Hill Preps for Musical Chairs With Top Committees in Flux

Reps. Walden, Shimkus jockey for Upton's House Energy & Commerce seat

11/07/2016 8:00 AM Eastern

By: John Eggerton

Rep. Greg Walden (R-Ore.) will be giving up his seat as Communications Subcommittee chairman, but is angling to chair the House Energy & Commerce Committee.

TakeAway

Depending on how Tuesday's presidential and congressional races turn out, key committee chairs could be up for grabs, and the jockeying has begun.

WASHINGTON — With control of the Senate possibly passing to the Democrats and the House perhaps losing a dozen to two dozen seats, there could be some big changes in the principal Federal Communications Commission oversight committees.

After the Nov. 8 election, the second campaign season gets in gear as legislators angle for those plum posts in a new Congress.

Even though the House is unlikely to change hands — Republicans have the biggest majority (59 seats) in almost 100 years — most of the potential post-election action in the lame-duck Congress on the communications oversight front is in that chamber.

House Energy & Commerce Committee chairman Fred Upton (D-Mich.) and Communications Subcommittee chairman Greg Walden (R-Ore.) are term-limited and will have to give up their respective seats. Walden is looking to take over Upton's chair, but has competition from John Shimkus (R-Ill.), who has seniority.

Walden is well-liked and, as head of the National Republican Congressional Committee, raises money and strategizes to help elect and re-elect Republicans to Congress. There were differing opinions on that race from sources both on and off the Hill, who asked not to be identified. One source believed seniority would win out and Shimkus would get the big chair. But another said Walden's fundraising counted for a lot and predicted he would get the full committee chairmanship.

While Republicans will almost certainly lose seats, Walden reportedly has been advising them to run local races for a year now, a wise strategy given the questionable coattails of the eventual Republican presidential nominee.

If Walden does not get it, there might be a way for him to remain atop Communications despite his term limits. There have been talks about moving oversight of the Federal Trade Commission from the Commerce, Manufacturing and Trade Subcommittee to Communications, which would reconstitute Communications and allow Walden to chair that newly reconstituted committee.

That would make sense now that the FCC and FTC are having to team on overseeing online privacy.

If the FTC move doesn't happen, vice chair Rep. Marsha Blackburn (R-Tenn.) would be in line for the chairmanship of the Communications Subcommittee given that she is currently vice chair.
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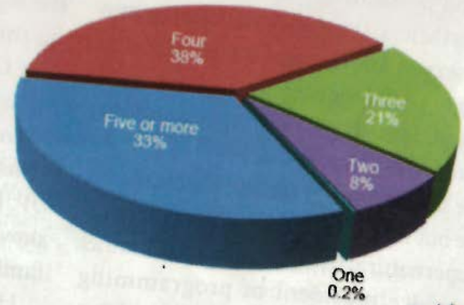
...pple TV box, iPads and iPhones. ...ailable on

VIDEOPHILE

THE GROWING SCREEN SCENE

Number of 'Screens' per US Broadband Household



Benchmarking the Connected Consumer, Q2 2016
(Among all respondents, n = 2,019; total exceeds 100% due to rounding)

The number of video-capable screens in the average U.S. home, including TVs, PCs, tablets and smartphones, has risen to eight, per a recent survey of more than 2,000 consumers by The Diffusion Group.

That trend has given rise to new whole-home WiFi platforms that can stream video to all corners of the house, not just places near the primary WiFi access point, the research firm noted.

Google is looking to capitalize on this with Google WiFi, a new mesh-based platform that features an app that can manage a coordinated grouping of Google-supplied access points set to start shipping in December.

While retail is the initial focus, sources said Google is also trying to sell its managed whole-home WiFi platform into the cable and ISP sector, which is also being targeted by traditional suppliers such as Arris, as well as AirTies. Startup eero, which makes a popular WiFi platform that coordinates access points, is also expanding into the service-provider sector as whole-home wireless video becomes a necessity rather than an option.

TDG noted that whole-home networks were available 15 years ago but tended to require professional installations and were cost-prohibitive while also outstripping mainstream usage models.

Now What?

Media industry has little to go on in parsing the Trump telecom agenda 11/14/2016 8:00 AM Eastern

By: **John Eggerton**

President-elect Donald Trump speaks to supporters on Election Night following his surprise victory over Democrat Hillary Clinton.

Phil McCaul/Polaris

TakeAway

Donald Trump's surprise win in the presidential election puts a figure in the White House who hasn't offered much in terms of telecom policy.

