

IT 851
U.S. TELECOMMUNICATIONS LAW
Past, Present and Future

SYLLABUS

Summer, 2002

G. Darryl Reed
Adjunct Instructor

This seminar will address the scope and effect of the federal Telecommunications Act of 1996, Illinois regulation of the telecommunications industry, and the relationship between state and federal telecommunication regulations and the industry.

Students final grade will be calculated as follows:

Class participation 30% - Final Paper 70%

There are only fourteen-scheduled class sessions. Therefore, class attendance is mandatory. Being absent from class will impact your final grade.

Final papers will be due no later than 2:00 p.m. on _____.

SEMINAR DATES & TOPICS TO BE ADDRESSED

June 10 & 12, 2002

Reference Materials

**Federal Telecommunications Law, 2nd Edition/Peter W. Huber,
Michael K. Kellogg, John Thorne
Newton's Telecom Dictionary, Latest Updated and Expanded Edition**

Introduction to Basic Telephony & Regulation

I. Discussion

American Civil Liberties Union v. Janet Reno
929 F.Supp. 824 (E.D. Pa. 1996)

II. Terminology

- a. The Public Switch Network ("PSN")
- b. Public Switched Telephone Network ("PSTN")
- c. Local Access and Transport Area ("LATA")
- d. Metropolitan Statistical Area ("MSA")
- e. Common Carrier/Common Carriage
- f. Interexchange Carrier ("IXC")
- g. Interlata Service
- h. Intralata Service
- i. Incumbent Local Exchange Carrier ("ILEC")
- j. Competitive Local Exchange carrier ("CLEC")
- k. Exchange Access
- l. Resellers
- m. Competitive Access Providers ("CAP")
- n. Internet Service Providers ("ISP")
- o. Payphone Service Providers
- p. Wireless Service Provider ("WASP")
- q. Private Branch Exchange ("PBX")
- r. Centrex
- s. Universal Service
- t. Access Charges

III. Telephone Economics and Price Regulation

Rate of Return Regulation

Alternative Regulatory Plans

Long Run Service Incremental Costs ("LRSIC")

Total Element Long Run Incremental Costs ("TELRIC")

IV. Technical Matters

Lecture – The Basic Communications Model

V. Important Dates to Remember

VI. Common Law Regulation - Pre 1934

The Mann-Elkins Act of 1910

The Kinsbury Commitment of 1913

Houston & Tx Ry. v U.S., 234 U.S. 342 (1914) (The Shreveport Rate Case)

Smith v Illinois Bell Telephone Company, 282 U.S. 133 (1930)

June 17 & 19, 2002

Reference Materials

**Federal Telecommunications Law, 2nd Edition/Peter W. Huber,
Michael K. Kellogg, John Thorne
Newton's Telecom Dictionary, Latest Updated and Expanded Edition**

I. Statutory Regulation – Post 1934

The Communications Act of 1934 – The FCC
FCC Authority
State PUC Authority
The Illinois Universal Telephone Service Protection Law of 1985
220 ILCS 5/13-101 et seq. (as amended)
Procedural Provisions – Administrative Procedures Act
Federal and State

II. Obligations of Common Carriers

Service on Demand
At Tariffed Rates
Just and Reasonable Rates
Without Unreasonable Discrimination
Private Contracts

III. Federal vs. State Regulation - Preemption Cases

North Carolina Utility Commission v FCC, 537 F.2d 787 (4th Cir. 1976)
North Carolina Utility Commission v FCC, 552 F.2d 1036 (4th Cir. 1977)
California v FCC, 567 F.2d 84, 87 (D.C. Cir. 1977) (*per curiam*), *cert. denied*, 434 U.S. 1010 (1978)
New York Telephone v FCC, 631 F.2d 1059, 1065-1066 (2d Cir. 1980)
La. PSC v. FCC, 476 U.S. 355 (1986)
California v FCC, 798 F.2d 1515, 1518 (D.C. Cir. 1986)
Hawaii Telephone Co. v Public Utilities Commission of Hawaii, 827 F.2d 1264 (9th Cir. 1987), *cert. denied*, 487 U.S. 1217 (1988)
NARUC v FCC, 880 F.2d 422, (D.C. Cir. 1989)
Illinois Bell Telephone Company v. FCC, 883 F.2d 104 (D.C. Cir. 1989)
Public Utilities Commission of Texas v FCC, 886 F.2d 1325 (1989)
Nantahala Power and Light Co. v. Thornburg, 476 U.S. 953 (1986)
New Orleans Public Service, Inc. v. Council of the City of New Orleans, 911 F.2d 993 (5th Cir. 1990)

