

# **Telecommunications Law and Policy**

## **Phil Weiser**

### **Course Description:**

This course surveys the basic principles underpinning our nation's telecommunications laws. In particular, we will examine the legal and regulatory treatment of a number of related technologies—from telephony to cable to the Internet—whose convergence will continue to challenge established principles. The course will focus most intently on administrative and statutory law, paying special attention to the design and implementation of the Telecommunications Act of 1996. In addition, the course will address the role played by antitrust, intellectual property and constitutional law (particularly the First Amendment) in shaping our nation's telecommunications landscape. Finally, the course will consider the important role played by state and federal agencies—antitrust enforcers, state public utility commissions and the Federal Communications Commission—in developing and administering our nation's telecommunications laws and policies.

### **Class Times and Office Hours:**

The class will meet on Tuesdays and Thursdays from 2:25-3:40. I will be available for office hours on Tuesday and Thursday mornings from 10:00 to 12:00 in Room 313. I also can be reached via email at phil.weiser@colorado.edu.

### **Course Expectations:**

Grades for the course will be based on the final, a class project, an optional research paper (if completed), and class participation. Class participation and preparedness are an important part of this course; students will be eligible for an increase/decrease in their grade based on their readiness to answer questions and their performance during an “on call” week. Students will be asked to sign up to be “on call” during two weeks of the semester. During each class, students may also be called on at random to ensure that the class discussion remains focused on areas that are not well understood. This possibility is meant to be a policy of last resort. Hopefully, students will ask questions when they do not understand a subject and obviate the need for such a step.

During week 10 of the course, students will participate in a simulation exercise that will involve a number of presentations on behalf of industry groups to a mock panel of the FCC. IN particular, these presentations will advocate future policy directions that suit each industry group. Two-thirds of the class will participate in this endeavor as industry presenters and the other third will participate as FCC Commissioners and Staff. Each group of presenters will be responsible for distributing “white papers” (not to exceed twenty pages), and for answering questions asked by the FCC. Each group acting as the FCC Commissioners and Staff will be responsible for drafting testimony (also not to exceed twenty pages) to be delivered to Congress. Presentations will comprise 1/5 of the course grade. The industry white papers are due on Thurs, October 23<sup>rd</sup> (week 9) and the FCC testimony is due on Thurs, Nov 20<sup>th</sup> (week 13). Finally, students also have the option of writing a paper that will count for 2/5 of their grade (due on Dec 4<sup>th</sup>), provided that the student does better on the paper than on the final exam (which will count for the other 2/5 of their grade). If the student chooses not to write such a paper, the final exam will comprise 4/5 of the grade.

## Course Materials:

The course will be taught mainly from Jonathan E. Nuechterlein & Philip J. Weiser, "Digital Crossroads: American Telecommunications Policy in the Internet Age" (MIT Press, 2005) as well as a number of supplemental materials that are available on the Web. You will note that the syllabus, which lists the reading by each week, separates the reading for each class: (1) for the Tuesday class; and (2) for the Thursday class. In addition to the assigned readings, students should also read the Monday Business section of the *New York Times*, as it reports on the information industries (same-day issue available on the Web at: <http://www.nyt.com>).

### Week 1: Introduction, Networks, and Bottlenecks (Aug 23<sup>rd</sup> and 25<sup>th</sup>):

#### A. Reading

- (1) Chairman Michael Powell's Speech to the Progress and Freedom Foundation, "The Great Digital Broadband Migration," available at <http://www.fcc.gov/Speeches/Powell/2000/spmkp003.html>
- (2) Digital Crossroads, Chp 1.

#### B. Concepts

1. Network Effects
2. Aspects of Network Effects—(a) interoperability/compatibility; (b) installed base; (d) interconnection.
3. Monopoly power—(a) ability to raise price profitably; or (b) ability to exclude competitors
4. Monopoly Leveraging
5. Platform and Applications
6. Scale Economies
7. Natural monopoly

### Week 2: The Basics of Telecom Technology, The Traditional Model of Regulation, and the AT&T Break-up (Aug 30<sup>th</sup> and Sept 1st):

#### A. Reading

- (1) DC, Chp 2 (31-55)
- (2) DC, Chps 2 (55-68)  
Hush-A-Phone v. FCC, 238 F.2d 266 (D.C. Cir. 1956).

#### B. Concepts

- (1) Parts of the telephone network—local loop, switching, transport
- (2) Common carrier
- (3) Tariff and tariffed service (filed rate doctrine)
- (4) Interconnection
- (5) Rate of return regulation (classic rate-making formula "R (revenue requirement) = C (operating costs) + Ir (invested capital or rate base times rate of return on capital))
- (6) Regulatory capture

- (7) Cross-subsidies
- (8) Universal service
- (9) (Incumbent) Local Exchange Carrier (LEC or ILEC)
- (10) Interexchange Carrier (IXC)

**Week 3: The Telecom Act and The Path of Local Competition (Sept 6th and 8th):**

A. *Reading*

- (1) DC, Chp 3 (69-97)
- (2) DC, Chp 3 (98-113)  
DC, Chp 5 (179-189)  
James Glassman, Monopolists' Playpen  
<http://www.techcentralstation.com/040403D.html>  
Alfred Kahn, Regulatory Politics As Usual  
<http://www.aei.brookings.org/policy/page.php?id=127>