WASHINGTON — Within hours of President-elect Donald Trump's stunning victory over Democrat Hillary Clinton early in the morning of Nov. 9, a former top Federal Communications Commission official said that a Trump surrogate had already reached out to tap his brain for suggestions for a new FCC chairman.

Trump has not outlined a specific technology/communications policy agenda, but there have been clues or, in some cases, mixed signals.

On the campaign trail, he has threatened to sue media outlets and block a major media merger, but how much of his campaign rhetoric will translate to policy is the question that lingers, and not just for communications issues.

Related: **President Trump? Wall Street Yawns**

Trump is generally deregulatory and pro-business and has come out against the FCC's reclassification of broadband as a common-carrier service, one of his few known communications policy positions.

Republicans, who now control both houses of Congress, have been seeking to roll back some of FCC chairman Tom Wheeler's regulatory agenda, including the reclassification of ISPs under Title II.

So while a Trump FCC might well try to reverse the Title II decision, Congress could beat it to the punch.

MoffettNathanson analyst Craig Moffett said he thinks that could be the case. Last week, he reduced the price regulation risks to cable stocks across the board on the assumption that a congressional rollback was not only possible, but likely.

But Trump did not get to the White House by a conventional route, and his regulatory policies could follow the same peripatetic course.

While he has expressed his distaste for Title II classification of broadband Internet service, Trump also came out publicly, and strongly, against the merger of telco AT&T and media company Time Warner Inc., and throughout **the campaign** he has strongly criticized similar consolidations among media companies.

Campaigning in Pennsylvania late last month, Trump said his administration would try to block the deal, sounding more like a populist reformer than a deregulatory Republican, but also sounding like someone who is simply mad at the media, which he has been throughout his run for the White House.

"As an example of the power structure I'm fighting, AT&T is buying Time Warner and thus CNN, a deal we will not approve in my administration because it's too much concentration of power in the hands of too few," he said.

Trump also said Comcast's purchase of NBCUniversal concentrated "far too much power" in the hands of one massive entity that is trying to tell the voters what to think and what to do." He said deals like that "destroy democracy," and his administration would look to stop it and others like it. He said the companies should not have been allowed to merge and said they were trying to "poison the minds of the American people."

Trump had accused the media of being part of a conspiracy to elect his Democratic rival. Trump suggested libel laws should be toughened when news outlets published stories he did not like, and even invoked the FCC against one reporter.

Back in September, Trump said the FCC should fine *National Review* editor Rich Lowry after, in an appearance on Fox News Channel's *The Kelly File*, Lowry said Carly Fiorina had surgically castrated Trump in a debate — although the editor used a more colloquial phrase — and added that Trump had "insulted and bullied" his way to the top of the polls.

Following Lowry's comments, Trump said in a post on Twitter — his communication mode of choice during the campaign — "Incompetent @RichLowry lost it tonight on @FoxNews. He should not be allowed on TV and the FCC should fine him!"

Trump's tone has not been lost on his supporters. *The Washington Post* illustrated a collection of post-election essays titled "Yeah, That Did Just Happen," with a picture of a Trump supporter in a T-shirt that read: "Rope. Tree. Journalist. Some Assembly Required."

A TRUMP FCC

Trump has also included lobbyists among the folks he targets with his "drain the swamp" campaign rhetoric, so he could institute more lobbyist reforms.

Who will lead the FCC is not usually one of the first priorities of a transition team, but the Trump team has signaled it wants to assemble the new administration's top leadership ASAP.

The most recent Democratic FCC chairmen have been outside choices. Wheeler had helped with the Obama technology transition and Julius Genachowski was a former law-school classmate of the president.

But the most recent Republican chairs, Kevin Martin and Michael Powell, were plucked from the ranks of sitting commissioners, and the same could apply here, though both already had strong Republican ties — Martin as an attorney in the 2000 election recount and Powell as the son of former Secretary of State Colin Powell.

Senior Republican Ajit Pai is well-liked in industry circles and will likely be at least interim chairman.

Democratic commissioner Jessica Rosenworcel will have to leave the FCC by the end of next month unless the lame-duck Senate reconfirms her. That is possible, but now unlikely since her exit would remove the Democratic majority on the commission, and Wheeler's exit would give Republicans a 2-1 majority.