June 24 & 26, 2002

Reference Materials

**Federal Telecommunications Law, 2nd Edition/Peter W. Huber,
Michael K. Kellogg, John Thorne
Newton's Telecom Dictionary, Latest Updated and Expanded Edition**

I. Antitrust

Antitrust Principles

The Essential Facilities Doctrine

United States v Terminal Railroad Assn. Of St. Louis, 224 U.S. 383 (1912)

Otter Tail Power v United States, 410 U.S. 366 (1973)

Berkey Photo, Inc. v Eastman Kodak, Co., 603 F2d 263, 281 (2d Cir. 1979)

Almeda Mall Inc. v Houston Lighting & Power Co., 615 F2d 343 (5th Cir.), *cert denied*, 449 U.S. 870 (1980)

MCI v AT&T, 708 F2d 1081, 1132 (7th Cir), *cert denied*, 464 U.S. 891 (1983)

United States v AT&T, 524 F. Supp. 1336, 1360 (D.D.C. 1981)

Tying

International Salt Co., v United States, 332 U.S. 392 (1947)

Jefferson Parish Hospital District No. 2 v Hyde, 466 U.S. 2, 33 (1984)

Fortner Enters., Inc v United States Steel Corp., 394 U.S. 495, 513 (1969) (White, J., dissenting)

“Leveraging” and Refusals to Deal

Twin Laboratories, Inc., v Weider Health & Fitness, 900 F2d 566, 570-571 (2d Cir. 1990)

Alaska Airlines, Inc., v. United Airlines, Inc., 948 F2d 536, 546 (9th Cir 1991), *cert denied*, 503 U.S. 977 (1992)

Aspen Skiing Co., v Aspen Highlands Skiing Corp., 472 U.S. 585, 601-603 (1985)

Lorain Journal Co. v United States, 342 U.S. 143, 154 (1951)

Image Technical Servs., Inc. v Eastman Kodak Co., 125 F3d 1195, 1210-1212 & n. 6 (9th Cir. 1997), *cert denied*, 118 S. Ct. 1560 (1998)

NYNEX Corp. v Discon, Inc., 119 S. Ct. 493 (1998)

United States v Aluminum Co. of America, 148 F2d 416 (2d Cir 1945)

Byars v Bluff City News Co., Inc., 609 F2d 843, 846 (6th Cir 1979)

Predatory Pricing and Cross-Subsidies

Irvin Indus., Inc. v Goodyear Aerospace Corp., 974 F2d 241, 244 (2d Cir. 1992)

Matsushita Elec. Indus. Co. v Zenith Radio Corp., 475 U.S. 574, 595-598 (1986)

Transfer Pricing and Self-Dealing

Discon, Inc. v NYNEX Corp., 93 F3d 1055 (2d Cir. 1996), *judgment vacated*, 119 S. Ct. 493 (1998)

The Implications of Regulation

Abuse of the Regulatory Process

Eastern Railroad Presidents Conference v Noerr Motor Freight, Inc., 365 U.S. 127 (1961)

United Mine Workers of America v Pennington, 381 U.S. 657 (1965)

Cantor v Detroit Edison Co., 428 U.S. 579 (1976)

General Immunity

Georgia v Pennsylvania R.R. Co., 324 U.S. 439, 456 (1945)

Silver v New York Stock Exch., 373 U.S. 341, 357 (1963)

United States v AT&T, 552 F. Supp. 131, 157 (D.D.C. 1982), *aff'd mem. Sub nom. Maryland v United States*, 460 U.S. 1001 (1983)

Sound, Inc. v AT&T, 631 F2d 1324 (8th Cir 1980)

Primary Jurisdiction

Goya Foods, Inc. v Tropicana Prods., Inc., 846 F2d 848, 851 (2d Cir 1988)

Pan Am. World Airways v United States, 371 U.S. 296 (1963)

United States v AT&T, 461 F. Supp 1314, 1349-1350 (D.D.C. 1978)

United States v Western Electric Co., Inc., 846 F2d 1422, 1432-1433 (D.D.C.), *cert denied*, 488 U.S. 924 (1988)

July 1 & 3, 2002

Reference Materials

**Federal Telecommunications Law, 2nd Edition/Peter W. Huber,
Michael K. Kellogg, John Thorne
Newton's Telecom Dictionary, Latest Updated and Expanded Edition**

