Telecommunications
Law and Policy
For Arti and Denise
PART ONE
Spectrum

Chapter Three · Regulating the Spectrum

Introduction
41

§ 3.A. Defining Spectrum
42
§ 3.A.1. Characteristics of Radio Waves
42
§ 3.A.2. Transmitting Through the Air
44
§ 3.A.3. Transmitting Using Wires
44
§ 3.A.4. Signal Modulation
45
§ 3.A.5. Newer Wireless Technologies
47
§ 3.A.6. The Spectrum as a Resource
49
§ 3.B. A Brief History of Early Spectrum Regulation
50
§ 3.C. Rationales for Regulation
55
§ 3.C.1. Scarcity/Interference
55
Coase, Why Not Use the Pricing System in the Broadcast Industry?
59
§ 3.C.2. Consumer Preferences
63
§ 3.D. An Overview of Spectrum Management
65
§ 3.E. Regulatory Tradeoffs and Allotment
66

Chapter Four · Zoning the Spectrum

Introduction
69

§ 4.A. Models of Spectrum Control
69
Spectrum Policy Task Force Report
72
§ 4.B. Implementing Flexibility
79
Redevelopment of Spectrum to Encourage Innovation in the Use of
New Telecommunications Technologies
81
§ 4.C. Dedicating Spectrum to Unlicensed Uses
90
Benkler, Some Economics of Wireless Communications
90
§ 4.D. Approaches to Unlicensed Access
97
§ 4.D.1. White Spaces
97
Unlicensed Operation in the TV Broadcast Bands and Additional Spectrum
for Unlicensed Devices Below 900 MHz and in the 3 GHz Band
98
106
President’s Council of Advisors on Science and Technology,
Realizing the Full Potential of Government-Held Spectrum to Spur
Economic Growth: Executive Summary
107
Amendment of the Commission’s Rules with Regard to Commercial
Operations in the 3550–3650 MHz Band
111
§ 4.E. Spectrum Leasing and Private Commons
117
Promoting Efficient Use of Spectrum Through Elimination of Barriers to
the Development of Secondary Markets
119

Chapter Five · Structuring and Assigning Licenses

Introduction
125
§ 5.A. License Renewal and Transfer
126
§ 5.A.1. License Renewal
126
§ 5.A.1.a. Early History
127
Chapter Seven · Control of Telephone Monopolies

Introduction

§ 7.A. Rate Regulation
§ 7.A.1. Rate of Return Regulation
§ 7.A.2. Price Cap Regulation
§ 7.A.3. Rate Regulation as Markets Become Competitive

§ 7.B.1. Introduction
  Implementation of the Local Competition Provisions in the
  Telecommunications Act of 1996
§ 7.B.3. Jurisdiction to Implement the 1996 Act: Local Competition,
  National Regulation
United States Telecom Ass'n v. FCC [USTA II]

§ 7.C. Unbundling, Interconnection, and Line-of-Business Regulation
Under the 1996 Act
§ 7.C.1. Identifying UNEs
  § 7.C.1.a. Iowa Utilities Board
  AT&T Corp. v. Iowa Utilities Board
  § 7.C.1.b. After Iowa Utilities Board
  United States Telecom Ass'n v. FCC [USTA II]
  § 7.C.1.c. FCC Response to USTA II
  Unbundled Access to Network Elements: Review of the Section 251
  Unbundling Obligations of Incumbent Local Exchange Carriers
§ 7.C.2. Pricing Network Elements
Verizon Communications Inc. v. FCC
§ 7.C.3. Interconnection
§ 7.C.4. BOC Line of Business Restrictions

PART THREE
Multichannel Video and Broadcasting

Chapter Eight · Multichannel Video Foundations
Introduction
§ 8.A. Paying for Television
Coase, Why Not Use the Pricing System in the Broadcast Industry?
§ 8.B. Why Regulate? Are There Natural Monopolies?
§ 8.C. Why Regulate? Implications for Broadcast
Besen & Crandall, The Deregulation of Cable Television
Chapter Nine · Shared Content

Introduction 303

§ 9.A. Individual Programs 303

§ 9.A.1. Compulsory Copyright Licenses 303
  § 9.A.1.a. Cable Television 303
  § 9.A.1.b. Direct Broadcast Satellite 306
  American Broadcasting Companies, Inc. v. Aereo, Inc. 310

