

7 Telecom Officials Attorneys Need To Know

By **Daniel Wilson**

Law360, Washington (June 10, 2015, 2:09 PM EDT) -- Although Federal Communications Commission Chairman Tom Wheeler and four other commissioners draw the lion's share of attention from the telecommunications industry, they are far from the only officials industry players should pay attention to, attorneys say.

From lesser-known officials at the FCC to other federal agencies and working groups, the industry can be affected by the decisions of a range of officials and staffers with significant input on federal regulations and policy.

This includes the FCC's bureaus, particularly its seven bureau chiefs, who run a close second to the agency's "8th Floor" — the commissioners and their key staff — in terms of influence, attorneys say. Although their degree of influence and importance can vary depending on the particular issues they are responsible for, the bureaus and their various divisions usually take the lead in writing the rules and regulations that the commission considers.

"Some have more sway than others, but by and large, they're incredibly important," said Samuel L. Feder, Jenner & Block LLP partner and co-chairman of its communications, Internet and technology practice.

Here are seven lesser-known telecoms officials on whom attorneys say they keep an eye:

FCC Consumer and Governmental Affairs Bureau Acting Chief Alison Kutler

Freshly appointed as acting chief on June 1, Alison Kutler is only just getting settled into her new role but is expected to make a big mark on a number of issues important to the telecommunications and broadband industries, including adjustment and enforcement of regulations related to the Telephone Consumer Protection Act and CAN-SPAM Act.

Kutler's background involves a range of senior government relations and public policy roles, including in private industry at Visa Inc. and at the mining giant Rio Tinto Group, in the public sector at the Export-Import Bank and International Trade Administration and in private practice at Sonnenschein Nath & Rosenthal LLP, now part of Dentons.

She will be called on to use this policy experience across a broad range of issues at the Consumer and Governmental Affairs Bureau, where she will



Alison Kutler

serve as the top official for the commission's consumer-facing work, as well as in her adjunct role as Wheeler's special adviser for "digital opportunity."

The bureau, through its various divisions, is tasked with developing the FCC's consumer policies for all commission-regulated entities — including common carriers, wireless service providers and cable companies — and ensuring consumers are considered in other FCC policymaking, as well as resolving consumer complaints over billing anomalies, telemarketing and similar issues.

Kutler will likely be tasked with overseeing the modernization of rules surrounding the TCPA, with various industry groups having petitioned the commission in recent years to overhaul its TCPA regulations, arguing the rules have not kept pace with the explosive growth in the use of mobile phones or with other changes in technology, since the law's passage in 1991.

FCC Wireline Competition Bureau Chief Matthew DelNero

Another newly appointed bureau chief, Matt DelNero oversees the commission's efforts to increase access to affordable broadband and voice service and maintain competition in the communications industry through merger review and other powers.

DelNero has been in charge of the Wireline Competition Bureau since May 22, after previous chief Julie Veach stepped down, having served as Veach's deputy since February 2014. He had previously worked as a partner in Covington & Burling LLP's communications and privacy practices and as an adjunct professor of law at George Mason University.



Matt DelNero

Prior to his elevation, DelNero had already made a name for himself inside the FCC, with no less a figure than Wheeler describing him as a "key player in a series of major policy initiatives" in the April announcement stating that DelNero would be elevated to the bureau chief's role.

As part of its remit, the bureau reviews the rates charged by common carriers for interstate and international services, as well as related wholesale and interconnection services. It also oversees various affordable communications programs for schools, public libraries and rural and low-income consumers and is responsible for phone numbering policy.

Perhaps its most prominent responsibility is to review applications from wireline carriers for proposed mergers and other transfers of control, such as the recent proposed tie-up between Comcast Corp. and Time Warner Cable Inc., abandoned after opposition from both the FCC and U.S. Department of Justice. This review process is a potential stumbling block for any major transaction proposed by telecommunications companies, attorneys said.

FCC Wireless Telecommunications Bureau Chief Roger Sherman

Roger Sherman has led the bureau since November 2013, giving him significant sway over policy development for all wireless services that come under the FCC's remit, from ham radio to mobile communications and mobile broadband services, including its lucrative spectrum license auctions, the most recent of which reaped tens of billions of dollars in revenue.

Prior to joining the commission, Sherman had spent more than a decade as director of regulatory affairs at Sprint Corp., in between extensive stints on Capitol Hill, including as the Democratic chief counsel to the House Energy and Commerce Committee — the most prominent House committee for the consideration of telecommunications-related policy — and time in private practice at Wiley Rein LLP.



Roger Sherman

His bureau is responsible for a wide range of issues, such as overseeing the nearly 2 million outstanding wireless licenses, the siting and registration of cellphone towers and mobile phone roaming policies, as well as producing the commission’s annual Mobile Wireless Competition Report.

And attorneys noted that the importance of Kutler, DelNiro and Sherman, as well as their bureau staff, extends beyond their immediate policy and oversight responsibilities as they continue to play a key role by providing guidance and interpretation for resolving issues that arise with rules that are passed by the commission.

“They’re not going to fundamentally alter any commission ruling or regulation, but where there are ambiguities in those rules ... senior staff and bureau chiefs can be very helpful in addressing those ambiguities,” Marshlian & Donahue LLC managing partner Jonathan S. Marshlian said.

FCC Enforcement Bureau Chief Travis LeBlanc

Although attorneys were loath to specifically rank the bureau chiefs in terms of importance, one name came up again and again: Travis LeBlanc, chief of the Enforcement Bureau.

