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Upcoming Events

Join us at the following events:

"Navigating Privacy Laws when Developing and Deploying Location Tracking Applications," O'Reilly Where 2.0 Conference, May 19, 2009, San Jose, CA (<http://en.oreilly.com/where2009>).

"Negotiating Network Deals in a Tough Economic Climate," May 28, 2009, New York, NY (<http://www.lb3law.com/nyconference/>)

"Practices for Sourcing Cloud Computing Solutions," Cloud Computing Symposium, June 16, 2009, Santa Clara, CA (<http://www.cloudcomputingsymposium.com/default.aspx>).

17th Annual Telecom Negotiation Conference September 14-15, 2009, San Diego, CA (<http://www.ccmi.com/conferences/negotiate/home.html>).

The Right Way to Cut Telecom Costs

In this down market, telecom managers have embarked on a quest to minimize network costs, but they must do so without reducing service, availability, or coverage. Meeting the dual challenges of reducing costs and maintaining service levels is the Holy Grail of network management in 2009.

Fortunately, finding savings in your telecom spend is easier than locating the legendary chalice. Shrewd telecom managers are realizing cost savings in many ways, and they are doing so by going after more than just the typical "low-hanging fruit." Here are some ideas:

Securing Price Improvements from Your Suppliers

When the pressure to reduce costs is high and rising, it can be tempting to sacrifice long-term leverage for short-term gains. One example of this is agreeing to onerous increases in your minimum spend commitments in return for a contract extension signing bonus. Although the short-term gain can be tempting, it can take years to repair the damage to your overall contract flexibility. Moreover, it's a one-time gain: when next year's round of budget reductions hits, you'll have little, if any, leverage remaining to extract further improvements from your suppliers.

In the current environment, suppliers know that it's all about price. In past years, customers might have been willing to pay a modest premium to avoid the headache of switching suppliers, but that is no longer the case. This development is making suppliers anxious. Your job is to exploit that anxiety, not only as you approach the end of your current contracts, but also in the middle of the term. You can get mid-term price improvements by leveraging the traffic that's in excess of what's needed to satisfy your contractual commitment. Remember: nothing focuses suppliers' minds more sharply than a customer who actually moves service to realize savings, even if that means transitioning a small volume of business. As a result, maximizing your leverage means that you must occasionally demonstrate to the incumbent that you are serious by taking concrete action and moving business to another vendor.

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Managing Demand

In many areas, the recession is *increasing* demand for telecommunication services. For example, frozen travel budgets are driving up usage of audio-, web-, and video-conferencing services. That said, there are still many opportunities to reduce costs by managing demand.

The best example of this is wireless services. A large and growing component of enterprise wireless spend is international calling, which includes both calling overseas from the US, and making/receiving calls on a US cell phone while traveling internationally. While some reductions can be achieved through price negotiations, the most productive path to reducing costs is optimizing your plans (discussed below), educating users on the high cost of these calls, and encouraging users to use other technologies (calling cards, landline phones, soft phones, rental phones picked up in a country they are visiting, etc.) to make and receive such calls wherever possible.

Contract Compliance

Although telecom carriers are not suffering as much as many other suppliers, they continue to drive back-office efficiencies, aggravating the substantial back-office and support cut backs of the last few years. This means that, while billing errors are as prevalent as ever, there are fewer carrier representatives available to fix them.

No telecom manager can afford to pad the suppliers' profits by not performing bill verification. But contract compliance means much more than just checking invoices. For example, we routinely see managed services deals where customers are incurring excessive change-related costs, i.e., charges for project services or for moves, adds, changes, and disconnects (MACDs). Excessive MACD charges often are the result of suppliers interpreting their pricing terms for such items in their favor, e.g., charging two MACD charges for a routine change that consists of two steps, even if the contract defines the effort as a single MACD.

Another example we frequently encounter is charging per-hour project fees for services that are included in the contract statement of work.