§ 9.B. Programs Grouped into Signals 320

§ 9.B.1. Retransmission Consent 321
  Amendment of the Commission's Rules Related to Retransmission Consent 322
  Amendment of the Commission's Rules Related to Retransmission Consent 328
§ 9.B.2. Must-Carry 331
  § 9.B.2.a. First Amendment Challenges to Cable Must-Carry 332
    Turner Broadcasting System, Inc. v. FCC [Turner I] 332
    Turner Broadcasting System, Inc. v. FCC [Turner II] 345
  § 9.B.2.b. DBS Carry One, Carry All 358

§ 9.C. Programing Delivered à la Carte 362

§ 9.D. The FCC’s Role in Digital Copyright Policy 364

PART FOUR
ANTITRUST AND STRUCTURAL REGULATION OF MEDIA

Chapter Ten · Structural Regulation of Media 369

Introduction 369

§ 10.A. Structural Regulation of Broadcasting 369
  § 10.A.1. Television Networks and Vertical Integration 370
    Schurz Communications, Inc. v. FCC 372
  § 10.A.2. Ownership Restrictions 379
    Prometheus Radio Project v. FCC [Prometheus I] 383

§ 10.B. Structural Regulation of Cable Providers 405
    Comcast Corp. v. FCC 414

§ 10.C. Regulation of Vertical Foreclosure by MVPDs 418
  § 10.C.1. The Initial Program Access Rules 419
  § 10.C.2. Extensions of the Program Access Rules 420
  § 10.C.3. Expansion of the Program Access Theory 422
§ 10.C.3.a. Extension of the Program Access Rules to DirecTV
General Motors Corp. and Hughes Electronics Corp., Transferors, and
the News Corp. Ltd, Transferee, for Authority to Transfer Control

§ 10.C.3.b. MVPD Access to Buildings
National Cable & Telecommunications Ass’n v. FCC

§ 10.C.3.c. Extension of the Program Access Rules to Terrestrially
Distributed Programming
Review of the Commission’s Program Access Rules and Examination of
Programming Tying Arrangements
Cablevision Systems Corp. v. FCC

§ 10.D. MVPD Non-Discrimination Obligations
Comcast Cable Communications, LLC v. FCC

§ 10.E. Spectrum Caps
Policies Regarding Mobile Spectrum Holdings: Expanding the Economic
and Innovation Opportunities of Spectrum through Incentive Auctions

§ 10.F. Choice
§ 10.F.1. Is More Always Better?
Sunstein, The First Amendment in Cyberspace
Posner, Bad News

§ 10.F.2. What Could the FCC Do About It?
Waldman et al., The Information Needs of Communities:
The Changing Media Landscape in a Broadband Age

Chapter Eleven · Antitrust and Merger Review
Introduction
§ 11.A. Merger Enforcement and Telecommunications Regulation
§ 11.A.1. Background on Merger Policy
Applications of Comcast Corp., General Electric Co., and
NBC Universal, Inc. for Consent To Assign Licenses and Transfer
Control of Licensees

§ 11.A.2. The SBC/Ameritech Proceeding
Applications of Ameritech Corp., Transferor, and SBC Communications, Inc.,
Transferee, for Consent to Transfer Control of Corporations Holding
Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of
the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of
the Commission’s Rules
Separate Statement of Commissioner Harold Furchtgott-Roth
Concurring in Part, Dissenting in Part

§ 11.A.3. Reconsidering the FCC’s Merger Review Process
§ 11.A.4. The FCC’s Own Institutional Reforms
§ 11.A.5. The Elusive Effort to Restrict the Scope of FCC Merger Review
Statement of the Department of Justice Antitrust Division on Its Decision
to Close Its Investigation of XM Satellite Radio Holdings Inc.’s Merger
with Sirius Satellite Radio Inc.
Commission Approves Transaction between Sirius Satellite
Radio Holdings Inc. and XM Satellite Radio Holdings, Inc.
Subject to Conditions

