

The Deadly Sins Of Carrier Billing And Dispute Resolution

In July we wrote about the seven deadly sins of carrier pricing and commitment terms. This month we thought we'd mix metaphors and take a look at two other horsemen of the carrier boilerplate apocalypse—billing and dispute resolution.

There's nothing new about these, but they are worth mentioning because generations of buyers have focused on negotiating price but ignored payment terms—only to learn, to their regret, that the carriers' boilerplate agreements and service guides are grotesquely one-sided in this area. Here are some of our "favorites."

Billing And Payment Terms

Under the standard carrier formulation, the buyer gets 30 days to pay a bill. But the 30 days runs from the "bill date," a date stated on the bill by the carrier that is usually 10–15 days before the customer gets the invoice (even when it is "sent" electronically and arrives immediately). So the customer actually has 15–20 days to pay before 18 percent "late payment charges" kick in.

And speaking of late payment charges, they are always imposed on the customer, along with clauses for payment to the carrier of the costs of collection (including attorneys' fees) if the carrier has to pursue legal remedies to get paid. Try asking for mutual and reciprocal provisions if the carrier posts credits late (or not at all) and the customer has to take legal action to get them. You won't get anywhere, but the effort will be worth it later (keep reading).

Carrier billing errors typically run 5–10 percent, and overwhelmingly favor the carrier—meaning that overcharges greatly outweigh undercharges. Perhaps for that reason, the carriers have been progressively shortening the time given a

customer to find and challenge overcharges. Federal law allows two years for a customer to challenge an overcharge, and FCC decisions allow the carriers a "reasonable" period that rarely exceeds one year to correct and collect undercharges, but those periods can be varied by agreement—and the carriers will insist that you agree.

Commonly, a carrier will insist on somewhere between three months and a year as the period for catching overcharges. And although it is the carrier's responsibility to bill, and it should bill accurately, the carriers invoke "mutuality" to insist that they have the same period to "correct" undercharges or find items not billed. That's when you need to look back a couple of paragraphs and ask why this has to be

mutual when interest on late payments and interest on late-posted credits aren't mutual.

The frontiers of greed are always being pushed back. One major carrier has written a term to the effect that if a customer doesn't question an item on a bill before the next bill arrives, the bill is final and binding on the customer, while giving itself a year to find undercharges. When questioned on this, it suggested that the provision was required by Sarbanes-Oxley. In case you were wondering, it's not.

The flip side of payment issues is credit issues. Beyond noting that if you are a business customer who has waited months or even years to get credits posted you are hardly alone, it is worth noting that service credits are a special case. If you have a service outage, you will have a hard time getting credits for it either in the normal course or under those ballyhooed carrier "guarantees." In 2007, submitting a trouble ticket doesn't trigger a



The process is grotesquely one-sided, but there are a few measures you can take to even things up



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request for a credit. The user has to submit a *separate* request for the credit, on a separate form, usually within 30 days of the outage. And if you do get a credit, it won't include the elements (such as dedicated access) that the outage rendered unusable. You still have to pay for those because, after all, **they** weren't out of service (even if they were worthless and unusable during the service outage).

Disputes And Dispute Resolution

The carrier forms give customers no right to withhold disputed amounts. You can seek and—if you have leverage—get such a right. But it won't do you any good if the Service Guide (or your agreement) provides, as many do, that the carrier has the sole, unilateral right to resolve the dispute.

Reasonable, negotiated dispute provisions provide for internal escalation up the food chain on both sides before anyone can go to a third party to resolve a dispute. The theory here, which usually works in larger enterprises, is that anyone who walks into an Executive Vice President's office to tell him that he has to meet with a supplier/customer EVP to resolve a \$100K billing dispute will probably walk out without a job, so the escalation process itself will force both parties to get reasonable and settle their differences.

In the rare case where that doesn't work, disputes can be solved by arbitration (private and usually faster and cheaper than litigation); litigation (you're kidding, right?); or through the FCC or a PUC. Although MCI once tried to tariff a truly horrendous compulsory arbitration provision, it was shot down. The principal pitfall we see in this area today is a requirement that all disputes be resolved in the carrier's home forum (guess who used to like Overton Park, KS).

Lots of companies don't know it, but the FCC's Enforcement Bureau not only provides a forum for the resolution of many carrier-customer billing disputes, it will mediate such disputes before and even after they turn into Formal Complaints (the FCC version of a lawsuit). For certain kinds of billing disputes this can be a low-cost, relatively effective way to resolve what appears to be an intractable problem.

Conclusion

The carriers are unreasonable about this stuff for a number of reasons. One, of course, is that they get away with it a lot of the time. Another is that their billing systems are old and complex and error-prone, and much of what's described above is a way to shift the resulting risk and burden to the customer. A third is that for years the carriers were victims in this area; at one point AT&T's average payment period was over 60 days. The problem is that the only way the folks who fixed this (and were viewed as rock stars as a result) could top

themselves was to go beyond being reasonable. Today, carrier Revenue Assurance Management is

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In bygone days, the carriers were victims in this area. No longer