

“...this (pause) here (pause) fancy frillery just hides big artillery”

-Bob Merrill, from *Sugar*

I am a huge fan of Broadway musicals. I've been waiting a long time to use this little lyrical gem from the 1972 musical "Sugar," based upon the movie classic "Some Like it Hot." In the musical, the line, "this here fancy frillery just hides big artillery" was sung by Broadway veteran actors Robert Morse and Tony Roberts dressed as women (the Tony Curtis and Jack Lemmon roles). Although I suspect the line has been quoted before, its relationship to telecommunications contracts is probably something that was never contemplated by its author, the virtuosic Bob Merrill, lyricist of, among other shows, "Funny Girl."

Back to our regularly scheduled program. Like many other types of contracts, reading contracts for interstate and international services is, um, slow and, as one lawyer to others, a bit like watching paint dry. However, in service agreements, particularly those which fall outside of the jurisdiction of the New York Public Service Commission (intrastate services), or are otherwise not tariffed, it's not the contract where all the action is. The drama is buried the documents which are incorporated by reference and not physically present.

That is, the "big artillery" isn't in the document that the account exec hands you at all. The prickly details are buried deep on the carrier web page. Not only is this information hard to find, but it is also subject to change without notice.

That's right. WITHOUT NOTICE!!!!

You are now probably leaning back, thinking, hmmm not my problem. The account exec that I worked with insisted that the rates would be capped or fixed the duration of the agreement. What is this commentator blathering on about? The issue is that while the rates may well be fixed, other charges which aren't even mentioned in the primary document, and which are buried deep below the carrier's primary url, are anything but – thus creating the ultimate floating crap game (note the "Guys and Dolls" reference).

As an example, most carriers now assess a "property tax allocation" which is levied as a percentage of interstate and international charges, including both usage and non-usage-related fees. Verizon announced in mid October that it would assess the property tax at a rate of 3% (it had just raised the rate to 2.2% in September). This sounds like a tax, but it isn't – it's pure revenue masquerading as a tax. Sounds official, but isn't. And, to add insult to injury, because it's revenue, it is also subject to sales tax. So the "rates" in the "contract" may not change, but everything else around them can, thus making the bottom line virtually impossible to manage or predict.

Knowledge of this carrier strategy is an essential element of any successful telecommunications negotiation. As of this date, at least two major service providers, Qwest and Sprint, not only retain the right to modify their service guides (under whatever names they're called by different carriers), but they have thus far been unwilling to institute an email notification system so that customers are, at a minimum, informed of these changes. Verizon and AT&T,

while unwilling to provide much advance notice, do have a free automated notification system in place which alert interested parties who have signed up for these notices about changes to these outside terms. Qwest and Sprint, among others, leave that up to the account exec to share with the customer. These carriers are unwilling to either write this obligation into the agreement or simply send out an email notification. In fact, customers of these carriers may or may not ever find out about these changes, and the variation in monthly billing is likely to be small enough to not warrant extra scrutiny.

Think about that for a minute. The terms included in the customer's contract change and the customer (or the customer's agent) has no notice—or even any idea—and yet is subject to those terms. It's tough enough to try to manage costs and expenses on enterprise contracts (talk about the constantly moving target). But the assessment of these extra charges never goes down...it creeps ever-upward. Without even the knowledge of a change, the consumer, be it corporate, governmental or individual, is faced with the equivalent of shooting at a moving target. Blindfolded.

Carriers not only have the right, but the obligation to create value for shareholders. The issue here is not that carriers are creatively generating extra revenue (the story behind the property tax allocation is, in fact, incredibly resourceful), but rather, the fact that its generation is inherently deceptive. If the monthly bill is really going to be \$X, then in my mind, a carrier should be upfront about it. But I firmly believe that it is wrong for a carrier to barrage the

consumer with so much factual (but convoluted and incomplete) information about rates that he/she is not only confused, but to a very real degree, deceived. Until the model changes, customers should understand that any relationship their monthly bills has to the promised \$Y, is random. In short, in telecom, it's not about the quoted rates, it's about the terms.

So the “fancy frillery” is the primary agreement which reads like a standard utility agreement with pages of rates which may or may not apply to the services being provided. If they do apply, they’re likely to be only part of the story. The “big artillery” is buried on the obscure webpage where carriers can modify it at will and consumers have no choice but to pay for it, without knowledge or recourse.