

Procuring Telecom and Wide Area Network Services

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Telecommunications and data networking requirements of real estate companies are characterized by a substantial proportion of wireline voice requirements that are local or regional in nature, and increasing demand for secure, networked data communications. Hosting requirements are expanding as real estate companies look to web-based tools to support property management, communications with tenants and prospective tenants, and the procurement of goods and services. Use of mobile wireless services within real estate companies tracks that of most businesses.

Historically, real estate companies have not fit the customer profiles preferred by AT&T, Sprint or MCI (“Interexchange Carriers” or “IXCs”). This is true even for companies with relatively large portfolios of MTU or MDU properties. Real estate companies do not operate large call centers that consume millions of minutes of inbound service, have virtually no international service requirements, and struggle to cost-justify high capacity dedicated access, frame relay or ATM services.

Several factors have converged to elevate the stature of real estate companies among telecommunications services providers:

- Real estate companies have growing data communications requirements, including demand for relatively new “data center services,” such as hosting and managed security services;
- Low-cost CPE that integrate Virtual Private Network (“VPN”), firewall, intrusion detection and report genera-

tion capabilities are driving acceptance of CPE-based IP- VPNs;

- Many enterprise customers that have historically relied exclusively on frame relay services for corporate data communications are migrating many locations to this Internet-based data networking option
- The Regional Bell Operating Companies (“RBOCs”) are now authorized to provide all the services that the IXCs have offered for years;
- Dedicated access services (DS-1 and DS-3) and DSL services generate substantial profits for the RBOCs, but are operating expenses for the IXCs; and
- Increasingly competitive rates for voice and data services allow more companies to consider managed services. (See Sidebar What are Managed Services.) These services are important for real estate companies that cannot staff their respective properties with expert Telecom or IT technicians, but require secure, reliable network connectivity.

The Procurement Life Cycle

The life cycle for telecommunications services procurements has three distinct phases: Planning, Implementation and Performance Review. The standard term for these agreements is three years, and a Request for Proposal is strongly recommended to secure bids from prospective services providers.

The Planning Phase

- Decide on the services subject to the procurement. The customer should designate one or two preferred data communications options, and deter-

mine whether VoIP services, managed services or local exchange services will be included in the procurement. The RFP should be structured to permit “apples to apples” comparisons.

- The customer must “know its traffic,” existing and as reasonably projected. Property-specific information—existing services, local service lines, data services, LD minutes of use, rate of churn (projected additions and deletions of properties), NPA-NXXs and street addresses—is essential.

- Existing agreements should be coordinated to expire as close in time as possible.

- Decisional priorities should be agreed upon. Management and staff often have a wide range of comfort levels with potential vendors, price points, services, and the idea of migrating to new services providers. Consensus on these points should be reached as early as possible.

- As the procurement process begins, communications between enterprise personnel and designated bidders should be consistent and disciplined. Internal preferences, priorities, and decision points not expressed in the RFP should never be communicated to bidding vendors.

- Services providers will not invest the time and effort to prepare a comprehensive bid, unless they believe the process is objective and they have a reasonable chance of obtaining some or all of the business.

- The timeline for the procurement should provide for vendor selection, contract negotiations and migration to the new services provider(s) prior to

expiration of the term or transition period, if one is included, of the existing agreement(s).

- Upon either the expiration of the term or transition period, the rates in the incumbent's agreement revert to "standard" price list rates. This can result in a price increase of 50% to 200% for services still being provided by the incumbent providers.

Implementation Phase

This phase of the procurement cycle includes the vendor selection decision(s) and the negotiation of the services agreement(s). In our representation of enterprise customers, we strive for (1) competitive business terms and conditions that embody the customer's service selection decisions and the elements of the "business deal," and (2) legal terms and conditions that reasonably balance the risks of services providers and customers. In regard to the latter, the carriers' standard agreements are grossly one-sided. In this article, we will focus on the business terms and conditions.

The pivot point in virtually all negotiations is resolving the carrier's demand for a

minimum revenue commitment. The carrier's core interest in these deals is customer retention and revenue assurance. The minimum revenue commitment is the principal vehicle for achieving these objectives.

Discussions focus on the percentage of projected expenditures upon which the commitment will be based, the form of commitment—monthly, annual or term and the service-specific sub-commitments, and the effect of intervening variables, unforeseen asset sales or other dramatic changes in the customer's business, and changing market conditions (prices) for the services. Annual expenditure commitments are most common. Generally, to the extent the customer does not meet the minimum expenditure requirement, it is obligated to pay the difference.

Another important, often overlooked point is how rates are expressed. Preferably, rates should be stated as

fixed recurring or per minute charges; pricing based on percentage discounts off of standard rates frequently lead to higher rates as the carriers increase the rates in their standard schedules. Fixed or "stabilized" rates ensure the projected savings are realized. Local exchange service is the possible exception to this rule.

Other basic elements of the business deal may be summarized as follows:

Service Quality. For virtually all data services and managed services, service level agreements ("SLAs") are provided by services providers. Rather than focusing on credits, customers should focus on (a) service parameters being measured, such as round trip delay or

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site-specific availability, (b) the extent of the service being measured—service between the services provider's POPs, this "interoffice service" plus the access circuit, or all services and including the CPE at the customer premises, such as the router. As a general rule, more aggressive service levels are typically achieved through additional service or CPE redundancy, all of which impose additional costs. The services providers' reporting options on SLA performance and escalating consequences for chronic failures to satisfy SLAs should be described fully.

