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Top 10 Tips for Buying Telecommunications Services

Jeff Linder, Wiley, Rein & Fielding

Most major companies spend anywhere from hundreds of thousands to tens of millions of dollars each year on long distance telecommunications services. Many of these companies may not realize, however, that contracting for telecommunications services is very different from contracting for machine parts, software, or accounting services. Even though there are hundreds of competitive long distance carriers vying for a piece of the $200 billion corporate telecom market, those carriers are at least nominally regulated by the Federal Communications Commission and its state counterparts, the public utility commissions. Consequently, any negotiation for telecom services must consider certain unique issues resulting from this regulatory overlay. Set forth below is our “top ten” list of regulatory and other matters to consider when procuring corporate telecom services.

1. Tariffs or their replacements remain relevant.

In a decision released April 28, 2000, the D.C. Circuit upheld an FCC order requiring long distance carriers to withdraw their existing tariffs for domestic long distance services and refrain from filing new ones. A tariff is a statement of rates, charges, terms, and conditions filed by a telecom carrier with a regulatory agency. Under case law going back to the early 1900s – known as the “filed rate” or “filed tariff” doctrine – tariffs take precedence over contracts. One of the primary reasons the FCC ordered detariffing was to eliminate the ability of long distance carriers unilaterally to alter contracts with their customers by filing changes to their tariffs.

As a result of the court’s decision, tariffs will be neither required nor
continued on page 3
From the President
Tony Mordosky
Bradley University

Leadership: Your Comments and Some Final Thoughts

that our jobs as telecommunications professionals will become extinct in a converged communications organization? My response is emphatically NO. My emphasis on leadership is not that I believe our jobs will become extinct. It is based upon my personal belief that leadership skills are and will become even more essential for all job functions in our ever increasingly technologically complex world.

Many of the functions currently performed in our telecommunications department will still be required in a converged organization. Convergence of both technology and the organization will require us to adapt and change. However, our strengths—including communication, customer service and relations management, project management, budgeting and financial planning, billing, and human resources management skills—will serve us well in a converged organization. We will need to adapt to the challenges of convergence, but a significant number of the functions we perform will not go away. For instance, I believe we will still bill for services. We may adopt a new pricing model, one not dependent upon call

Finally, I would like to share some final thoughts on leadership that I found in the book Leader to Leader published by the Drucker Foundation.

Leadership is about how to be, not how to do.
We spend most of our working lives learning how to accomplish tasks. However, in the end, it is the character and quality of the individual that defines the performance of great leaders.

Leaders succeed through the efforts of their people.
The basic function of a leader is to build a highly motivated, highly productive team. This requires us as the leaders to work across boundaries both internal and external to our institutions, to invest in our people and the resources they need to succeed, and to exemplify our personal commitment to a common vision and require no less of our team.

continued on page 3

New Area Code for ACUTA: Central Kentucky is transitioning to a new area code. Please note our new number: 859/728-3338

The Association for Telecommunications Professionals in Higher Education
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859/728-3338
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Spotlight on Volunteers: State Coordinators

EllenSue Cameron, ACUTA state coordinator for Illinois, has been at the University of Illinois at Urbana-Champaign for 20 years and in the field of telecom for 10.

"In January of 1990," EllenSue says, "I returned to the university and worked through extra-help services in the Office of Telecommunications. That temporary position became an interesting, challenging, and beloved career. Currently, I am manager of the long distance network for the university and also serve as project manager of video conferencing.

"I attended my first ACUTA seminar in the Spring of 1994 as someone else," she continues. "Just days before the seminar started, a colleague found she was unable to attend and offered me the opportunity to go in her place. I was overwhelmed—and hooked. Until then I just worked in telecommunications. After that, my career was in telephony!" "Through networking with other members, I have learned and grown.... and made many friends. At this time, I take great pride in serving on the ACUTA membership committee as well as being the state coordinator for Illinois. These positions keep me even more up to date in our ever-changing field."

Reach EllenSue at ellsues@uiuc.edu.