Service and Cost Optimization

One of the most fruitful areas for cost optimization is wireless: the current patterns of lay-offs, M&As, divestitures, travel budget freezes, etc., are turning wireless optimization into a growth industry. But effective wireless optimization entails addressing far more than just base rate plans—professional wireless optimization services also should analyze messaging add-ons, international calling features, data plans and other feature charges, and cost components in order to drive the effective rate as low as possible.

Finally, enterprise users need to seek out other, less obvious optimization opportunities. For example, one way to optimize managed services is to consider whether all sites really need 24x7 support. In many cases customers find that 8x5 coverage is adequate for many sites and costs less. Also, where wide-area Ethernet access is available, replacing T-1 and DS-3 access circuits with Ethernet can significantly reduce the cost per megabit.

For more information on how to squeeze excess costs out of your telecom bill, contact Ben Fox at bfox@techcaliber.com.

Peeking at the Carriers' Negotiation Playbook

If you are involved in telecom or IT sourcing, you probably are feeling pressure from two fronts. Internally, because telecom and IT are cost centers, you are being pressured to save as much money as possible. But your service providers are also working hard to extract more money from you during these tough times.

Something has to give.

Service providers negotiate thousands of deals each year, which gives them keen insights into how their customers approach procurements. They use this experience to develop a set of negotiating tactics that have been proven to ensnare customers. This article tries to level the playing field by exposing several "revenue maximization" strategies from the carriers' negotiation playbook.

Boost Existing Fees/Surcharges or Conjure Up New Ones

Taxes and surcharges comprise about 20% of your telecom bills, 15-25% for wireless and 30% for local lines and PBX trunks. If you scrutinize the carriers' form

agreements and Service Guides, you'll notice that they reserve the right to pass through taxes, regulatory fees, and unspecified surcharges. Some of these, like the "property tax" surcharge, are junk charges designed to pad the carriers' bottom line. Despite statutes requiring carrier practices for regulated services to be "just and reasonable," the regulators aren't much help; you'll have to fight the carriers yourself.

Charge for Stuff that Used to Be Free

Network management reports are classic example of this tactic. They are free if you negotiate the issue up front, but they cost a bundle if you ask for them *after* you've inked a deal. Recently some carriers have started to charge for managing (i.e., acting as the RespOrg) toll free numbers, even when a carrier gets the traffic directed to the number. Another new charge is Proactive Notification—the carriers expect the *customer* to speak up when the carriers fail to meet one of their own SLAs; if you want the carrier to notify you, additional charges may apply. And to prove that desperate times call for desperate measures, Verizon is so enthralled by its web portal that it has put in its Service Guide the right to charge customers \$8 per paper bill. If you get 100 bills, that's \$10K per year.

Quote a Bare-Bones Price for New Managed Services and Profit from the "Extras"

Remember the story about the guy who negotiates a rock-bottom price for a new car only to find it sitting on blocks when he comes to pick it up? "Tires?" says the salesman incredulously. "You wanted tires? Sorry, but that costs extra."

Welcome to the scope of work. The examples in the network services world are more subtle, but only slightly. The Scope of Work attachment is as important as the contract, especially in managed service and outsourcing deals, because if it's not in the Scope of Work, you will pay extra. For example, in managed network services deals carriers will impose a per-device migration or transition charges (never mentioned in the RFP response) to bring client hardware under management. They will also impose charges for "enhanced" SLAs for maximum time to repair and "dedicated management servers" in the supplier's NOCs.

There are several related tactics, such as pricing specified initial sites reasonably and then "custom pricing"

additional sites at higher prices even though the new sites are comparable to the initial locations.

