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Articles

MY VIEW FROM THE DOORSTEP OF FCC CHANGE

By Kathleen Q. Abernathy199

Commissioner Abernathy discusses the five key principles that inform her regulatory philosophy:

- 1) Congress sets the FCC's responsibilities in the Communications Act, and the Commission should faithfully implement those tasks rather than pursuing an independent agenda;
- 2) Fully functioning markets deliver better products and services to consumers as compared to markets regulated by the government. Unless structural factors prevent markets from being competitive, or Congress has established objectives (such as universal service) that are not market-based, government should be reluctant to intervene in the marketplace;
- 3) Where the FCC promulgates rules, it should ensure that those rules are clear and vigorously enforced;
- 4) A regulatory agency cannot possibly duplicate the resources and expertise of those it regulates. Therefore, the FCC must be humble about its own abilities and must reach out to consumer groups, industry, trade associations, and state regulators to maximize the information available in the decision-making process;
- 5) As a government agency supported by taxpayers, the FCC should strive to provide the same degree of responsiveness and effectiveness that would be expected of an organization in the private sector.

A COMMON CARRIER APPROACH TO INTERNET INTERCONNECTION

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This Article argues that some generalized interconnection rules are broadly appropriate. Specifically, some lessons learned from the ancient regime of common carrier regulation provide the appropriate regulatory foundation for the modern Internet. Since at least the middle ages, most significant carriers of communications and commerce have been regulated as common carriers. Common carrier rules have resolved the disputed issues of duty to serve, nondiscrimination, and interconnection. These were the problems of seventeenth-century ferry owners and innkeepers, eighteenth-century steamships, nineteenth-century railroads, and twentieth-century telephone

networks. They are similar to the problems of the twenty-first-century Internet, and similar rules can govern its evolution as well.

**DETARIFFING AND THE DEATH OF THE FILED TARIFF DOCTRINE:
DEREGULATING IN THE “SELF” INTEREST**

By Charles H. Helein, Jonathan S. Marashlian, and

Loubna W. Haddad281

This Article reviews the history of the FCC’s detariffing efforts, addressing the major issue raised not so much by detariffing itself, but by the FCC’s view of detariffing orders impact on the Filed Tariff Doctrine. Notwithstanding the existence of the Doctrine for nearly a century, the FCC, through detariffing, has declared the Doctrine dead. This Article formally opposes the FCC’s declaration and suggests that the FCC’s motivations behind detariffing have failed to consider, much less attempted to properly balance, the conflicting public interests involved. Comparing and contrasting the legal rights enjoyed by long-distance carriers under the Filed Tariff Doctrine to the rights and potential liabilities of carriers in its absence, this Article discusses the actions several states have taken immediately following the July 31, 2001 effective date of the FCC’s mass-market detariffing order. The Article concludes that the FCC’s action is a manifest injustice to both carriers and consumers alike, and is a prime example of irresponsible agency regulation.

Notes

**SMUT ON THE SMALL SCREEN: THE FUTURE OF CABLE-BASED ADULT
ENTERTAINMENT FOLLOWING *UNITED STATES V. PLAYBOY ENTERTAINMENT
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By Bradley A. Skafish319

This Note argues that the most important aspect of *Playboy* is the Court’s determination that cable television is not analogous to broadcast media. Provided it withstands the test of time, this distinction allows the cable industry to avoid the more stringent regime placed upon broadcast media. The *Playboy* decision also shows the Court’s willingness to invalidate laws even when they serve a compelling interest and impose less restrictions than a complete ban. Members of the Court differed on whether “signal bleed” actually constituted an influence harmful to children. This discrepancy evinces a significant disagreement on where lines should be drawn discerning dangerous from harmless material. It also demonstrates the extent to which the “least restrictive alternative” test can be bent to serve competing interests.

**THE DEFAMATION OF CHOICE-OF-LAW IN CYBERSPACE: COUNTERING THE
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This Note examines the adequacy of the traditional choice-of-law rules, including the Restatement (Second), in interstate cyber-defamation disputes, and argues that there is nothing different or unique about cyberspace which warrants the modification or abandonment of traditional choice-of-law regimes for cyber-defamation disputes.

Comment

INDECENT EXPOSURES IN AN ELECTRONIC REGIME

By Natalie L. Regoli365

As the topic of data privacy is vast and the subject of much scrutiny, this Comment focuses narrowly on commercial cyber-activities relating to the nonconsensual Internet acquisition of personally identifiable user data. Beginning with a brief examination of the technology that has exacerbated privacy law's inadequacies, it briefly discusses failed attempts to safeguard privacy rights through the market and federal agency management. It then addresses current U.S. privacy legislation and the 1995 European Privacy Directive. Finally, this Comment proposes the creation of a new legislative system to effectively combat the surreptitious collection, storage, use, and sale of personal data.

Book Review

WORKING THE SYSTEM

By Christopher H. Sterling387

This handbook is exactly what the well-heeled lobbyist—or would-be lobbyist—needs. Three experienced Washington communications attorneys, with input from a number of other individuals, have pooled their backgrounds and insights to create a desk-top guide to working the FCC system, or as they might prefer to say, making the system work.

