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Upcoming rules could break open wireless market

By Paul Davidson, USA TODAY

Federal regulators Tuesday are scheduled to pass new rules aimed at breaking open the tightly controlled wireless market, potentially making it easier for consumers to use any handset and software they choose with certain services.

But some analysts are skeptical that the Federal Communications Commission's rules for an upcoming airwaves auction will loosen the grip of big wireless carriers that may be intent on steering consumers to their own cellphones and services. FCC commissioners were negotiating late Monday on ways to prevent that from happening.

"Open-access" requirements are expected to be imposed on about a third of the airwaves sold in January's auction. That means the winner of that spectrum would have to offer a service that lets subscribers use any handset and download any software they wish.

For example, a consumer could buy a cellphone from Google and use it on, say, Verizon's network to download Google games or video from the Web. Google, which itself has expressed interest in bidding, has led the push for open access.

Today, big wireless carriers strictly control the devices and applications that work on their networks. The iPhone, for instance, works only on AT&T's network.

Analyst Blair Levin of Stifel Nicolaus says a deep-pocketed wireless carrier likely will win the spectrum. A new entrant such as Google lacks the expertise to build and operate a network, he says.

The carrier, he says, would be bound by open-access rules but could easily favor the handsets or software it offers. For instance, it could charge a subscriber a much higher monthly fee to use another company's phone. Alternatively, the carrier could build its network in a way that ensures its handsets work virtually everywhere, while a rival's are useless in key places, such as airports or downtown areas.

Commissioners Monday were haggling over conditions to head off such tactics. For instance, the winning bidder likely would be barred from charging technology licensing fees — which could be exorbitant — to ensure a vendor's phone works on the carrier's network, FCC officials say. The officials requested anonymity because commissioners have not yet voted.

Other constraints, such as capping the service fee a carrier can charge, are less likely to be imposed.

Big carriers "have lots of ways of leveraging their ... assets to make the openness less meaningful," Levin says.

Some FCC officials counter that the new rules will make it easier for competitors to lodge complaints if a carrier violates the FCC's intent. The burden will be on the spectrum winner, for example, to prove it acted reasonably.

"My feeling is this is a positive step forward," says Harold Feld, senior vice president of the Media Access Project, a public-interest group.

Google had proposed making the spectrum winner lease some of its airwaves to third parties, giving the winner far less control over how the spectrum is used. That idea was rejected.

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