Four ACUTA Members—and YOU!—Are Big Winners!

With our new Online Facilities and Services Index everybody will be a winner. But for four ACUTA members, the winnings have already started. Their names were drawn recently from the list of those who have completed the survey and submitted information about their campus for publication on our Web site. Our winners include: Mary Lou Duncan, Babson College, and Ken Sooper, The George Washington University, complimentary registrations for an ACUTA audio conference; Diane Metzger, Bucks County Community College, digital cordless phone; and Joyce Becker, Kutztown University, Sony Discman ESP2.

If you haven’t told us about your facilities and services, please contact Kellie Bowman at 859/278-3338 ext. 22 or e-mail kbowman@acuta.org to request a copy of the survey. Remember—the more we know, the more YOU know!

ACUTA LEGISLATIVE & REGULATORY AFFAIRS COMMITTEE

DC Update

Wiley, Rein & Fielding Online Update

Be sure you read the online Legislative/Regulatory Update that is prepared for ACUTA each month by Wiley, Rein & Fielding. The first two items in the May edition (available in the archive) are of special interest to ACUTA members.

First, the Appeals Court in Washington, D. C., has upheld the FCC order on detariffing issued over three years ago. If there are no more court challenges, the only tariffs that will exist after January 31, 2001, will be for international service.

The second item relates to the FCC rule that TV nor telecom services and thus aren’t subject to FCC regulation.

E-rated Funding

About the first of May the Schools and Libraries Division of the Universal Service Administrative Co. (USAC) sent out letters to schools and libraries with a total commitment of almost $455 million for the third year of the program (July 1, 2000 to June 30, 2001). These funds are to be used to “purchase discounted telecom and Internet services and internal connections.” So far the total committed for the third year is almost $1 billion.

Whitney L. Johnson

ACUTA members may read about the latest developments in telecommunications- and Internet-related issues in the most recent Legislative and Regulatory Update, an electronic newsletter prepared monthly by Wiley, Rein & Fielding. Members may also access archived copies of back issues of this document at www.acuta.org/legislation/index.cfm.
Building and Pole Access

Telecommunications Reports (TR 5/1/00) notes that the idea of nondiscriminatory access to multitenant buildings continues to be a very controversial issue throughout the industry. At least three bills that represent the concerns of the CLECs (HR 3487, HR 2891, and S 1301) are under consideration in Congress. It is interesting that HR 2891 and S 1301 would only apply to federally owned buildings.

Building owners are also very active in opposition to the open access idea according to TR. "The Real Access Alliance of building owners also is claiming victory at the state level. There has been a total of 30 efforts to date in 25 states to pass mandatory building access legislation...but not a single state, once it had the opportunity to review the marketplace, has mandated access."

Two of the FCC commissioners questioned whether the FCC could impose requirements on entities that aren’t telecom carriers.

TR (4/17) also noted that in mid-April a federal appeals court ruled that the FCC does not have the authority to regulate the price of utilities, and telcos can charge wireless carriers or Internet service providers for attaching equipment to their poles. The court also ruled that “Internet services are neither cable

$351 million. (TR 5/8)

The FCC’s Common Carrier Bureau has given the schools and libraries (S&L) that were granted funds for the second year extra time to use those funds. The new deadline is September 30—a three-month extension.

The FCC has authorized the USAC to collect $2.25 billion from the various carriers to fund the e-rate program for the third year. The dollar total of the 36,000 applications from S&L for the new year is about $4.72 billion, but some of these requests are expected to be ineligible for funding. (TR 4/17)

A bill has been introduced in the Senate (S 2476) that would eliminate the cap on the overall size of the federal Universal Service Fund. The bill would also eliminate caps on the amount that individual carriers are eligible to receive in universal service support. (TR 5/1)

More activity in Congress that could cost the educational community big dollars in the future.

Prepaid Calling Cards

Growing cheaper all the time, prepaid cards are a major reason for the decline in student use of the campus long-distance service. Rates as low as 4–5 cents per minute (cpm) are not uncommon, and some are as low as 1 cpm. In many cases the buyer does not know what special fees will be charged, in minutes deducted, each time the card is used.

