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Articles

PARITY RULES: MAPPING REGULATORY TREATMENT OF SIMILAR SERVICES

By Sherille Ismail447

The notion of regulatory parity has greatly impacted the evolution of American communications regulation, but the difficulties associated with applying this standard are frequently under-appreciated by industry participants. Throughout this Article, the Author acknowledges the difficulties in applying equal treatment standards to operators of various communications, video, and data services. Mr. Ismail asserts that several problems arise with attempts to ameliorate apparent disparities in how entities are regarded under current regulations, including difficulties in assessing revenue resources, channel control, and service delivery methods. The Article concludes that parity is difficult to define and apply in an effort to eliminate inefficiencies associated with disparate treatment of similarly-situated players. Therefore, a more workable approach to achieving equal treatment of industry participants would include concentrating on rights by resolving the issues according to identifiable policies instead of general notions of equality.

WANDERING ALONG THE ROAD TO COMPETITION AND CONVERGENCE— THE CHANGING CMRD ROADMAP

By Leonard J. Kennedy and Heather A. Purcell489

In this timely follow-up piece to a 1998 piece entitled *A Federal Regulatory Framework that is "Hog Tight, Horse High, and Bull Strong,"* the Authors of this Article revisit the progress of American commercial mobile radio services ("CMRS") proliferation and regulation. The piece expresses the concern that balkanization has continued to plague wireless regulation in the United States, as misguided legal analyses and state regulation further hinder wireless development across the nation. While the European Union has witnessed unprecedented growth in this sector, conflicting court and FCC decisions and continued federal, state, and local burdens on CMRS have placed hurdles throughout the process of efficient US wireless technology adoption in many fundamental areas. Challenges such as consumer protection, convergence, and the optimization of competition have further complicated the CMRS regulatory scene. The Authors conclude that in order to promote a healthy wireless communications industry in the United States in the future, obstacles to sustainable competition, regulatory predictability, limited taxation, and facilitated investment must soon be overcome.

**VERIZON COMMUNICATIONS, INC. v. FCC—TELECOMMUNICATIONS ACCESS
PRICING AND REGULATOR ACCOUNTABILITY THROUGH ADMINISTRATIVE
LAW AND TAKINGS JURISPRUDENCE**

By Michael J. Legg563

In this Article, Michael Legg examines the Supreme Court decision in *Verizon Communications, Inc. v. FCC*, and asserts that shortcomings associated with administrative law have led to an environment of unaccountability in the sphere of telecommunications regulations. Arguing that communications oversight has become exceedingly reliant upon regulatory expertise and that power over economic policy has been excessively ceded to the regulators, the Author concludes that Congress should become more involved in access pricing to prevent further undermining of the democratic governance in this important sector. Finally, Mr. Legg maintains that without further guidance with respect to the relationship between TELRIC and the Takings Clause, further rate-setting cases may become inevitable.

**A HORIZONTAL LEAP FORWARD: FORMULATING A NEW COMMUNICATIONS
PUBLIC POLICY FRAMEWORK BASED ON THE NETWORK LAYERS MODEL**

By Richard S. Whitt587

Over the course of the last several decades, legal and structural fictions have evolved and have been integrated into the reality of communications theory and regulation. In this Article, the Author argues that the development of a “layers approach” to communications regulation of IP networks would lead to greater efficiencies while addressing public policy issues. By reconceptualizing communications regulation along horizontal layers, Mr. Whitt posits that the logical walls surrounding the key components of IP networks should be removed to promote increased functionality of communications oversight and management. In this way, the outmoded vertical separation associated with the legal legacy of communications regulation may be replaced by a horizontal system designed to accommodate new technologies and functions, as opposed to attempting to force congruency between new network characteristics and twentieth century regulations.

Note

**STAYING AFLOAT IN THE INTERNET STREAM: HOW TO KEEP WEB RADIO
FROM DROWNING IN DIGITAL COPYRIGHT ROYALTIES**

By Emily D. Harwood673

In the 1990’s, the development of “streaming” technology allowed webcasters to begin broadcasting music on the Internet. The public took advantage of a plethora of free media players, and the number of web-based radio stations soared. However, a crippling dispute over broadcast rates left the viability of this technology in doubt, leading to the passage of the Small Webcaster Settlement Act of 2002 (“SWSA”). This Note criticizes the Act for curtailing radio streaming by providing harsh financial restrictions on webcasters. As SWSA nears expiration, Ms. Harwood provides a review of the Act and points out its successes and failures. In looking to the future, this Note argues that Congress, the recording industry, webcasters, and the Copyright Arbitration Royalty Panel should join forces for the next round of broadcast rate discussions in order to provide a fee structure that is reasonable for all.