



FCC Chairman Michael Powell understands high tech,

POLITICALLY CORRECT CHAIRMAN POWELL

Like any good politician, Michael Powell talks a good game. One would hardly expect less, given his lineage as the son of Secretary of State Colin Powell. And some might even say that Michael, who has been chairman of the Federal Communications Commission for the last two years, has a harder job than his father when it comes to balancing the interests of many disparate groups in an attempt to reach a fair compromise. After all, he doesn't have the Armed Forces to back him up.

By Tam Harbert

but so far he's all talk and little action



The pressure is on for Powell to act quickly and decisively to make some changes to ease the telecom depression and prompt broadband growth.

And yet he's trying to settle squabbles among industry forces that are sometimes as much at odds with each other as President George W. Bush and Saddam Hussein. Broadcasters, phone companies, cable companies, network equipment companies and electronics providers all lobby him to try to get favorable regulatory treatment for their particular industry. That's because the policy decisions before today's FCC—the telecom meltdown, broadband deployment, the digital TV debacle and wireless spectrum management—hold the potential to make or break these industries.

During his first two years as chairman, Powell has impressed many with his formidable intellect and keen understanding of the technology industry. He has made great speeches about the potential of these new technologies, and about the steps that regulators can take to facilitate them, say observers. But, so far, he hasn't walked the walk, they say.

"Powell is a very political, consensus-oriented person," says Tom Hazlett, a former chief economist at the

FCC and now a senior fellow at the Manhattan Institute, a think-tank in Washington, DC.

He's viewed by many as a status-quo chairman, unable or unwilling to rock the boat. "It's the thanklessness of a high-profile government job," says Gary Arlen, president of Arlen Communications Inc., a consultancy in Bethesda, MD. "Even if he were to be an activist chairman, how much could he get away with?"

He most definitely is not an activist chairman, says Scott Cleland, CEO of The Precursor Group, an independent telecommunications research firm in Washington, DC. "Remember, a Republican, market-forces-oriented chairman isn't going to do a lot of new things," Cleland points out. Rather, Powell has had to spend the last two years "trying to clean up a huge legal and economic mess that he inherited."

Powell also is "more of a lawyer" than his predecessors, says Cleland. Rather than mapping out his own legal and political policies, as some previous chairmen have done, he defers to Congress and the courts.

Although lauded for his people skills, Powell prefers to spend time studying policy and trying to solve problems rather than meeting with industry lobbyists, legislators and others. "He wishes he didn't have so many external demands on his time," says Cleland. "Thousands of people want a chunk of him."

Technologists praise him for having both an intellectual and personal understanding of technology and the benefits it can bring. However, "the ability to use a WiFi card does not map with an incentive to do things that are politically risky," says Hazlett. "As a regulator, you don't want to create political risk."

Some FCC watchers think that Powell simply and quietly has been laying the groundwork for some heavy lifting he wants to do in 2003. "Any assessment right now is premature," says Blair Levin, telecommunications analyst at financial services firm Legg Mason Inc., Washington, DC, and former chief of staff of the

FCC under Reed Hundt. Several major proceedings are likely to be concluded in 2003, he notes. "What he's going to do in the next nine months is going to be much more than what he's done in the last two years."

Broadband on the brink

The issue of broadband access may be the single most important issue now before the FCC, at least from high tech's point of view. The combination of the telecom economic meltdown and the lack of regulatory relief from the FCC has left many companies struggling to survive.

"The regulatory situation is killing us," says Doug Cooper, director of regulatory and market development at **Catena Networks Inc.**, a four-year-old DSL equipment start-up in Redwood Shores, CA. "Because of the uncertainty, carriers have stopped capital expenditures, and it's killing the vendors." Cooper left the FCC in 2000, after serving 10 years at the agency.

The "situation" is this: Under the 1996 Telecom Act, the telephone companies are supposed to allow their competitors to access their networks at very low rates. In the area of providing broadband access to the home, this means that the phone companies would invest in the network elements to bring broadband to the home, only to have to give their competitors access to those very capabilities. Thus, phone companies have not invested much in these services.

Although they've rolled out DSL, they've done so only from the central office. Much of the debate concerning broadband has to do with unbundling "network elements," which means the boxes that sit in the neighborhood and serve all the houses in that area. Until there is guidance on whether the FCC will require phone companies to make these network elements available to competitors as well, phone companies are loathe to expand them.

