NCTA's Agent of Change

Michael Powell On NAB, The FCC And Staying On At The NCTA

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By: John Eggerton

Armed with a new, three-year contract, the board's green light to wade into the retransmission-consent debate and recent victories in Congress and at the Federal Communications Commission, National Cable & Telecommunications Association president and CEO Michael Powell comes into The Cable Show on a roll.

Taking a page from his father, former Secretary of State Colin Powell, Michael Powell said he likes the role of diplomat as well as advocate, to "help keep things on keel when the convulsions are coming around change." The cable industry has plenty of that these days, as well as loads of competition, Powell said.

In an exclusive interview with *Multichannel News* Washington bureau chief John Eggerton, Powell weighed in on the National Association of Broadcasters latest attack (which he called "duplicity"); new FCC chairman Tom Wheeler ("one of the best I've ever seen"); those who would deny wireless as a broadband competitor ("Machiavellian"); and re-upping with NCTA ("not a hard decision").

MCN: Give us a preview of your convention speech. What is the state of the cable industry?

MP: I would say "positively transforming." We've seen a number of significant trends evolving for years, whether they be the arrival of IP distribution, the arrival of streaming media or the pipe dreams of WiFi companion services. These things have been in the works for a long time, and I do feel like many of them are coming to this kind of junction of transformation where companies now have made those bets and doubled down on them, and you are really seeing them starting to flower.

Community WiFi is very real, with over 200 hotspots and some companies like Comcast with up to 1 million because they use the settop box for that purpose as well.

So, that is very powerful. You really do see platforms starting to integrate. With streaming, you see more and more headlines with tech companies around new video offerings. And of course, things like broadband speed are increasingly approaching a level where it will pretty much be invisible to the consumers pretty soon. I remember the day when you used to argue about whether you were getting a Pentium 1 or Pentium 2 computer. Today, I don't know anyone who gives a thought to what the processing speed is. Unless you are a graphic designer, it's always fast enough. And I personally have always believed that broadband will get to that too, with the idea of speeds starting to fade because they are fast enough.

So, I think that is the reality. It is a time of both new opportunity and understandable anxiety.

MCN: At the NAB convention, someone referred to the FCC as the "Federal Cable Commission." Why do you think issues like coordinated retransmission-consent negotiations and sharing arrangements have gotten traction?

MP: Because they have merit. There is a storyline in this town that everyone wants to believe in, which is that the results that come out of government are only the consequence of some nefarious thing, either lobbying dollars or prior personal relationships. I sat in that seat [FCC commissioner and chairman] for many years and I have been on both sides of this. I think it is a real disservice when you suggest that is the way the commission behaves. I have never found that to be true. You can find an incident or two, perhaps, but 99% of the time if not more, the commission is choosing the path they honestly believe has the most merit.

We do a very good job of arguing on the merits. I tell my staff we fight with ideas, not emotion. We don't try to yell and scream our way to success or bury

someone or get hysterical. You'd have a hard time finding NCTA advocacy that looks like what some do in this town in terms of the hyperbole and the exaggeration.

MCN: What is your read on FCC chairman Tom Wheeler?

MP: Tom Wheeler is a fantastic, sober, rigorous, thoughtful chairman. In my opinion, one of the best I've ever seen so far. And he calls 'em like he sees 'em.

MCN: Speaking of calling 'em like he sees 'em, Gordon Smith, president of the National Association of Broadcasters, referred to pay TV providers as those who "milk, bilk and bill by the bit." Any reaction?

MP: I don't even know what it means. It is very colorful. Good use of alliteration. I like all the Bs. But what the heck does that mean?

One thing I will attack — and I will even use the word "attack" — that is implied by that is that we get paid and they don't.

That is a duplicity that nobody should listen to in an argument. I don't begrudge them profit, but it is disingenuous for a broadcaster to argue that their business is providing a free product, while simultaneously building their business through retrans fees that most consumers have to pay.

MCN: How does the business work?

MP: They have very valuable content, and we certainly can concede its value, but they argue quite strenuously about their right to get paid, quite strenuously in defense of their double-digit increases in programming costs, which they pass on to cable, which then get passed on to consumers.

