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Politics and telecom: The issue of network neutrality

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One of the hottest topics in the telecom world for the last year or so has been the issue of network neutrality. While I've written about it before, recent events related to the pending AT&T/Bell South merger have raised the profile of this issue to perhaps a new constituency.

In particular, I am referring to the recusal of the FCC's fifth, newest and majority-making commissioner, Robert McDowell on the matter. The long struggle to secure the merger between AT&T and Bell South (merger approval breezed through Justice Department but came to a dead halt in a deadlocked FCC).

This recusal is particularly interesting because now the standoff between the 4 remaining FCC commissioners — two Democrats (Copp and Adelstein) and two Republicans (Martin and Tate) — has created some opportunities for consumers.

The two Democratic commissioners, are holding AT&T's feet to the fire in an effort to secure concessions that will benefit consumers by assuring technology options first and price stability second. The Republicans have banded together to support the merger with as few concessions as possible, under the theory that the market is the best regulator.

This approval process has brought the long-simmering discussion of network neutrality front and center. Net neutrality is an issue which has been in front of Congress and regulators for more than a year.

As the biggest providers of Internet backbone (delivery) services seek to find new ways to create new revenue streams and maximize existing ones, the issue of net neutrality, on its most basic level, is whether or not the information superhighway should be divided into fast and slow lanes, or whether the network should be neutral to end users. The argument is conceptually a battle between digital "haves" and "have nots," and ultimately whether telephone and cable service providers who offer high speed internet access can charge access (read: additional) fees for priority (read: faster, slicker) services.

The issue of Net Neutrality was a hot one during the past Congress, primarily as a result of the nasty combination of legitimate technological concerns and old fashioned partisan bickering. The die seemed cast and the issue closer to resolution when the newest FCC commissioner, Republican Robert McDowell, was confirmed this past spring.

Those on the Republican side of the aisle thought—at least temporarily — that the FCC's agenda on this and many other issues, would be controlled by the Republican majority. Unfortunately, at least in the instance of the AT&T/Bell South merger, success for the Republican agenda was not a foregone conclusion.

Commissioner McDowell, before ascending to the FCC, had worked for the lobbying organization Comptel, an advocate for the competitive local exchange carriers. Comptel not only was opposed to the merger, but had also taken active steps against it by filing comments opposing the merger.

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Given that the Justice Department approved it very quickly, advocates for the merger believed that the FCC would do the same. Instead, Commissioner McDowell recused himself from the process and the Democrats took the opportunity to garner concessions and assurances from AT&T in terms of both price stability and technology availability.

As a result, the FCC, despite incredible amounts of pressure from the outside, has been unable to reach a consensus and has yet to grant the necessary approval.

The drama continues. Late last week, press reports disclosed that FCC Chairman Kevin Martin asked the FCC's General Counsel whether or not Commissioner McDowell could be permitted to participate in the decision given his relationship with Comptel. Almost concurrently, Commissioner McDowell sought clarification from the Virginia Bar as to whether his participation in the fall under the Commonwealth's conflict of interest rules.

Furthermore, Commissioner McDowell has not indicated whether, in fact, he has any interest in participating in the decision. Nonetheless, he is under great pressure from those who support the merger, if freed from the ethical hurdles, to not only do so, but to do so on the Republican side, thus allowing the merger to (finally) pass muster with the FCC.

While addressing the annual Credit Suisse conference on Media and Telecom, according to *The Wall Street Journal* from Dec. 6, Commissioner McDowell said that "When it comes to regulation of an industry, rarely do we [as regulators] do as good a job as you [the markets] do."

He added that the triple play technologies of communications, information and entertainment have empowered consumers as never before. While this may be true in the aggregate for consumers, the victories have been fewer, so far for small and medium-sized businesses, who have yet to find cost-effective, communications options beyond the framework of traditional carrier offerings.

The big carriers have shown a general lack of interest in making creative product offerings — let alone offering reliable, affordable service and support for those products that they've already sold — to small and medium sized entities. Generally, the larger a service provider gets, and the fewer alternatives available for consumers, the greater the potential for thug-like behavior from the big providers.

So, the long and short of it is that, for the reasons mentioned here, the merger approval remains on hold. Perhaps, as the day the issue again reaches the FCC's agenda creeps closer, AT&T will soften its stance and the Democratic commissioners will agree to approval of the merger in such a way that the mega-carrier will take additional steps to secure good offerings that benefit residential, small and medium-sized corporate consumers.

The FCC is scheduled to vote on the merger on Dec. 20. Let's hope that both the FCC and AT&T use that time effectively and wisely.

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