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Business & Technology: Monday, October 21, 2002

Broadband believer: FCC's chair presses for big leap for U.S. high-speed Internet

By **Jim Landers**
The Dallas Morning News

WASHINGTON — Michael Powell professes boundless faith in broadband. The chairman of the Federal Communications Commission sees high-speed Internet access transforming modern civilization with the impact that gunpowder had on warfare centuries earlier.

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When he curls up in bed with his broadband-linked laptop, trying to guess the would-be assassin on Fox television's "24" or ordering household repairs, he envisions a leap in history.

"I'm closing the time and distance so that as things occur to me, the tool to put them into action is a lot closer to me physically," he said in an interview. "I do think there is something right about a government policy that embraces the notion that if we can put together the citizenry of America in an interconnected fashion, that America will be better."

So get on with it, grumble the phone companies.

"We've had plenty of time for study and debate," said Tom Tauke, a senior vice president at Verizon Communications. "Now it's time for action."

An Internet true believer and target for criticism, Powell personifies both as he guides the FCC toward breaking a longstanding legal and regulatory logjam over broadband access.

At its base, the tussle is over arcane topics such as defining broadband — information service or telecommunication service? — and who gets access to the phone lines and cables reaching consumers' homes.

But the stakes are enormous. Moving Americans from poky dial-up connections to fast, always-on Internet access will unleash tremendous innovation and growth, advocates say, and nurse sick Information Age industries back to health.

With the Internet bubble popped, the tech sector is down by \$2 trillion on Wall Street. The ventures owe banks, suppliers, government auctioneers and each

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other another \$1 trillion. A half-million employees are out of work. Telecommunications CEOs are among the most brazen of the corporate buccaners facing jail time.

Union workers, suppliers and warring executives all say broadband is the best hope for bailing them out. Trouble is, they disagree — with remarkable rancor — about how to coax consumers aboard.

Michael Powell

Born: March 23, 1963, Birmingham, Ala.

The companies are suing the FCC and each other. Whatever the FCC does seems likely to generate more lawsuits and more evidence that there is no consensus on how to move ahead.

Education: College of William and Mary, B.A., 1985; Georgetown University Law Center, J.D., 1993

"To this day, I cannot get over the personification, the passion, the good versus evil," Powell said. "This is basically a trillion-dollar, sophisticated industry, and you would think this was a squabble among 3-year-olds about who gets to sit at the table."

Military: Armor officer in Army

Job history: Policy adviser, Pentagon; clerk to Harry Edwards, chief judge of the U.S. Court of Appeals for the District of Columbia; associate, O'Melveny & Myers law firm, Washington, D.C.; chief of staff of the antitrust division, U.S. Department of Justice

Dimensions of the market

About 10 million U.S. households had broadband access as of mid-2001. But 50 million relied on dial-up connections. One of the few points of agreement in the broadband debate is that the move to high-speed access will remain slow till the FCC clears away a dense fog of regulatory ambiguity.

FCC: Appointed to the commission by President Clinton in 1997; appointed chairman by President Bush in 2001

That puts the spotlight squarely on the 39-year-old Powell and his broadband initiative: four proposed rules that, taken together, will establish the competitive landscape for phone and cable companies to offer broadband access. He expects a vote by early 2003.

Family: Married to Jane Knott Powell; they have two children.

The old Bell regional companies, such as SBC Communications and Verizon, and their allies say that Powell holds the key. Economist George Gilder wrote in *The Wall Street Journal*: "With Congress and the courts hopelessly deadlocked, only George W. Bush and Michael Powell can save us from the telechasm."

Powell — a former antitrust lawyer, the son of Secretary of State Colin Powell and a free-market champion — says he's no savior. "But I'm going to do my damndest to play our part in improving the conditions that will allow us to save ourselves from the telechasm," he said.

Scott Cleland, chief executive officer of the Precursor Group investment-research company in Washington, D.C., predicted that Powell would deliver clear rules for a new broadband marketplace.

"Chairman Powell has laid out a market-forces agenda and will implement it in the coming months," Cleland said. "The stakes have increased, and telecom regulation needs to have more economic rationality. There's a lot of regulatory disincentive for investment. ... He's got the plan, the approach, and he's got the votes."

An information service

Powell has already led a majority of the four commissioners across one hotly contested aspect of his rule-making initiative. Last winter, the FCC voted to define broadband supplied by cable modem as an information rather than a telecommunications service.

