



## FCC's McDowell Won't Cast Vote on AT&T/Bell South Merger

By John Eggerton -- Broadcasting & Cable, 12/18/2006 5:00:00 PM

Republican FCC Commissioner Robert McDowell says he "has no choice" but to disqualify himself from the AT&T/Bell South merger vote, leaving FCC Chairman Kevin Martin without the tie-breaking vote.

McDowell cited outside advice and his own personal sense of ethics for the decision, which he said was not reached lightly.

Lingering questions about his involvement had been used as an excuse for inaction, he said, an excuse he wanted to take off the table, or as he said, take his piece--a pawn-- from the chessboard.

McDowell said he had asked the other four commissioners to work out a decision, but "to no avail."

He also said he had spent "a tremendous amount of time and energy" over the past week making the decision--one outside observer said he was "agonizing over"--as to whether to cast the vote.

Still, McDowell said the memo from the FCC's general counsel clearing him to vote was "hesitant," and framed the matter "as an ethical coin toss frozen in midair. The document does not provide me with confidence or comfort," he added. He said he expected "the legal equivalent of body armor. And I was handed swiss cheese."

He said he was also concerned about the Office of Government Ethics' reservations about his participation. OGE suggested it would not un-recuse him. He also did not get encouragement from the Virginia State Bar, though he said he could not discuss specifics.

McDowell said he hoped the other four commissioners would, in the holiday spirit, come back to the table and find common ground.

"Now, my four colleagues have exclusive and unambiguous ownership of this important merger," he said, which he added does not have to be an impediment. He pointed out that the commission since 1990 has had fewer than five commissioners for "a combined period of over five years," with the two previous Bell mergers approved unanimously by a four-member commission.

Click [here](#) to read the entire statement.

Martin, who will now have to work with the two Democrats to find some that common ground, said in a statement:

"I appreciate Commissioner McDowell's thoughtful consideration and respect his decision to abstain.

"My goal in recent weeks has been to ensure that the Commission acted on the transaction. The Commission is not obligated to reach a particular outcome. However, the Commission is responsible for making a determination in a timely fashion. With Commissioner McDowell having made his decision, I will continue to try to work with my colleagues to bring our consideration of this merger to conclusion."

Democratic Commissioner Jonathan Adelstein said he remained committed to the public interest considerations he has been pushing fo, while saying he was open to working "with all parties."

parties but also the many other businesses and consumers across the country that are directly impacted by this merger, as well as the broader economy."

A Disappointed AT&T said the merger was in the public's interest and said it would continue to work for as speedy a resolution as possible.

"Our merger is in the best interest of consumers, the economy and the Nation," the company said in a statement. "A broad range of individuals and organizations – including the Communications Workers of America – have voiced their support for the merger and the pro-consumer conditions we have offered.

"State regulators, minority organizations, small business groups, educational and community groups and elected officials from both the Democratic and Republican parties have all recognized the concrete benefits that our merger brings to consumers and the public interest.

"We have sought the support for this merger from every member of the Commission since the very beginning and we will continue to do so. We will – as we have always done – do our part to bring the merger review to a bipartisan completion as quickly as possible."

McDowell has been prevented by ethics rules from participating in the vote, currently stuck at 2-2, but FCC General counsel Sam Feder cleared him last week to vote if he wanted to, saying the appearance of conflict did not translate to a conflict in fact, and that the prohibition was trumped by the FCC's interest in breaking the deadlock.

The FCC's Democrats want stronger conditions on the merger. FCC Chairman Kevin Martin has three times tried to call for a vote, but has scrapped it all three times.

Martin had asked Feder to look into the possibility of un-recusing McDowell, though some key congressional Democrats were not happy, saying the FCC should take more time and levy stronger conditions, and suggested that McDowell should recuse himself.

The FCC does not have an official shot clock on mergers, though its unofficial one is 180 days. Currently, the AT&T/Bell South merger is pushing 250 days.

McDowell did not take any questions.

Presumptive chair of the House Telecommunications Subcommittee, Ed Markey (D-Mass.), one of the Democrats who had advised McDowell to abstain, was understandably pleased.

"I applaud Commissioner McDowell for adhering to sound ethical standards and judgment," he said. "I urge Chairman Martin, as well as Commissioners Copps, Adelstein, and Tate, to proceed with discussions over how to resolve remaining issues in contention and to approve or disapprove the merger in timely fashion."

Markey said whatever the resolution, it should include "effective and enforceable conditions to ensure consumer protection and competitive markets."

Another happy legislator was Rep. Heather Wilson (R-N.M.), who pointed out that she had been the only Republican on the House Energy & Commerce Committee to call for a committee hearing on the merger.

"I commend Commissioner McDowell for an ethical decision that stays on the white side of gray," she said. "He made the right decision for the right reason and we cannot ask more of a public servant."

"FCC Commissioner McDowell has courageously elevated professional responsibility over expedience in declining to participate in deliberations about the AT&T/BellSouth merger," said Media Access Project's Andrew J. Schwartzman. Map favors the sort of public interest conditions advocated by the commission's two Democrats. "The test for such decisions is whether an action diminishes public confidence in the FCC's actions," said Schwartzman. "There is no doubt that the legitimacy of all FCC decision making would have suffered had Commissioner McDowell yielded to pressure and agreed to vote on the merger."

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