Regulation as a "Fact of Market Life"

The Filed Rate Doctrine

Keogh v Chicago & Northwestern Ry. Co., 260 U.S. 156 (1922)
Cost Management Servs., Inc. v Washington Natural Gas Co., 99
F3d 937, 946 (9th Cir 1996)

State Action

Parker v Brown, 317 U.S. 341 (1943)
Southern Motor Carriers Rate Conference, Inc. v United States,
471 U.S. 48, 57 (1985)
Federal Trade Commn. v Ticor Title Ins. Co., 504 U.S. 621. 631
(1992)
Metro Mobile CTS, Inc. v NewVector Communications. Inc., 661 F.
Supp. 1504, 1514 (D. Ariz. 1987). *aff'd*, 892 F2d 62 (9th Cir. 1989)
DFW Metro Line Servs. v Southwestern Bell Tel. Co., 901 F2d
1267, 1269 n. 6 (5th Cir), *cert denied*, 498 U.S. 985 (1990)
Sonitrol of Fresno, Inc. v AT&T, 629 F. Supp. 1089 (D.D.C. 1986)

The Tenth Amendment

National League of Cities v Usery, 426 U.S. 833 (1976), *overruled*
by Garcia v San Antonio Metro Transit Auth., 469 U.S. 528 (1985)
Columbia Steel Casting Co. v Portland General Elec. Co., 111 F3d
1427 (9th Cir 1996), *cert denied*, 118 S. Ct. 1688 (1998)

A Brief History of Government Cases

The 1914 Bell Decree

United States v AT&T, 1 Decrees & Judgments in Civil Federal Antitrust Cases 554 (D. Or. 1914) (No. 6082), *modified*, 1 Decrees & Judgments in Civil Federal Antitrust Cases 569 (D. Or. 1914), *modified*, 1 Decrees & Judgments in Civil Federal Antitrust Cases 572 (D. Or. 1918), *modified*, 1 Decrees & Judgments in Civil Federal Antitrust Cases 574 (D. Or. 1922)

The 1956 Bell Decree

United States v Western Elec. Co., 1956 Trade Cas. (CCH) ¶¶68,246 (D.N.J. 1956)

The 1982 Bell Decree

United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982). *aff'd. sub nom. Maryland v. United States*, 460 U.S. 1001 (1983).
MacAvoy and Robinson, Winning by Losing: The AT&T Settlement and its Impact on Telecommunications, 1 Yale Journal on Regulation (1983).

The GTE Decree

United States v GTE Corp., No. 83-1298 (D.D.C. Dec. 21, 1984)
United States v GTE Corp., 603 F. Supp 730 (D.D.C. 1984)

The AT&T/McCaw Decree

Proposed Final Judgment, United States v AT&T Corp. and McCaw Cellular Communications, Inc., No. 94-01555 (D.D.C. July 15, 1994)

July 8 & 10, 2002

Reference Materials

Federal Telecommunications Law, 2nd Edition/Peter W. Huber,
Michael K. Kellogg, John Thorne
Newton's Telecom Dictionary, Latest Updated and Expanded Edition

Mergers, Acquisitions, TA '96 and Resulting Litigation

Jurisdictional and Procedural Overview

The DOJ and the FCC
Federal and State Authority
Presumptions, Procedures, and Burdens of Proof
Conditional Approvals

Substantive Merger Standards

Media-Specific Standards Codified by Congress and the FCC
The Merger Guidelines and Antitrust Case Law

Merger Review by the FCC

The Public Interest Standard
Small Conglomerate Mergers
Large Conglomerate Mergers
The "Analytical Framework" Applied
Expedited Merger Review FCC 02-78 (3/21/02)

Merger Review by the ICC

Non-Competitive Telecommunications Carriers
220 ILCS 5/7-201 et seq
Competitive Telecommunications Carriers
220 ILCS 5/13-101 et seq

Telecommunications Mergers

Pacific Telesis Group and SBC Communications
FCC 97-28
NYNEX Corporation and Bell Atlantic Corporation
FCC 97-286 (8/14/97)
Teleport Communications Group and AT&T Corporation
FCC 98-169 (7/23/98)
MCI Communications Corporation and WorldCom Incorporated
FCC 98-225 (9/14/98)
Southern New England Telecommunications Corporation and SBC
Communications
FCC 98-276 (10/23/98)
TCI Incorporated and AT&T Corporation