The Republicans will have the majority once a permanent chairman is nominated and confirmed, but that could take six months or longer. Pai would be a popular choice. Another name in the mix is Jeffrey Eisenach, a deregulatory free-market economist who is a member of the transition team. Eisenach is director of the Center for Internet, Communications and Technology Policy at the American Enterprise Institute, a conservative think tank.

Adonis Hoffman, former chief of staff to Democratic FCC commissioner Mignon Clyburn, who had been contacted by the Trump surrogate, said he (Hoffman) had pointed to Pai as an obvious inside choice for chairman when asked for his input.

A top Republican communications attorney who spoke not for attribution seconded that endorsement. Pai would be the first Indian-American chair, as he was commissioner.

Pai has generally been supportive of the kinds of media mergers Trump attacked on the campaign trail, but Hoffman said he expected Trump to moderate the anti-media rhetoric now that the campaign is over.

"I'm not so sure that mergers will not get done," Hoffman said. "Governing is a lot different than campaigning, and big companies know how to speak the language of business."

Pai has been a big supporter of loosening media-ownership regulations, so a Pai FCC could well prioritize at least getting rid of the newspaper/broadcast cross-ownership rules or rolling back the tightening of joint sales agreements (JSAs) under Wheeler.

WHERE ACTION IS LIKELY

Republicans, including Pai, fellow commissioner Michael O'Rielly and many on Capitol Hill, have sought FCC process reforms like publishing the drafts of decisions before they are voted and a cost-benefit analysis of all new regulations. That could definitely get traction, though there will likely be fewer of those new regulations to vet.

And while Wheeler has taken an expansive view of the FCC's congressional direction — under Section 706 of the Telecommunicati ons Act — to promote advanced telecom, Hill Republicans have called for a far narrower view, and Pai agrees.

One thing a looming Trump presidency will likely do is light a fire under the current Democratic chairman to try to get the remaining items, like the set-top revamp and reregulation of business data services, out the door before he has to exit.

Candidate Trump promised an "immediate review" of U.S. cyber defenses and vulnerabilities by a Cyber Review Team from the military, law enforcement and the private sector.

He also said he would create a joint task force to coordinate a federal, state and local law enforcement response.

SIDEBAR: The Regulations In Trump's Crosshairs

WASHINGTON — President-elect Donald Trump made the following campaign promises related to pruning federal regulations.

• “Ask all Department heads to submit a list of every wasteful and unnecessary regulation which kills jobs, and which does not improve public safety, and eliminate them.”
• “Reform the entire regulatory code to ensure that we keep jobs and wealth in America.”
• “End the radical regulations that force jobs out of our communities and inner cities. We will stop punishing Americans for working and doing business in the United States.”
• “Issue a temporary moratorium on new agency regulations that are not compelled by Congress or public safety in order to give our American companies the certainty they need to reinvest in our community, get cash off of the sidelines, start hiring again, and expanding businesses. We will no longer regulate our companies and our jobs out of existence.”
• “Cancel immediately all illegal and overreaching executive orders.”
• “Decrease the size of our already bloated government after a thorough agency review.”
http://www.multichannel.com/now-what/409041
Multichannel News

President Trump? Wall Street Yawns

Stunning election news hasn't led to turmoil in the market

11/14/2016 8:00 AM Eastern

By: Mike Farrell

TakeAway

Media stocks haven't been affected much by the uncertainty surrounding Donald Trump's election.

Despite the soul-searching and disbelief that has informed the liberal reaction to his stunning election-day victory, President-elect Donald J. Trump has had no negative impact on the stock market, so far.

As for what he would do to the media business that had been the target of much of the Republican candidate's disdain during his campaign, most observers believe it is too soon to call.

Related: Now What? Media Industry Has Little to Go on in Parsing Trump Agenda

While gloomy predictions of plunging markets were made in the wake of Trump's surprise victory, the Dow Jones Industrial Average actually rose 256 points on Nov. 9, while media stocks rose a slight 1% to 2%. The Dow closed Nov. 10 up more than 200 points.

While the investment community is showing early optimism, media-industry analysts and executives are taking a cautious approach to what could come in a Trump administration, with many writing off some of the former reality TV star's criticism as playing to his audience.

AT&T-TW RIPPLES

Trump had repeatedly called out media bias as the reason for missteps during the campaign, so it was no surprise that he turned his bluster box up to 11 in October, shortly after AT&T announced its $108.7 billion deal to purchase Time Warner Inc. Trump, citing what he said was too heavy a concentration of power among too few media companies, vowed to block the mega-merger, adding if he had his druthers, Comcast's 2011 purchase of NBCUniversal would be unwound for the same reasons.