§ 11.A.6. The Comcast/NBCU Proceeding
PART FIVE

The Internet

Chapter Twelve · Introduction and Evolution
§ 12.A. The History and Architecture of the Internet
  §12.A.1. Basic Characteristics
  §12.A.2. Network Elements
  §12.A.3. Packet Switching and Addressing
  §12.A.4. Services
  §12.A.5. Layers
§12.B. Initial Principles of Internet Policy
  A Framework for Global Electronic Commerce
  Communiqué on Principles for Internet Policy-Making:OECD High Level Meeting on the Internet Economy
  NTIA Announces Intent to Transition Key Internet Domain Name Functions

Chapter Thirteen · Universal Service: From Telephony to Broadband
§ 13.A. Origins of Universal Service Policy
§ 13.C. Universal Service After Divestiture
§ 13.D. Universal Service After the 1996 Act
  §13.D.1. Access Charge Reform
  §13.D.2. Intercarrier Compensation Reform
  In re FCC 11-161
§ 13.E. Broadband Universal Service
  Federal-State Joint Board on Universal Service
  National Broadband Plan: Connecting America
  In re FCC 11-161
§ 13.F. A New Blank Slate: The IP Transition
  Technology Transitions

Chapter Fourteen · Broadband Jurisdiction and Structural Regulation
Introduction
§ 14.A. The Ancillary Jurisdiction Doctrine and the Past as Prologue?
  United States v. Southwestern Cable Co.
  FCC v. Midwest Video Corp. [Midwest Video II]
§ 14.B. Regulatory Characterization of Broadband Services
  AT&T Corp. v. City of Portland
  National Cable & Telecommunications Ass’n v. Brand X Internet Services
§ 14.C. Net Neutrality
  §14.C.1. The Broadband Internet Access Marketplace
PART SIX

DIRECT REGULATION OF CONTENT

Chapter Fifteen · Direct Regulation of Content Deemed Valuable

Introduction

§ 15.A. The Fairness Doctrine and Related Obligations

§ 15.A.1. Tornillo and Red Lion

Miami Herald Publishing Co. v. Tornillo

Red Lion Broadcasting Co. v. FCC

§ 15.A.2. The FCC Abandons the Fairness Doctrine

§ 15.A.2.a. The Fairness Doctrine Report

Inquiry into the Commission’s Rules and Regulations Concerning the General Fairness Doctrine Obligations of Broadcast Licensees

§ 15.A.2.b. Syracuse Peace Council

§ 15.A.3. The Personal Attack and Political Editorial Rules

§ 15.A.4. Political Broadcasting

Request of ABC, Inc. for Declaratory Ruling

§ 15.A.5. The Scarcity Rationale in Other Media

Time Warner Entertainment Co. v. FCC

Time Warner Entertainment Co. v. FCC

§ 15.B. Children’s Television

Children’s Television Programming and Advertising Practices

Policies and Rules Concerning Children’s Television Programming

Policies and Rules Concerning Children’s Television Programming

Chapter Sixteen · Direct Regulation of Content Deemed Harmful

Introduction

§ 16.A. Indecency

§ 16.A.1. Regulation of Broadcast Indecency

FCC v. Pacifica Foundation

Action for Children’s Television v. FCC [ACT III]

Complaints Against Various Broadcast Licensees Regarding Their Airing of the “Golden Globe Awards” Program

FCC v. Fox Television Stations, Inc.

FCC v. Fox Television Stations, Inc.
§ 16.A.2. Regulation of Cable Indecency 780
§ 16.A.2.a. Denver Area 781
Denver Area Educational Telecommunications Consortium, Inc. v. FCC 782
§ 16.A.2.b. Playboy Entertainment 797
United States v. Playboy Entertainment Group, Inc. 798
§ 16.A.3. Regulation of Indecency via Telephone 809
Sable Communications of California, Inc. v. FCC 809
Regulations Concerning Indecent Communications by Telephone 814
§ 16.A.4. Regulation of Internet Indecency 817
Reno v. ACLU 818
Ashcroft v. ACLU [Ashcroft II] 825
ACLU v. Mukasey 832
§ 16.B. Violent Programming 839
Violent Television Programming and Its Impact on Children 843

EPILOGUE

Chapter Seventeen · Why an FCC? 855
Introduction 855
A New Federal Communications Commission for the 21st Century 856
Huber, Abolish the FCC and Let Common Law Rule the Telecosm 859
Lessig, It’s Time to Demolish the FCC 864

