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FCC Top Enforcer Moves To Private Communications Law Practice

The Editor interviews David H. Solomon, Partner, Wilkinson Barker Knauer, LLP. Mr. Solomon joined the firm in June 2005 after an 18-year career at the Federal Communications Commission. From November 1999 to May 2005, Mr. Solomon was Chief of the FCC's Enforcement Bureau.

Editor: Please tell our readers about your professional background.

Solomon: After graduating from Harvard College in 1976, I worked on Capitol Hill for two years before law school. I've practiced communications law for the 24 years since I graduated from Harvard Law School in 1981. After six years of private practice in a Washington, D.C. law firm, with a particular focus on broadcast and cellular radio clients, I joined the FCC Office of General Counsel (OGC) as Assistant General Counsel in 1987. I became FCC Deputy General Counsel in 1994. In November of 1999, I became the first Chief of the FCC Enforcement Bureau and served in that capacity until May of this year. I joined Wilkinson Barker Knauer in June.

Editor: What were your key responsibilities in your various positions at the FCC?

Solomon: As Assistant General Counsel from 1987 to 1994, I supervised the Commission's Agenda Review Team, which had responsibility for reviewing all Commission decisions to maximize their chances of being sustained in court. More



David H. Solomon

generally, I provided legal advice to the General Counsel, the Chairman and Commissioners, Bureau and Office Chiefs and others at the Commission on a wide variety of communications and administrative law issues.

As Deputy General Counsel from 1994 to 1999, I had responsibility for overseeing OGC's provision of legal advice to the Chairman and Commissioners, Bureau and Office Chiefs and others at the Commission. In this role, I remained actively involved in the agenda review process, particularly on highly complex or highly sensitive matters. I also worked closely with OGC's litigators on cases involving Commission decisions in which I had been extensively involved. I was also generally responsible for the day-to-day management

of OGC, which included approximately 75 people. In addition, as a special project for Chairman Bill Kennard, I oversaw the Commission's first biennial regulatory review.

When Chairman Kennard decided to elevate the role of enforcement at the Commission in an era of increasing competition and deregulation, he asked me to plan what the new Enforcement Bureau should look like and to be its first chief.

As Chief of the 350-person Enforcement Bureau, I was responsible for overseeing the FCC's enforcement activities across a wide variety of areas – for example, telephone competition, universal service, wireless, broadcast, satellite, equipment, consumer protection and public safety. After Michael Powell became Chairman in 2001, the responsibilities of the Enforcement Bureau expanded even further. For example, the Commission gave the Enforcement Bureau responsibility for the agency's telephone company auditing program and for additional cable television matters. In addition, after 9/11, when the Commission set up an Office of Homeland Security to make homeland security a higher priority issue at the FCC, the Commission assigned that responsibility to the Enforcement Bureau as well. Also, as a special project for Chairman Powell, I helped coordinate the Commission's work on certain highly controversial universal services issues, particularly involving the schools and libraries discount program.

Editor: What were some of the matters that you found most satisfying in your

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various FCC jobs?

Solomon: While in OGC, I was involved in virtually every one of the 300-400 decisions issued each year by the full Commission. One of the most interesting and challenging aspects of the job was that on any given day I could, for example, simultaneously be at the center of key issues in common carrier law, key issues in media law and key issues in wireless law.

I found particularly satisfying my involvement in OGC at the center of implementation of major changes in the Communications Act – the Cable Television Consumer Protection and Competition Act of 1992, the Omnibus Budget Reconciliation Act of 1993 and the Telecommunications Act of 1996. These three statutes collectively revolutionized FCC regulation of the media, telephone and wireless industries, and established the FCC's program for auctioning spectrum licenses. The Commission faced an incredibly broad array of complex and challenging legal issues in dozens or even hundreds of proceedings generated by these statutes. I think OGC did a superb job in helping the Commission navigate through difficult legal waters and achieve generally legally sustainable policy results. It was quite exciting and rewarding to be at the heart of the action.

