

A Change in the Wind?

Things are changing at the Federal Communications Commission, starting at the top, and there is reason to be hopeful that at least some of those changes will be beneficial to amateur radio. As our “Washington Readout” editor Fred Maia, W5YI, reports in detail in this issue, President Obama has named FCC Commissioner Michael Copps Acting Chairman and is widely expected to nominate Julius Genachowski as the new permanent Chairman. They succeed Kevin Martin, who resigned as Chairman and as a Commissioner on President Bush’s final day in office.

You may recall that back in December (Zero Bias, “A New President, But No New Sheriff”), we took the FCC to task for its failure to name a replacement for amateur radio enforcement “czar” Riley Hollingsworth, K4ZDH, who retired last July, and for its failure to initiate a single amateur-related enforcement action in that timeframe. We were concerned that the FCC was renegeing on its promise made a decade ago to never again leave our self-enforcement efforts without backup from the Commission for those cases in which enforcement action with teeth was required.

It soon became clear, though, that the problem may not have been a lack of good intent on the part of the Enforcement Bureau, but rather one of bureaucratic bottlenecks at the very top of the Commission organization. In February, W5YI reported on a stinging staff report issued by a Congressional committee, blasting Chairman Martin’s administration of FCC affairs. One of the big problems cited was that absolutely everything had to be routed through the Chairman’s office, that virtually nothing could be done without his personal approval, and that, as a result, very little was getting done—including the filling of staff vacancies.

The scope of Martin’s mismanagement was made clear in the days immediately following his departure, in public comments and an exchange of open letters between Acting Chairman Copps and Commissioner Robert McDowell, currently the FCC’s lone Republican member. In those open letters, McDowell called on Copps to quickly initiate a wide variety of organizational reforms. It appears that Copps was already on the same page, particularly if you read between the lines of his remarks to the FCC staff just after his appointment as Acting Chairman.

“I am troubled that our lines of communication, both internal and external, seem to have frayed,” he told the staff, announcing several moves intended to increase openness and accountability. One particularly telling remark confirmed the charge in the Congressional staff report that Chairman Martin had effectively cut off the other commissioners’ access to the FCC staff. “I also want to ensure that my Commissioner colleagues have unfettered access to the Bureaus, with the presumption being that requests for information will be honored,” said Copps, adding, “I realize this is not a bureau-created problem but, beginning now, requests from Commissioners’ offices—not just the Chairman’s Office—should be answered directly and as quickly as possible, just as if the Chairman’s Office is asking for it and without the need for running those requests through the Chairman’s Office first...”

Copps also reminded the FCC staff that its “stakeholders ... include not just the industries we regulate but, more importantly, all citizens. ... The spectrum is theirs and the rest of us are stewards.”

A few days later, Commissioner McDowell told the Federal Communications Bar Association that he had “sensed an immediate boost in morale” among the FCC

staff since Copps took over. And he made it clear that he supported Copps’s early moves. “I share and applaud Chairman Copps’s view that we delegate some authority back to upper and mid-level management. We ought to have the confidence in our deputy bureau chiefs and division chiefs to handle routine matters ... and generally discuss their subject areas with anyone, including commissioners, without prior approval from the head of the agency.”

McDowell also alluded to the growing domination of FCC staff by lawyers. “I am hopeful,” he added, “that we will make more efficient use of non-attorney professionals, such as engineers and economists. For example, there is no reason why we cannot use engineers to help investigate complaints and petitions that involve technical and engineering questions.” Hallelujah! And remember, he said this to a group of communication lawyers!

A New Sheriff

These words were accompanied by actions. One of the Commission’s first moves under Acting Chairman Copps was to reverse a rather bizarre chain of events in a proceeding on TV program carriage rules (whether cable systems had to carry certain programming). Initially, last October, the Media Bureau combined a half dozen complaints and designated them for hearing before an Administrative Law Judge, a rather routine action. But less than two months later, the Media Bureau issued a series of three follow-up orders saying that the judge’s authority to hear the cases had expired and that the bureau would resolve them on its own ... presumably with the decisions coming straight from the Chairman’s Office. One week after Chairman Martin left, the remaining three commissioners reversed those orders. “On our own motion,” their order read, “we conclude that the factual determinations required to fairly adjudicate these matters are best resolved through hearings before an Administrative Law Judge, rather than solely through pleadings and exhibits as contemplated by the Media Bureau. Accordingly, we rescind in full the (three orders and) hereby reinstate the presiding Administrative Law Judge’s delegated authority...”

Plus, one of the first signs that the personnel logjam was breaking was the ARRL’s announcement on January 26 that it had learned the FCC had named Laura Smith, an attorney and former lobbyist with significant prior FCC staff experience, to fill Riley’s old job as Special Counsel for Amateur Radio. At press time, there had been no formal announcement from the Commission or indication of when Ms. Smith would begin work, but W5YI was able to confirm that the report is accurate.

We applaud the FCC’s new direction at the top, and hope it will continue once Mr. Genachowski is formally nominated and confirmed. We also applaud Ms. Smith’s appointment as the new ham radio “sheriff” and we look forward to renewed enforcement activities on the amateur bands.

Bumper Satellites

A closing note ... as you may have read in the news (and can read about in more detail in this month’s VHF-Plus column), two communications satellites collided in early February, destroying both of them. Our very modest Professor Emil Heisseluft, whose latest treatise appears in this issue, reminds us that he warned of such a possibility 12 years ago in his article “Little LEO’s Dirty Secret,” which predicted the potential for catastrophic collisions among Low Earth Orbiting satellites. The good professor, once again, was well ahead of his time.

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