While his ultimate stance on big media and mergers will depend on his picks to head key regulatory agencies like the Department of Justice and the Federal Communications Commission, Dish Network chairman and CEO Charlie Ergen said that position could change with time.

"You always have to take it seriously what someone who is running for president says," Ergen said during Dish's earnings call. "Any candidate would reserve the right to change their mind if they had different facts. The regulatory process is probably as unknown as it was before the election."

Related: Ergen: Trump Could Have Light Regulatory Hand

Whether Trump would be able to have any effect on those mergers is unclear, but most observers believe he would be out of his jurisdiction in having any direct impact on the deals.

AT&T and Time Warner have characterized their merger as an opportunity to change consumer behavior, using Time Warner content and AT&T distribution vehicles like its upcoming DirecTV Now to offer skinnier bundles, mobile and social media-exclusive content and low-cost video products supported by advertising.

What the combination doesn't do is remove a competitor from the landscape — one of the chief concerns of any Justice Department review. The deal may not even attract scrutiny from the FCC because it would involve the transfer of just a handful of broadcast and satellite licenses. Time Warner owns one broadcast license, for TV station WPCH, the Atlanta-based holdover from the days of Superstation WTBS, and dozens of satellite licenses.

While the Trump administration's options to lower the regulatory hammer on the deal are limited legally, it could heap conditions on the transaction. Those conditions could make a deal unattractive for both parties.

BACKSEAT FOR TELECOM

At least for now, most analysts believe Trump has other pressing issues — his pledges to abolish Obamacare, build a wall on the Mexico border and deport illegal aliens, to name a few — and might not devote much attention to telecom policy in his first months in office.

"The logical thought process is that a Republican-controlled executive branch and Congress would likely lead to far more laissez-faire policies, which would be good for consolidation and good for an environment with less regulation," Pivotal Research Group CEO and senior media & communications analyst Jeff Wlodarczak said.

As far as Trump's comments about AT&T-Time Warner, Wlodarczak wrote them off to "political hyperbole," and said the deal most likely will pass. As far as Comcast-NBCU, the analyst believes Trump's hands are tied.

"The Comcast-NBCU comment was, again, arguably hyperbole as he was mad at coverage of his campaign," he said. "I don't think he can do anything about Comcast-NBCU."

AT&T was taking an optimistic approach to the new administration, with senior executive vice president and chief financial officer John Stephens pointing out their similar approaches at the Wells Fargo Technology, Media and Telecom conference last Wednesday.

"From a company perspective, we really look forward to working with President-elect Trump and his transition team," Stephens said at the conference. "His policies and his discussions about infrastructure investment, economic development and American innovation all fit right in with AT&T's goals. We've been the leading investor in this country for more than five years running, and our Time Warner transaction is all about innovation and economic development, consumer choice, and investment in infrastructure with regard to providing a great 5G mobile broadband experience. So we look forward with optimism to working with the leadership and providing benefits to consumers and to our shareholders."

Time Warner declined to comment.

Some analysts warned the new commander-in-chief could have a chilling effect on future deals.

"It's unclear; it's hard to know where he [Trump] is on Fox these days," Telsey Advisory Group media analyst Tom Eagan said. "He probably doesn't like CNN. To the degree it increases the discount on the [AT&T-TW] deal, it could lower the zeal for more consolidation."

Time Warner stock was down last Wednesday — it closed at to $86.44 per share, down 1.6% or $1.43 each — but the bigger news on the shares has been the discount to the price AT&T agreed to pay. When it announced the deal Oct. 22, AT&T said it would pay $107.50 per share in cash and AT&T stock for every Time Warner share. At the Nov. 9 close, Time Warner is trading at a nearly 20% discount to AT&T's offering price. Most of that discount has been because investors aren't sure it will receive regulatory approval.

Wlodarczak wasn't so sure Trump alone could discourage further consolidation. He said the market will do that.

The chatter over more vertically integrated deals in the wake of AT&T-Time Warner was largely generated by the press, Wlodarczak said. Like other analysts, he doesn't believe pairing content and distribution makes much sense, and he sees AT&T's move as more of a diversification play.

Instead, Wlodarczak believes the markets will focus on the potential positives of a Trump regime.

