reductions.

In addition, customers should restrict the carrier's right to change rates or rate-affecting terms of an agreement. Carriers increasingly are removing key provisions from their contracts and replacing them with references to extra-contractual sources, such as websites or printed "collateral." Whenever possible, put rates, terms and conditions in the agreement. If the carrier insists on the right to make unilateral changes, the customer should demand a remedy if the carrier makes such changes that are material and adverse to the customer.

### State/Local Surcharges and Carrier Markups

The final component of a sound wireless procurement strategy consists of minimizing both state and local taxes and surcharges on wireless services and carrier add-ons to any permitted surcharges.

The combination of state and federal assessments adds as much as 20% in 22 states and over 15% in 45 states. State and local taxes and surcharges on wireless services vary widely: Nevada has the lowest state and local wireless taxes and surcharges, totaling 1.14%, while New York has the highest, at 16.23% (these figures include transaction taxes, such as sales and use taxes, telecom excise taxes, gross receipt taxes, state universal service charges, 911 fees and other state regulatory surcharges, to the extent applicable).

So what is an enterprise customer to do? If circumstances permit, some customers may be able to designate a low-tax state as their “place of primary use” (“PPU”). Under the federal Mobile Telecommunications Sourcing Act, a customer’s PPU is “the street address representative of where the customer’s use of mobile telecommunications service primarily occurs,” which can be either the residential street address or primary business street address of the customer within one of the carrier’s licensed service areas.

For example, if an end user lives in Annapolis, MD, but works in Washington, DC, and the user’s carrier is licensed in both jurisdictions, the user could arguably designate either jurisdiction as its PPU by having the invoice sent to the address of the user’s choosing (*i.e.*, home or office). In this case, if the end user specified his or her home address, the wireless state and local tax burden would be approximately 7.07%, compared to a wireless tax burden in Washington, DC of 12.57% (excluding federal taxes and surcharges). If, however, the same end user lived in Prince George’s County, MD, which recently enacted a local tax of 8% on wireless service (with the state General Assembly’s approval), the state and local tax burden associated with the end user’s home address would be 15.07% — almost 25% more than the comparable tax burden in Washington, DC. This example illustrates the potentially significant savings an enterprise buyer of wireless services might realize in the area of state and local taxes. Before proceeding to designate or change PPU’s to reduce your company’s wireless tax burden, we recommend that you first seek the advice of a qualified tax lawyer. The potential tax savings are well worth the cost of obtaining a professional opinion.

As with landline carriers, regulatory surcharges are a fertile source of revenue enhancement for wireless carriers. Ever since Congress deregulated wireless carriers’ rates and pre-empted the states from regulating them in 1993, the potential for carrier abuse in this area has been great. In recent years, the risk of abuses has increased because of two factors: first, the proliferation of regulatory programs (including wireless LNP, 1,000-block number pooling and E911), and second, the FCC’s hands-off approach to regulating the manner in which carriers may recover these costs from their customers.

In March of 2005, the FCC reversed course and released a new Truth-in-Billing Order that made some advances toward curbing — or, at least, uncovering — discretionary carrier markups of regulatory surcharges. A second order is in the works, and it promises to go even further to protect the customer’s interest in accurate disclosure of the actual

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## 10 Issues to Contemplate About Convergence

In the coming years, enterprise customers are going to have to face the issue of convergence. Already, many customers are planning to leave behind the comfortable world of separate dedicated T1 access for voice, data and internet services in favor of using a single DS3 (or an even fatter pipe) to get all three services using IP. LB3’s Hank Levine recently spoke to a group of U.S. Government telecom professionals about convergence, and here are the ten issues regarding convergence that keep Hank awake at night:

- Will the converged world be secure, or will there be a constant danger of implosion?
- The converged world will be more dynamic — will enterprises understand what action is required?
- Will enterprise users be able to keep up with the rapid scope and speed of change?
- How does one specify performance?
- What are the metrics for speed, performance and cost?
- Will the marketplace be able to bring order to the chaotic carrier world?
- How will enterprises transition to new services and applications while also supporting the existing applications?
- What training and skills will people need to support and use these services?
- When and how will there be clarity about unresolved regulatory and governance issues?
- Is convergence a framework for evolution or a straightjacket on innovation?