LeBlanc — like other bureau chiefs — is an attorney by trade, who has previously worked in private practice at Williams & Connolly LLP and Kecker & Van Nest LLP, in the U.S. Department of Justice’s Office of Legal Counsel and as a top deputy to California Attorney General Kamala Harris.



Travis LeBlanc

He has wasted little time in seeking to reshape the bureau, the FCC’s largest organizational unit, since his appointment in March 2014, initially as acting chief. In his time with the commission, he has staffed up the bureau with more enforcement attorneys, many of them former prosecutors, and has shown a strong willingness to aggressively pursue cases, attorneys said.

“[The bureau]’s really taking a more aggressive, more proactive approach to enforcement, in various contexts,” Marshlian said.

LeBlanc has honed in particularly on issues perceived as negatively affecting customers, such as privacy breaches or overbilling, and has provided much less flexibility to companies to resolve enforcement issues than had often been allowed in the past, such as refusing to allow them to disclaim rule violations as part of settlement deals, according to attorneys.

As a result, not only has the amount of money reaped from fines and settlements increased — reaching

close to \$400 million in LeBlanc's time in charge — but companies have, in some cases, also been opened up to broader legal liability, making it increasingly important to not get on the bureau's bad side, they said.

James Cawley and the Federal-State Joint Board on Universal Service

James Cawley, a Pennsylvania Public Utility Commission commissioner, is one of the two co-chairs of the Federal-State Joint Board on Universal Service alongside FCC Commissioner Jessica Rosenworcel, which is responsible for the oversight of the largest U.S. telecom-related public service fund, the Universal Service Fund.

Cawley has had multiple stints on the Pennsylvania PUC over a multidecade career, including as chairman, in between roles as counsel in state government and in private practice, and has served on the joint board since 2010, before being elected joint chairman in 2011.

The joint board — with Cawley, Rosenworcel and three other state officials sitting alongside two other FCC commissioners and consumer advocates — makes recommendations on how to secure income for the service fund and on how to spend the money the fund collects.

Despite coming under the auspices of the FCC, its mix of officials and advocates gives it different concerns and viewpoints to those of its federal contingent, which alone would make its collective views worth paying attention to, attorneys said.

But adding to the board's importance to the industry is that the Universal Service Fund rakes in billions of dollars each year from charges imposed on telecommunications companies, and in turn pays out billions of dollars through its four access programs, attorneys noted.

A particularly important recommendation could come from the board soon regarding whether to extend fee collection under the fund to cover broadband services in order to make up for declining revenues and reflect a growing shift to Voice over IP, or VoIP, and other internet-based communications services, according to attorneys.

The FCC temporarily exempted broadband services from the requirement to pay into the fund in its recent Open Internet Order, perhaps fearing more political blowback on what was already a contentious issue, attorneys noted. But the issue is not settled, and a recommendation on how to proceed has been left in the hands of the board to decide.

Jessica Rich and the Federal Trade Commission

Jessica Rich heads up the Federal Trade Commission's Bureau of Consumer Protection, putting her in charge of the arm of the FTC that has the most impact on the communications industry, with its importance having only grown in recent years, attorneys said.

Rich was appointed to head the bureau in June 2013 after working as a staff attorney with the FTC for more than 25 years, focusing on issues such as privacy, fraud and emerging technologies — all areas that have



James Cawley



Jessica Rich

significant intersection with the telecommunications industry.

Although the FTC and the FCC have been somewhat at odds over privacy and data security enforcement issues stemming from the FCC's recent Open Internet Order, the agencies are nonetheless working increasingly hand-in-hand to address other consumer issues such as phone bill "slamming" and "cramming," attorneys claimed.

"The FTC has taken on increasing importance with respect to entities also subject to FCC jurisdiction," Wiley Rein LLP partner Eve Klindera Reed said.

Recent collaborations between the FTC and the FCC, which have also variously involved state attorneys general and the Consumer Financial Protection Bureau, include a combined \$158 million in settlements reached with Verizon Wireless and Sprint Corp. and a \$105 million settlement with AT&T Inc., both over alleged cramming.

Scott Scheele and the DOJ's Antitrust Division

Chief of the Telecommunications and Media Enforcement Section of the DOJ's Antitrust Division, Scheele is another key player for a limited but important set of telecommunications issues, particularly when the DOJ is called upon to coordinate with the FCC and the FTC on merger reviews, attorneys said.

Scheele is an experienced attorney with a strong grounding in telecom and technology issues, as well as antitrust issues, having held multiple roles within the Antitrust Division, including as a litigator and as assistant chief of the division's Networks and Technology Section.

As chief of the Telecommunications and Media Enforcement Section, he oversees the arm of the DOJ responsible for coordinating with other relevant agencies to add its view on competition issues related to potential mergers and acquisitions — bringing a different angle to the FCC's "public interest" standard — as well as weighing in on issues such as alleged abuses of market power.



Scott Scheele

Recently, the department has exercised its review power in a number of proposed telecommunications mega-mergers, including the failed Comcast-Time Warner Cable deal, as well as the proposed \$55 billion merger between Charter Communications Inc. and Time Warner Cable and the \$48 billion AT&T Inc.-DirecTV merger deal, both of which are still pending.

The DOJ, through various U.S. attorneys' offices, also provides the legal muscle to back FCC enforcement rulings when required, Reed noted, something that may come to the fore more with the increasingly firm stance taken by the Enforcement Bureau under LeBlanc.

"The FCC does not have independent litigation authority," Reed said. "Once it's issued a proposed fine, if that party does not pay forfeiture, the FCC is at the behest of the DOJ [to file suit]."

--Editing by Christine Chun.