My job as Chief of the Enforcement Bureau allowed me to continue to work on a wide variety of issues covering the vast range of the FCC's jurisdictional responsibilities. It was very satisfying to be involved in major enforcement activities in so many different important areas, including telephone competition, universal service, consumer protection (for example, do-not-call, junk fax and slamming), public safety/homeland security (for example, Enhanced 911, tower safety and interference), broadcast indecency, payola, children's television commercial limits and television captioning.

In an era of increased competition and deregulation in communications, the FCC now regards compliance with existing statutory and regulatory provisions as critically important to the public interest. As the first Chief of the Commission's Enforcement Bureau, my primary tasks, broadly speaking, were to transform the FCC into a serious, credible and professional enforcement agency and to ensure that the various industries regulated by the FCC recognize the importance of remaining in compliance with the FCC's rules. With the strong leadership and support of Chairman Kennard, Chairman Powell and the other Commissioners (including cur-

rent Chairman Kevin Martin), I think we achieved this goal.

Editor: How have your experiences at the FCC provided you with expertise and insights that will help your clients at Wilkinson Barker?

Solomon: Setting up the Enforcement Bureau and running it for its first five and a half years have given me a special understanding of the laws and policies that the FCC enforces, as well as of how the enforcement process works. If a client is the subject (or potential subject) of an FCC complaint or enforcement action, my experiences put me in an ideal position to help regardless of the substantive issue involved.

As Congress considers new reforms to the Communications Act, I will use the insights gained through my involvement in the Commission's implementation of key new communications statutes such as the 1992 Cable Act, the 1993 Budget Act and the 1996 Telecom Act, as well as my work on a variety of legislative issues at the Commission over the years, to assist clients. This background also should be useful when the Commission turns to implementing any statutory changes enacted by Congress.

More generally, I was fortunate enough in my years at the FCC to have gained substantive expertise in virtually all areas of communications law. My broad understanding of the legal landscape and how various issues at the FCC interrelate will be of great help to clients given the increasingly competitive nature of communications markets and increasing technological convergence. My experience with the FCC processes and procedures as well as FCC-related administrative law issues will also enable me to assist clients effectively and efficiently.

At bottom, all of my jobs at the FCC have been focused on achieving fast, high quality and, perhaps most important, practical and commonsense solutions to complex communications law and policy issues. I understand better than most how the FCC works and how to get things done quickly at the FCC in a way that will achieve practical results and be legally sustainable. Ultimately, serving clients is about solving thorny problems and getting results and that's what my whole career at the FCC has been about.

Editor: What do you think will be active areas of FCC enforcement in the next couple of years?

Solomon: I think public safety/homeland security enforcement is likely to be increasingly important. This will likely include, for example, strong enforcement of the Commission's new rules regarding provision of 911 service by Voice over Internet Protocol (VoIP) providers, including requirements regarding what telephone companies must do to assist VoIP providers in this regard. I expect the Commission will likely continue to remain vigilant as well regarding implementation of the Enhanced 911 rules relating to wireless carriers and any rules it adopts under the Communications Assistance for Law Enforcement Act (CALEA).

In the media area, it's clear that the FCC is going to continue to give high priority to enforcement of its broadcast indecency policies. I think payola/sponsorship identification enforcement is going to be a key emerging area, as will television captioning enforcement.

In the telephone field, I think it's likely that universal service enforcement will continue to be important and may even be stepped up. The Commission may also put more emphasis than in the past on the formal common carrier complaint process for resolving disputes among telephone companies. Disability enforcement is also likely to be an important area should problems arise.

Finally, as the Commission increasingly relies on unlicensed spectrum for technological advances, it will likely become more interested in ensuring compliance with interference and power rules.

Editor: What made you decide to go into the private practice of communications with Wilkinson Barker when you decided to leave the FCC?

Solomon: Communications law continues to be an area that is constantly evolving in response to an array of technological and marketplace changes, so it is an exciting area in which to continue working. What I have enjoyed most about my career is devising effective and practical solutions to complex legal problems. Private practice provides an excellent opportunity for me to apply my problem solving abilities in a different context. I chose to join Wilkinson Barker because the firm is made up of extremely talented communications law attorneys who are strongly committed to achieving practical solutions for their clients in an efficient and legally sustainable manner. I think it will be an excellent fit in terms of working together to serve the firm's existing and future clients.