The commission also tentatively decided that broadband delivered over the phone lines via DSL technology is also an information service, though the question will come before the FCC again when the rest of the initiative comes to a vote.

The distinction is huge.

Owners of a telecommunications service network, such as those run by the Baby Bells, must open up their lines to other companies' services on a so-called common carrier basis. The FCC and the states determine an allowable wholesale price that the network owners can charge. They also have to collect universal service fees to subsidize service for remote areas and for those who otherwise could not afford service.

An information service faces no such mandates. That's why the ruling regarding Internet-over-cable was such a big win for the cable companies. The FCC has the ability to require access to the cable network for competing companies, but it's an option, not an obligation.

Here is where the arguments start.

If cable escapes such obligations for broadband, the Bells argue, they should escape as well.

Free us, say the cable companies, but not the Bells.

Force them both to share their lines, cry consumer groups, competing phone companies and Internet service providers.

The FCC staff could even find a middle ground by forcing both the Bells and the cable companies to share their systems with at least some competitors for a price that the agency would help determine.

In this ambiguous environment, Powell and others say, is it any wonder that the phone and cable companies have slowed their broadband investments?

What critics say

Critics of Powell respond that there is no ambiguity, that broadband via cable or phone line is like local telephone service: Network owners are born monopolists. They'll get rid of competitors, then hit consumers with high prices.

"You learn in Economics 101 that monopolists never innovate and never bother with incentive costs. I don't know how relieving the Bells is going to lead to more broadband deployment," said Lawrence Spiwak, a former FCC attorney who is now president of the Washington-based Phoenix Center for Advanced Legal and Economic Studies.

This fight was joined long ago for local telephone service. From AT&T to

WorldCom on down through the competing local phone companies, SBC and the other regional Bells have been assailed as unwilling to share their networks.

Even Powell has asked Congress to raise the limits on fines the FCC can levy against the Bells for their stalling tactics, because getting hit with \$1 million penalties hasn't changed their behavior.

But Powell's critics foresee the chairman doing far too little to level the broadband playing field. Indeed, Powell found himself in front of the Senate Commerce Committee soon after putting his rule-making initiative out for public comment.

Administer the law and leave the policy-making to us, said Chairman Ernest Hollings, D-S.C.

"I think you'd be a wonderful executive vice president of a chamber of commerce, but not a chairman of a regulatory commission at the government level," he told Powell at the March hearing.

Political background

Powell joined the FCC as a Republican commissioner in 1997, after working as a top staffer for antitrust chief Joel Klein in the Clinton administration.

He's a favorite of heavyweight Republicans John McCain in the Senate and Billy Tauzin in the House.

President Bush seemed to endorse Powell's broadband initiative at his Baylor University economic summit in August.

"The Federal Communications Commission is focusing on policies to encourage high-speed Internet service for every home and every business in America," the president said. "The private sector will deploy broadband. But government at all levels should remove hurdles that slow the pace of deployment."

This irks some conservatives, such as former FCC Commissioner Harold Furchtgott-Roth, for reasons just the opposite from Hollings' complaint of over-reaching.

Furchtgott-Roth, now with the American Enterprise Institute, attacks the broadband initiative as market-meddling industrial policy.

Powell says it requires a push from the government to accelerate broadband's deployment.

"You can put your head in the sand and be a libertarian and say, 'Leave it to the market.' But it's not a market!" he said. "It's not really a market because major elements of its economic viability rest in the hands of regulators, for good or for wrong.

"I'm a free-market guy who completely accepts that we're kidding ourselves if we think we have a free market in communications."

Powell says it's also naive to think Microsoft or another company will invent a new, instantly popular technology that will drive consumers to demand

broadband over dial-up access.

"It's more like we're handing creative minds a new palette of paints. What they will paint is not clear, and it may be many years (before they are)," he said.

This is where Powell finds himself in bed with his laptop. His off-line bedtime reading runs to histories of technology and intellectual thought, an eclectic universe that includes, among others, Leonardo da Vinci and Albert Einstein.

Fiber-optic cables and wireless transmissions moving at the speed of light will ultimately deliver broadband to every business and every household, he said.

And that's when consumers will be able to find answers, order products or do any of a million other things as quickly as they think of them. Nothing in this universe is going to be any faster than light.

"My flip statement is, if Einstein is right, we're done," Powell said.

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