Using Preemptive Renewal Offers to Keep the Customer from Going to Market

A customer's negotiating leverage peaks about one year before contract expiration. And it's axiomatic that customers who are "up for grabs" in a down market will draw aggressive offers. So it's no surprise that about a year before a major network deal ends, the incumbent will try to prevent the customer from going out to bid by presenting a "really aggressive" offer that will produce **immediate savings**. The carrier will often throw in a "signing" or "loyalty" bonus in the form of a one-time credit that will effectively lower the customer's costs in the current fiscal year.

The catch is that the preemptive offer isn't that good—it's usually 15-20% above "market." The carriers get away with this because the improved pricing they are offering is pegged to giving the customer a modest but quick reduction in what it is paying *now*, not a good price compared to the market. It's the telecom equivalent of a payday loan. And that "free" loyalty bonus is expensive: the carrier typically realizes a premium over the life of the deal in the form of above-market pricing equal to three times the value of the bonus.

Pushing Back in Rate Reviews

Back in the good old days there were four or five first-tier carriers and it wasn't uncommon to see annual price reductions of 10-15%. Now, with AT&T and Verizon trying to act like a duopoly and Sprint and Qwest weakened, reductions of 5-8% are more common. Go down a level and commodity voice rates can be even stickier, although double digit reductions are still the norm for newer, more rapidly growing services such as MPLS.

The carriers are now asserting in rate reviews that prices are "firming" in the hope that it will become a self-fulfilling prophecy. The targets of this effort are companies with minimal leverage (i.e., those who have committed 90% of their traffic for the next two years). The carriers are also stingy on rate reductions when the subject is traffic/networks that can't be moved easily—for technical reasons (complex data nets) or for cultural reasons ("800" traffic to call centers).

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Water Down SLAs and Hollow out Account Team Support

When it comes to SLAs and account team support, less is more for the carriers. Carriers can reduce their risk of paying SLA credits without alienating customers by leaving the nominal SLA metrics untouched and using exclusions, exceptions, and limitations to give them a way to avoid paying credits.

When times get tough, headcount is one of the easiest ways to cut costs, which is why the carriers strip down dedicated account teams, forcing customers to work the phones for support issues, orders, trouble tickets, and billing issues. Even if you can keep a real person with an actual name as a point of contact at the vendor, that person may be assigned to multiple clients, so response times suffer, and it takes forever to resolve billing issues.

Run out the Clock in Negotiations

Carriers often slow down and become unresponsive during the final phase of contract negotiations. They take several days to turn around contract drafts. Every open issue, however mundane, must be "internally escalated," which can take weeks. The carriers try to "run out the clock" to extract additional concessions (or to induce the customer to give up pressing outstanding issues) from customers anxious to sign the deal so they can take advantage of credits and lower rates.

After the contract is signed, the carrier will delay resolution of billing issues. Response times are l-e-n-g-t-h-e-n-i-n-g, which makes tracking billing issues difficult, since there is an ever-growing list of open problems to track. Insist on opening a ticket, and you'll add another two or three weeks to the process.

Conclusion

Nothing strengthens a defense like a look at the offense's playbook. Understanding what the carriers are trying to get (more revenue) and how they are trying to get it does not guarantee that you will foil their strategies, but it's a good start.

For more information about negotiating with service providers, contact Hank Levine at hlevine@lb3law.com.

From the TC2 Blog: Making the Most of the New European Mobile Roaming Price Caps

By now you may have seen press reports about the latest round of European regulatory announcements regarding caps on the charges that European mobile operators can impose. These include caps on charges for users making and receiving calls or text messages, plus charges for using mobile data services whilst roaming outside of their home country.

Here is a re-cap (pun intended) of the upcoming changes:

- Outbound voice calls, now capped at 46 Eurocents per minute, were already slated to fall to 43 cents per minute on July 1, 2009. The price will now drop again to 39 cents per minute on July 1, 2010, and again on July 1, 2011 to 35 cents per minute.
- Incoming voice calls, now capped at 22 Eurocents per minute, were already going to drop to 19 cents per minute on July 1st, 2009. They will then drop to 15 cents per minute on July 1, 2010, and to 11 cents per minute again on July 1st 2011.
- The price of text messages will be capped at 11 cents per message effective July 1, 2009.

