

M&A Telecommunications' Vertical Case Study

Having recently acquired a company, our Client discovered that the Acquiree's telecom contracts included significant long-term liabilities and undesirable above-market rates. With its own global network infrastructure contracts nearing expiration, our Client engaged Abylity ("A"), and Levine+Associates LLC ("LA") (collectively, "ALA") to implement a competitive RFP and negotiate improved global network contracts for the newly integrated company.

Through ALA's intensive analysis, negotiation and implementation process, our Client realized over \$14 million in annual savings and achieved new telecom contracts that offered flexible and competitive Best-of-Market terms in comparison to the Client's existing contracts.

Approach

ALA started with a careful analysis of the Acquiree's existing agreements and invoices, which revealed that terms and conditions were not Best-of-Market and that pricing was approximately 43% above-market. Part of the contract analysis involved a determination of the likely termination liability if the Client opted to end the Acquiree's agreement before it expired. One major agreement (a five-year deal) stood out in particular, with prices significantly above-market, no meaningful business downturn or business reorganization clauses, annual commitments and an effective early termination liability of 70% of the unmet revenue commitments.

ALA also simultaneously reviewed the Client's existing telecom contracts, determining that improved Best-of-Market rates and terms could be achieved in new agreements.

Request for Proposal (RFP) Process

Drawing upon their past experience with negotiations and RFPs, ALA developed a RFP for the replacement of all existing Client and Acquiree telecom contracts. In addition to focused questions which would determine which vendor could best meet the Client's needs, SLA requirements and market prices, the RFP featured the key terms that the Client wanted to have incorporated into the final contracts. The RFP covered voice and data services for the newly merged company and the Client's domestic and international needs. ALA and the Client thoroughly reviewed the 34 responses to the RFP and eventually selected six finalist candidates.

As each finalist attempted to win as many different services the Client requested as possible, a bidding war ensued. The Client adopted a multi-carrier approach to secure the best deal possible across all services, which included: voice, primary domestic data, secondary domestic data, primary international data, secondary international data, audio conferencing, Internet and RAS services. In order to ensure that it had the flexibility to move between vendors in the event that problems emerged with data services, the Client opted to use a customized agreement developed by ALA as the starting point for negotiations with each selected carrier.

The agreement was designed to reflect Best-of-Market terms and meet the following objectives:

- Competitive pricing for existing services that reflected the new contract rates
- Client having the flexibility to terminate orders pre- and post-delivery with no minimum order term, and to order moves, adds and changes and expedites without penalty
- Reasonable commitments over the term only (no annual commitments or subminima for individual services)
- Term commitments reflecting a percentage of the Client's anticipated spend (calculated with ALA's assistance)
- All payments to the carrier were applicable towards the commitment (excluding taxes and certain regulatory charges)
- Generous business downturn/change provisions
- Client having the ability to exercise remedies (including termination in the event of the carrier's financial instability (far in advance of severe financial situations such as bankruptcy))
- Technology change provisions enabling the Client to implement new technology (and lower prices) with an existing vendor or to move to another vendor (and lower the commitment with their existing vendor if they can't or won't meet the Client's technological needs)
- Terms enabling the Client to terminate the contract, at its convenience, for an agreed upon and reasonable amount
- Contract terms representing the substance of the deal; no incorporation of tariff or carrier-biased terms that were subject to unilateral change by a vendor

The Client commenced parallel negotiations with four vendors for different telecom services. Negotiations with one major vendor broke down due to that carrier's inability to meet the Client's financial and SLA requirements. Another carrier stepped in and the ALA/Client team successfully negotiated upfront credits that would largely negate the effect of any termination payments in the existing agreements. The Client ultimately awarded business to four carriers under terms that satisfied the requirements set forth above.

Lessons Learned

Our Client leveraged the knowledge and expertise of ALA to achieve significant cost savings and negotiate contracts that included Best-of-Market terms. Here are some of the key takeaways of the project that a company might want to consider when dealing with its own telecom arrangements:

Patience and attention to detail are critical

- Telecom deals for large enterprise clients are complex and take time. Make sure that your team is well-versed in Best-of-Market terms and pricing so they can leverage this knowledge to provide up-to-date, accurate information for your client and be in the best position to negotiate on your behalf.

Teamwork matters

- Spend the necessary time to find experienced consultants and lawyers with specialized knowledge of the telecommunications industry and market. Require vendors to provide a dedicated negotiation team with key decision-makers available and briefed on an ongoing basis.

Negotiate, negotiate, negotiate

- Make certain that your team is mitigating your risk as much as possible via multi-carrier strategies and provisions enabling termination if necessary. For larger deals it is very advantageous to negotiate your Client's own form contracts, rather than from standard-form carrier agreements. Starting with "customer paper" produces much better results for the Client, more quickly. Know what the carriers you are negotiating with usually offer customers who are spending approximately the same amount for similar services.

Harness technology, drive transparency

- Use online RFP technology to speed up the process, capture savings more quickly and enable better review and comparison of vendor responses. Ensure that the online RFP has thorough, focused questions requiring vendors to provide detailed information and make their commitments clear.

Client Objectives

The Client sought to eliminate or significantly offset the acquired company's liability, partially through negotiating new global contracts that offered the following benefits:

- Significant cost reductions (an important component of meeting Wall Street's expectations for the overall merger)
- Improved contract terms to take advantage of downward-market pricing trends and any emerging new technologies
- Flexibility to enable the seamless integration of the Client's and the Acquiree's networks as well as additional business changes
- Best-of-Market SLAs with enforceable penalties (including the right to terminate based on poor carrier performance)
- Reasonable termination for convenience provisions
- Protection in the event of a vendor's financial instability
- A multi-carrier strategy and other favorable terms to minimize risk to the Client

Challenges

- Acquiree's existing contracts featured:
 - Significant potential liabilities
 - Adverse commercial implications
 - Above-market rates
 - Unfavorable Service Level Agreements (SLAs)
 - Severe termination liability provisions
- Client's telecommunications contracts were expiring and they wanted to:
 - Achieve significant savings. They engaged ALA to negotiate new agreements and work with them on a competitive online RFP process.
- The Client needed a solution that met the needs of the merged entity, and was flexible to grow and change as the business evolved.

Benefits Achieved By ALA

- **Significant cost savings:** The Client recognized annual savings of \$14 million with the new contract rates.
- **Enhanced Quality of Service (QoS):** The negotiations produced best-in-class SLAs backed by industry-leading expertise, which enhanced the Client's peace of mind.
- **Increased contractual and technology flexibility:** Provisions built into the major contracts ensured lower contract commitments and allowed the Client to choose the technology that best met their needs.
- **Improved billing terms and transparency:** The new contracts required carriers to provide consolidated billing with detailed supporting reports. In the event that a carrier fails to bill in a timely fashion the Client is relieved from payment obligations.
- **Financial protection:** The Client enjoys greater fiscal security by being allowed to terminate its relationship with a carrier if the carrier in question is having financial difficulties or is not adhering to accounting and disclosure rules.