"The ramifications for Trump should be less regulation, Obamacare disappears, tax rates decline, all of which is good for the backdrop for the sector," Wlodarczak said. "I think it is reasonable to assume that a lot of what the current FCC has pushed on the industry will be thrown out, including most importantly Title II-led regulation on cable, which is fundamentally positive."

SNAPPING UP WIRELESS

He also believes conditions will be more favorable to consolidation, adding that wireless carrier T-Mobile could be an attractive target for Sprint or a teamed up Comcast and Charter.

Sprint stock rose 12% on Nov. 9, to $7.11 per share, a twoyear high, while T-Mobile rose 5% to $53.01 each.

Ergen pointed to the Republican control of the House and Senate, which should help Trump push through his agenda.

"You're probably going to see bipartisan support for infrastructure, a more rational tax code, particularly as it relates to corporate taxes and particularly as it relates to maybe bringing overseas money back, which can then pay for infrastructure," Ergen said.

http://www.multichannel.com/president-trump-wall-street-yawns/409042

Multichannel News

Comcast Launches 'Internet Essentials' Pilot for Seniors in Boston


WIKIMEDIA COMMONS

Comcast said it is extending Internet Essentials, the MSO's high-speed Internet program for low-income homes, to senior citizens in Boston.

The MSO also said it has donated $100,000 to Boston's Tech Goes Home digital literacy training for seniors, as well as 110 laptops to seniors at the South Boston Neighborhood House and high school students throughout the city.

Comcast has introduced similar seniors-focused trials of Internet Essentials in Philadelphia, Seattle, San Francisco County, and Palm Beach County, Fla.

"Closing the digital divide for low-income parents and children across the country and in the City of Boston has never been more important to Comcast," David Cohen, senior vice president and chief diversity officer, said in a statement. "Seniors, too, need Internet access at home to break down barriers of isolation and connect them to their friends, family and caregivers."

Internet Essentials, originally a voluntary commitment linked to Comcast's acquisition of NBCUniversal, provides high-speed Internet service (up to 10 Mbps downstream) to qualifying subs for $9.95 per month and offers subsidized computer equipment and free Internet training.

In August, Comcast announced that the program had connected 750,000 families, or about 3 million Americans, to high-speed broadband. About 80,000 residents in Massachusetts are on the program.

Comcast said eligible senior citizens in Boston are also in line for a 10% discount on Basic Cable TV or Digital Starter Cable TV.

—Jeff Baumgartner

Wheeler Ramps Down Agenda

Heeds GOP warnings about voting ‘controversial’ items

11/21/2016 8:00 AM Eastern

By: John Eggerton

TakeAway

FCC chairman Tom Wheeler’s plans for business data services regulation and other items lacking GOP support appear to have left the building ahead of the Democratic appointee.

WASHINGTON — It looks like Federal Communications Commission chairman Tom Wheeler won’t get some of his most contentious regulatory proposals out the door before he’s out the door.

Wheeler pulled his business data services re-regulation proposal off the Nov. 17 meeting agenda last week under pressure from Congressional Republicans who made it clear they did not want any 11th-hour regulatory push with a new sheriff coming to town. That would also appear to spell curtains for Wheeler’s controversial set-top box revamp.

Cable operators had opposed both efforts, though NCTA: The Internet & Television Association wasn’t commenting last week. The trade group tends not to exult publicly in regulatory victories.

CHAIRMAN WANTED ACTION

Wheeler wanted to vote those items out; that was clear from his press conference after the FCC’s mini-meeting, the business end of which lasted all of a minute or so as the pulling of the BDS revamp and three other items was announced and a single noncontroversial item was voted.

Among the items not getting a vote was one to expand the number of hours of video-described programming cable and broadcast networks must provide. NCTA and movie studios had opposed that, too, as beyond the FCC's authority under statute.

Wheeler said it was a "shame" hospitals and small businesses would not get the benefits of his BDS reforms, and "tragic" that 1.3 million blind and sight-impaired people would not be getting expanded access to video programming because the items had been dubbed "controversial."

The items pulled from the meeting are still on circulation and could be voted if there are three Democratic votes for them — an FCC source said the decision to pull the items was the chairman's alone — but getting those votes appears unlikely, according to various sources inside and outside the FCC and given the Republicans' warnings.

The warnings came on at least three fronts. Citing similar letters from Democrats eight years ago, when Obama won the White House, Wheeler got letters from the leadership of the House and Senate commerce committees warning against voting "controversial" items, seconded by the FCC Republican commissioners; a separate letter came from the House majority leader and all the Republican House chairs issuing the same warning to all federal agencies — executive and independent — threatening to overturn any items voted; and the House passed a bill last week that would make it easy for Congress to invalidate with a single vote any last-minute regulations from an agency like the FCC.

