FCC Auction Should Allow for Open Wireless Network, Say Lawmakers

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Thursday, July 12, 2007; Page D08

Key lawmakers on Capitol Hill yesterday supported the idea that regulators should give consumers greater control over how they use their cellphones.

Several members of a House subcommittee voiced agreement with a proposal that would require a portion of valuable airwaves about to be auctioned off by the Federal Communications Commission to be used for an "open" network that would connect to any mobile device or service. Such a rule would benefit technology companies such as Google, Intel, Yahoo and Skype, who want more ways to reach their customers without going through carriers. The plan could hurt wireless carriers, who say unfettered access to their networks would undermine billions of dollars of investment for high-speed services.

This issue of open access lies at the center of the debate about rules that will govern the spectrum auction, which are expected to be released this month. FCC Chairman Kevin J. Martin has proposed setting aside one-third of the spectrum for an open network that would work with any cellphone.

Supporters of Google and its partners say an open network would promote innovation by letting consumers use services on new devices like the iPhone without being limited to a single network. But critics argue that placing such conditions on the bidding process would actually stifle competition and reduce revenues from the auction, which is expected to yield between $15 billion and $20 billion for the U.S. Treasury.

Rep. Edward J. Markey (D-Mass.), who chairs the subcommittee that handles telecommunications and Internet issues, urged the...
FCC to "seize this opportunity to create an open-access opportunity for wireless service in this auction." He added that wireless carriers are "exerting far too much control over the features, functions and applications that wireless gadget makers and content entrepreneurs can offer directly to consumers."

Ranking Republican Fred Upton of Michigan countered by saying the wireless market is already "vigorously competitive."

"No matter how you slice it," he said, the proposal "smothers investment in a competitive market, and in the end would leave consumers worse off and with fewer choices."

The four-hour hearing highlighted the divergent views of policymakers and industry representatives on the consequences of using a slice of the spectrum for an open-access network.

Steven E. Zipperstein, general counsel for Verizon Wireless, testified that competition already forces wireless companies to invest in new products and networks, ultimately benefiting consumers. He also said that any open-access requirement would make the spectrum less valuable to companies like Verizon Wireless.

But Jason Devitt, who runs a Silicon Valley start-up that sells wireless products and services, disagreed. While the major carriers such as Verizon Wireless and AT&T bring new products to market, he said, "there are so many other products and services not getting in front of consumers" because carriers act as gatekeepers.

"I'm an entrepreneur, and I'm mad as hell I have to ask for permission to innovate," he said, referring to what he called the wireless companies' "death grip" on the market.

Google, which has been lobbying Congress and the FCC in favor of open networks, has not decided whether it will formally bid on a piece of the spectrum and build a wireless network. On the company's public policy blog, Google's Washington telecom and media counsel, Richard Whitt, wrote Tuesday that the company was still interested in participating in the auction but said "it's clear that the incumbent carriers have built-in advantages that will prove difficult to overcome."

Google said it favors openness that allows all services, applications and devices to work on the wireless network.

Some consumer advocates say the auction rules Martin proposed this week do not go far enough to promote real competition. In addition to allowing any device to connect to the network, the FCC should require the auction winner to wholesale the spectrum to companies that impose no rules on what type of services and equipment consumers can use, said Art Brodsky of Public Knowledge, an advocacy group.

Martin seems to be testing the waters, Brodsky said, with draft rules that seem to favor high-tech companies over the major telecom carriers.

"He wants to see the congressional and industry reaction," he said. "He's trying to see what kind of support he'll get."