So, people should be a little more careful about suggesting they are not in the business of making money. I don't know any company in any of these industries that is not in the business of making money. And I think on a value basis, we continue to deliver the lowest per-channel cost of virtually any

entertainment product in the world. We're cheaper than movies, cheaper than theater. And we continue to add value to consumers with more channels.

I don't have a fun alliteration to throw back at them, but it's silly. It's just silly because, trust me, broadcasters are in the business of making money too, and they will fi ght as vehemently for that as anybody else.

MCN: How competitive is the industry? At the Comcast-Time Warner Cable hearing, there seemed to be some Democratic concern about cable and broadband competitiveness.

MP: It's a great question because I learned a long time ago [as former chief of staff of the Antitrust Division of the Justice Department] that everybody has their own definition, and it is often driven by their own preconceived biases.

Of course, companies always say the market is super-competitive, and critics always say it is overly concentrated. Fortunately, there is a more fact-based approach to this, and in the language of antitrust, and the language of horizontal competition, from that standpoint it absolutely is.

No one is behaving like a monopoly. A real monopolist stops investing in a network because he doesn't have to. A real monopolist raises prices far beyond what a competitive market would do. A real monopolist wouldn't innovate. A real monopolist wouldn't deploy brand new set-top boxes with new Web features. A monopolist would take advantage of that secure position, and I don't think you see that.

Who knows what Google Fiber really means, but it is putting heat in the market. That's what you want. What you're not going to get, and I think there just has to be a resignation around this, is you are not going to get five or 10 competitors.

Networks scale, they are hard to build, and you are super fortunate if you have two. You are blessed if you have three. And we're going to have three. We're going to have the phone industry's contribution, the cable industry's contribution and the wireless market's contribution. I am 100% sure of that.

MCN: And you think the broadband speeds among those are going to be ultimately competitive?

MP: I do. I think those who want to take wireless out of the equation are doing so for Machiavellian reasons. They don't want to dilute the market and add another competitor because it is more convenient to say it's concentrated.

Watch the behavior of people. I sit at my computer at NCTA and I probably have a super fast connection. I can do anything right at my desk, but how many times do I just do it on my cellphone? That is substitution. Do I check the weather on that machine? Never. Do I check the traffic report? Nope, I pull it up on my phone.

There are tons of Internet activities I choose to do with the device on my hip. And it has gotten so fast that I am relatively agnostic about whether I have WiFi. Even if I don't have the WiFi connection, I still do it. The theoretical speeds of 4G are quite serious. They are fast enough for streaming video, which is the fastest thing consumers are doing today.

And when you look at the glide paths of those industries, they are coming on extremely strong. It is the only broadband device in the world where there's one for every living human being on the planet. And I think if you want to discount that, you're just being willfully blind.

MCN: Your asks in STELA were essentially: (1) No coordinated retrans; (2) get rid of the set-top integration ban; and (3) get rid of the must-buy requirement. Do you think you will get any of those in the final bill?

MP: I think we remain optimistic. We chose a narrow list because we took the guidance from the leadership on the Hill on the extent to which they were willing to entertain reforms.

We had a very deliberative process here selecting the things we wanted to go after, which included a thorough and substantial discussion among the board

of NCTA about these items. They all have the full support of our leadership, which has been great.

Among the criteria we used in choosing what we wanted was whether we thought we had a meaningful chance to get it. I don't think we would be doing them if we thought they were Don Quixote efforts.

MCN: What prompted NCTA to get more involved in the retrans debate?

MP: NCTA is a really significant institution in terms of the advancement of its policy objectives, and it should have a clear position on something as important as retrans, particularly when that subject is being debated at the FCC and on Capitol Hill.

Broadcasting interests, and we respect everyone's perspective, but they had a very formidable association arguing quite vociferously and aggressively around their position. The cable community did not, though we did have some very able organizations like the American Cable Association working on it. But there was just this sort of yawning absence of our participation that I was quite unsatisfied with. Sometimes issues are tough, but they shouldn't always just be avoided because they're tough. We got much clearer marching orders and we have been executing on those marching orders.

And what I am particularly thrilled about is that xalmost all of that list is being actively executed in the United States government.