Last year, the FCC published a notice of proposed rulemaking (NPRM) that tentatively classified wired broadband (DSL) as an information service, not a telecom service. The distinction is important because, under the 1996 Act, information services are not regulated. However, the NPRM prompted a deluge of public comment, and there's no word on when or whether the FCC will make the ruling final, which leaves the issue in limbo.

Secondly, the FCC has undertaken a broad review of the regulations affecting broadband. Powell realized early in his term that a lot of the rules regulating broadband were outdated, and that the FCC shouldn't have different requirements for different platforms that deliver broadband, says Cooper. But the deadline for the end of the review, which was due by the end of 2002, has stretched out. Industry now hopes that the FCC will end the review and perhaps announce results sometime in Q1 2003, he says.

"He says all the right things," says Gary Shapiro, CEO and president of the Consumer Electronics Association in Arlington, VA. Shapiro, along with many in the industry, just wishes he would hurry up and do something about it.



Meanwhile, the FCC has been slapped around by the courts on what action it has tried to take on this issue. In May 2002, the Court of Appeals for the DC Circuit threw out the regulations that the FCC tried to put forward on unbundled network elements for

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the platform. The regulations basically had tried to force telcos to open everything up at very low prices. (Under the traditional economic model—called TELRIC for total element long run incremental costs—the incumbents would have had to make their network element platforms available to competitors at a discount of 55% or more, according to Cooper.) But the court said that the FCC needed to consider that some pieces of the network already are available on a competitive basis, and that the FCC shouldn't require incumbents to provide those facilities that already are available.

Complicating matters has been a lack of coherence in high tech's lobbying, says Hazlett. Some companies, such as Corning, have lobbied for government subsidies for broadband to the home. This is both unrealistic and self-serving, says Hazlett. "As long as the industry engages in these unhelpful suggestions, it will create a vacuum there and create no way to push policy forward." Such lobbying causes confusion among the regulators "and out of that confusion comes whatever politics rule the moment."

But some of the tech industry has coalesced, uniting under an umbrella organization called the High-Tech Broadband Coalition, formed last spring. The group,

which includes the Telecommunications Industry Association, the CEA and the Semiconductor Industry Association, favors categorizing telco broadband as an information service, so that phone companies won't have to unbundle their network elements. The group believes that removal of such regulation will increase the investment needed to spur broadband competition.

The pressure is on for Powell to act quickly and decisively to make some changes to ease the telecom depression and prompt broadband growth. Last summer, Powell presented a six-point plan for telecom recovery to the Senate Commerce Committee that was long on rhetoric but short on specifics. "Powell's talked about this for a long time, but he's done virtually nothing," says Steve Rago, a principal analyst at iSuppli Corp., a market analysis company in El Segundo, CA.

But with the Republican victory in Congress last fall, Powell's political stars may be aligning. Bills introduced



thing if he doesn't enforce it," says Arlen. "He's saying all the right things, but he pushes and the very rich and powerful guys on the other side push right back."

The only part of the plan that he has forced on industry so far is DTV tuners. In August, the FCC mandated that DTV tuners be built into televisions by 2007 (see ELECTRONIC BUSINESS, "FCC plays chip makers' tune," October 2002, page 30). That mandate was viewed by many in the industry as a way to ensure that there were enough TVs available to receive over-the-air digital broadcasts so that the FCC could finally take the analog spectrum back from broadcasters.

"I think the approach was backwards," says Jenny Miller, a CEA spokeswoman. Instead of pushing for cable compatibility, which would be the most effective way of getting more DTV to people, the FCC has chosen to mandate tuners in TVs so that it can get its

The Powell Plan on digital TV "doesn't mean anything if he doesn't enforce it."

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in the Senate to spur broadband access repeatedly have been stopped by Senator Ernest Hollings, D-SC, chairman of the powerful Senate Commerce Committee. But now Senator John McCain, R-AZ, a friend of Powell and a promoter of broadband access, will head the committee. Some believe that will pave the way for telecom reform in 2003.

Digital television doldrums

Digital television is another issue that has prompted many a Powell speech, but little action. And what action he has taken has stirred up a storm of protest.

