



# The FCC and Broadband

By David P. McClure ■ *USIA*

In the aftermath of last month's cat fight at the Federal Communications Commission, the question is not whether the broadband industry won or lost but rather how badly it will be damaged.

For those who didn't buy the official program for this event, here's a basic chronology:

Back in 1996, the Bells were spoiling to get into long distance telephony. The Congress was inclined to let them do so, but at the same time, thought it would be a fine idea if the entrenched Bells got a taste of competition in local calling. What they had in mind was that large and powerful telephone companies would build out new facilities and networks to support their competition, fueling investments as they went along.

It was legislation at its worst – with little forward thought, too many compromises and no clear sense of how to achieve the goals it set. Further, it allowed the FCC to continue its role as an instrument of social engineering – micromanaging consumer telephone rates and the content of television shows, for example - while technological changes rendered the agency obsolete.

Enter a Republican administration and Chairman Michael Powell. Powell's charter from the Congress and the White House was to turn the FCC around. To get it out of the micro-management business, to build a basis for free and deregulated communications markets, and to shift the role of the FCC from policy-setting to enforcement. To do this, Powell had to

reorganize an ineffective structure of bureaus and offices, and he had to deregulate national telecommunications to allow the markets to work.

Though embattled by Democrats, competing phone companies, cable companies, mega-media companies hell-bent on mergers and a host of other distractions, Powell was on his way to getting the job done. The crowning achievement was to have been a series of orders that would strip regulatory barriers away from both telephone and the emerging broadband industry.

The deals were done, the script was written and the date set for February 13, 2003.

What happened next was brutal, even by Washington standards. A Republican Commissioner named Kevin Martin derailed the entire Powell plan, cutting a deal with Democratic Commissioners to support a plan of his own that would sort of deregulate some things, not deregulate others and give each state the right to decide when - if ever - telephony would be deregulated. The meeting was slipped by a week while Powell tried to generate support for his own plan. But Martin has friends in high places in the Administration – and aspirations for Powell's job. In the end, the meeting went down with Powell damaged and embarrassed and Martin victorious.

Martin's actions enraged many in the Internet industry and confused the rest. While the Martin Plan deregulates future broadband networks built on fiber optics, it appears to retain line-sharing requirements for the current copper loop. At the same time, the phone



companies are no longer required to sell unbundled access to the high-frequency portion

of the copper loop – the portion used by most competitive DSL providers in the US.

But this may or may not be the case, because the FCC meeting was run from a two-page "fact sheet," not an official order. The order will not be published for weeks, and a lot of back-room negotiating is going on in the interim.

No matter what happens, there are few scenarios that will be good for the Internet industry. If the proposed ruling does not change, the industry will see the loss of scores of competitive DSL companies with no offsetting investments in fiber optic networks. That means no recovery of the telecom sector, and no economic recovery in 2003. It could also mean a continued slow deployment of broadband.



might be to true reform, economic growth and the deployment of broadband nationally.

The cat fight at the FCC isn't over. Nor do we know where the final bodies will land when all of this is over. But we know that whatever the outcome, it will likely be a solution that is micro-managed by an FCC that is already obsolete in today's communications industry. ■

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#### **About the Author**

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But even these relatively disastrous outcomes are not the most troublesome parts of the cat fight at the FCC last month. The most troublesome part is that, according to the Washington Times, the White House engineered the whole mess. The Times – Washington's conservative, pro-Bush newspaper – says that the decision was made to derail the FCC and its deregulatory efforts out of fear that deregulation would in the short run raise telephony costs for consumers – and jeopardize the second campaign of G.W. Bush for president.

The White House is mum on the subject, and there are reports that Bush and his immediate advisors were not a part of the decision to support Martin. But if true this scenario raises troubling questions about an administration already tagged as being Internet-unfriendly. And it raises questions of how committed the Administration



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