Instructor:
Professor Rob Frieden
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Class Hours: Tues./Thurs. 1:00-2:15 p.m. (258 Katz Carlisle/241 Katz UP)
Office Hours: Monday 9-11 a.m.; Wed. 9-11 a.m. and by appointment

Course Materials:

The readings for the class are available as World Wide Web links and portions of Benjamin, Lichtman, Shelanski and Weiser, TELECOMMUNICATIONS LAW AND POLICY (2nd ed. 2006) and the 2010 supplement (optional as I will provide web links).

Overview

Careers in telecommunications and information processing require interdisciplinary skills including the ability to integrate an understanding of law with policy making components that include economics, technology management, business imperatives, the public interest, and politics. This course aims to present, investigate, and debate ongoing or anticipated conflicts in specific telecommunications law and policy issues. The resulting confrontations may stem from technological innovation, real or perceived changes in the marketplace, or the imperatives of prevailing regulatory, political, and economic philosophies. Conflict resolution often results from persuasive advocacy, coalition building and accommodation of outsiders with new perspectives or entrepreneurial visions, rather than solely applying legal precedent. But at other times, even entrepreneurs, who have devised a superior product or service, fail to achieve market success, because the regulatory process hinders, or obstructs commerce.

Course Format

We will examine and debate a series of spectrum management, broadcasting, cable television, common carrier, Internet, resource allocation, and technology planning issues. Students will prepare for each class by reading the assigned materials and generally taking responsibility to understand, or pose questions about the positions of all major constituencies and stakeholders involved. I value class participation very highly. You can bring computers into the classroom for purposes of taking notes only.

In light of the mixed composition of students in this course, as well as the interdisciplinary nature of the material covered, you may find yourself at both a comparative advantage and disadvantage. I will emphasize the legal aspects, but you will find much of the materials require an understanding of the technologies used. Law students will see elements of administrative, antitrust, law & economics, constitutional (First Amendment) and other law
courses addressed in the cases we will examine. Telecommunications students already may have reviewed some of our cases, albeit not at the level of scrutiny we will use.

**Final Exam or Paper**

The final, “open-book” exam for this course will examine issues we have covered extensively in class. During the exam, you may access any written materials, notes, books, and outlines. However you may not use any electronic device including cellphones. You may use a computer as a word processor, but for no other purpose.

In lieu of a final exam, you can prepare and possibly present in class a paper (20-25 pages) that examines a telecommunications or information policy issue of your choice. You must review the recent scholarly and trade literature on the chosen paper topic. Your paper should demonstrate a clear understanding of the primary issues at stake, and it should go further by suggesting how to resolve problems. In preparing to write this kind of paper you should expand your search to include case law, journal articles and World Wide Web sites.

The litmus test of a good paper will be whether it makes a contribution to the body of knowledge on a topic, rather than merely distill what is already available. Please type your papers. You should comply with the following schedule to ensure ample time to prepare a worthy project:

Fifth week of classes: Propose a topic in a one paragraph abstract.

Ninth week of classes: Deliver to me an outline and bibliography of primary source materials you will use.

**Introduction to Telecom Law and Policy (Jan. 11, 13)**

**Assignment:**


We begin the course by examining the legal and regulatory classification of all the different media and communications covered in the course: broadcasting, cable television, print, telephone and the Internet. Traditionally laws and regulations, along with their judicial interpretation, have used a “silo” based approach that assumes near mutually exclusivity, e.g., telecommunications service or information service) applies different regulations. For example, broadcast regulation impacts content, industry structural and business while telephone, common carrier regulation primarily addresses price and availability of service. Throughout the course we will need to keep in mind the impact of technological and market convergence on service-specific laws and regulations.

**Recommended Reading:**


Kevin Ryan, *Communications Regulation--Ripe for Reform*, 17 COMMLAW CONSPECTUS 771 (2009).


The Role of the Federal Communications Commission and Its Intellectual/Policy Drivers (Jan. 18); no class on Jan. 20

Assignment:

TLP pp. 51-66

Recommended Reading:

TLP 2010 Supplement pp. 8-16


Spectrum Management (technology strategies) Jan. 25, 27

Assignments:


TLP pp. 69-77, 83-105;

Recommended Reading:


Spectrum Management (administrative strategies) Feb. 1, 3

Assignments:

Recommended Reading:


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**Broadcast Regulation (economic and structural) Feb. 8**

**Assignments:**

TLP pp. 336-345, 389-392, 403-434

Recommended Reading:


Broadcast Regulation (content) Feb. 10, 15

Assignments:


Recommended Reading:


Emerging Multi-channel Video Programming Distribution Marketplace (Direct Broadcast Satellite, Cable Television, IPTV) Feb. 17, 22


Recommended Reading:


Telephony Regulation--Tech primer, history, AT&T Divestiture Feb. 24

Assignments:

TLP pp. 713-724, 724-739
Telephony Regulation—Rate regulation, incentive regulation and universal service
March 1

Assignment:

TLP pp. 747-769

Recommended Reading:


Telephony Regulation-- Telecommunications Act of 1996—initiatives and failures, promoting local exchange competition, interconnection and network unbundling
March 3, 15

Assignments: TLP pp. 787-789, 799-825, 828-848, 771-781

Recommended Reading:


Telephony Regulation—Universal Service reform, impact of Voice over the Internet Protocol telephony March 17

Assignments: TLP pp. 863-881, 1028-1047, TLP 2010 supp. 233-244, 244-251

Recommended Reading:


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**Stimulating Access to Affordable Broadband Service March 22**

**Assignment:**


**Recommended Reading:**
Internet Regulation—which regulatory model applies? March 24

Assignments: TLP pp. 927-935

Recommended Reading:


Advanced Services Regulation—scope of Title I “ancillary jurisdiction”; regulation of information services, regulatory asymmetry, further problems with silo regulation, impact of technological and marketplace convergence March 29, April 5

Assignments: TLP pp. 955-972, 990-1007

Recommended Reading:


Class Nineteen: Network Neutrality April 7, 12


**Recommended Reading:**


Rob Frieden, *Network Neutrality or Bias?--Handicapping the Odds for a Tiered and Branded Internet*, 29 HASTINGS COMM. & ENT L.J. 171 (Winter, 2007).


J. Gregory Sidak, *A Consumer-Welfare Approach to Network Neutrality Regulation of the*


**Telecommunications Merger Review April 14**


**Recommended Reading:**


**The Role (if any) of Antitrust Enforcement in Telecommunications April 19**


**Recommended Reading:**

Philip J. Weiser, *Reexamining the Legacy of Dual Regulation: Reforming Dual Merger Review*


Adam Candeub, Trinko and Re-Grounding the Refusal to Deal Doctrine, 66 U. PITT. L. REV. 821 (Summer, 2005).


Wrap Up April 21