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Bad Week for Wireless Incumbents

By [Roy Mark](#)
July 13, 2007

It was not the best of weeks for the telephone and cable companies who control 98 percent of the U.S. broadband market.

First, Federal Communications Commission (FCC) Chairman Kevin Martin [floated](#) the notion that if they don't want to open their networks to all legal devices and applications, they won't be welcome at the January bonanza spectrum auction where the best airwaves ever made available for wireless broadband will be sold.

The very next day, the House panel that oversees telecommunications and the Internet repeatedly [poked](#) incumbent wireless companies in the eye over the same issue that may keep AT&T, Verizon Wireless, Comcast and Time Warner out of the spectrum auction: closed networks.



"It has become increasingly clear... 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," said the panel's chairman, Rep. Ed Markey (D-Mass.), in his opening comments.

To illustrate his point, Markey held up an iPhone, pointing out that consumers can only use the device on AT&T's network under a two-year contract. Not only that, he complained, but consumers pay full price for the device even though AT&T still charges an early termination of \$175.

"This highlights problems with the current marketplace structure, where devices are provided by carriers, portability of devices to other carriers is limited or non-existent," Markey said.

"Many consumers feel trapped having bought an expensive device or having been locked into a long-term contract with significant penalties for switching."

Which was exactly Martin's point when he began promoting his draft rules for the upcoming 700 megahertz (MHz) auction, probably the country's last great chance to create a third market force in the broadband market to challenge the telephone and cable companies.

The two sectors currently control 98 percent of the high-speed connections in the country. Most of those connections require that consumers buy a bundle of broadband, television and telephone services. If they have their way, they will also gobble up the spectrum that will be available in January.

But Martin rained all over that parade. The chairman proposed that the choicest cut of the commercial spectrum be reserved for an open access network where consumers can connect any legal device or application to the network.

This is not a radical concept. Landlines, no matter the carrier, allow consumers to connect any number of different devices from modems to fax machines to the network. When customers change services, they can still use their existing devices on the new carrier's network.

There is a reason for this. Prior to 1968, consumers had one choice for a telephone: a black, rotary dial clunker leased from the old Ma Bell.

In a landmark 1968 regulatory decision, the FCC ruled consumers could connect any legal device to the monopoly's public switched telephone network, opening the market for a slew of innovative products beyond the control and pockets of AT&T.

The wireless industry, however, is exempt from these requirements, as anyone who has ever switched carriers knows. A new carrier usually results in having to buy a new cell phone/smartphone/wireless device and the wireless carrier strictly controls the applications that run on those devices. Congress and the FCC backed this play to help the wireless industry get off the ground.

In 2007, though, does anyone really think Verizon Wireless or AT&T Wireless need a helping hand from the government? Early indications are Congress and the FCC do not and the wireless industry suddenly finds itself fighting a two-front battle: getting a beachhead on the new spectrum while clinging to their current closed networks.

Jason Devitt, the CEO and co-founder of Skydeck, a Silicon Valley mobile products and services startup, laid out the case convincingly at Wednesday's House hearing.

"Forcing entrepreneurs to seek permission to innovate in mobile services is killing powerful new ideas before you ever get to hear about them," Devitt said.

"Imagine the founder of Amazon having to persuade Sprint in 1995 that he could do a better job of selling books online than Barnes & Noble... Picture the founders of Google in 1999 persuading AT&T to let them launch another search engine."

While Devitt said he is working the FCC to force open access on at least some of the new spectrum, he also added, "I'd go back and apply it retrospectively to all spectrum."

If Martin ultimately has his way (the fight has just begun), the incumbent wireless carriers can keep their closed networks but unless they want to offer open access connections, including the ability to use, say, Internet telephone services such as Skype that compete with their own voice products, they can sit on the sidelines during the spectrum auction.

Which would be a perfect spot for them.

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