The set-top revamp proposal, which drew criticism from Internet providers and legislators on both sides of Capitol Hill, is also likely DOA. That item could also have spelled the end of Democratic commissioner Jessica Rosenworcel's tenure.

Two senators from Rosenworcel's own party last week briefly put a hold on her nomination, which is not likely to get through the Republican lame-duck Congress. They then lifted it anyway, saying Rosenworcel might be willing to vote some of the pending items. Republicans would almost certainly block such votes.

ANOTHER TRUMP PICK

If Rosenworcel is not confirmed, President-elect Donald Trump would get to pick a new Democrat as well as a new chairman. If custom dictates, that pick would be deferred to the incoming Senate minority leader, Chuck Schumer (D-N.Y.). Trump, though, has not made a habit of following form and ran on a platform of shaking up the old order.

Rosenworcel was widely believed to have had continuing issues with the impact of the set-top box revamp on contracts and copyright. She shared those concerns with cable operators, studios and the U.S. Copyright Office and some Hill Democrats and Republicans and others, but not with Wheeler or activist groups like Public Knowledge, whose former head, Gigi Sohn, is a top Wheeler adviser.

http://www.multichannel.com/wheeler-ramps-down-agenda/409217

Multichannel News

FCC Stands Up for Cable Deregulation

In oral argument, points to NCTA data to defend effective competition decision

11/21/2016 8:00 AM Eastern

By: John Eggerton

The FCC is defending its effective competition ruling in federal court in D.C.

WASHINGTON — The unusual scene of the Federal Communications Commission strongly defending cable deregulation played out in a federal appeals court here, with the agency defending its decision to presume there is local MVPD competition in a market unless franchise authorities can prove otherwise.

When the FCC decides that a market is competitive, basic rate regulation is eliminated.

The FCC's decision to reverse the presumption of no effective competition — which placed the burden of proof on cable operators — was prompted both by a legislative directive (in the Satellite Television Extension and Localism Act Reauthorization, or STELAR, bill) to make the effective-competition determination process easier on smaller cable providers and by a petition from NCTA: The Internet & Television Association to extend the reversed presumption to all cable providers.

The National Association of Broadcasters was on the other side of the argument. The NAB backs the National Association of Telecommunications Officers and Advisers in seeking to reverse the new FCC policy, concerned that basic-cable deregulation threatens TV stations that are "must buys" on regulated basic tiers.

In oral arguments on Nov. 10, FCC attorney James Carr cited NCTA and the American Cable Association, which represents smaller operators. Carr cited NCTA's submission showing that in each of 210 designated market areas across the country, more than 15% of pay TV customers were subscribing to a cable competitor, primarily satellite TV. That's one of the key benchmarks in determining effective competition.

The FCC said that does not mean that there will be effective competition in each franchise area, because DMAs typically encompass multiple franchise areas. Carr's point was that there was no countervailing evidence in the record or raised by NATOA to show "there is some marked deviation from the mean that would lead us to expect there was a significant cluster that didn't meet the threshold."

In other words, if there was going to be a presumption that had to be disproved, it made more sense for it to be that competition exists rather than it doesn't.

Stephen Kinnaird, representing NATOA, told the court the FCC had seized on "narrow streamlining legislation" to "shed statutory duties that it had long been keen to escape," and, in the process, violated the statute.

It is hard to gauge how judges are leaning by their questions, as they probe arguments and play devil's advocate. But several seemed to suggest that if there was going to be a presumption one way or the other, the NCTA evidence about presuming in favor of competition made sense. There's no schedule on when the judges will rule but a decision likely won't come until at least the first quarter of next year.

http://www.multichannel.com/fcc-stands-cable-deregulation/409225

Multichannel News

FCC Not Bound By Trump Regulatory Fiats

11/21/2016 8:00 AM Eastern

By: John Eggerton

WASHINGTON — President-elect Donald Trump has pledged to put a hold on federal regulations once he gets into the Oval Office, but the FCC is shielded from that initial presidential proclamation.

As part of his first plan for his first 100 days, the president-elect has said he will impose a moratorium on new federal regulations. Then, when new regulations are imposed, he says for every one added two should be eliminated.

While that sounds more like campaign rhetoric than a workable plan, he has included it on his transition website as one of the things he wants to do.