The chairman of the FCC and the commissioners voted 5-0 on joint negotiations of retrans, which we have been arguing for for years. That was one of the key things the board said go get, and we got it. It's in the books. They [House Communications Subcommittee members] supported [lifting] the integration ban, they supported must-buy repeal. And these are things we have made steady progress on.

MCN: So, should the FCC continue to punt on the definition of an MVPD?

MP: Speaking out of school, I probably would if I were at the FCC.

People call it "punting," but one of the things I admire in the commission is a concept [former FCC chairman] Bill Kennard and I used to talk about all the time. You'll see it in his statements and you'll see it in mine. It's "vigilant restraint."

That is the notion that the regulator sees something emerge that is novel, that doesn't have all the characteristics of its traditional regulatory authority or what bucket it belongs in. It's popular in the market. It's fomenting and it's building and it's gaining traction and along the way it creates anxieties and problems and confusions out there: "What is this thing?"

I actually think it is a very affirmative policy for a regulatory leader to say: "We're going to wait on this. I want to see how this evolves. I want to see what impact it has. I'm not going to regulate just because I want to regulate. I'm not in the business of expanding my power. Let me see what this is. Let me see if it needs help. Let me see if it causes problems. Because if it doesn't, god knows they don't need me to sort of tote the market in some direction."

The simple problem with this is, do you want to give them all of the benefits and none of the burdens, or do you want to give them both? And what we do reject is the idea that they should get all the benefits of an MVPD under the law, but [are] not subject to the same obligations.

But let's go back to the fundamental, which is that it is a bad exercise because the reality is that nothing in the statute contemplates this reality. And without another judgment from Congress about what these things are, I would be very hesitant.

MCN: So, Sky Angel just becomes collateral damage since its interest in resolving the question does not trump the interest in letting the marketplace develop?

MP: Let's be clear, the bureau has signaled that Sky Angel is not an MVPD. So, they're not completely punting here. I think Sky Angel has gotten their answer, though they might not like it.

MCN: Let's talk network neutrality. Will you be OK with what the FCC does in recrafting the rules, even if that includes preempting local regulation of municipal broadband?

MP: I am comfortable with the process and the direction. Net neutrality is very much a devil in the details. I think it is very difficult to make any pronouncement. What we've seen so far is a framework, a blog or two, some generalized discussion about direction, which has been helpful. But that is by no means a rule.

The industry that I work with has never been concerned about blocking. We don't have any conceivable interest in behaving that way. We think that it is kind of like a pyrrhic debate because you're not going to fi nd us doing that anyway, because it is fundamentally against our self-interest in doing it.

MCN: And discrimination?

MP: I think the discriminatory prong — can you make deals with people? — is a complex issue. But I do think the government shouldn't smother the idea.

I've seen plenty of examples in the economy where that kind of two-sided market arrangement is very beneficial to consumers and I certainly, as a regulator, wouldn't accept a speculative assumption that it is always bad, which you almost have to conclude to bar it.

I think that is why chairman Wheeler very smartly says, "Look, I'm going to move to a more case-specific approach to this because I need to see the facts of a case; I need to see what happened because maybe what happened was good or maybe what happened was not so good." But not just some blanket speculation that that is possible.

MCN: What problems are there in the cable industry?

MP: I think there are three things.

We'd better double and triple our efforts on customer service. We are very unusual in the modern tech economy. Why? Because we may be the last guy that has to come in your house. Almost nobody else comes in your house anymore. The electric guy doesn't come in my house. He checks the meter on the side. I never see him; I never hear from him.

Almost everything else I do, I buy at Best Buy, bring home and do it myself.

We have this pain point, by which I mean an interaction, that few industries have. And that means that there is such a heightened need to make sure that is a fabulous experience.

I think people are working on this very hard. I would commend things that Bright House is doing around the "Hello Friend" campaign. I think Comcast has a new app, for example, that is quite elegant on managing your bill and your appointments.

This is the kind of stuff we need to be doing because we're always going to be thought of poorly if the consumer doesn't have more positive experiences when that young man or woman comes into your house. That is one thing we really need to fix.

Secondly, and something that is also being invested in, is the navigation experience. I think all the content the American consumer wants is sitting right there. The more we have provided, the more complexity of the environment, the higher premium on easier ways [to get to it].