B. Concepts

- (1) Section 2(b) of the Telecommunications Act
- (2) Section 251
- (3) Section 271
- (4) Unbundled Network Elements (UNEs)
- (5) Interconnection
- (6) Pricing of UNEs—long run incremental cost (replacement cost) v. historic cost
- (7) Cream-skimming
- (8) Interconnection agreement

**Week 4: Introduction to The Internet (Sept 13<sup>th</sup> and 15<sup>th</sup>)**

A. *Reading*

- (1) DC, Chp 4 (115-147)  
Constance Robinson, Network Effects in Telecommunications Mergers (Aug. 23, 1999)  
<http://www.usdoj.gov/atr/public/speeches/3889.htm>
- (2) DC, Chp 5 (149-179, 189-90)

B. Concepts:

- (1) End-to-end
- (2) Network Neutrality
- (3) Multiple ISP Access
- (4) Computer Inquiry rules

**Week 5: The Future of the Internet (Sept 20<sup>th</sup> and 22<sup>nd</sup>)**

A. *Reading*

- (1) Brand X Internet Servs v. FCC, \_\_\_ S. Ct. \_\_\_ (2004)
- (2) Andrew Odlyzko, The Many Paradoxes of Broadband,  
<http://www.dtc.umn.edu/~odlyzko/doc/broadband.paradox.pdf>.

Jim Crowe, Telecom Regulation: A New Approach  
([http://www.level3.com/userimages/dotcom/pdf/Progress\\_Freedom\\_Address.pdf](http://www.level3.com/userimages/dotcom/pdf/Progress_Freedom_Address.pdf)).

Ex Parte by Lessig and Wu, [http://faculty.virginia.edu/timwu/wu\\_lessig\\_fcc.pdf](http://faculty.virginia.edu/timwu/wu_lessig_fcc.pdf)

**Week 6: Voice over Internet Protocol (Sept 27)**

*A. Reading*

- (1) DC, Chp 6  
Net Phone Calls, Free--and Clear, Business Week (November 1, 2004)  
([http://www.businessweek.com/magazine/content/04\\_44/b3906087\\_mz063.htm](http://www.businessweek.com/magazine/content/04_44/b3906087_mz063.htm))

*B. Concepts*

**Week 7: Wireless Regulation (Oct 3<sup>th</sup> and 6<sup>th</sup>) (NOTE Tues Class will meet on Monday)**

*A. Reading*

- (1) DC, Chp 7  
The Airwaves Explained,  
[http://www.newamerica.net/Download\\_Docs/pdfs/Pub\\_File\\_1309\\_1.pdf](http://www.newamerica.net/Download_Docs/pdfs/Pub_File_1309_1.pdf)
- (2) DC, Chp 8

*B. Concepts*

**Week 8: Intercarrier Compensation and Universal Service (Oct 11<sup>th</sup> and 14<sup>th</sup>) (NOTE—Thurs class will meet on Friday)**

*A. Reading*

- (1) DC, Chp 9
- (2) DC, Chp 10

**Week 9: The Market For Video Programming (Oct 18th and 20th)**

*A. Reading*

- (1) Schurz Comm, Inc. v. FCC, 982 F.2d 1043 (7th Cir. 1992).  
Statement of Commissioner Powell on Broadcast Ownership Rules  
([http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-03-127A3.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-03-127A3.pdf))
- (2) DC, Ch. 11

**Week 10: Simulation Exercise (Oct 25<sup>th</sup> and Oct 27<sup>th</sup>)**

**Week 11: Industry Transitions, Digital Television, and Digital Copyright (Nov 1st and Nov 3rd):**

A. *Reading*

- (1) DC, Chp 12
- (2) Implications of the Broadcast Flag: A Public Interest Primer  
(<http://www.cdt.org/copyright/031216broadcastflag.pdf>)

**Week 12: Models of Regulation and IP As A Common Law Alternative (Nov 8<sup>th</sup> and Nov 10<sup>th</sup>):**

A. *Reading*

- (1) DC, Chp 13
- (2) Lotus v. Borland ([http://www.law.cornell.edu/copyright/cases/49\\_F3d\\_807.htm](http://www.law.cornell.edu/copyright/cases/49_F3d_807.htm))

**Week 13: The First Amendment and Regulation of the Internet's Content (Nov 15<sup>th</sup> and Nov. 17<sup>th</sup>)**

A. *Reading*

- (1) *ACLU v. Reno* (<http://supct.law.cornell.edu/supct/html/96-511.ZO.html>)  
Lawrence Lessig, The Laws of Cyberspace  
([http://cyberlaw.stanford.edu/lessig/content/articles/works/laws\\_cyberspace.pdf](http://cyberlaw.stanford.edu/lessig/content/articles/works/laws_cyberspace.pdf))
- (2) *U.S. v. American Library Ass'n, Inc.*, 123 S.Ct. 2297 (2003)

**Week 14: The Common Carriage Concept and Tort Liability (Nov. 22th)**

A. *Reading*

- (1) *Blumenthal v. Drudge*, 992 F. Supp. 44 (D.D.C 1998)

**Week 15: Wrap-Up (Nov 29<sup>th</sup> and Dec 1)**

A. *Reading*

- (1) TBA
- (2) Review