Intelligent Telecom Data Solutions

WITH A WINK AND A NOD – HOW *NOT* TO SQUANDER YOUR LEVERAGE

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With a Wink and a Nod – How *Not* to Squander Your Leverage

Every contract negotiation involves a balance of leverage between the parties. In the context of telecommunications negotiations, that balance almost always favors the vendor, regardless of how much money the customer is bringing to the table. We could debate whether this has something to do with lack of robust competition, the cost in time, dollars and human capital required to migrate a network between vendors, or the fact that telecommunications is considered a cost center for most clients, so that achieving quick savings generally trumps concerns regarding long term risks and liabilities. Whatever the reason, creating, or at least maintaining, leverage can make all the difference in reaching a successful result, and yet it is all too easy to lose.

Customers come to the table having spent a lot of time and money preparing an RFP and pressing the vendors for their best pricing. Then (as they are feeling the satisfaction of nearing the end of the process) they do what you should never do but so few can resist … they cede their leverage with a wink and a nod. Customers do this literally and figuratively, with body language, words, and conduct that have nothing to do with what is at issue. It happens when the vendor is pressing hard on a point that is completely against the customer's interest and the customer tells the vendor that the concern isn't a "show stopper." It happens when, in the midst of negotiation, there's a "buddy" moment when the customer responds positively to "let's go out for a drink and start our partnership." It happens when the customer makes very clear that time is running out and they must have the deal inked in three days.

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The last is the most deadly because often the customer really and truly believes time is running out: The RFP process took too long and the CIO or CTO is breathing down procurement's neck; the vendor has dangled savings and repeatedly pointed out that for every week of delay in contract execution, the customer is losing dollars; the existing contract is about to expire and if the customer can't place orders *now* with the new vendor, operations are at risk.

So if these are all ways that enterprise customers can squander leverage, what are the ways to build it?

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Several years ago, Levine, Blaszak, Block & Boothby LLP (LB3) represented a large client negotiating a pretty large deal. Expected spend was around $10 million per year, which was not a bad place to start in terms of customer leverage . . . until we learned that the vendor on the other side of the table was one of the *client's* largest customers. The client was a classic "captive" customer, and changing vendors wasn't an option. Optimism faded.

But then we met the business lead negotiating the deal on behalf of the client. He wasn't a table pounder, but he was determined. He knew what he wanted, he knew it was reasonable, he wasn't about to take less, and that's how he acted throughout the negotiations. We laid out a strategy that focused on priorities and by the time we finished we had substantially improved the company's business position and just as substantially improved some key terms and conditions.

We rarely see a client with so little obvious leverage successfully create leverage for itself. Having a big monetary commitment helped, but the vendor knew that the client couldn't and wouldn't walk away. So how did the client do it? How did he take a situation that was stacked against him from the get go and create leverage for his company and an exceptional result?

Clear goals, tenacity, and the (appearance of) time to be tenacious.

Know your bottom line. Besides lower pricing and higher savings, you need to know your overall contractual goals. For example, what type and level of commitment are you willing to accept; how long do you want your term to do be and are you looking for renewal rights; do you want a transition period at the end of the term; are there specific service level expectations, diversity expectations, payment terms that you need; where have you been burned before and how do you want to fix it in this contract? The list can be long or short, but it should be well-considered, intentional and specific.

Believe and don't let go. There's a big difference between talking the talk and walking the walk, and once the vendor figures out that it's all talk and no walk, your leverage meter has just gone down several notches. Setting goals is one thing, but really believing in those goals as necessary for your company goes a long away in helping you make a compelling case. Certainly there will be terms and conditions you ask for that you can live without, but keep your eye on the ball with respect to the key terms that really do matter. And then stick to them, with a willingness to compromise when the vendor makes a reasonable counter. Customers unwilling to make any concessions at all – especially when challenging a vendor's bedrock practices – often walk away empty handed.

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Make time. Time is your worst enemy when there's not enough and your best friend when there is. To the extent you can, begin the RFP and then the negotiating process early enough so there is no rush at the end, and allow for the give and take of negotiations when determining the schedule. And never let them see you sweat even when time really is running out. Time pressures can wear you down, but they wear down the vendor too.

Leverage is something you need to create internally as well – to justify the additional time (and possible loss of short term savings) that come with improving your leverage outside the company. For this, it is essential to keep in mind that the deal you negotiate now will likely be the one you live with for years to come. It is your one shot to get it right because circumstances change more often than deals. Years ago we had a client with very small volumes to commit who successfully negotiated a contract better than contracts ten times the size. They benefitted hugely from doing so, as several years later their annual volumes grew from a few hundred thousand dollars to several million and yet they had a solid agreement in place that could support a bigger deal. How did they do it?

They knew what they wanted. They stuck to their guns. They had time on their side. And they never let the vendor see them sweat.

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