

Ten Pitfalls to Avoid When Negotiating Telecom Service Agreements

Abstract: The transition to IP-based networks and the development of new utility standards for security and reliability in communications services pose significant challenges to utilities procuring carrier-based network services. Flowing these new standards down to carriers is difficult because they are wary of the potential expense and risk that could result. Further, while deregulation in the telecom industry created opportunities to negotiate special terms and conditions with carriers, it also removed many regulatory protections, which means utilities should not expect regulators to come to their assistance during negotiations. This article looks at ten negotiating pitfalls that, if avoided, will enable utilities to preserve leverage, manage risk, and improve deal economics.

For the typical large business, few services are as important as power, water, and communications. For utilities providing these essential services, the stakes become that much higher because they depend on access to communica-

tions services to support their delivery of essential services to the public. As a result, utilities historically have deployed private communications systems for most mission-critical applications, but they also purchase network services from carriers when prudent and cost-effective.

The transition to IP-based networks and the development of new utility standards for security and reliability in communications services also pose significant challenges to many utilities when procuring carrier-based network services. In addition, carrier forms are notoriously one-sided, and service guides contain traps to ensnare the unwary. Utilities also face the additional challenge of ensuring that their telecom providers can offer the levels of security and reliability they need to adhere to public service standards and commitments. Carriers are reluctant to agree to these added terms because they impose additional expense and risk. Verifying that the providers implement these standards takes time and effort; contract stewardship is essential to maintaining leverage.

With these thoughts in mind, here are ten pitfalls to avoid



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when negotiating with carriers to help you meet operational demands and industry standards:

1. Being on the Wrong Side of the 80-20 Equation

Most carrier contracts are one-sided and customer-unfriendly. Two classic carrier traps are short timeframes for disputing bills and early termination fees for any discontinued circuits (even if the customer is meeting its revenue commitment). Other favorites are asymmetrical limitations of liability and unbalanced indemnification obligations.

A lawyer for a large carrier once explained why: 80 percent of the customers signed the vendor's contract without making any edits. With odds like that, the vendor had no incentive to be reasonable unless the customer spoke up. While negotiating terms and conditions takes time and resources, it also produces an agreement with equitable allocations of risk, reduced customer exposure, and increased flexibility for the customer. It's worth the effort.

2. Failing to Understand the Dynamics of a Deregulated Telecom Environment

There has been substantial deregulation in the telecom industry over the past dozen years, and it has enabled enterprise customers to negotiate customized rates, terms, and conditions. But the price of that freedom is that regulators perceive enterprises as sophisticated entities capable of protecting their own interests without a lot of regulatory oversight or recourse.

This is true even for network reliability, which has received increased regulatory scrutiny due to recent disruptions to 9-1-1 services. It appears uncertain whether the FCC will regulate carrier reliability even for critical 9-1-1 services. As a result, utilities wanting greater assurances of reliability or conformance with industry standards should be prepared to negotiate for them on their own.

3. Falling Victim to Regulatory Myths

Many carriers still use regulatory myths to convince unwary customers that their hands are tied by (non-existent) restrictions. "We can't change that provision because it's in the tariff" is one favorite. Another is "if we agreed to do this for you, we'd have to do it for all of our customers or it would be discriminatory." Both of these excuses are as effective as they are false.

Understanding the telecom regulatory landscape will help you avoid such concocted carrier excuses.

4. Leaving Wireless Up in the Air

Although wireless now accounts for an increasing percentage of telecom budgets, many companies are reluctant to devote resources to negotiating their wireless agreements.

Wireless raises a host of unique issues. Some customers still have not taken the plunge and moved to pooling, made sure that wireless spend contributes to satisfaction of their commitment(s), drafted and circulated wireless policies, implemented a BYOD strategy, or committed to a quarterly wireless plan optimization. All of these measures can yield dividends.

5. Overlooking Opportunities to Streamline Procedures

How often does your primary carrier give you an amendment that someone in your organization says has to be executed "yesterday," even though the pricing is awful and the documents contain boilerplate that you rejected when you negotiated the master agreement 18 months ago?

To eliminate rush projects, train your staff and the carrier account team to communicate their planning through regular meetings that look one or two quarters into the future. And if you find yourself repeatedly confronting the same issues (e.g. change orders to deploy service to additional sites), develop forms with the carrier using "pre-negotiated" language.

6. Ignoring the Contract

Do you know what your contract says and whether the carrier is complying? Is the carrier giving you timely and accurate reports? Is it cooperating with your telecom expense management provider and other third-party vendors? Are you taking advantage of rate reviews, optimizations, and similar provisions?

Surprisingly, many customers overlook basic contract stewardship tasks, thereby missing out on the chance to get better performance from their vendors.

7. Failing to Look Beyond Price

Until a few years ago, many large customers thought that business downturn clauses were unnecessary because the economy was strong and demand was rising. The recession reinforced the importance of business divestiture, early ter-

mination, and shortfall provisions. Customers who agreed to the carriers' boilerplate language in these areas may be in for a shock when they discover that it says nothing more than "we'll talk" and offer no real protection.

Price is just one aspect of a strong agreement; pay attention to sound terms and conditions, too.

8. Losing Control of the Procurement Process

For best results, the customer must control the negotiations. This requires leverage (discussed below) and having the time to exert that leverage.

Customers often lose control over procurements by running out of time. This can result from not budgeting enough time for the process or from squandering months on internal negotiations before going to market. When a customer loses control, the vendor takes over and tries to refocus the discussion to how much the customer is "losing in savings every week" by not agreeing to the vendor's latest (but mediocre) offer.

Another way for customers to lose control of negotiations is to reveal to the selected carrier that the deal has to be done by a date certain, a gaffe that incents the vendor to be nonresponsive until time has almost run out.

9. Delaying the Next Procurement Cycle

The same principles discussed above apply to contract renewal. It takes time and planning to draft a decent RFP, evaluate bids, negotiate agreements (including special terms that utilities may have to flow through), and transition the network (if required) before existing contracts expire. A customer who lacks the time to complete these tasks can probably get a short-term extension, but not improved pricing or terms.

A good rule of thumb is to start planning for your next procurement at least one year before the expiration of your existing contract.

10. Neglecting Leverage


Leverage is the ability to go somewhere else if you are not offered a good deal by the incumbent. Leverage is important because of the unique nature of telecommunication services. They are mission-critical, purchased for multi-year terms, and difficult to transition from one vendor to another.

If you are in a sole-source relationship, engaging a second carrier is an easy way to increase leverage. It can save money, boost the primary carrier's responsiveness, and generate a ready source of competitive pricing information.

If you already have a multi-vendor solution in place, the best way to keep your primary vendor honest is to state that you can and will move traffic if you are not treated appropriately. Customers who lose leverage with their primary carrier almost always pay above-market rates and receive sub-par service.

Many companies mistakenly believe that negotiation means giving up leverage to get something; for example, increasing your commitment to get better pricing, terms, and conditions. This approach is ultimately self-defeating because your vendor gives you less and less as your leverage dwindles. Protect your leverage.

Conclusion

Negotiating network service agreements is never easy. The challenge is even greater for utilities, which must control risk, negotiate specialized terms and requirements, and improve deal economics. Avoid the mistakes described above, and you will stand a good chance of conserving leverage and obtaining the deal you need to fulfill your mission. 

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