A bill has passed the Connecticut General Assembly and, as of May 8, was on the Governor’s desk which would require card providers to disclose

(2) founding of time used by the caller, (3) restrictions on use of the card, and (4) a toll-free consumer assistance phone number. (TR 5/8)

FCC Reform

The U.S. Telecom Association (USTA), composed of a number of the large players in the telecom industry, is working hard to get Congress to pass legislation that would reform the FCC. The USTA is “eyeing reforms of the Commission’s ‘accounting areas’ and ‘merger reviews,’ and along with ‘diminishing or eliminating other regulatory procedures that are obsolete or need redirection,’” (TR 4/17)

FCC representatives speaking at a public forum on April 28 reported progress in implementing their strategic plan for overhauling the agency. FCC officials cited progress in streamlining processes for reviewing mergers and transactions, monitoring the deployment of broadband services, and enhancing the FCC’s Web site. Steering committees have been created to review and make recommendations on a number of internal problems within the FCC and these will be reported in the future. (TR 5/1)
Buying Telecom Services...

Continued from page 1

permitted for domestic long distance services. Specifically, as of May 1, 2000, long distance carriers may not file new "contract tariffs" for those services. (Contract tariffs are used to provide service to most medium and large business customers.) In addition, carriers must withdraw all existing domestic long distance tariffs (including the domestic portion of bundled domestic/international tariffs) no later than January 31, 2001.

Customers should recognize, however, that carriers are likely to replace those tariffs with standard "price lists" or "service guides" that they will then seek to incorporate by reference into their contracts. Doing so will give the carriers the same ability to modify rates or terms and conditions that they enjoyed through their tariff filings, unless the contract expressly provides that the contract is entirely self-contained – that is, that the service guide or price list is irrelevant. In addition, tariffs still will be required for international services, so customers will need to make sure that any rates, discounts, or credits for international offerings are contained in a tariff – side letters are not enforceable.

2. Everything is negotiable.

Long distance carriers often say that they would like to give the customer what he or she is asking for, but they are prevented from doing so by regulation. This is never correct. Long distance carriers are free to charge any rate and to negotiate any terms and conditions they want. (Once again, international rates still must be tarifed.) While carriers will point out that they cannot engage in unreasonable discrimination among customers – which is true – it is not the case that, as they often claim, "if I gave that to you, I'd have to give it to everyone who asked." Long distance companies enjoy great flexibility to "fence off" their deals so that they apply only to a single customer.

3. Telecom is a declining-cost industry.

As competition increases, regulation decreases, and technology advances, telecom costs generally are declining. As a result, customers should ask for a rate ceiling (to guard against increases), but should also seek some mechanism for adjusting the rates (e.g., periodic reviews). For example, a company that plans to divest a business unit should make sure that the carrier is aware of this, and should secure the carrier's up-front agreement that any annual revenue commitment will be reduced by the amount of the telecom expenditures generated by the divested unit. Similarly, many companies negotiate a provision that commits the carrier to (1) allow the customer to bring newly acquired entities under the contract, and (2) waive any termination liability associated with an acquired entity's existing, less favorable deal with that carrier. This second provision is particularly useful when dealing with one of the "Big 3" long distance carriers (AT&T, MCI WorldCom, and Sprint), since they have a very large combined share of the business market.

Arguably, no industry undergoes more constant and climactic change than telecommunications. Given the intensity of competition, it is not surprising that carriers continually look for innovative ways to move more information, more quickly, at lower cost. To capitalize on this technological dynamo, customers should ask their vendor to agree that they can switch from an existing service to a more efficient, new one without incurring penalties for failing to meet the revenue commitments. Similarly, customers should negotiate provisions obligating their carrier to allow them to discontinue a certain service without liability if another carrier introduces a more efficient substitute that their existing vendors cannot match.