Statutory Appendix 869

Conceptual Index and Telecommunications Glossary 943
# Table of Materials

<table>
<thead>
<tr>
<th>Reference</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACLU v. Mukasey (2008), 832</td>
<td></td>
</tr>
<tr>
<td>Unbundled Access to Network Elements: Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (2005), 248</td>
<td></td>
</tr>
<tr>
<td>Alliance for Community Media v. FCC (2008), 295</td>
<td></td>
</tr>
<tr>
<td>American Broadcasting Companies, Inc. v. Aereo, Inc. (2014), 310</td>
<td></td>
</tr>
<tr>
<td>American Council on Education v. FCC (2006), 664</td>
<td></td>
</tr>
<tr>
<td>Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(D) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission’s Rules (1999), 492</td>
<td></td>
</tr>
<tr>
<td>Separate Statement of Commissioner Harold Furchtgott-Roth Concurring in Part, Dissenting in Part (1999), 496</td>
<td></td>
</tr>
<tr>
<td>Applications of Comcast Corp., General Electric Co. and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses (2011), 490, 510</td>
<td></td>
</tr>
<tr>
<td>Appropriate Framework for Broadband Access to the Internet over Wireline Facilities (2005), 620</td>
<td></td>
</tr>
<tr>
<td>Ashcroft v. ACLU [Ashcroft II] (2004), 825</td>
<td></td>
</tr>
<tr>
<td>AT&amp;T Corp. v. City of Portland (2000), 596</td>
<td></td>
</tr>
<tr>
<td>AT&amp;T Corp. v. Iowa Utilities Board (1999), 235</td>
<td></td>
</tr>
<tr>
<td>Benkler, Some Economics of Wireless Communications (2002), 90</td>
<td></td>
</tr>
<tr>
<td>Besen and Crandall, The Deregulation of Cable Television (1981), 278</td>
<td></td>
</tr>
<tr>
<td>Broadcast Renewal Applicants, Competing Applicants, and Other Participants to the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process, Formulation of Policies and Rules Relating to (1989), 165</td>
<td></td>
</tr>
<tr>
<td>Cablevision Systems Corp. v. FCC (2011), 441</td>
<td></td>
</tr>
<tr>
<td>Changes in the Entertainment Formats of Broadcast Stations (1976), 136</td>
<td></td>
</tr>
<tr>
<td>Children’s Television Programming and Advertising Practices (1983), 716</td>
<td></td>
</tr>
<tr>
<td>Children’s Television Programming, Policies and Rules Concerning (1991), 721</td>
<td></td>
</tr>
<tr>
<td>Children’s Television Programming, Policies and Rules Concerning (1996), 723</td>
<td></td>
</tr>
<tr>
<td>Children’s Television Programming, see also Violent Television Programming</td>
<td></td>
</tr>
</tbody>
</table>
TABLE OF MATERIALS

Coase, Why Not Use the Pricing System in the Broadcast Industry? (1959), 59, 273
Comcast Cable Communications, LLC, v. FCC (2013), 447
Comcast Corp. v. FCC (2009), 414
Comcast Corp. v. FCC (2010), 628
Comcast Corp., see also Applications of Comcast Corp.
Commercial Operations in the 3550–3650 MHz Band, Amendment of the Commission’s Rules with Regard to (2012), 111
Comparative Broadcast Hearings, Policy Statement on (1965), 142
Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, Implementation of Section 309(j) of the Communications Act—(1998), 174
Denver Area Educational Telecommunications Consortium, Inc. v. FCC (1996), 782
FCC v. Fox Television Stations, Inc. (2009), 768
FCC v. Fox Television Stations, Inc. (2012), 777
FCC v. Midwest Video Corp. [Midwest Video II] (1979), 591
FCC v. Pacifica Foundation (1978), 740
FCC v. WNCN Listeners Guild (1981), 138
Federal-State Joint Board on Universal Service (1997), 562
General Fairness Doctrine Obligations of Broadcast Licensees, Inquiry into the Commission’s Rules and Regulations Concerning the (1985), 685
General Electric Co., see Applications of Comcast Corp.
General Motors Corp. and Hughes Electronics Corp., Transferors, and the News Corp. Ltd., Transferee, for Authority to Transfer Control (2004), 423
“Golden Globe Awards” Program, Complaints Against Various Broadcast Licensees Regarding Their Airing of the (2004), 764
Huber, Law and Disorder in Cyberspace: Abolish the FCC and Let Common Law Rule the Telecoms (1997), 859
Huber, Kellogg, and Thorne, Federal Telecommunications Law, 198
In re FCC 11-161 (2014), 553, 567
Indecent Communications by Telephone, Regulations Concerning (1990), 814
Key Internet Domain Name Functions, NTIA Announces Intent to Transition (2014), 543
Kwerel and Felker, Using Auctions to Select FCC Licensees (1985), 168
Lessig, It’s Time to Demolish the FCC, (2008), 864
Lutheran Church–Missouri Synod v. FCC (1998), 160
Metro Broadcasting, Inc. v. FCC (1990), 151
Miami Herald Publishing Co. v. Tornillo (1974), 676
Minnesota Public Utilities Commission v. FCC (2007), 655
Mobile Spectrum Holdings: Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions, Policies Regarding (2014), 453
National Broadband Plan: Connecting America (2010), 565, 615
National Cable & Telecommunications Ass’n v. Brand X Internet Services (2005), 600
National Cable & Telecommunications Ass’n v. FCC (2009), 428
TABLE OF MATERIALS