The much-lauded roaming data usage price caps are actually being applied at the wholesale, not the retail level. So we'll need to wait and see what impact these caps (1 Euro per MB initially, falling to 0.80 Euro on July 1, 2010, and 0.50 Euro on July 1, 2011) will have on end-user pricing.

One caveat: before the measures listed above can take effect, they must be ratified by the full European parliament and the twenty-seven member states, but approval seems likely.

What implications do the price caps have for US-based users? The short answer is that it depends on the nature of your global business. The caps will have little direct impact when US users are travelling to Europe because the EU lacks the power to impose caps on US wireless carriers. But we do expect to see an indirect impact because the price decreases in Europe are likely to flow through to US-based users eventually. Indeed, for large enterprise deals, we are starting to see a greater willingness by the US carriers to negotiate lower, custom unit pricing for international roaming calls. In addition, those with truly global operations should see an immediate reduction in local European supplier costs for their European end-users.

But check with your carrier to make sure the caps actually flow through to your enterprise contract—you can't assume they automatically will do so.

There's another European wireless industry development that could be seen as a direct result of the pricing pressures that the EU is imposing. Various European mobile carriers have announced that they are extending their initiatives to share infrastructure with their competitors in order to reduce costs—whether simply sharing masts and cell locations, or even sharing infrastructure to the extent that T-Mobile and 3 are planning for their 3G infrastructure in the UK. Interestingly, in addition to reducing costs, the T-Mobile and 3 initiative will result in their 3G network coverage being identical.

This could be a valuable, if unexpected, by-product of the European regulatory pricing caps: pricing pressures lead to new infrastructure sharing initiatives in order to reduce costs, which, results in more ubiquitous and consistent coverage across suppliers. European users, and in particular the principal U.K. users' group, the Communication Managers Association (CMA)—no relation to the defunct U.S. users' group of the same name—have been pressing for carriers to implement domestic roaming for some time (similar to the situation in the US, where a user of one carrier can roam onto an alternative carrier's network in order to improve coverage).

The European carriers have been immovable on this front to date, but the infrastructure sharing plan between T-Mobile and 3 essentially provides exactly the same results as domestic roaming would—improved coverage for users of those two networks. If, and as, this trend continues coverage will become less and less of an issue for users when choosing a wireless carrier, which can only be a good thing for astute telecom sourcing professionals looking to leverage marketplace competition.

A version of this article appeared in the blog "TC2's David Rohde on Telecom" (<http://www.techcaliber.com/blog/>). For more information on wireless procurements and optimization, contact Ben Fox at bfox@techcaliber.com.

Will You Soon Be Seeing USF Surcharges on Your MPLS Bill?

Your MPLS provider may soon be adding a Universal Service Fund ("USF") charge to your MPLS bill, even if it has not done so in the past. And it *may* seek to impose a year's worth of such charges retroactively.

On March 6, 2009, the FCC clarified that carriers must *pay* the Universal Service Fund ("USF") charge on their MPLS services. But that doesn't mean customers are automatically on the hook because the FCC's rules do not dictate that carriers must *charge* their customers USF. In practice carriers have taken different approaches to including a USF charge on their MPLS invoices, and even those carriers who have imposed a USF pass-through for MPLS have not necessarily applied it to all of their MPLS services—some imposed it on access charges but not port charges, for example. Now that the FCC has addressed the issue and clarified that carriers must pay USF on MPLS generally, enterprise customers should expect to see a broader pass-through from carriers.

The carriers had to include MPLS in a USF filing for their 2008 revenues that was due on April 1, 2009. How and when they pass USF through to their MPLS customers, and whether they can only apply it prospectively or whether they can also seek to collect it retroactively on 2008 invoices, is a fact-specific question, and the answer depends on which vendor is involved and what the customer's contract provides.