Long distance carriers often like to renegotiate and extend their agreements part way into the contract term. Given the declining cost structure of the industry, they can often promise the customer substantial cost savings if it is willing to "re-up" for a few more years. While these offers may be attractive, customers still may be able to do better by going out with an RFP that solicits competitive responses. At a minimum, any customer thinking about extending prior to expiration of the contract should ask a telecom consultant to opine on whether the proposed rates are as aggressive as they could be.

Board Report

May

The Board of Directors met by conference call on May 4, 2000. Following are highlights of that meeting:

- Tony Mordosky appointed an ad hoc committee to study possible Fall Seminar alternatives. Their report is due October, 2000.
- The budget for fiscal year 2000-01 was approved.
- Gary Luft from Var-Tec Telecom, Inc., was approved to fill an unexpired two-year term on the Vendor Liaison Committee.
- Newport Beach, California was approved as the site for the Spring 2001 Seminar.
- A proposal for a three-year replacement cycle for ACUTA office computer equipment was approved.

Respectfully Submitted,

Linda Bogden-Stubbs
ACUTA Secretary/Treasurer

Dues Notices Mailed

Dues notices for 2000–2001 were mailed May 1 with payment due July 1. ACUTA membership continues to increase in value, with benefits such as the new electronic legislative/regulatory newsletter, participation in the listserve, and a host of resources and services available online. In addition, members receive at no additional charge the monthly newsletter and quarterly journal which provide up-to-date coverage on important...
periodically reviewing and adjusting rates to make sure they remain competitive. This is particularly important for international services, where rates have begun to fall dramatically. As a corollary point, customers should procure services through a competitive RFP process that avoids identifying a tentative winner too early. As soon as a tentative selection is made, the leverage shifts from the customer to the carrier.


Long distance carriers often like to ask for exclusivity provisions — that is, commitments that a customer will give 80, 90, or even 100 percent of its telecom business to the carrier. Agreeing to exclusivity may (or may not) yield very competitive rates when a contract is signed. Most telecom contracts, however, last for three years or even longer. As a result, a user bound by an exclusivity clause will have no leverage to force the carrier to reduce rates in the out years of the contract, even if market rates have declined significantly. We generally advise clients not to agree to an exclusivity provision unless the contract has a strong provision for forcing rate reductions during the term of the agreement.

5. Understand your revenue commitments.

Long distance carriers always ask customers to commit to a certain amount of revenue each month or each year of the contract term. Make sure you understand whether this commitment is based on gross (pre-discounted) rates or net (discounted) rates — the difference between the two often is more than fifty percent. In addition, many customers find annual commitments much more predictable than monthly commitments, due to usage variations.

6. Deal with planned business changes up front.

Many customers consider it likely that they will be divesting a business unit or acquiring new companies during the term of an agreement. These matters are best dealt with during the initial contract negotiation, rather than relying on the carrier’s stock “business change” clause (which usually commits both sides to negotiate a mutually acceptable outcome but

9. Ask for a service level agreement.

Although the reliability of telecom networks is generally excellent, there are always problems, some of which can be catastrophic. The carriers’ tariffs or service guides substantially limit their liability for problems caused by service outages, usually providing only a credit for the time service was unavailable. Customers with critical telecom needs therefore should ask for a service level agreement (known in the industry as an SLA) that accomplishes two things. First, the SLA should provide for escalation to senior management within the carrier to assure that problems are rapidly resolved and that the underlying causes of those problems are fixed so that there is not a recurrence. Second, the SLA should provide for significant financial penalties for service outages—and ultimately, for the right to terminate in whole or in part without liability if service is chronically unacceptable.

10. Focus on dispute resolution.

As in any complex commercial agreement, there are often disputes between long distance carriers and their customers. Major problem areas include inaccurate bills, service problems, and changes in the customer’s account team. Most long distance carriers include arbitration clauses in their standard agreements, some of which refer to arbitration rules in internal carrier documents that may be designed to enhance the likelihood of the dispute being resolved in the carrier’s favor. Customers should demand balanced dispute resolution provisions that begin with executive escalation. In addition, if arbitration is the ultimate remedy, customers should assure that it proceeds under neutral rules. Not surprisingly, there’s a lot more that goes into negotiating a favorable telecom agreement than the tips discussed above. Nonetheless, keeping these tips in mind can go a long way toward securing an enforceable, mutually beneficial, and workable business arrangement with one of your institution’s major vendors.

