

# Proactive Protection for Today's Telecom Company

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Texas has survived the oil and gas crash, the real estate boom and bust, and the bursting of the high-technology bubble. Cyclical in nature, one additional industry -- telecommunications -- is also on the list. For example, Richardson's Telecom Corridor has seen a significant decline in the business done by its member companies and layoffs at those companies have made headlines nationally. Many of the lessons from the past apply today, but telecom contains some individual challenges as well.

The following is a brief list of practical approaches to day-to-day corporate practice in this area. General counsel in telecom companies need to provide legal and practical protection for their companies, which will continue to deal with declining sales and profits as well as reductions in workforce.

\* **Learn to do more with less.** Almost every telecom company is downsizing to adjust to current levels of revenue. Employees will be asked to expand the scope of their responsibilities, probably without any substantive increase in compensation. All will continue to be concerned about future layoffs. Having seen industry giants such as MCI WorldCom and others file bankruptcy, legal and nonlegal employees will need to show leadership and confidence during trying times.

\* **Develop exceptional working relationships with all groups, especially sales.** Each area in the company will have its own individual needs, but sales is the engine that can drive the company's revenue. Responsiveness to contracts and other sales requests are imperative. Work with other departments to rewrite contracts and reduce costs.

\* **Standardize contracts.** To reduce the amount of time helping the organization implement new agreements, consider passwords protecting the "boilerplate" of company documents and putting any variations from the standard in an addendum, which can be distributed to the relevant departments in the organization.

\* **People will make mistakes.** They are overworked and underpaid. Be patient. Set realistic timeframes for deliverables. Recognize that the flashes of temper occasionally shown are more at the

situation than the legal department. As employees scramble to keep their jobs, they may see your not approving a contract immediately as a personal attack. Treat everyone equally and fairly. Again, lead by example.

\* ***Check noncompete and nonsolicitation provisions.*** People across the industry will be jumping from ship to ship, perhaps operating under the "grass is greener" theory, only to find that each company is in about the same shape. Therefore, the legal department must work closely with human resources to make sure that any new hire will not subject the company to liability under these provisions. Having a summary of all agreements, with these types of provisions noted, is an excellent tool to use here.

\* ***If you have the money, hire excellent talent.*** A friend in the human resources department of a major telecom company placed an ad for a lawyer with an online posting service. Within the first day, they had received more than 350 responses. With the shrinking of the industry, the available talent pool is impressive. The legal department can upgrade its staff if there is money in the company's ever-changing budget. Consider trying to hire a contracts manager instead of a lawyer (although the successful candidate may be a lawyer) as this is a necessary function and the salary is typically lower than that of a lawyer.

\* ***Become a "jack-of-all-trades."*** Most telecom lawyers are either large-firm regulatory types or deal lawyers. If you run a small legal department, your responsibilities will increase into new areas such as bankruptcy during this part of the cycle. Being mindful of the requirements of applicable ethical concerns and constraints, develop a set of basic forms to file claims and a bankruptcy calendar to make sure documents are filed properly. However, if you are not able to handle this or other bankruptcy issues (which represents a possibility for your company to recoup some much-needed money) develop a relationship with outside bankruptcy counsel.

\* ***Consider including business or industry turndown provisions in all agreements.*** This should play well with the chief executive officer who has just seen the telecom industry meltdown and has probably tapped you to re-rate as many of the company's circuits as possible. Many of the larger companies offer at least the business turndown provision in some of their basic contracts. These provisions will either provide an agreement to discuss re-rating if your business hits certain negative criteria or a more detailed discussion of how those negotiations will work. While it may be easy to accept these terms from these more sophisticated companies, getting such a provision into the transport agreement with a smaller company may be more problematic.

**\* Attend as many telecom lawyer functions as possible.** I have been overwhelmed with the kindness with which most lawyers in this field have offered to share forms to make my life easier. Also discretely swapping war stories seems to help with the stress.

**\* Satisfy the requirements of the Sarbanes-Oxley Corporate Fraud and Accountability Act of 2002.** While the extent of the Sarbanes-Oxley is beyond the scope of this article, most lawyers agree that it offers new challenges for the corporate lawyer to discharge his or her duty.

**\* Remember who the client is: the company, not management.** This may be particularly difficult to do in telecom given the bunker mentality under which most telecom companies operate. However, clients have a way of looking for deep pockets - or at least additional pockets - if things go belly-up. Follow the company's handbooks and regulatory requirements. Document everything.

**\* Get and maintain officer and directors liability insurance with an attorney rider.** Amazingly enough, these policies are still being written and are an invaluable way to feel that you have some protection. However, since these policies are mostly "claims made" (i.e., they will provide coverage only when an action is filed against your company), do not overrate the protection. Instead, do a solid job of lawyering and you should be able to overcome any charges of misdeeds.

**\* Always try to help other lawyers that are out of work.** This is just a good rule of thumb for every lawyer. In these uncertain times, those you help one week may be in a position to help you the next. I placed a call to the general counsel of a large privately held company in Dallas so we could get to know each other and network. He never returned the call. Three weeks later, he was fired and called me for networking ideas. We met and I gave him several ideas.

The key to protecting the company in these difficult economic times is to work closely with each department, understand the legal and the business issues they must address and resolve those situations with less resources than most of us are used to having. It can be done, and the telecom world will survive - it needs in-house counsel to make that transition as efficiently and with as much proactive legal protection as possible.

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