

## **FHH Telecom Law**

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#### **Long-Awaited Fifth Commissioner At Hand?**

*By Michael Richards  
richards@fhhlaw.com  
703-812-0456*

It took the Senate Commerce Committee just twenty minutes to complete its interview of FCC Commissioner-designate Robert McDowell. With such issues as media ownership deregulation and the AT&T merger with Bell South on the Commission's agenda, you might think that there would have been more questions. But the Republican telecom lawyer and lobbyist may turn out to be iconoclastic enough to overcome the partisan battle lines that typify debates over communications regulation.

McDowell is a Bush-Cheney loyalist, having served as legal counsel to the campaign Florida Recount Team in 2000. FCC Chairman Kevin Martin also worked for the Bush-Cheney campaign organization in 2000. And, no doubt, McDowell will provide Chairman Martin the crucial third vote on a number of initiatives –most notably the Chairman's efforts to relax certain media ownership limits. These efforts have been stymied because, until McDowell takes office, the Commission is deadlocked with two Republicans and two Democrats who are often at odds.

But when it comes to telecommunications, no one is sure where McDowell will come out. His most recent resume entry is as Vice President of Comptel, a trade association that represents alternative providers of telecommunications services. These little guys are facing increasingly large competitors among the incumbent "Baby Bells," which have metamorphosed into behemoths more closely resembling the Old Ma Bell in sheer market girth. Of course, the old Ma Bell remnant, AT&T, was merged into SBC Communications (which took on the AT&T name). The new SBC/AT&T is now seeking permission to merge with another of the old telco incumbents, Bell South. While many analysts expect Chairman Martin to support the proposed combination, McDowell's background as a lobbyist and lawyer for the anti-AT&T insurgency suggests a possibility that he may not follow Martin's lead here – and instead side with Democrats on the Commission who have been more skeptical of such mega-mergers.

Although McDowell promises to "wipe the slate clean" and "prejudge nothing," the odds-makers inside the Beltway aren't giving either the pro- or anti-merger teams much of a spread when it comes to the new Commissioner. In fact, informed speculation is rampant that McDowell might be forced to recuse himself from the Bell South merger altogether. The pressure for McDowell to step back from the merger debate would be especially strong if his last employer, Comptel, were to take a formal position.

Should McDowell recuse himself from the Bell South merger proceeding, it will give the

FCC's two Democrats more leverage to either extract concessions, as occurred when SBC and AT&T merged, or to torpedo the deal. If McDowell does participate and maintains sympathies with his old Comptel crowd, the outcome could be similar. Of course, in Washington's currently polarized state, party loyalty may trump all else. In which case, McDowell would follow Chairman Martin's lead. But, with McDowell professing clean slates, prognostication here would be no better than a coin flip.

McDowell is a cum laude graduate of Duke University, and received his law degree from the nation's oldest institution of higher learning, the College of William and Mary. A native Virginian, McDowell, his wife and two children live on land that was once the McDowell family farmstead, in a now suburban area just a little beyond Washington's beltway. He currently serves on the board of a hometown arts organization and has twice run unsuccessfully for the Virginia legislature. A website is operational from his last bid for state delegate in 2003. It still contains a link for campaign contributions by credit card.