NBC Universal, Inc., see Applications of Comcast Corp.
New Federal Communications Commission for the 21st Century, A (1999), 856
Nuvio Corp. v. FCC (2006), 660
Posner, Bad News (2005), 474
President’s Council of Advisors on Science and Technology, Realizing the Full Potential of Government-Held Spectrum to Spur Economic Growth (2012), 107
Program Access Rules and Examination of Programming Tying Arrangements, Review of the Commission’s (2010), 433
Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets (2004), 119
Red Lion Broadcasting Co. v. FCC (1969), 678
Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies (1992), 81
Reno v. ACLU (1997), 818
Request of ABC, Inc. for Declaratory Ruling (1999), 700
Retransmission Consent, Amendment of the Commission’s Rules Related to (2011), 322
Retransmission Consent, Amendment of the Commission’s Rules Related to (2014), 328
Sable Communications of California, Inc. v. FCC (1989), 809
Schurz Communications, Inc. v. FCC (1992), 372
SBC Communications, Inc., see Applications of Ameritech Corp.
Simon Geller for Renewal of License of WVCA-FM and Grandbanke Corporation for Construction Permit, Applications of (1985), 146
Sirius Satellite Radio Holdings Inc. and XM Satellite Radio Holdings, Inc. Subject to Conditions, Commission Approves Transaction Between (2008), 508
Sirius Satellite Radio Inc., see also XM Satellite Radio Holdings Inc.
Spectrum Policy Task Force Report (2002), 72
Sunstein, The First Amendment in Cyberspace (1995), 468
Technology Transitions (2014), 578
Time Warner Entertainment Co. v. FCC (1996), 710
Time Warner Entertainment Co. v. FCC (1997), 712
United States Telecom Ass’n v. FCC [USTA II] (2004), 233, 242
United States v. American Telephone & Telegraph Co. (1982), 204
United States v. Playboy Entertainment Group, Inc. (2000), 798
United States v. Southwestern Cable Co. (1968), 589
Unlicensed Operation in the TV Broadcast Bands and Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band (2008), 98
Verizon Communications Inc. v. FCC (2002), 254
Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, LLP (2004), 522
Verizon v. FCC (2014), 632
Violent Television Programming and Its Impact on Children (2007), 843
Waldman et al., The Information Needs of Communities: The Changing Media Landscape in a Broadband Age (2011), 482
XM Satellite Radio Holdings Inc.’s Merger with Sirius Satellite Radio Inc.,
<table>
<thead>
<tr>
<th>TABLE OF MATERIALS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statement of the Department of Justice Antitrust Division on Its Decision to Close Its Investigation of (2008), 505</td>
</tr>
</tbody>
</table>
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The theme of almost any law school casebook is apparent from the outset. An administrative law casebook, for example, pulls together materials about governmental administration. An antitrust law book evaluates the basic laws and judicial decisions that protect competition by limiting how and when firms can cooperate, engage in potentially anticompetitive behavior, and merge with one another. Thus, even though an administrative law book will consider agencies as diverse as the Environmental Protection Agency and the Federal Aviation Administration, and even though an antitrust law book will apply to industries ranging from real estate to computer software to supermarkets, it is not difficult to describe the overarching themes that structure the set of materials covered by the text.

