

Locked cellphones are no longer a lock

November 29 2013, by Mark Davis

Uncle Sam wants to hand you the keys to your cellphone. A federal agency is pressing wireless phone companies to start "unlocking" customers' phones, possibly by the time you exchange gifts for the holidays.

A locked phone will work only on the network of the carrier that sold the phone. The change would make it easier for consumers to shop for service from other carriers.

"It's one less obstacle for the consumer to face in deciding whether to move to another carrier," said Jeff Silva, an analyst at Medley Global Advisors. "At the end of the day, that's what it's all about."

There are other moves to make your mobile phone more mobile. A federal judge in Kansas recently asserted a subscriber's right to sell a phone - including that new, upgraded one fresh out of the box.

Even some of the technology differences that make it hard to switch carriers without switching phones are eroding.

Wireless carriers say locking phones allows them to offer expensive new devices at discounted prices that customers can afford. And those devices are tuned specifically to the carrier's network, which means they won't work well on other networks.

"While the promise of universal compatibility by unlocking a device is enticing, we're not quite there yet, and may never be," said Bill Moore,

whose company, RootMetrics, tests carriers' networks for reliability and performance.

If vast numbers of cellphones are unlocked, the U.S. wireless industry may have to adjust its standard business model.

Though consumers can buy an unlocked phone for the full price of \$650, most sign up for two-year service deals and get a discounted phone from the carrier.

Cellphone companies charge us a hundred bucks or two, but we pay the rest back as part of our monthly bills, or as an early termination fee if we don't keep up.

To cement the deal, [wireless carriers](#) lock the phone so it only works on their network.

T-Mobile is one carrier focusing on a different model. It sells phones on an installment plan separate from the service. Consumers still pay for their phones through the carrier, and if they cancel the service, they owe the balance due on the phone.

Because the cost of the phone is no longer part of the monthly bill, consumers can see more easily how much they're paying for service.

Unlocking all phones would reinforce that focus. Carriers could compete harder on prices or continue to emphasize faster networks, better coverage and even brand cachet.

The U.S. market would move closer to the cellphone deal that prevails in Europe.

There, customers select and buy a phone first, often saving up to pay the

full price, though discounted phones are available with service plans.

Mostly, Europeans stick with one phone longer but change carriers more often. Switching carriers is a relatively easy matter of buying a subscriber identity module card, or SIM card, from the new carrier and plugging it into the phone.

U.S. travelers with the right unlocked phone can move across Europe by swapping SIM cards along the way.

Holiday shoppers might keep the move to unlocking phones in mind as they check out the deals and devices available during the U.S. wireless industry's busiest season.

The hurried push to unlock cellphones comes from the Federal Communications Commission. For eight months it has negotiated with the industry's standard-bearer, CTIA-The Wireless Association.

"Enough time has passed, and it's now time for the industry to act voluntarily or for the FCC to regulate," the commission's new chairman, Tom Wheeler, said in a letter last week to CTIA's president, a post Wheeler once held.

Wheeler called for the industry to recognize consumers' "full unlocking rights" and to do it "before the December holiday season."

The issue is also coming to the fore because early this year the Library of Congress dropped a waiver of copyright law that previously made it OK to unlock phones without phone company permission.

The change turned unlocking into a crime, said Derek Khanna, who led a national petition for unlocking rights that got the Obama White House to back unlocking.

"Our campaign said, 'That doesn't make sense. Let's fix that,' " Khanna said.

Admittedly, no one is being arrested, but the threat is enough to quell the practice. Even those who say unlocking remains legal see the impact of the move by the Library of Congress.

"I would say forget all of that (copyright) law. It's still legal for you to unlock it," said Sherwin Siy, vice president of legal affairs at Public Knowledge, a consumer advocacy group.

"Me and some other experts saying that isn't enough to make everybody comfortable enough that they'll do it without fear of being sued."

Most customers don't know it, but wireless carriers have unlocking policies in place now.

Generally, carriers say they will unlock phones once customers have completed their service deals, paid for the phone through installments or met an early termination fee. Military personnel also can get their phones unlocked upon deployment.

But Wheeler in his letter called on wireless carriers to go a couple of steps further and notify customers when their devices are eligible for unlocking - or better yet to unlock them automatically without charging a fee.