Billing. Billing errors are the most common problems experienced by business customers. Standards for accuracy and timeliness make sense in light of the services providers' insistence on payment within 30 days. A provision for resolving the inevitable billing issues is commonplace. Fundamentally, these clauses are crafted to ensure the undisputed portions of the bill are paid, and the Customer's obligation to pay disputed amounts is suspended until the confusion is

largely for customers having more than 50 sites, are recommended. Charges and timelines for subsequent moves, adds, changes and deletions are also recommended.

Critical Service Provider Commitments. Other commitments are typically sought by customers. The first is a process to ensure that pricing remains competitive for the term of the agreement. This requires a commitment by the services provider to conduct or participate in one or more competitive pricing reviews during the term. The customer should look to reserve the right to conduct its own pricing review and to propose suggested rate revisions and to reserve certain options, such as a reduction in its minimum expenditure obligation, if the services provider fails to propose and implement a warranted pricing adjustment. The mere promise to meet and discuss possible rate adjustments is virtually useless from the customer perspective. Another commitment that is more challenging to craft is a meaningful technology "refresh" clause.

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resolved. If the process fails to resolve the difference, the dispute is escalated to the dispute resolution procedures in the agreement.

Provisioning. The provisioning of services by a successor carrier involves the ordering and installation of special access (including PRIs) or DSL services typically provided by the local telephone company. The providers of the interoffice voice or data services also have to provision their services. The principal services provider typically assumes responsibility for the provisioning process. The provisioning of special access and DSL services tend to be more problematic. Contractual obligations for services providers to meet deployment schedules, particu-

Dealing with the RBOCs. The RBOCs—Verizon, SBC, BellSouth and Qwest—are now positioned to offer the full range of telecommunications services, information services, and managed services. In the near future, they likely will begin to bundle wireless services in these package. The RBOCs provide the preponderance of the local wireline service in the United States, including most MTUs and MDUs in the country. Unlike most services included in services deals, local exchange service and intrastate long distances are still tariffed in most jurisdictions. Particularly with regard to local exchange service, the object is to obtain a discount off of the RBOC standard rates for local services pro-

vided to properties.

The IXC provide local services as do a number of competitive local exchange carriers ("CLECs"). Apart from financial stability concerns, the CLECs may serve only modest percentage of a real estate company's properties. For purposes of contract management and the real world concern of having just "one throat to choke," consolidation of services providers—though not necessarily the "exclusive provider"—is often the prudent approach.

As compared to the IXCs, the RBOCs pose negotiation challenges. The negotiation process is extended not so much because of RBOC resistance to customer positions or interests, but because the consolidation of diverse services in a single agreement challenges business structures that have been built around individual services, in many cases heavily regulated services.

The "Carrier-Lite" Solution. A major objective for many real estate companies is a cost-effective, secure data communications network that connects corporate resources to the property level. For smaller real estate companies, the resources to undertake a comprehensive procurement may be too scarce. An alternative exists.

Rather than focus on the services provider, the focus shifts to establishing the VPN that leverages the sophisticated CPE, DSL last mile transport and Internet access. Individual properties could be responsible for procuring the local DSL/Internet Access services, but the company would standardize on a given CPE platform to establish the VPN. The CPE at the properties could be managed internally or by a network management company that would monitor the CPE, install software upgrades and patches, and administer the firewall policy—set by the company, and in the event of problems conduct remote diagnostics to identify the nature of the problem and determine whether a software patch or adjustment, hardware maintenance dispatch or a trouble report to the local DSL/

ISP provider is warranted. The management company would monitor the process until the trouble is resolved.

This company may also be in a position to provide hosting and managed security services for Web-based services and applications involving the company, its tenants and prospective tenants and its suppliers and services companies.

While a “carrier lite solution” does not address voice services, smaller real estate companies could, at a minimum, secure competitive long distance rates by entering into an agreement with a second tier carrier or reseller in parallel with the data services solution.

Performance Review

The telecommunications services procurement should be viewed as a process, not an event. Competitive pricing reviews and relatively low minimum expenditure obligations provide customers the opportunity to keep pricing competitive and the services provider responsive. A technology refresh clause can provide operational uplifts without negotiating a new agreement.

At a minimum, service provider performance in terms of economic benefits, business and technology benefits, and carrier support and responsiveness should be assessed continually to identify and address service shortfalls, and to support informed decisions in defining the company’s priorities for the next the procurement. ■

About the Author

C. Douglas Jarrett, a partner with the law firm of Keller and Heckman LLP, specializes in representing companies and associations before the Federal Communications Commission on Wireless, Broadband and Wireline Competition issues. For years, he has represented MDUs in negotiating marketing and access agreements and other agreements with services providers. The author may be reached with questions or comments via email at Jarrett@khlaw.com or by telephone at 202-434-4180.

What Are “Managed Services”?

Managed services are offered by telecommunications services providers and network management companies. The basic elements of “managed services” may be summarized as follows

- Setting and revising the configuration and having exclusive, remote access to the operating software in customer premises equipment (“CPE”)—such as PBXs, routers, soft switches and multifunction CPE having firewall and VPN capabilities.
- Remote access to the CPE is provided through a line (typically a POTS line) other than the transmission service connecting the customer location to the customer’s wide area network.
- Monitoring CPE, detecting troubles, notifying the customer, determining the source of the trouble or fault, i.e., in the CPE, in the access circuit, or wide area service, notifying the customer, addressing the problem, restoring the service, and providing status reports to the customer until service is restored.
- Service restoration activities include remote adjustments to the operating software or CPE resets, hardware maintenance dispatch, and contacting the telecommunications or Internet access service provider.
- Providing periodic reports on CPE or overall network performance for defined parameters and at agreed upon intervals.
- These reports are often provided on-line.

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