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Telecom Law: Let the bidding begin

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Every once in a while, when a group of consumers yells loudly enough, an entity not only hears, but responds.

That's exactly what has happened in the world of American wireless telephony in the past month.

First, under incredible pressure, wireless carriers are allowing consumers shorter and/or more flexible contracts so they are not locked in without option until the dreaded 24 months are over. There are costs for contract flexibility, but carriers finally are hearing consumers' numerous complaints and are releasing their collective stranglehold on them. Think honey versus vinegar: Honey's always more effective, particularly when the competition is tough.

Secondly, Verizon Wireless (VZW) is taking the unusual step of agreeing to open its network to others and has created, at least initially, a hint that major changes are coming to the wireless marketplace that could benefit consumers on other levels, whether corporate or residential. This means consumers will not necessarily have to purchase a new phone when switching from one provider to another. For anyone who's ever been annoyed by the fact that the Motorola phone used on the Verizon network won't work on the Sprint-Nextel network, this is very good news.

There are other promising conditions on the horizon driven by the serendipitous confluence of three interesting factors — the success and limitations (contractual and technical) of the iPhone; the impending auction of a significant amount of newly-available wireless spectrum early in 2008, creating some unique pre-auction alliances among and between a few well-known carriers and others you've never heard of; and the concern of the biggest players in the wireless market about what Google's entry into the space will do.

Unlike in Europe and Asia, the American wireless market is driven by a few large, powerful vendors, the most famous of which are Verizon Wireless, AT&T, Sprint Nextel and T-Mobile. Each has created limitations on what its devices can do, and what actions it (as the vendor) will support. Specifically, marketing considerations have thwarted technical


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capabilities. Vendors have imposed restrictions on what each allows its phones to do in an effort to force customers to sites where it can generate the most revenue for itself by restricting access to other sites and capabilities.

In exchange for this forced loyalty, U.S. vendors traditionally have subsidized the cost of each phone in exchange for a long-term (generally 24-month) contract. Anyone who has ever tried to get a new phone before the existing contract is up KNOWS the carrier is subsidizing the cost of a new phone. So, if you like some of the Sprint-Nextel features and have a Verizon phone, you'll have to have one of each to take advantage of the best features each has to offer.

This flies in direct contrast with the European wireless marketplace, where consumers are not required to have to have multiple handsets to support multiple functions and well-connected individuals carry around multiple memory cards (SIMs) that can be inserted into a single phone to achieve connectivity to services or features desired (think Internet and gaming, among others). Further, wireless phone devices (the phone itself) are purchased at a Motorola or Nokia store, for example, while service is provided by a different vendor, such as Vodafone.

But I digress. When the iPhone was first announced and made available in the United States, it was available only to those who use AT&T's (formerly Cingular) wireless service. Many early iPhone customers were annoyed by the phone's limitations and devised methods for getting on to other networks. Those who weren't as technically savvy complained vocally.

In Germany, a court issued an injunction preventing Deutsche Telekom AG's mobile unit from forcing iPhone customers to use its network. Such users no longer will be required to have a 24-month service contract with Deutsche Telekom, but they'll have to pay more than twice as much for the device (according to the Wall Street Journal).

In light of this European court determination, as well as a recognition of newly available spectra to support numerous wireless applications, Verizon Wireless surprised the wireless world last week when it announced it will support open access (not without cost) to other vendors and carriers. It

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further surprised everyone when it announced it would support Google's recently launched software platform for wireless phones called "Android."

Since the dawn of Google's ginormous presence in the technology sector, and since an announcement was made that newly available spectra will be auctioned, speculation has been HUGE as to whether Google would enter the auction (it will) and, if so, if any other vendors would work with it as opposed to thwart it (or at least make a valiant run at thwarting it).

Those entities participating in the auction (there is a finite quantity) had to declare their intentions by Dec. 3, and the list of those participating is quite enlightening. Of course, Verizon, AT&T and Google will participate. Interestingly, or perhaps tellingly, neither Sprint-Nextel nor the two largest cable companies, Comcast Corp. and Time Warner Cable

Inc., are.

Who cares? Consumers should. The 62 megahertz being auctioned (it becomes available when analog TV surrenders to digital in 2009) is the very best of wireless beachfront property. Some smaller entities also will bid in an effort to support specialized services, including those used by public safety and emergency personnel. In any case, who bids and who wins will determine who controls the market. And that's what keeps things so interesting.

Seasons greetings to all.

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