In an effort to jumpstart the roll-out of DTV, Powell unveiled the "Powell Plan" in April 2002 and created a DTV task force to hold inter-industry meetings on various issues. The plan called on broadcast networks to increase their digital programming, on broadcast stations to increase their digital broadcasts, on cable and satellite to increase their carriage of digital programming and on equipment makers and retailers to commit to make more digital cable set-top boxes available at retail and include over-the-air DTV tuners in new televisions.

But industry observers are quick to point out that the plan is voluntary. "It doesn't mean any-

spectrum back, she says. The CEA has sued the FCC over the mandate.

"The mandate on receivers is just not farsighted," Hazlett says. Rather than trying to push tuners into TVs, the FCC should realize that cable and satellite—the means by which more than 80% of the U.S. population receives its TV signals—are the perfect vehicles for the digital TV transition.

But the FCC has not issued any mandates on cable compatibility—not yet, anyway. Because cable set-top boxes still are based on proprietary architectures from companies like **Scientific America** and **General Instruments** (now a division of Motorola), these makers have a lock on the market, says Miller. The CEA wants a standard architecture so that all manufacturers can build set-top boxes for this market and sell them at the retail level.

A compromise on cable compatibility was announced by the consumer electronics and cable industries in mid-December. In a memorandum of understanding, 14 major consumer electronics companies and seven major cable operators agreed to a set of technical standards for cable systems and cable-ready DTV products, and urged the FCC to adopt regulations to enforce the plug-and-play standards.

What prompted the heightened discussions that led to the compromise? “A lot of it has to do with the leadership that the Chairman has shown” when he issued the Powell Plan and launched the DTV task force, says Miller of the CEA. But negotiations really heated up after Powell issued his tuner mandate. “That was a wake-up call for all industries,” says Miller. With that, the FCC showed it was willing to regulate these things, so if the industries did not want to be regulated they had better work harder at finding some compromises, she says.

Even though the CEA doesn't agree with the mandate, “he's doing what he should be doing,” says Shapiro, CEA president. “He's leading.”



Unleashing more spectrum

Another area where the Chairman has talked a lot about deregulation and market forces is in the management of the nation's airwaves. A Powell-appointed task force last fall delivered a report on spectrum management that excites many in the wireless industry.

The task force is proposing an overhaul of the way the FCC manages spectrum. Contrary to some press and industry reports, there is no shortage of spectrum, says the task force—it's just ineffi-

ciently managed. More sophisticated technologies now coming on the market, such as software-defined radios and smart-antenna technology, can make more efficient use of the spectrum and reduce the possibility of interference, says the report. The task force recommends that the FCC adopt more market-oriented spectrum use policies that will motivate users to adopt the best and most efficient

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technologies. It also notes that new technologies can now enable the FCC to consider time—in addition to frequency, power and space—as a parameter in allocating spectrum. This would allow time-sharing of spectrum among certain uses. It also recommends that the commission shift from a “command-and-control” mode of spectrum regulation to a more liberal, flexible approach, making more unlicensed spectrum available for broader use.

Industry welcomes the task force's findings. “This is a great effort on the part of the Powell FCC,” says Peter Pitsch, director of telecom policy for Intel Corp. in Washington DC. “The old command-and-control regime has become very expensive. This will make it possible for spectrum to move from old technologies to new.” Specifically, Intel would like the FCC to make new rules that will allow new technologies to operate in unlicensed spectrum, as long as they don't interfere with other uses, he says.

In fact, in early December the FCC launched a notice of inquiry, asking for public comment on the possibility of permitting unlicensed transmitters to operate in certain parts of licensed broadcast TV spectrum, and other parts of the spectrum, when they are not being used.

Perhaps this is the year that Powell will take action on this and other issues. Only time will tell. So far, on these hot-button issues, “Powell has said some good things, and very little has happened,” says Hazlett of the Manhattan Institute.

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U-R-Linked

<http://www.fcc.gov/enbanc/100702/>

FCC's hearing on steps toward recovery in the telecommunications industry

<http://www.thehtbc.com>

High-Tech Broadband Coalition

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-224797A1.pdf

Powell's speech on the six steps to telecom recovery

http://www.fcc.gov/commissioners/powell/mkp_proposal_to_speed_dtv_transition.pdf

Powell five-point plan on DTV

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-228242A1.pdf

Press release on spectrum management task force report