Negotiating Enterprise Wireless Agreements

Kevin DiLallo

As enterprise demand for wireless services increases, so does senior management's pressure on telecom managers and procurement officials to control wireless costs. Most commentators who offer tips on controlling the cost of wireless services focus on only a tiny portion of the problem. i.e., selection of the right rate plans. Of course, matching rate plans to your users' traffic profiles is important, but those who devote all their energy to negotiating the pricing attachment while ignoring the other 95 percent of the contract could achieve greater savings by taking a more holistic approach to their negotiations.

Experience shows that enterprises can realize superior long-term results by developing a rational wireless procurement strategy, implemented through the terms and conditions of their wireless contracts, rather than by attempting to juggle several carriers and rate plans, with their nuances and hidden costs. By following four simple principles, an enterprise customer can ensure that it will get the most competitive rates in the market while minimizing costly surcharges and avoiding unforeseen costs.

- First, limit the number of carriers and rate plans, to facilitate management and preserve an exit strategy if your incumbent carriers don't treat you like a valued customer that they could lose.
- Second, maintain leverage over the incumbent carriers by eliminating obstacles to migrating to a new carrier.
- Third, minimize or eliminate the risk of unauthorized or unexpected charges or rate increases by negotiating strong protections against usage and subscription fraud, and prohibitions against (and remedies for) unilateral rate-affecting changes by the carriers.
- Fourth, minimize the state and local surcharges that the carriers tack onto your invoice and that can increase your bill by more than 20 percent.

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Consolidating Carriers

The single most effective strategy for lowering your wireless rates is to maintain the flexibility to move traffic to a competing vendor. This threat is empty, however, if the incumbent carrier can make it too painful to carry out.

Too many enterprise customers have spread their wireless traffic among the five major providers, resulting in dissipated leverage and diminished discounts. At one time, they may have had a good reason for this procurement "strategy" (to use the term loosely), but no more.

There are two leading wireless voice/data platforms—CDMA/1xRTT/EV-DO and GSM/GPRS/EDGE/UMTS —-and a third specialty platform—Nextel's iDEN—although Sprint is expected to phase out iDEN after it completes its acquisition of Nextel.

These days, it is simply folly to have more than three providers, and, unless your enterprise has a specialized workforce (such as a fleet of drivers, a team of baggage handlers or large housekeeping staffs) for which Nextel's best-of-breed push-to-talk service makes sense, two carriers should be plenty.

In an ideal world, an enterprise customer should divide the vast majority of its wireless end users between two vendors: a GSM provider and a CDMA provider. For specialized circumstances, the enterprise might have a third, smaller agreement with Nextel.

The rationale for this approach is a matter of simple mathematics. Assume that an enterprise customer has 2,500 corporate-liability users with each of the two CDMA providers, Sprint PCS and Verizon Wireless. Now assume that each provider is giving the customer a 15 percent discount off its eligible charges, which total $4 million per year, pre-discount, between the two carriers. The savings is $600,000 annually.

If, however, the enterprise jettisons one of the providers and consolidates its CDMA users with one carrier, the discount may increase to 20 percent. All other things being equal, that would result in a 33 percent increase in savings, or a total annual savings of $800,000.

This approach also would leave a competing GSM provider and an alternative CDMA provider waiting in the wings, thus increasing the enterprise's leverage with its incumbent carriers. Of course, that leverage is illusory if the incumbent carrier is able to hobble the customer's ability to change carriers, via a labyrinth of steep early termination fees and policies. Therefore, after one has narrowed the field of providers, the next task would be to eliminate obstacles to contract mobility, which principally come in the form of early termination charges and proprietary wireless devices.

Maintaining Contract Mobility

Before wireless local number portability (LNP) became reality in November 2004, the FCC PR machine was predicting waves of lemming-like defections from incumbent carriers as consumers, freed from wireless phone number bondage, would flee their abusive vendors for greener pastures. (How many metaphors can we mix in one sentence? you ask.)

But post-LNP reality hasn't lived up to the hype. Even though consumers can now port their numbers from their incumbent to their new carriers, the cost of doing so (in the form of early termination fees or "ETFs") is simply too high. Excessive and anti-competitive ETFs and related policies have been very effective at curbing consumer attrition.

This phenomenon is magnified for enterprise users, who have to weigh the savings they might achieve by switching carriers against the early termination fees they will incur if they move end users whose minimum service periods have not expired. Keeping track of those expiration dates, and managing end users so they do not re-start the minimum-service-period clock is no easy feat, but the only way to avoid it is to negotiate some relief from ETFs.

Although there is little an enterprise customer can do for its individual-

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liability users (who are typically at the mercy of off-the-shelf consumer contract terms and conditions), carriers generally will agree to some early termination fee concessions for corporate-liability subscribers. There are four variations of relief:

- Some carriers will agree to waive all ETFs for corporate-liable subscribers;
- others will agree to prorate them over the minimum service period;
- still others will agree to a waiver pool (i.e., a certain number of "free" early terminations per contract year); and
- still others will agree to certain circumstances in which the customer may terminate service or lines without liability and reduce its commitment. Such circumstances could include business downturn, divestitures, material and adverse changes to extra-contractual rates or provisions, exiting a market, material degradation of service and other events. Obviously, the fewer conditions the carrier imposes on the free terminations, the better for the customer.

Preventing Unforeseen Costs

It is axiomatic that as the number of carriers and rate plans increase, so does the complexity and cost of managing wireless services. And that's when mistakes are made.