The switch to convergence will bring tremendous opportunities in the form of cost savings and enhancements to existing services, but it will also create immense challenges for enterprise customers as they select new platforms and carriers.

For more information on the risks and benefits of convergence, contact Hank Levine at [HLevine@lb3law.com](mailto:HLevine@lb3law.com) or (202) 857-2550.

**1Q 2006 USF Contribution Factor to Hold Steady at 10.2%:** On December 15, 2005, the FCC announced that the proposed universal service contribution factor for the first quarter of 2006 would remain 10.2%, which would generate approximately \$1.7 billion in USF funds.

## LB3 Meeting the Telecom and IT Needs of Enterprise Customers

Levine, Blaszak, Block & Boothby, LLP ("LB3") is dedicated to meeting the needs of enterprise customers in the procurement and use of telecom and IT services. LB3 has extensive experience in negotiating custom network service agreements, network outsourcings, and related transactions on behalf of large users and information technology companies; assisting enterprise customers when their agreements with carriers "go south" and representing the interests of enterprise customers before the Federal Communications Commission. For more information, see our newly-redesigned website at [www.lb3law.com](http://www.lb3law.com).

Inside Wire is a quarterly newsletter that helps enterprise customers stay current with the latest telecom and IT

developments. If you have any questions about any of the articles in this edition of Inside Wire, please e-mail us at [insidewire@lb3law.com](mailto:insidewire@lb3law.com), or contact us at:

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net cost of service and of the true nature and amount of claimed regulatory charges.

On the state and local levels, however, even enterprise customers with considerable leverage have had little success persuading carriers to itemize state and local taxes and surcharges. But knowledge is power (and savings); the well-informed enterprise customer may be able to realize

significant savings by minimizing the state and local taxes and surcharges that are added to its bill.

### Conclusion

In short, don't limit your contract review to just rates. The terms and conditions can have as much — if not more — impact on your bottom line.

Contact Kevin DiLallo at [KDilallo@lb3law.com](mailto:KDilallo@lb3law.com) or (202) 857-2550 for more information on improving your next wireless agreement.

## Carrier Updates

**Sprint: Farewell to Frame Relay.** The trade press is reporting that Sprint plans to phase out frame relay and ATM services by mid-2009, although the company will continue to provide frame over an IP core. Sprint may be trying to accelerate the phase-out, however: customers negotiating contract renewals may find language that states that they will agree to transition off frame relay and over to MPLS as early as January of 2007.

**AT&T: Earnings Reports Show that Price War Rages On.** AT&T's quarterly report for 3Q 2005 — AT&T's last before the SBC merger closed — reported that revenues for the Business Services unit declined by \$1.5 billion, or 9%, during the first three quarters of 2005 compared to the same time period for 2004. Long-distance voice revenues dropped by over 14% because of "a decrease in the average price per minute" and declining "retail volumes, primarily due to the impacts of competition and substitution." Competition and technology changes pushed data revenues down by over 9%. IP and enhanced service revenue actually climbed by 7.8% as more customers migrated to advanced products such as E-VPNs and IP-enabled frame relay services.

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**MCI Boosts Non-Recurring Charges.** MCI announced increases in several non-recurring charges effective September 1, 2005 (which means they started to appear on October invoices).

- Expedite fees increased from \$900 to \$1100
- Cancellation fees increased from \$550 to \$650
- Physical move fees increased from \$150 to \$200
- MCI's administrative fee increased from \$50 to \$60

These changes affected MBSI, MBSII, and pre-MBS customers, as well as customers with special contracts. If your contract provides for some or all of these charges to be fixed, check your invoice to verify that MCI did not mistakenly increase any of these charges.

**FET Update:** With a victory in the Court of Appeals for the Sixth Circuit on November 2, 2005, LB3 now has won six straight victories on behalf of enterprise customers seeking refunds of the 3% federal excise tax ("FET") on communications services, including two victories at the appellate level. A month later the DC Circuit sided with the taxpayer on a similar claim. For more information about FET refund actions, contact Steve Rosen at [SRosen@lb3law.com](mailto:SRosen@lb3law.com) or (202) 857-2550.