Smaller and regional carriers strongly support unlocking phones, said Tim Donovan of the Competitive Carriers Association. They often can't get manufacturers of the newest phones to build models for their networks, but they could offer service to customers with unlocked phones from other networks.

T-Mobile not only sells phones on an installment plan. It also takes advantage of unlocked phones.

A year ago, its ads urged consumers to join the pink network by bringing over an unlocked AT&T iPhone. The company was acknowledging what consumers already were doing. More than a million iPhones operated on T-Mobile's network, though it did not offer the device.

But there's a reason T-Mobile ran those ads instead of Sprint or Verizon. T-Mobile and AT&T both use the same basic network technology, called GSM.

Sprint and Verizon use a different technology, called CDMA, that is incompatible with GSM phones.

"That has gotten lost in the debate" about unlocking, said Jot Carpenter, vice president of government affairs for CTIA-The Wireless Association.

Other network differences make Sprint's and Verizon's networks distinct from each other. They operate at different frequencies of radio spectrum, which means the phones may not be able to pick up reliable signals if switched.

"You would have a very disappointing experience," said John Taylor, a Sprint spokesman.

Carriers say the routine unlocking of phones would produce a lot of unhappy customers spouting complaints that their new carriers couldn't resolve.

But it is getting better.

Manufacturers are putting more technologies into phones because it's cheaper to make one device that fits many carriers than a different one for each.

International travel adds pressure to make phones more portable. Verizon, for example, offers some dual-mode devices that speak CDMA and GSM, which is much more widely available overseas.

"The world of unlocked phones is a messy one," said Moore, with RootMetrics. "In the end, it's all about the hardware in the phone and what the chipsets are able to support."

For now, consumers' best bet for changing networks is to change phones. It's one reason devices change hands every day on Craigslist, Gazelle and other websites.

"As soon as that contract's up, you own the phone," said Linda Sherry, a spokeswoman for Consumer Action. "Our position is that you can do whatever you want with that phone."

Others say consumers may not have to wait.

An Oct. 31 court order by U.S. District Judge J. Thomas Marten said Sprint's contract allows customers to sell any phone that isn't currently active on the company's network.

And he means any phone.

"Often, the online seller has just been eligible for an upgrade from Sprint, so they purchase the new phone and decide they would rather sell it and keep using their old phone," Marten's Oct. 31 order said.

Sprint objects. It pays big subsidies to provide the newest phones to

customers at affordable prices. Reselling that device, the company says, amounts to stealing the subsidy from Sprint.

Marten, however, found that the customers Sprint offered as examples had continued paying their bill. Sprint got its subsidy back.

Siy, with Public Knowledge, said the argument makes sense. Customers have signed up for two years whether they keep the phone or not.

"I think a lot of consumers probably would feel that way," he said.

James Baldinger, an attorney representing Sprint, said more than subsidy dollars are at stake.

Sprint enjoys marketing and public relations benefits when others see its customers using the latest new devices. And newer phones operate on its network more efficiently, holding down Sprint's costs.

In court, Baldinger's claims go even further. The terms of Sprint's contract prohibit the resale of any Sprint phone. It doesn't distinguish between new and old phones.

"The terms and conditions say that you can't resell your phone. That's what we say in the court papers," Baldinger acknowledged.

The legal declaration, and Marten's orders, came in a federal lawsuit Sprint bought against a Kansas City, Kan., company that buys and resells phones. The Middle Man Inc., Sprint alleged, is a trafficker that deceptively acquires Sprint phones in bulk to resell them overseas.

It's the same complaint Sprint has brought against many others, hoping to shut down what it says is widespread illegal [phone](#) trafficking.

Brian Vazquez, who operates The Middle Man out of his home, has fought the lawsuit and won some early battles. He says he buys and resells phones, but not as part of any big scheme.

"It's onesies and twosies," Vazquez said.

Regardless of how the case ends, the battle has shed light on Sprint's ban on reselling phones.

Baldinger, who says he has filed about 200 trafficking cases, insists that Sprint hasn't and won't go after "legitimate customers" who sell their phones. It is interested only in traffickers and needs the broad resale prohibition to catch them.

"These guys are crafty," Baldinger said.

Siy, on the other hand, is concerned about legitimate customers if Sprint prevails.

"If they win on this case, then they legally will have shown that they get to restrict their customers from selling their phones."

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