



Post-Election Analysis What a New Administration Means for the FCC ~ BY ROBERT GURSS

I've recently been asked one question more frequently than others: "What will the impact of the recent election be on the FCC and public safety policies?" Now that the long election season is finally behind us, here's my best answer: There will be major changes at the FCC, but with less impact on public safety issues than other policy matters. The most significant consequence of this (or any) election will be an inevitable delay in FCC actions.

The FCC consists of five commissioners, no more than three of whom can be of the same political party. They are nominated by the president and confirmed by the Senate. The president can also decide the chair. The commissioners serve five-year terms, which are staggered so that only one commissioner's term expires each year. If a commissioner is not reconfirmed or replaced at the end of their term, they can continue in office until Congress adjourns. A commissioner can also serve out their term, notwithstanding a change in the White House.

So what does that mean for the current FCC, which includes three Republicans (Chairman Kevin J. Martin and Commissioners Deborah Tate and Robert McDowell) and two Democrats (Commissioners Michael Copps and Jonathan Adelstein)? Tate's term has already expired, so she is expected to leave the Commission once Congress adjourns. Her seat cannot be filled right away, because President Obama's nomination for a new commissioner will require Senate confirmation. (There are no "acting commissioners.") Chairman Martin will probably resign because he would have to give up the chairmanship. Some observers believe that President Obama will then name Copps as chairman or at least as interim chair. There will probably be two seats to fill (Martin's and Tate's), with one being another Republican and the other a Democrat,

thus, changing the 3-2 balance in favor of the president's party. The new Democrat might also become the chair.

This description may suggest substantial presidential influence over the Commission, but in reality the FCC is usually more responsive to Congress. Indeed, the FCC is sometimes described as a "creature of Congress," because all of its authority and funding comes from the Congress. The FCC is an independent regulatory agency and is not part of the executive branch. Thus, the solidification of Democratic control in the House and Senate, along with the shift in the FCC majority, will likely increase the ability of the Democratic committee leaders to influence the FCC and reduce the influence of the Republican minority.

The actual impact of these changes in the White House and Congress is hard to gauge, because public safety communications policy tends to be nonpartisan. For example, both Commissioner Copps and Chairman Martin identify themselves strongly with their political party (one need only compare their office decorations—FDR and Truman campaign memorabilia for Copps, and George Bush photos for Martin), but they have worked closely together on many public safety issues in recent years. However, there are significant differences between Democrats and Republicans on many of the broader regulatory issues facing the FCC, and those issues have increasingly involved public safety components.

In addition to changes among the commissioners, various FCC staff moves are also likely. The legal advisors to each commissioner have considerable influence, and movement among their ranks had already begun prior to the election. Although bureau chiefs (e.g., Derek Poarch who leads the Public Safety & Homeland Security Bureau) serve at the discretion of the chair, they sometimes carry over into at

least a portion of new chair's tenure. Some election-year job shuffling among mid-level staff is also common, but lower level staff generally stay in place.

That brings us to what may be the biggest impact that an election has at the FCC: It creates delays. Significant changes in staff, combined with leadership changes and potential shifts in policy direction, inevitably cause delays in decision making on both policy and routine matters. New staff, especially those coming from outside the FCC, need time to learn the ropes, and new leadership may want to revisit decisions that are still in the pipeline. *One caveat:* Sometimes new leadership will try to "clear decks" of the backlog from the prior administration.

NEW 800 CHANNELS

The FCC finally issued its revised ruling regarding Sprint Nextel's release of its 800-MHz band "interleaved" (809-815/854-860 MHz) channels. Those Sprint Nextel channels will become available for *new* public safety licenses (not to replace rebanded channels). Some interleaved channels will be released immediately, and others will be available once certain rebanding thresholds are met in each region. However, the Commission also adopted a hard date of March 30, 2010, when all of Sprint's nonborder, interleaved channels must be released, regardless of the status of rebanding. The Commission also said that it would entertain requests for accelerated release of the channels when a public safety agency demonstrates a "compelling need." **||PSC||**



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