



Hey Michael, Thanks for Nothing

By Joshua E. Barbach

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FCC Commissioner Michael Powell announced his resignation in January. His was a busy tenure. Powell was part of three attempts to write unbundling rules, twice as Chairman. Despite speeches filled with a strong emphasis on his pro-competition stance, there were nine significant communications mergers during his tenure. A review of Powell's career reveals a long line of well intentioned statements and protests for the letter of the law that did little to prevent the reconsolidation of telecommunications by the RBOCs. The RBOCs got what they wanted, with regulation turning in their favor. It happened under Powell's watch, despite what he had to say about it.

Powell was Pro-Competition?

What happened to the pro-competitive stance Powell assumed in his early days with the FCC? An excerpt from his first speech, given December 1997, reveals that things have not changed that much in telecommunications:

Let me conclude with a diagnosis. Washington tends to suffer from the disease "Big-Guy Myopia." AT&T, Sprint, and MCI are not the only long distance companies in America, nor are the BOCs and GTE the only local carriers. Yet all too often we act as if they are. We write one-size-fits-all policies based on the experiences, data, and promises of the big guys, we short-sightedly cut deals with one or two large companies, and, fatally, we measure the success of competition, new market entry, innovation of services, and prices by what these giants are doing.

Now there are fewer of these "Big-Guy" companies, controlling a greater percentage of the market than there were in late 1997. There was once a time when the increasing number of wireless competitors was celebrated by the FCC. Commissioner Tristani, in 1999 said, "consumers, if they were lucky, had a cellular duopoly for choice. Today, most Americans have at least five -- and some as many as six -- providers to choose from. But that number is being reduced back to previous levels."

There have been nine significant mergers during Powell's tenure. He concurred with the SBC-SNET, Worldcom-MCI, SBC-Ameritech, Qwest-US West, Bell Atlantic-GTE, AOL-Time Warner, ATT-Comcast, News Corp-DirecTV and ATT Wireless-Cingular mergers. The Sprint-Nextel proposed merger has received no public statement from the FCC. Meanwhile, SBC has talked merger with ATT, and Verizon is targeting MCI.



There can be little wonder why Alltel acquired Western Wireless. With over 10 million combined customers, Alltel would remain on the main stage, if just slightly in the background.

The competitive market is shrinking. Consider the situation if all the mergers go through. The telecom landscape looks like the following: Cingular, Verizon Wireless and Sprint-Nextel would control more than 80% of the US wireless market. With ATT and MCI soon to be absorbed by the RBOCs, that would leave Sprint-Nextel as the only major telephony player without a BOC history. The RBOCs still control more than 80 percent of the local access market. This leaves just a few entities in control of the U.S. telecommunications market.

271 Blunders

The first successful vote allowing RBOCs to begin selling Long Distance under the Section 271 terms was in December 1999 - a 5-0 sweep in favor of Bell Atlantic. Shortly after 271 authorization had been granted the violations began. A March 2000 FCC release states, "Bell Atlantic has failed to process properly a large number of orders for such unbundled network elements in New York in the last two months. Specifically, Bell Atlantic has failed to provide competitors with various notifications concerning the status of certain types of electronic orders placed by competitors or otherwise failed to process properly those orders." When the admonishment was released, Bell Atlantic agreed to a "voluntary payment" to the treasury of up to \$27 million. Commissioner Tristani opposed this ruling, suggesting that "the more appropriate response would have been to direct Bell Atlantic to show cause why the Commission should not suspend its authorization to provide long distance service to new customers in New York due to its apparent failure to provide nondiscriminatory, unbundled access to network elements."

With his failure to back competition in this instance, Powell began a pattern witnessed with each new 271 authorization granted to the RBOCs. Knowing that once a ruling went in their favor it would be easier to pay fines than obey rules, the RBOCs have steadily rebuilt whatever was dissembled by the Telecom Act of 1996. It seems as though following Tristani's suggestions would have done more for fairness in competition than dissenting in part while allowing Orders to proceed. For all of Powell's rhetoric about competition and the boundaries of the law, the RBOCs have had nearly free reign for years, right under his nose.

There doesn't seem to be a genuine concern for what's best for consumers, whom the FCC is charged with protecting. Even the most recent attempt at UNE rules seems focused more on gaining acceptance than on achieving the best possible rules. It is admirable in a limited sense to see such devotion to the achievement of passable UNE rules. It would be better to have rules designed with the best future as a goal, rather than rules designed to withstand judicial review.



Powell has had four years as FCC Chairman to help right telecom's wrongs, but in the balance he has failed. Despite his strong and repetitive rhetoric, Powell should be judged by the state of telecommunications that he has helped to deliver. The United States is trailing the world's leaders in broadband penetration, CLECs are trying to survive as they work around a fourth set of UNE rules, and the number of telecom choices are growing fewer. These negatives outweigh Powell's "IP" advocacy, the future of which will be decided in Congress after Powell is long gone.