But as an independent agency, the FCC is not subject to executive orders or presidential pronouncements.

For example, when President Obama issued executive orders about agencies doing cost-benefit analyses of new regulations, the FCC was exempted from that directive.

But the president can also make his wishes felt in no uncertain terms. After Obama came out publicly urging the FCC to reclassify Internet-service providers under Title II of the Communications Act, FCC chairman Tom Wheeler pivoted to that position.

Certainly, Trump can appoint an FCC chairman who agrees less regulation is better. That would be the case with either Republican commissioner Ajit Pai, expected to be interim chairman at least (and maybe stay on permanently) after Trump takes over on Jan. 20, or Jeffrey Eisenach of the American Enterprise Institute and George Mason University, another likely pick.

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Multichannel News

Appeals Court Questions Basis For FCC Reversal Of Cable Competition Presumption

Paul, Weiss, Rifkind, Wharton & Garrison LLP

USA November 18 2016

During oral arguments last Thursday, a three-judge panel of the D.C. Circuit Court of Appeals questioned the FCC's grounds for reversing the agency's long-standing rebuttable presumption that effective competition does not exist in the U.S. cable market. While acknowledging that, during the two years preceding the FCC's June 2015 decision, the FCC had processed 228 applications for effective competition with an approval rate of 99%, at least one judge suggested the FCC's resulting conclusion in favor of effective competition for the cable industry as a whole may have been based on "selection bias."

The case was brought to the D.C. Circuit by the National Association of Telecommunications Officers and Advisors (NATOA), which is seeking to overturn the FCC ruling on grounds that it violates tenets of the STELA Reauthorization Act of 2015 (STELARA) by abolishing the effective competition test altogether instead of merely streamlining it. Following the passage of the 1992 Cable Act, the FCC adopted a rebuttable presumption in 1993 that the U.S. cable market is not subject to effective competition. As a result, cable operators were subjected to regulation of their basic rate tiers unless they could prove to the FCC that effective competition exists in their respective franchise areas. Under Section 111 of STELARA, the FCC was required by June 2, 2015 to streamline the process by which small cable operators request relief from basic tier rate regulation on grounds that they are subject to effective competition. Noting that it had approved 99% of petitions filed since 2013 for findings of effective competition, the FCC voted unanimously last year to apply a rebuttable presumption in favor of effective competition which applies not only to small and rural cable operators but to the U.S. cable industry as a whole.

Charging that the FCC had "seized upon a narrow provision to escape statutory duties it had long been eager" to do away with, counsel for NATOA told the appellate panel there was no way the FCC could have built a finding in favor of effective competition in every local franchise area on a record which relies on national averages of competitive market share. Asked by Judge Cornelia T.L. Pillard why an FCC record showing an average competitive market share of 34% nationwide is insufficient evidence of effective competition, counsel for NATOA replied that the 34% average includes telephone companies that have entered the multichannel video program distributor (MVPD) market since 1993 and that numerous franchise areas throughout the country remain unserved by telco MVPDs.

As "proof" that the FCC's decision to reverse the effective competition may have been correct, Senior Judge Douglas Ginsberg noted that only three franchising entities nationwide had filed rebuttals of the FCC's plan to reverse the competitive presumption. Nonetheless, Pillard appeared somewhat skeptical of FCC attorney James Carr's claim that "it made perfect sense" for the Commission to reverse the presumption by virtue of the fact that the FCC had recently approved nearly all of the applications that had been brought before it for findings of effective competition. Countering that cable operators are more likely to apply for rate relief when they have strong evidence in favor of effective competition, Pillard told Carr that the FCC's data could have been affected by "selection bias." Pillard also advised Carr that FCC figures on competitive market share may not suggest even distribution of that share nationwide, remarking: "if I were a cable company, there are vast areas [of sparsely populated communities] that I would not be interested in serving."

AT&T on Monday unveiled its streaming service, DirecTV Now, with hopes of enticing young adults and budget-conscious customers with a less expensive bundle of live television networks.

The DirecTV Now streaming service launches Wednesday with such premium brands as AMC, ESPN, Fox News, HGTV, NBC and Nickelodeon.

The service is designed to appeal to consumers who are part of the estimated 20 million households in the U.S. without a pay-TV subscription, and to those who watch entertainment mainly on mobile phones.

The TV channel bundles — available through an app, streaming device or Web browser — will be offered at four subscription price points, including a package of 60 channels for $35 a month and a 120-channel bundle for $70 a month.