Consider this: A New York financial services firm was required to pay one wireless provider more than $1 million in charges incurred by users who had fraudulently ordered phones and service under the company's corporate contract—an employee had ordered 700 phones and sold them on the black market. The equipment and service charges were billed to the company but they weren't monitoring their bills closely, and charges added up for a year before they put a stop to it.

In this instance, the contract failed to establish ordering procedures and safeguards against fraudulent orders and usage, and when the company's internal ordering and bill review processes broke down, it could not persuade an arbitrator to let it off the hook for the fraudulent charges. The company's telecom group could not possibly manage all their wireless providers and stay on top of the multiple invoices, and consequently, ended up paying a steep price.

What lesson can we learn from this experience? Although the customer had negotiated attractive rates, it had neglected other contract terms and conditions, and its mistake ended up costing the company more than it saved through the rate reductions. Telecom managers must negotiate strong fraud prevention, ordering and cancellation procedures to protect the enterprise from charges it did not incur. And limit the number of wireless providers and rate plans you deal with, so you will be able to manage your account intelligently.

You should also limit the carrier's right to change the rates or rate-affecting terms of your agreement unilaterally. Increasingly, carriers are removing key provisions from their contracts and replacing them with references to extra-contractual sources, such as their websites or printed "collateral."

Unless the customer strenuously objects, the carriers also retain the right unilaterally to change the extra-contractual rates, terms and conditions, and to add new ones, often without prior notice, and usually without recourse for the unsuspecting customer. The more savvy enterprise customer refuses to be subject to the carriers' whims and insists on memorializing all rates, terms and conditions in its contract. Such a customer also prohibits the carrier from changing any terms without his or her prior written consent.

Those customers who choose not to take the time to negotiate and memorialize extra-contractual rates and provisions should demand a remedy if the carrier unilaterally changes them in a way that is material and adverse to the customer. The remedy usually consists of the right for the customer to terminate the affected services with neither liability nor a rate increase, but with a corresponding reduction in affected commitments. Only through these measures can the enterprise customer ensure that the contract it has throughout the term is the same as (or no worse than) the contract it negotiated at the outset.

State/Local Surcharges And Carrier Markups

The final principle to follow when developing and implementing a wireless procurement strategy is to be aware of potentially applicable state and local surcharges on wireless services, and carrier add-ons to permitted surcharges.

Let's take the second item first. Just as with landline carriers, regulatory surcharges are a fertile source of revenue enhancement for wireless carriers. Since the Omnibus Budget Reconciliation Act of 1993, in which Congress deregulated wireless carriers' rates and pre-empted the states from regulating them, the potential for carrier abuse in this area has been great. In recent years, these abuses have become more difficult to detect with the proliferation of regulatory programs including wireless LNP, 1,000-block number pooling and E911, accompanied by a virtual abdication of responsibility by the FCC for directing the manner in which carriers may recover these costs from their customers.

Finally, in March of this year, the FCC reversed that 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 net cost of service and of the true nature and amount of claimed regulatory charges.

The FCC's efforts in this regard are commendable, but beyond the scope of this article. The author will report on the effect of the second order on enterprise customers once the order is released. In the meantime, customers should be aware that an age of greater transparency and rationality in regulatory surcharges is dawning.

Things are different, however, on the state and local levels. Even enterprise customers with considerable bargaining clout have had little success persuading their carriers to itemize state and local taxes and surcharges. But knowledge is power (and savings). The well-informed enterprise customer can save 10 percent or more by minimizing the state and local taxes and surcharges that are added to its bill.

State and local taxes and surcharges on wireless services vary widely among states. According to the Cellular Telecommunications and Internet Association (CTIA), the leading industry group, Nevada has the lowest state and local wireless taxes and surcharges, totaling 1.14 percent. New York has the highest, at 16.23 percent. These figures include transaction taxes, such as sales and use taxes, telecom excise taxes, gross receipt taxes and state universal service charges, 911 fees and other state regulatory surcharges, to the extent applicable. Combined, state and federal assessments increase wireless subscribers' bills by more than 20 percent in

22 states, and by more than 15 percent in 45 states.

So what is an enterprise customer to do? To a limited extent, customers may be able to manage their state tax burdens by designating a low-tax state as their "place of primary use" (PPU). Under the federal Mobile Telecommunications Sourcing Act, a wireless carrier must calculate the state and local taxes applicable to each customer according to this PPU. Carriers are permitted to rely in good faith on a customer's designation of its PPU, in light of other information the customer has provided. For purposes of the Act, the "customer" is either the person or entity that contracted for the wireless service or, if not the contracting entity, then the end user, as would be the case for employees of enterprises who are billed separately and pay their charges directly to the carrier.

A customer's PPU is "the street address representative of where the customer's use of mobile telecommunications service primarily occurs," which the Act defines as 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 percent, compared to a wireless tax burden in Washington, DC of 12.57 percent (excluding federal taxes and surcharges). If, however, the same end user lived in Prince George's County, MD, which has recently enacted a local tax of 8 percent 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 percent—almost a fourth more than the comparable tax burden in DC.

This example illustrates the potentially significant savings an enterprise buyer of wireless services might realize in the area of state and local taxes. The author, however, is not a tax specialist, and thus urges extreme caution in this area. Don't try this at home without the advice of a competent tax lawyer. On the other hand, the potential savings are so great, it is easy to justify the cost of seeking a professional opinion in this area.

Conclusion

The four principles described above are by no means the only methods of controlling an enterprise's cost of wireless service, but they are certainly some of the most effective—perhaps more effective than spending weeks crunching numbers to squeeze a few tenths of a cent out of a per-minute rate. In short, don't limit your contract review to the numbers. The words can have as much, or more, impact on your bottom line□

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