I often sit down at my TV and try to watch CNN and I can't remember where it is. And all of a sudden I am flipping through 180 clicks looking for something.

So searching, voice commands, more intuitive interfaces. That is a huge premium. From a year ago, we have seen announcements that have made big strides, whether Cox and [its] Contour [app] or Comcast and [its] Xfinity

[platform]. Even some of our operators are starting to use boxes like TiVo[‘s] because they want to solve that.

The third thing is that we have a blizzard of offerings out there. Bundles are complex, pricing is a little complex, and I think what Sen. Claire McCaskill [D-Mo.] was talking about [complaining, at a Hill hearing, about a questionable charge on her cable bill] is something that we ought to listen to because it is not an uncommon experience.

A consumer frequently buys our product at a discounted promotional rate for a significant amount of time; that’s the nature of price competition in our market. That’s what Verizon does. Just watch TV one day: “For $99 [a month] for two years you get this, this and this.”

Consumers buy that; I’m not sure they always understand that’s going to expire, and as their bill goes up, that’s a pain point. Then we offer new consumers a discount on something you’re paying full price for, and that feels uncomfortable. That is what the senator was talking about. I got something at one rate and the next thing I know, it is being given away as the base product. That is not an uncommon strategy, meaning lots of companies to attract new customers give them things they aren’t giving existing customers.

But it is not always well-received by consumers. They feel like, “I am a loyal customer but I’m paying the premium for that.”

And what they’ve discovered, because every consumer magazine in the world tells you how to do it, is that if you call and complain enough you can usually get a refresh deal, and her argument is that that feels like the kind of haggling you have to do unnecessarily at a car dealer.

I don’t totally agree with that, but I do agree with the anxiety and the sentiment, and it would be better if those experiences didn’t feel like haggling, and it was more simplified and cleaner and easier to understand.

MCN: NAB’s Smith, at the STELA [Satellite Television Extension and Localism Act] hearing talked about cable’s collusive joint-sales

negotiations and suggested they were the same as the TV joint-services agreements the FCC has just limited. Can you explain what you see as the difference?

MP: It is really quite simple. Antitrust concerns itself with companies that are supposed to be competitors colluding. Antitrust is not bothered by companies that find efficiencies by acting collectively if they are not otherwise competitors, meaning they are not damaging the competitive dynamics of the market.

Cable interconnects are collections of companies who are selling advertising jointly for efficiency reasons, reasons that advertisers, who are customers in this market, love and want because if you are Procter & Gamble, and you want to buy advertising in an entire DMA — let's say a big circle — one cable company usually cannot provide that to you. If you want an ad on *Mad Men*, let's say in this DMA, *Mad Men* is going to be on Dish, DirectTV, a cable company and some other guy. And if you want to get that whole market, you have to go buy advertising on every single one of those mediums. Putting those mediums together and selling them as a package is an efficiency that the advertiser likes.

Broadcasters are competitors in their markets. They compete for advertising dollars against each other. So, if they get together and say, "Hey, let's sell advertising at this price instead of me offering one deal and someone else offering a better deal, which is the competition." That's a different kind of collusion that the Justice Department says concerns us.

I will tell you, too, that these cable interconnects have been reviewed by Justice authorities in the past and have been found to be completely fine.

So the simple answer is, one is a set of competitors and the other isn't. One is an efficiency that has been sanctioned by Justice; one is a collective action that Justice has raised serious concerns about.

MCN: Can you confirm that you recently signed a new, three-year contract, and tell us why you decided to re-up?

MP: I did. And let me be personal. There is nothing better in life than stimulating, fulfilling work, and I have found that to be the case. This job is quite challenging in a positive way. I work with the best people I've ever worked with, both my current staff and external bosses. I like it and am satisfied by it. So, that part was not a hard decision.

The second feeling is that I think I can add value. I think we are in a really transformational time. I think our leadership values NCTA and [its] role in being not just an advocate but a diplomat, to help keep things on keel when the convulsions are coming around change. And I don't shy away from that role. I like it and I like that they like that I do it. It really wasn't a very hard decision
- See more at: http://www.multichannel.com/news/policy/ncta-s-agent-change/374120#sthash.nuWZDHXW.dpuf

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