The implicit logic of a telecommunications book, at least on first blush, may be harder to understand. Why should statutes and regulations related to broadcast television, cable, satellite, wireline telephony, cellular telephony, and the Internet all be considered in a single volume? Do these communication mechanisms really have that much in common?

The challenge of capturing the story of telecommunications law is particularly interesting and important today because of technological convergence. This means that once-distinct technologies—for example, the traditional telephone infrastructure and the traditional cable infrastructure—can provide very similar and substitutable services, including telephone service, cable television, and broadband Internet access. The question of how to treat different technologies, be they telephone networks, cable networks, or wireless providers, can no longer be answered by reference to the service that those networks titularly support. Given that this answer was often the way such policies developed in the past, this book can be read on two levels: (1) what is the best policy for telecommunications networks of all kinds; and (2) in light of the legacy of policies long in place (and a statute first written in 1934), how can the administering agency (in almost all cases, the Federal Communications Commission) move towards the best policy (or find a second best one) if practical, legal, or political constraints limit its ability to get there?

Given the nature of technological convergence, it is hard to consider any one branch of telecommunications in isolation. It is the combination of broadcast, cable, telephone, and Internet regulation that together determine how wire, air, and other telecommunications resources are allocated between all their myriad competing uses. Because almost any telecommunications resource can be put to more than one telecommunications use, telecommunications topics are necessarily interconnected. And, as noted above, today’s decisionmakers are not writing on a clean slate, creating challenges insofar as decisions of yesterday, such as how much wireless spectrum to dedicate to over-the-air television broadcasts, are not easily reversed to address the needs of today—say, more spectrum for wireless broadband services.
The topics addressed in this book are not only related in terms of basic technologies, but also they share common economic and institutional characteristics. On the economic front, the range of technologies we discuss raises the question of whether competition is either unworkable or undesirable. To give but one example, policymakers have long worried that the economics of local wireline telephone service are such that either only one firm can survive in the long run (“competition is unworkable”) or a single firm can provide a given quality of phone service at lower total cost than can multiple competitors (“competition is undesirable”). Policymakers in this area therefore struggled with the question of whether regulation should displace competition as the principal mechanism for ensuring good performance. Similar arguments that regulation might have advantages over competition arise in every telecommunications market. This is therefore another reason to consider all of these topics in a single conversation. On the institutional side, the Federal Communications Commission has extensive regulatory authority over traditional telephony, broadcast, cable television, and satellite services, and at least some residual authority over all other telecommunications technologies. Thus, before we discuss the substantive telecommunications policy issues, Chapters One and Two begin with the basic economic and institutional issues that will be discussed throughout the book.

Now, some acknowledgments. This book grew out of an earlier book written by Tom Krattenmaker, and so first and foremost our thanks to Tom for getting us started back in 2001. Howard Shelanski and Phil Weiser were on previous editions, and their ideas and analyses remain in these pages, for which we are deeply indebted. We also thank Doug Lichtman who was on the first two editions. Jack Balkin, Dale Hatfield, Karl Mannheim, Preston Padden, John Roberts, Peter Shane, and Doug Sicker also have contributed significantly to this project over the years. We owe each sincere thanks for helping us think through issues. Our thanks go to Stanley Besen and Lucas Powe as well. While their contributions came to us through Krattenmaker, those suggestions nevertheless benefit the book still today. Sincere thanks, too, to the family at Carolina Academic Press. Linda, you especially have been supportive of our work on this project; we genuinely appreciate everything you do for us and our readers. For this edition we owe a particular debt to a few people whose careful reading of the text helped it immeasurably: Julie Moushon and Balfour Smith from Duke Law School and Duke Law students Ben Chalfin, Matthew Craig, Daniel Stockton, and Bill Warren.

One final word before we step aside: the materials included in this book have been ruthlessly edited for style, length, and clarity. To avoid clutter, we have left almost all of those changes unmarked. While we are confident that none of our edits altered the meaning of the relevant passages, we do want to warn readers that the materials have been edited so as to maximize their value in the educational setting and, thus, attorneys looking to cite materials in court documents are advised to look to the original sources before quoting any of the materials excerpted here.

With that, we welcome you to the text. We hope you find your study of telecommunications law to be a rewarding one.

Stuart Benjamin and Jim Speta