

## **FCC'S MCDOWELL MAINTAINS RECUSAL**

by Ron Orol

The ex-lobbyist is not persuaded by the agency lawyer's rationale for joining vote on the proposed BellSouth-AT&T merger.

Federal Communications Commission member Robert McDowell late Monday, Dec. 18, said he will not vote on BellSouth Corp.'s \$80 billion merger with AT&T Inc., putting in question the eventual completion of the deal or at least delaying the eventual outcome.

Republican McDowell's decision not to vote is expected to prolong a 2-2 commission stalemate that has prevented the merger from winning the final required regulatory approval.

FCC Chairman Kevin Martin and fellow Republican Commissioner Deborah Tate have been trying to snag the third vote needed to approve the deal by negotiating with the commission's two Democrats, who are demanding several conditions that Martin opposes.

McDowell had voluntarily recused himself because of conflicts of interest between the vote and the post he held as a lobbyist for the big telephone companies' competitors before joining the FCC. McDowell had lobbied against the deal for the Washington-based Competitive Telecommunications Association, or Comptel, immediately before joining the commission in March. FCC General Counsel Sam Feder late Friday, Dec. 8, issued an opinion purportedly freeing McDowell to vote on the deal. Martin on Dec. 1 had asked Feder to analyze whether agency conflict-of-interest rules prevent McDowell from voting on the deal. But Monday, McDowell characterized Feder's legal rationale as a "coin toss" that was insufficient to persuade the reluctant commissioner he would be on solid ground casting a vote.

"While I expected the legal equivalent of body armor, I was handed Swiss cheese," McDowell said.

The decision by McDowell not to vote may embarrass Martin, who went to extreme public means to make it easier for McDowell to unrecuse himself.

Publicly, however, Martin put on the best face possible in reacting to the decision, but his frustration at the impasse remained apparent. "I appreciate Commissioner McDowell's thoughtful consideration and respect his decision to abstain," Martin said in a prepared statement. "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. ... I will continue to try to work with my colleagues to bring our consideration of this merger to conclusion."

Consumer groups were pleased by his decision.

"FCC Commissioner McDowell has courageously elevated professional responsibility over expedience in declining to participate in deliberations about the ATT-BellSouth merger," said Media Access Project president Andrew Schwartzman. "The test for such decisions is whether an action diminishes public confidence in the FCC's actions. 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."