Some carriers may also seek to challenge the FCC's action or delay MPLS-based charges until next year's USF filing, which will give them a chance to pass these charges through to customers before they have to pay them. It's not yet clear whether they'll do either of those things.

In the mean time, enterprise customers should be prepared for the appearance of USF surcharges on their MPLS invoices, and they may want to explore whether their contracts give them a basis for arguing that their carrier is not entitled to pass through USF fees on some or all MPLS charges incurred in 2008.

One last point: it is important to understand that the FCC's decision did not change the rules for which services are covered by USF. Those rules treat "basic transmission" or "telecommunications" (USF applies) differently from "enhanced" or "information services" (USF doesn't apply). The FCC's decision did not reclassify MPLS; it simply listed MPLS as an example of the many services that fit within the definition of "telecommunications" and therefore must be included when the carriers calculate their USF payment.

For more information about the FCC's decision and whether and how your contract may—or may not—mitigate its impact, please contact the LB3 attorneys with whom you work or Colleen Boothby at cboothby@lb3law.com or Jim Blaszak at jblaszak@lb3law.com.

LB3 and TC2: Working Together to Meet the IT and Telecom Procurement Needs of Enterprise Customers

LB3 and TC2 help enterprise customers maximize the value on their telecommunications and IT investments. LB3's lawyers have broad experience in telecom and information technology transactions, regulatory work, and dispute resolution. TC2's consultants inform, prepare, and position enterprise customers seeking to optimize the cost and performance of their increasingly complex voice and data networks. Together, LB3 and TC2 work to assist clients in network services procurement, benchmarking, compliance management, regulatory issues, and disputes.

Inside Wire is a quarterly newsletter designed to keep enterprise customers informed about the latest developments in the telecom and IT industries. If you have any questions about any of the articles in this edition of the newsletter, e-mail us at insidewire@lb3law.com, or contact us at this address:

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Verizon Takes Surcharges to the Next Level

In October of 2008, Verizon increased its absurd property tax surcharge from 2.5% to 3.0% of a customer's "total interstate and international charges." In March 2009, Verizon took junk charges to the next level by announcing that it is now imposing a Universal Service Fund Charge (set at 11.3% for the second quarter of 2009) onto this surcharge. Why USF should apply to property taxes imposed by states and local jurisdictions is anyone's guess, especially when, according to Verizon's own Service Guide, USF "applies to telecommunications services subject to direct regulation by the Federal Communications Commission (FCC)." When did the FCC's jurisdiction expand to include real estate and equipment?

Sprint Wants (all of) Your Business. And You're Going to Give It to Them

Meanwhile, here is exhibit no. 523 to why we hate service guides: on February 19, 2009, Sprint modified its Schedule (their name for a service guide) to provide that if you are a Sprint Voice VPN customer, you are required under the terms of the service guide to "award Sprint not less than **100% of [your] and [your] affiliates' long distance communications service.**" This applies not just to voice services, but to "all long distance telecommunications service." Apparently to avoid looking greedy, Sprint exempts service that is contractually committed to other carriers.

Verizon: Your Conference Call May be Monitored for "Service Quality"

Yet another reason to hate service guides, if you needed one. In March 2009 Verizon added this gem to its conferencing service guide: "Company personnel will have access to Customer Conferences and recordings of Conferences to perform requested services, such as operator or technical assistance, and for service quality purposes." When and why Verizon would want to review a customer's conference call is anybody's guess; enterprises concerned about the confidentiality of information exchanged during conference calls should take appropriate action.

Visit www.lb3law.com for new articles, the latest on the telecom megamergers and other breaking news.

Telecom/IT Blog

For the latest on IT/telecommunications from the perspective of the business user community, go to TC2's new blog (<http://www.techcaliber.com/blog/>), hosted by David Rohde. You will find current commentary by David and guest posts from other TC2 consultants and friends of TC2.

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