FCC 99-024 (2/18/99)

Ameritech Corporation and SBC Communications

CC 98-141 (10/8/99)

Qwest and U.S. West

FCC 00-91 (3/10/00)

GTE and Bell Atlantic Corporation

FCC 00-221 (6/17/00)

MCI WorldCom and Sprint

DA 00-1771 (8/3/00) (withdrawn)

NorthPoint Communications, Inc. and Verizon Communications

DA 01-1048 (4/24/01)

OnePoint Communications, Corp. and Verizon Communications

DA 00-2783 (12/8/00)

July 15 & 17, 2002

The Telecommunications Act of 1996 – A Plethora of Change

Discussion of Sections 224, 251, 252, 253, 258, 271, 272 and 276 of TA '96

Interconnection [FCC 96-325; 96-394; 96-476; 96-333, 97-295, 99-48, 99-355]
(as codified in 47 C.F.R. Part 51)

Universal Service [FCC 97-157; 97-246; 97-253; 97-380; 97-411; 98-120; 99-290; 01-120]
(as codified in 47 C.F.R Part 54)

Access Reform [FCC 96-488; 97-159; 97-247; 97-368; 98-257; 99-119; 00-193; 01-146; 01-166]
(as codified in 47 C.F.R. Part 69)

Number Portability [FCC 96-286; 97-074; 97-289; 98-082]
(as codified in 47 C.F.R. Part 52)

Payphones [FCC 96-388; 97-371]
(as codified in 47 C.F.R. Part 64)

Numbering Resources [FCC 00-104]
(as codified in 47 C.F.R. Part 52)

Inter-Carrier Compensation for ISP-Bound Traffic [FCC 99-38; 01-131]
(as codified in 47 C.F.R. Part 69)

Developing a Unified Inter-carrier Compensation Regime [FCC 01-132]

Deployment of Wireline Services Offering Advanced Telecommunications
Capability [FCC 99-355; 01-26]

Pole Attachments [FCC 96-327; 97-94; 98-20; 00-116; 01-170]
(as codified in 47 C.F.R. Part 1)

Litigation Spawned by TA'96

Iowa Utilities Board v FCC, 120 F.2d 753 (8th Cir. 1997)

AT&T Corp. v. Iowa Utilities Board, 525 U.S. 366 (1999)

Iowa Utilities Board v FCC, No. 96-3321 (8th Cir. 2000)

Texas Public Utility Counsel v. FCC, No. 97-06421 (5th Cir., slip opinion released 7/30/99)

AT&T Corp. v City of Portland, No. 99-35609 (9th Cir. 2000)

GTE Service Corp. v FCC, 205 F3d 416 (D.C. Cir. 2000)

Illinois Bell Telephone Company v Worldcom, No, 98-3150 (7th Cir. 1999)

MCI Telecommunications Corp. v Illinois Bell Telephone Co., No 98-2127 (7th Cir. 2000)

NCTA v Gulf Power, 122 S. Ct. 782 (2002)

WorldCom, Inc. v. FCC, No. 01-1218 (D.C. Cir., slip opinion released 5/3/02)

July 22 & 24, 2002

The Confluence of Technologies; Next Generation Networks

Copper Based Technologies

xDSL

High Frequency Portion of the Line

Wireless Services

Fixed – the operation of wireless devices or systems in homes and offices (e.g., VCR and television remote controls, cordless mouse), and in particular, equipment connected to the Internet via specialized modems

Mobile – the use of wireless devices or systems aboard motorized, moving vehicles (e.g., automotive cell phone, PCS, SMR, MSS)

Portable – the operation of autonomous, battery-powered wireless devices or systems outside the office, home or vehicle (e.g., Paging, Cellular phones, PCS)

Data Services and the Internet

Origin

Jurisdiction

Common Carriage

Rate Regulation

Universal Service

Structural Regulation of the Industry

Information Services

Definitions

“Enhanced” and “Information” Services

“Basic” and “Telecommunications” Services

“Information” versus “Telecommunications” Services under TA '96

Federal Deregulation of Information Services

Delivering Information Services over Phone Lines: Interconnection, Open Networks, Comparably Efficient Interconnection and Unbundling

Rate Regulation and Access Charges

Video Services

FCC Jurisdiction

Common Carriage of Video Signals

Telco-Cable Interconnection

Price Regulation

Universal Service

Industry Structure