

Timing Still Unclear on Powell Replacement (FCC Work Load Could Back Up)

With still no word from the White House on a replacement for outgoing Federal Communications Commission Chairman Michael K. Powell, Washington observers say that it's difficult to predict the timing for not only filling the chairman's spot but the upcoming vacancy on the Commission as well. Most expect the Powell resignation to result in delays on major telecommunications rulings pending before the FCC.

"With Chairman Powell's resignation looming, the Commission's ability to act decisively will definitely be hamstrung," predicts a long-time Washington lobbyist for the telecommunications industry. "Things will be slower until a new chairman is named."

Powell announced on January 21 that he will leave his post, one that he held for four years, in two months. If the Bush Administration names sitting Commissioner Kevin J. Martin to the spot – as some have speculated – then little time will be lost, since Martin would not be required to go through the Senate approval process. But naming someone who is not a sitting commissioner could result in a long approval process, which would begin with the Senate Commerce Committee, and its new chairman Senator Ted Stevens, R-Alaska.

Meanwhile, pending before the FCC are proposed regulations that will have a major impact on the telecommunications industry. In one case, the Commission is considering regulations that could put Voice over the Internet Protocol (VoIP) in the same category as traditional telephone service, meaning that VoIP carriers might be required to pay interconnection service charges. The FCC also has before it proposed rules that would overhaul the universal service fund.

Powell was aggressive in this efforts to deregulate the telecommunications industry. It's unclear what a change in the chairmanship might bring.

Verizon Forges Ahead With Fiber Lines, Offering Video Service

A recent story in the Central New York Business Journal outlines Verizon's expansion of its fiber-based broadband technology into the upstate New York market. The expansion is part of a larger plan announced by Verizon this past October to begin offering its unparalleled high speed service, fiber-to-the-premises (FTTP), in six additional states including Pennsylvania. Verizon began the FTTP deployment in California, Florida and Texas.

In New York, Verizon is working with the state Department of Public Service to bring cable service to municipalities previously served under contracts with either Time Warner Cable or Adelphia. The company is spending \$2.4 billion over the next 13 months to provide video and other services to 3-million homes over its fiberoptic network.

The Business Journal story notes that Verizon's entrance into the cable-TV market will allow it to compete with Time Warner, which is able to bundle its services together for residential and business customers. But Verizon contends that Time Warner's one-price-fits-all approach to telephone service hurts customers.

In its October announcement, Verizon said that it will hire between 3,000 and 5,000 new employees by the end of 2005 to help build the network.

"Verizon fiber all the way to the homes and businesses of our customers means they will have the highest-speed computer connections available from anyone," said Paul Lacouture, president of Verizon Network Services Group. "No other company is offering this cutting-edge data service, and the reliability of fiber also means unprecedented dependability as well."

The new FTTP technology is capable of carrying a wide array of existing and new services, including high-speed broadband products that are far superior and more cost-effective than most services offered today, as well as video applications in the future. FTTP technology uses a fiber-optic cable to replace the existing copper-wire link that now connects homes and businesses to Verizon nationwide network.

Fiber offers tremendous advantages to network operators in addition to new and superior services for customers. For example, fiber offers reliable service in periods of wet weather that can affect copper, and with fiber less day-to-day maintenance is required and repairs are quicker when problems do occur. Verizon fiber engineering eliminates electronics between the customer and the network so that problems of providing repairs and power for equipment in the field are reduced.

Public Utility Commission Implementing Portions of Chapter 30; Summary of Law Released to Advisory Council

At its January 25 meeting, the Pennsylvania Public Utility Commission's (PUC) Consumer Advisory Council reviewed a summary of the recently enacted law that re-authorizes Chapter 30. The PUC is charged with implementing sections of the new law.

Among other things, the summary notes that the new law seeks to encourage earlier completion of network modernization plans (NMPs) by providing local exchange carriers (ILECs) with economic incentives and a reduced regulatory burden. The key provisions under network modernization include the following:

Continuity of existing Commission-approved alternative regulation (in the form of price cap regulation) and NMPs to provide broadband deployment (BB) by 2015;

Options to encourage rural and non-rural ILECs to complete their NMPs earlier than 2015 by offering the reduction or elimination of the productivity offset;

Establishment of a Bona Fide Request (BFR) Program by which customers can request deployment of advanced services;

Establishment of a Broadband Outreach and Aggregation Fund (BB Fund) and Education Technology Fund (E-Fund) and discount BB services to schools;

New limits on Commission-mandated general filing requirements;

Streamlined procedures for declaration of competitive services;

Commission authority to establish and maintain quality of service standards;

Establishment of automatic notification of Lifeline eligibility and elimination of restrictions on vertical services

Taxing Telecommuters Possible

The New York Court of Appeals recently heard a case of critical importance to the future of telecommuting in New York state, and perhaps the rest of the country.

Although Thomas L. Huckaby of Tennessee spends little time in New York, does not live in New York and does virtually no work in New York, New York claims it is entitled to tax 100 percent of his income because his employer is based in Queens. An appellate court has unanimously held that the state is right.

Huckaby v. New York State Division of Tax Appeals is being watched closely by states attempting to address the modern reality of telecommuting with tax codes written when the idea of telecommuting was futuristic.

The question is: To whom does a telecommuter pay state income tax? Most states resolve the issue by simply apportioning income.

For example, if an employee works 80 percent of the time in his or her own state and 20 percent of the time in the employer's state, 80 percent of his or her income is taxed by the home state and 20 percent is taxed by the employer's home state.

New York, however, has different ideas on how to tax out-of-state residents.

In New York, if the employee works out of state for convenience rather than employer necessity, the state claims it is entitled to tax 100 percent of the income earned. Since some states, such as Connecticut, base their income tax on where the taxpayer lives rather than where the income is earned, that means some workers are subjected to double taxation on the same income.

Virtually all of New York's neighbors have urged it to revise its tax code and eliminate the convenience of the employer test, but Albany is loathe to abandon a source of income that brings in around \$100 million annually.

U.S. Sen. Christopher Dodd, D-Conn., has gone a step further with his Telecommunications Tax Fairness Act. Dodd's bill would bar states like New York from collecting taxes for work performed out of state.

The bill was prompted by the case of Edward Zelinsky, a professor who teaches tax law at the Benjamin N. Cardozo Law School in Manhattan but frequently works from his home in New Haven, Conn. Zelinsky challenged New York's tax scheme but lost at every level of state court and then was denied certiorari by the U.S. Supreme Court.

Huckaby, however, raises different issues, which Peter L. Faber of McDermott Will & Emery in Manhattan hopes will yield a different result.

Unlike Zelinsky, Huckaby is a telecommuter. Also unlike Zelinsky, Huckaby's principal place of business is outside of New York - so far outside New York that he rarely and only indirectly benefits from government services in the state. Huckaby lives approximately 900 miles from Manhattan.