Already the nation's largest television provider with more than 25 million subscribers, AT&T is taking aim at a fast growing segment: consumers who have ditched their traditional pay-TV packages to save money or exercise more control over their viewing experience — and millions of younger consumers who never signed up.

Wall Street has been closely watching to see whether DirecTV Now will dramatically reshape the television business. Some analysts worry that AT&T might be offering premium TV channels at too steep of a discount, thereby encouraging more people to cut the cord.

After AT&T announced the basic package would cost $35 a month, prominent research firm MoffettNathanson issued a report with the headline: "Running with Scissors."

AT&T has been eager to gain a foothold in the streaming space before technology giants such as Google and Apple Inc. roll out their own subscription bundles of traditional TV channels. Dish Network launched its competing Sling TV streaming service more than a year ago, and Sony PlayStation has its own package called PlayStation Vue. Next year, online video service Hulu plans to offer its own bundles of TV channels.

AT&T has used its advantage as a market leader to leverage existing partnerships with traditional programmers, including Walt Disney Co. and 21st Century Fox. For more than a year, DirecTV executives have been hammering out new deals with those media companies for the rights to live stream their channels so that DirecTV could create a more robust service than its rivals.

One notable holdout is CBS Corp., which means CBS and Showtime channels won't be part of DirecTV Now when it launches. CBS is holding out for higher fees. NFL games also won't be available because another phone provider, Verizon, has those streaming rights.

DirecTV Now was designed to appeal to younger audiences. AT&T plans to include a channel featuring pop star Taylor Swift and another channel for women called "Hello Sunshine," backed by entertainment mogul Peter Chernin and actress Reese Witherspoon.

The service also is targeting people who move often. It does not require a contract, and customers who live in apartments or those with low credit scores can qualify, AT&T executives said. The service was also designed to be easy to use, particularly on a mobile phone.

"This is the foundation in how we are going to do things in the future," AT&T Entertainment Group Chief Executive John Stankey said during Monday's presentation, noting that 50% of the company's customers already watch video "on something other than a TV set hanging on a wall."

Traditional media companies recognize that they must evolve to keep up with changing consumption patterns and rising competition. Over the last two years, an estimated 2 million subscribers have dropped their TV subscriptions, opting for online outlets such as Netflix, Hulu and Amazon Prime Instant Video.

AT&T also touted discounted add-ons. For example, the Dallas phone company is offering premium channel HBO to DirecTV Now subscribers for an additional $5 a month. That contrasts with the approximately $15 a month that HBO typically costs premium pay-TV subscribers.

AT&T also said DirecTV Now streaming would not count against data caps for its mobile phone users. Some consumer rights advocates worry that AT&T phone users could run up big data bills by streaming content from other providers such as Hulu or Netflix, giving DirecTV a competitive advantage.

CHAIRMAN WHEELER ANNOUNCES HIS PLANS TO STEP DOWN

WASHINGTON, December 15, 2016 – Today, Chairman Tom Wheeler, after more three years at the helm of the agency, announced he intends to leave the Federal Communications Commission on January 20, 2017. Chairman Wheeler issued the following statement:

“Serving as F.C.C. Chairman during this period of historic technological change has been the greatest honor of my professional life. I am deeply grateful to the President for giving me this opportunity. I am especially thankful to the talented Commission staff for their service and sacrifice during my tenure. Their achievements have contributed to a thriving communications sector, where robust investment and world-leading innovation continue to drive our economy and meaningful improvements in the lives of the American people. It has been a privilege to work with my fellow Commissioners to help protect consumers, strengthen public safety and cybersecurity, and ensure fast, fair and open networks for all Americans.”

Today, NATOA, joined by the US Conference of Mayors, the National League of Cities, the National Association of Counties, the Government Finance Officers Association, and the International Municipal Lawyers Association jointly filed with the FCC a Motion for Extension of Time to file comments in "Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Practices; Mobilitie, LLC Petition for Declaratory Ruling," WT Docket No. 16-421. Currently, comments are due February 6, 2017, with reply comments due March 8, 2017. This proceeding has the potential to further erode local government authority over the public rights-of-way and adversely affect local government revenues.

We will be discussing this proceeding on the FREE eNATOA webinar scheduled for Monday, January 9th, from 2:00-3:00 pm Eastern. If you haven't signed up yet, it's not too late. Go to https://www.natoa.org/events/enatoa.html.

Read a copy of the Motion here.

Trade Journal Links

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