F.C.C. Approves Airwave Sale Rules

By THE ASSOCIATED PRESS
Published: July 31, 2007

Filed at 3:35 p.m. ET

WASHINGTON (AP) -- The Federal Communications Commission approved rules Tuesday intended to give consumers more choice in their cell phones and wireless devices after a pivotal new airwaves auction is held next year.

The vote clears the way for the auction, which is expected to raise as much as $15 billion.

The commission approved a much-debated "open access" provision, pushed by FCC Chairman Kevin Martin, a Republican, and supported by the two Democrats, that will allow customers to use whatever phone and software they want on about one-third of the network to be auctioned.

A more ambitious provision, that would have required a licensee to sell access to its network on a wholesale basis, was not included in the rules, making it unlikely that Google Inc. will bid. Google had been expected to challenge traditional wireless companies if the rules had been favorable.

The rules also will allow for the creation of a new shared public safety network that commissioners hope will solve many of the communication problems that fire fighters and other first responders have experienced during disasters like the Sept. 11 terrorist attacks.

The vote was not unanimous. Republican Commissioner Robert McDowell dissented on the open access provision, his first dissent since joining the commission. Republican Deborah Taylor Tate also expressed concerns about the provision, but did not oppose it.

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The text of the dense, technically worded rules was not released at Tuesday's meeting. The language in the document ultimately will determine which investors will commit billions of dollars to develop new wireless networks and which will decide to drop out of the bidding.

The spectrum to be auctioned has been praised for its ability to travel long distances and penetrate walls easily -- the same characteristics that made it attractive to broadcasters...
who are being evicted from it in the move to all-digital television.

The Congressional Budget Office estimates the auction's proceeds will amount to between $10 billion and $15 billion.

A total of 60 megahertz will be auctioned. Twenty-two megahertz are expected to be subject to "open access" rules being pushed by Martin. Another 10 megahertz will be dedicated to a national public safety network, shared between a commercial operator and public safety agencies.

Last April, Martin described the auction as the last best opportunity to introduce a "third pipe" competitor to the world of high-speed Internet access, which is largely dominated by cable and telephone companies.

Public interest groups, later joined by Internet search engine giant Google Inc., argued that the best way to ensure that a third-pipe competitor would emerge was to reserve some of the spectrum for use by a wholesaler.

Google even said it might bid if such a condition were imposed. A wholesale requirement would have discouraged big cable and telephone companies -- who would be unlikely to lease space on the new network to potential competitors -- from bidding.

While Martin said his "open access" provision will benefit consumers, some consumer groups maintained it will have little real impact.

"It's a small benefit way off in the future that conceals a really blown opportunity to bring prices dramatically down and increase broadband speeds enormously through competition," said Gene Kimmelman, vice president for federal affairs for Consumers Union, the nonprofit publisher of Consumer Reports magazine.

The spectrum will be occupied by television broadcasters until February 2009. The winning bidder or bidders then have to "build out" the network. This could take several years and billions of dollars.

In addition, if one of the large existing providers is the winning bidder, it might incorporate the spectrum into its existing network in such a way that the open access requirements would be meaningless. Finally, there is no indication to date how the FCC intends to enforce the rule.