

## Communications

### **Successor to FCC's Genachowski Will Lead an Agency in Transition**

**F**ederal Communications Commission Chairman Julius Genachowski's March 22 announcement that he will resign from the agency sets the stage for a succession debate that is likely to determine the future course of an agency still trying to bring communications policy in line with a broadband-centric world.

One of the many challenges confronting Genachowski's replacement is finalizing rules for first-ever "incentive" auctions of spectrum, in which the FCC will try to reclaim airwaves now used for broadcast television and auction them off to wireless carriers for use in mobile broadband networks, with a portion of the proceeds paid to the broadcasters. The auctions, which Genachowski has tentatively slated to be held in 2014 at the earliest, have been described by economists and engineers as the most complex ever to be attempted by a federal government in the world.

The FCC also must decide whether to relieve telephone companies of the requirement to maintain their century-old networks of copper wires that wind their way through the country, a system widely seen as obsolete in the face of newer, all-IP, or internet protocol, networks.

On top of that, the next FCC chairman will inherit the task of carrying forward Genachowski's major restructuring plan to convert the Universal Service Fund, a roughly \$4.5 billion-a-year rural telephone-subsidy fund, into a new broadband fund.

Lastly, and perhaps most importantly, the next top chief of the FCC will be forced to reckon with a federal appeals court ruling on agency's *Open Internet* order—which, if overturned as legal observers expect, would mean every company that provides a pipeline through which consumers gain access to the internet would be free to block websites or treat their own web content better than that of rivals.

**Focus to Remain on Broadband.** In a March 22 interview with BNA, Genachowski said he expects the work of the agency to continue to focus around broadband—both hastening the deployment of adoption of wired broadband services and freeing spectrum for future mobile broadband uses.

"There's so much that the agency has done over the last four years, and I think we'll see continuity and a lot more work to do," Genachowski said.

In listing his biggest accomplishments as FCC chairman over the last four years, Genachowski took pains to credit his staff for their contributions to the agency's first National Broadband Plan, reform of the Universal Service fund, and policies to open more spectrum for both commercial mobile broadband networks and for applications such as Wi-Fi.

He further cited FCC's enactment of net neutrality rules in 2010, and the agency's decision in 2011 to block AT&T Inc.'s proposed \$39 billion acquisition of T-Mobile USA Inc., two actions that fueled animosity between his office and congressional Republicans.

But more broadly speaking, Genachowski may be remembered most for trying to modernize FCC policy to provide incentives for investment and innovation in the new dominant communications technology of our era: broadband.

"Over the last four years, Julius has brought to the Federal Communications Commission a clear focus on spurring innovation, helping our businesses compete in a global economy and helping our country attract the industries and jobs of tomorrow," President Obama said in a statement March 22. "Because of his leadership, we have expanded high-speed internet access, fueled growth in the mobile sector, and continued to protect the open internet as a platform for entrepreneurship and free speech. I am grateful for his service and friendship, and I wish Julius the best of luck."

**Wheeler Seen as Leading Candidate for Top FCC Job.** Now, with Genachowski's departure official, all eyes have turned to that question of who will replace him, and when.

The leading candidate appears to be Tom Wheeler, managing director of the venture-capital firm Core Capital Partners (37 DER A-3, 2/25/13).

Wheeler is highly regarded within the communications sector, having served as the chief executive of both CTIA-The Wireless Association and the National Cable Television Association.

Wheeler was among Obama's earliest backers and biggest fund raisers; in 2009, he led the Obama-Biden Transition Project's Agency Review Working Group in charge of transitions for the science, technology, space, and arts agencies. He now serves as chairman of the FCC's Technological Advisory Council.

And despite the fact that Wheeler has strong industry ties, he has not been a registered lobbyist since 2005, and therefore would not be covered by Obama's "revolving door" executive order signed the day after his Jan. 20, 2009, inauguration.

As for policy, Wheeler's positions have for the most part dovetailed with Genachowski's.

In 2011, the Technological Advisory Council recommended that the agency not only begin preparing for the end of the public-switched telephone network but also begin rethinking spectrum policy.

"It is time to abandon the concept of perfection in spectrum allocation," Wheeler wrote in an Oct. 3, 2011 blog post titled "Updating Spectrum Policy." "The rules for 21st century spectrum allocation need to evolve from the avoidance of interference to interference tolerance. We've seen this evolution in the wired network; it's now time to bring the chaotic efficiency of Internet Protocol to wireless spectrum policy."

In the post, he gave his support to the idea of incentive auctions, but said the FCC and the Commerce Department's National Telecommunications and Information Administration must look for opportunities to innovate on spectrum held by federal agencies, which could include, among other things, sharing between the government and industry.

"The government is the single largest user of spectrum; there is ample opportunity for experimentation and innovation," he wrote. "Historically communications innovation has started with government initiatives. The telegraph began with a government-sponsored trial, the railroad grew because of government incentives, digital packetization was developed on a government grant and ultimately implemented by the government to evolve into the internet. Government has always led the path to new communications realities. Now is the time to continue that leadership legacy with spectrum."

Other candidates to become FCC chairman in the second Obama term include Larry Strickling, the head

of NTIA; Jason Furman, assistant to the president for economic policy and the principal deputy director of the National Economic Council; Karen Kornbluh, U.S. ambassador to the Organization for Economic Cooperation and Development; and Catherine Sandoval, a Santa Clara University Law School professor and first Hispanic commissioner of the California Public Utilities Commission (218 DER A-14, 11/13/12).

Wheeler, however, is seen as a top candidate.

Genachowski, who is a close friend of Obama, declined to comment on whether he would offer recommendations to the president on his replacement.

**Easing Confirmation of Replacements.** His resignation came in the same week that senior GOP Commissioner Robert McDowell announced his plan to leave (55 DER A-24, 3/21/13), and it is believed that Genachowski waited until McDowell resigned to give Obama the option to move two nominees through the Senate confirmation process instead of one. Typically, FCC commissioners and chairmen have been confirmed more easily as a package of a Democrat and a Republican.

In the interim, Democratic FCC Commissioner Mignon Clyburn is seen as the likely candidate to become acting chairman until the president makes his selection and the nominee is confirmed by the Senate.

Speaking to reporters March 22, Clyburn declined to comment on whether she has expressed interest in the job, or whether the president should nominate a woman, as some civil rights and women's groups have advocated.

"I am committed to public service; I have been for a number of years, and I will continue to serve at the will of the president in any capacity in which he chooses," Clyburn said. "There are very much a lot of talented individuals out there, very much a lot of talented women. I know the president will make the right call."

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