

Powell: Rx For Telecom In Competition

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As financial markets continue to batter the telecommunications sector, commentators are offering a variety of diagnoses and prescribing an assortment of remedies. I believe, however, that industry observers can draw two unambiguous conclusions from the recent dynamics of the telecommunications marketplace.

First, neither the crisis of accounting scandals and corporate malfeasance nor the related but distinct economic slowdown suggest it is appropriate to change our nation's fundamental public policy goal of fostering competition in telecommunications. To the contrary, reliance where possible on competitive market forces rather than regulation is a key part of the solution to our current troubles.

Second, the industry as well as governmental bodies, including the FCC, must take critical steps to address financial scandals, to help stabilize the telecommunications sector, and to ensure that it recovers and evolves in a way that best serves the public interest.

These are the six key elements of the FCC's role in the successful recovery of the telecom industry generally and the wireless sector specifically.

Protect Service Continuity. While the FCC does not hope to witness future bankruptcies in telecom, the unfortunate reality is that they may occur. If and when they do, we are committed to ensuring that orderly transitions are carried out and that customer service is not disrupted. For example, as part of its reorganization efforts, WorldCom decided to exit the mobile wireless resale business. The FCC worked with WorldCom and the major mobile operators to ensure that no unreasonable discontinuance of service resulted from that decision. Customers received appropriate notice that WorldCom would no longer be providing mobile service and had the opportunity to make arrangements with other providers so that their service could continue uninterrupted.

Root Out Corporate Fraud. Free markets cannot function properly when corporations provide false information to their investors and to the public. Although not primarily an FCC task, several government agencies are taking action to seek out and prosecute telecom companies that intentionally mislead the public and the financial community. We applaud those corporations that are working to build a new framework for accounting integrity and to avoid future financial scandals.

Restore Financial Health. Restoring the wireless sector's financial health will be a multifaceted undertaking that principally involves business, marketplace and investment factors. Nevertheless, certain regulatory decisions may have an impact on this effort. For example,

the FCC recently granted financial relief to many of the winners of the January 2001 PCS spectrum auction. The commission had been unable to issue licenses to these winners because of the ongoing NextWave (and related) litigation. Therefore, we have allowed the winners, if they so choose, to have their down payments returned in full and their remaining payment obligations canceled. Our decision should relieve the affected operators of a major debt obligation that may have hindered their ability to raise additional capital, and should enable them to move forward with the development of new and improved services that will benefit consumers.

Acknowledge Industry Restructuring. It is no secret that the financial community believes consolidation in the wireless sector is generally desirable. The FCC acknowledges that prudent industry restructuring may not only improve the financial health of the sector, but can increase efficiency and promote consumer welfare. On Jan. 1, the FCC eliminated its wireless "spectrum cap" rule. The spectrum cap limited the amount of spectrum that any firm could hold in a given location, and the FCC used the rule to guide its policy on spectrum license transfers up to this point. In 2003, we will begin using a case-by-case approach to assess mergers and other license transactions on their individual facts. However, industry should not take this change as an indication that the commission will be rubberstamping all proposed consolidations that come through the door. By shifting to a case-by-case review, we will be free to base our decisions on sound antitrust and competitive analysis rather than a single, over-inclusive rule.

Provide New Revenue. The FCC's role in helping the wireless industry generate new revenue through new services is to make sure there is spectrum available and ensure that current service rules do not hinder innovation. In November, the commission allocated 90 megahertz of spectrum that licensees will ultimately be able to use for a variety of advanced wireless services, including those commonly referred to third-generation, or 3G services. While wireless providers are in the process of assessing which advanced services will be popular and feasible, this allocation ensures that spectrum will be available for them and will ultimately provide American consumers with additional wireless communications options and capabilities. The FCC is currently seeking comment on proposed licensing and service rules for the spectrum and plans to auction it off as early as 2004. In addition, the recent Spectrum Policy Task Force Report recommended providing licensees with greater flexibility in our service rules. The report is currently subject to public comment. I fully expect the commission will continue to explore ways to grant existing licensees greater flexibility. Moreover, the commission is looking for opportunities to make additional spectrum available for unlicensed use.

Support Spectrum Reform. The FCC is in the process of designing a new spectrum paradigm. Reforming the methods used by the FCC to allocate spectrum will not only help with the industry's recovery but will ensure that it evolves in a way that best serves the public interest. The Spectrum Policy Task Force recently recommended that the commission move from its current command-and-control approach in which the government primarily decides which spectrum bands should be used for which services to a more flexible, market-based and consumer-oriented approach. I support many of the specific measures

proposed by the task force, including enabling secondary market transactions, the clear definition of spectrum users' rights and responsibilities, the creation of a standard for acceptable interference and the greater use of both the property rights and the commons models of spectrum allocation. In addition to these spectrum reform measures, the agency's staff is in the midst of a congressionally mandated biennial process dedicated to regulatory brush clearing and the removal of out dated rules. This effort, too, will promote efficient spectrum use.

What is the outlook for mobile telecommunications if the industry and government work together to carry out the six steps I have listed above? My hope is that as we sow, so shall we reap; that if we plant the seeds of reform now, we will be rewarded with a resurgence of growth in the wireless sector in the coming months. Our goal is to encourage growth that will produce greater revenue for providers, healthier returns for investors, and, most importantly, new and better services for consumers. I can assure you that the FCC will not only avoid trampling on this growth, but will do its part to clear the regulatory weeds.