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Chief of FCC facing big test

It's unclear whether Michael Powell can muster a majority for his deregulatory cause.

Marilyn Geewax - Cox Washington Bureau
Sunday, February 9, 2003

Washington --- When Michael Powell became chairman of the Federal Communications Commission two years ago, he promised to speed up the regulatory process to make the agency operate on "Internet time."

But so far, the FCC has made no sweeping changes in phone or cable television rules.

That will change soon as the agency plans to rule on major issues involving local phone service and high-speed Internet access. The first big vote, on whether large regional phone companies must lease their networks to competitors in local markets, is set for this week.

"I think it's going to be a huge year" for decisions affecting consumers and businesses, said Sue Ashdown, executive director of the American ISP Association, a trade group that lobbies for small Internet service providers. Regulators will "determine how competition is going to play out --- we're really at the crossroads now."

While Powell hopes these decisions will reflect the free-market philosophy he has become known for, it's unclear whether he can muster a majority on the five-member commission to support his deregulatory vision.

Powell's "views are radical enough that it's going to be hard for him to find the votes" for even a simple majority, Ashdown said.

And many advocates for consumers and small companies believe Powell would need more than three votes to secure dramatic change.

"If you want to make big policy changes, you better get a 5-0 decision, because when you get 3-2 splits, you get a lot of litigation," said Mark Cooper, research director for Consumer Federation of America, a nonprofit advocacy group.

"He is discovering that just because you are chairman of the commission doesn't mean you can establish your own policies," Cooper said.

Public Enemy No. 1

Since being elevated from FCC commissioner to chairman in January 2001,

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Powell has become Public Enemy No. 1 for many consumer advocates. They say he backs changes that would allow large regional phone and cable companies to become unregulated monopolies, using their dominant positions to crush competitors and exploit consumers.

Consumers advocates have been rattled by a number of Powell's pronouncements, including:

> His labeling of the 1996 Telecommunications Act as a "success." Consumer groups generally see it as a legislative disaster that allowed cable TV rates to soar while shrinking the number of regional phone companies from seven to just four.

> His declaration that "openness is not always good." Small ISPs say they need open access to proprietary systems such as a cable system's high-speed network, but Powell says too much openness can prevent cable and phone companies from making enough profit to survive.

> His insistence that government is not a "nanny" in charge of cleaning up offensive content on public airways.

Powell, the 39-year-old son of Secretary of State Colin Powell, planned a career as an Army officer. But after a near-fatal jeep crash in 1987, he became an attorney. From 1996 to 1997, he served as chief of staff in the Justice Department's antitrust division. President Clinton appointed him to the FCC in 1997.

Before his elevation to chairman, Powell was viewed as a moderate. For example, in the FCC's biggest case in 2000 --- AOL's acquisition of Time Warner --- Powell adopted a middle-of-the-road position, dissenting from the majority's decision to impose restrictions on AOL's instant messaging service but supporting curbs on AOL Time Warner's relationship with AT&T.

Since becoming chairman, Powell has focused on clarifying regulations under the Telecommunications Act. That has put him at the center of a rancorous dispute over how the law intended to help the telecommunications industry to improve its technology and increase competition.

In recent years, it appeared Congress might make itself the focal point of the debate. For example, last year, Congress failed to complete action on a bill, sponsored by Reps. Billy Tauzin (R-La.) and John Dingell (D-Mich.) that would have spelled out new rules for competition in phone service.

This year, the Bush administration is not prodding Congress to act on telecom issues. And with Congress so engrossed in budget and war issues, Capitol Hill observers say most lawmakers would prefer to sit back while the FCC takes the lead in deregulatory issues.

Among the issues the FCC will soon address:

> Whether to free the large regional phone companies, often called the Baby Bells, from regulations requiring them to give other companies access to telephone lines into homes to provide broadband service. Consumer advocates oppose such a change.

> Whether to classify high-speed Internet access that flows through phone lines as an "information service." At present, broadband that comes through cable TV wires is considered an information service, not phone service, and therefore is minimally regulated.

Phone companies want to operate under the same rules. But consumer groups say allowing phone companies to act like cable companies would be a

mistake, given that cable TV rates have risen far faster than inflation since 1996.

> Whether the government should restrict big companies from owning multiple media outlets in the same community.

> How to allocate use of newly freed-up airwaves, much of which could be used for advanced wireless services, such as getting Internet access through cellphones.

The first issue, on the Bells' obligation to lease network capacity to local competitors, comes up at the FCC's meeting on Friday, more than two years after Powell ascended to the chairmanship.

In a recent meeting with reporters, Powell said he was "absolutely not disappointed" about having to spend so much time preparing for the vote. "Why wouldn't you expect the largest, most controversial, most significant items to be the ones that take the longest?" he asked. "More important than time is getting it right."

Network problems

On one side of the network controversy are the Bells, which include BellSouth Corp., SBC Communications Inc., Verizon Communications and Qwest Communications International Inc.

Under the Telecommunications Act, they can compete in the lucrative long-distance market only after they have allowed local competition.

As the big companies have opened up their networks, local competition has indeed increased. About 21.6 million households, or 11.4 percent of all homes, now get local phone service from a company other than a Baby Bell.

But the Bells say the current rules put them at a disadvantage. They say it makes little sense for them to invest in broadband and other advanced technologies if they have to help competitors by leasing equipment at low rents. The Bells argue that such obligations are delaying the rollout of better technologies, especially high-speed Internet access.

The Bells also say that if competitors had to build their own local networks, new equipment orders would soar, helping stimulate the economy.

At a Senate Commerce Committee hearing last month, Powell said phone competitors should build their own networks, noting that the Sept. 11, 2001, terrorist attack on New York underscored how important it is to have redundant networks to keep phones working during emergencies.

In late January, 22 members of the House Energy and Commerce Committee signed a letter urging the FCC to free the Bells from their equipment-sharing obligations, saying "the future of the U.S. telecommunications equipment manufacturing base will be greatly affected by the outcome" of their vote.

But on the other side of the debate are consumer groups and small competitors who say the goal of building new networks is unrealistic for now.

Pointing out that the telecom industry has suffered immense financial losses in the last three years, they say young competitors ought to be allowed to continue leasing until they can grow strong enough to own more of their equipment.

They also dismiss the notion that Baby Bells would spend more on new

equipment for advanced services. "Monopolists do not invest, absent competitive pressure," said Lawrence Spiwak, president of Phoenix Center, a research group based in Washington.



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