President’s Message

continued from page 1

• Leaders build bridges.

The boundaries between departments, organizations, employees, customers, and other constituents are constantly blurring. The challenge for us as leaders is to build a cohesive community both internal and external to the institution, to invest in relationships, and to communicate a vision that speaks to a richly diverse community of students, faculty, staff, alumni, business and industry partners.

Leadership skills are the essential foundation upon which our current career is built and our future career(s) will be constructed. I thank you all for your insightful comments.

As always, I welcome your comments anytime at mordosky@bradyedu.
From ACUTA Headquarters

Coming Soon to the ACUTA Web Site: Valuable Data Supplied by You!

Scenario #1: It's 10:00 p.m., and you're working at home putting the finishing touches on your department’s marketing plans for the coming year. It's due on the boss' desk tomorrow morning, but needs the last fact or two to give it that extra impact it will need to gain approval. What you really need is some benchmark data—information on the services that are being offered by other institutions similar to yours in terms of size, budget, geography, etc.

Scenario #2: It's Sunday afternoon, you're at yet another hotel representing your company at an ACUTA trade show. Meanwhile, your team's recommendations for enhancing penetration in the higher education telecom/IT market are due to Corporate on Monday afternoon. You need to make a case for increased allocation of travel dollars, increased exhibit presence, more sales personnel to call on higher education customers. What you need are some hard facts about what products and services are currently being offered on college campuses, what services are managed in-house versus outsourced, etc.

Scenario #3: You finally have approval to go ahead with the RFP process for student voice mail, a call center for the Development department, purchase of a PBX that will accommodate VoIP, re-cabling student housing to provide one port per pillow, or any other product or service. The funds have been allocated, and the university administration wants the system installed and running by the time new students arrive this Fall. What you really need is a list of qualified companies who are familiar with higher education, to receive the RFP. Or, perhaps a list of consultants who understand the needs of higher education institutions, to put together the RFP and manage the whole implementation process for you.

As you might guess, my reason for describing these scenarios is to point out that ACUTA can be your primary source of vital information to assist you in any of these situations. Even more importantly, we can be that source at your convenience, 24 x 7, when you have a need to know.

How can we do this? Through two databases that we maintain on the ACUTA Web site for the benefit of our members: The Facilities and Services Survey and the Guide to Products and Services. However, the value of these databases is directly proportional to the quality and quantity of data that our Institutional and Corporate Affiliate members provide.

We have recently completed major improvements to both of these databases, making them more relevant and current to today's technology. We also shortened the surveys and enabled Web access to the questionnaires, to make them easier and faster for you to complete.

Facilities and Services Survey:
This Spring, every primary college/university member of ACUTA received e-mails from the ACUTA office, with very simple instructions for accessing your Facilities and Services Survey on the Web. If you haven't already done so, please locate the e-mail (or request a copy from the ACUTA office), and complete your survey on-line. Our goal is 50% participation—413 institutions—in order to make the data meaningful and reliable. As of May 16, we had 284 member institutions (35% of the membership) responding. This response is higher than previous "paper" F&S surveys, but we need to do better to enhance the value of these results.

By the Annual Conference in July, we will be introducing exciting new ways to search the Facilities and Services Survey data over the Internet. At any time of the day or night, without assistance from the ACUTA staff, you will be able to search for the information you need to complete that service proposal or marketing plan. Or, you will be able to identify members with similar equipment, budget, or department structure who can help you with a technical or management problem.

Guide to Products and Services

Many ACUTA members use the Guide to Products and Services to compile a list of companies that will receive RFPs. In fact, one vendor recently told us that a customer had called him, asking why he wasn't on the list! He made sure his company filled...
BRONZE LEVEL

- **Focal Communications**, Chicago, IL. Lisa Howard, 312/895-8503.  [www.focal.com](http://www.focal.com)
  Focal Communications Corporation is a rapidly growing national communications provider, offering innovative voice, data, and colocation services to large corporations, Internet service providers, and value-added resellers across the United States. Focal provides its customers with an attractive alternative to the incumbent local exchange carriers.

COPPER LEVEL

  Phonetic Systems is a leading provider of award-winning speech recognition solutions that allow users to have fast and easy voice access to information. Applications include voice-driven automated attendant, call routing, directory assistance, self-service information retrieval or a front-end to a call center.

- **UTStarcom, Inc.**, Iselin, NJ. Howard Frisch, 732/767-6135.  [www.utstar.com](http://www.utstar.com)
  UTStarcom designs, manufactures, and sells cost effective wireless equipment for campus- or community-wide voice and data communications. Our solution is compatible with any PBX or CO switch as well as with standard twisted pair wiring.

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Four positions at The University of Texas Health Science Center at San Antonio:

**Senior Network Analyst; Mgr, Telecom Customer Services; Asst. Dir, Computer Network Operations; Communications Tech III**

Contact the University of Texas Health Science Center at San Antonio, Office of Human Resources, Mail Code 7972, 7703 Floyd Curl Drive, SA, TX 78229-3900. Phone: 210/567-2600; [http://www.uthscsa.edu/hr](http://www.uthscsa.edu/hr). EOE/AAE

**Telecom Specialist/Technician, Teachers College, Columbia University**

Send resume to Telecom Specialist Search, Computing and Information Services, Box 43, Teachers College, Columbia University, 525 West 120 Street, New York, NY 10027. Fax 212/678-3243; e-mail mgc29@columbia.edu.

**Telecommunications Director, Phillips Academy Andover**

Send letter, resume, and salary requirements to: Personnel Dept., Phillips Academy, 180 Main Street, Andover, MA 01810. Phone 978/749-4600; fax 978/749-4110. EOE

**Director, Network Engineering, CHR Solutions, Inc.**

E-mail resume to: resume@chrslutions.com or send hard copy with cover letter to CHR Solutions, Inc., Employment Manager, Job #532-CB, 2711 LBJ Freeway, Suite 560, Dallas, Texas 75234. Phone: 972/878-4923; fax: 972/442-2339

**Dir. of Mgmt. Information Systems, Southern Baptist Theological Seminary**

Send resume with 3 letters of reference to: Connie Marrett, Personnel Services, Southern Baptist Theological Seminary, 2825 Lexington Rd, Louisville, KY 40280 or cmarrett@sbt.edu.

**Network Service Center Manager, University of California, Davis**

Send cover letter, detailed resume, and salary history to: Lisa Chance, Communications Resources, Univ. of California, Davis, One Shields Avenue, Davis, CA 95616. See [http://it.ucdavis.edu](http://it.ucdavis.edu) or call the Campus Employment Office at 530/752-1760 for more info. EOE

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In order to be included in this important listing (included in your membership dues), Corporate Affiliates must complete a very brief survey that lists the products and services offered by their company. The survey takes no more than five minutes to complete. This Spring, every Corporate Affiliate company received e-mail and fax messages containing a URL linking directly to the Products and Services survey ([www.acuta.org/html/prodsrv.pdf](http://www.acuta.org/html/prodsrv.pdf)). Please print out the survey from the Internet, check off your company's products and services from the list provided, and fax it back to us at 859/278-3268. It's that simple. The information will be updated on the Web within days, and your company will be included in these valuable listings.

If you need a fax copy of these questionnaires or assistance with either survey, please call or e-mail Kellie Bowman at the ACUTA office, kbwman@acuta.org or 859/278-3338 ext. 22.

I hope that you will invest the small amount of time and effort required to complete these surveys, as the return on investment to your institution or company will be significant.

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ACUTA News - June 2000

Register by June 23 and SAVE!

Details at [www.acuta.org](http://www.acuta.org)