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## Introduction

### SECURING THE FREEDOM OF THE COMMUNICATIONS REVOLUTION

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In no industry has the impact of the events of September 11, 2001 (“9/11”) been felt more strongly than in the communications industry. After 9/11, as the American people demanded a greater sense of security, Congress and the executive branch agencies reacted with new laws, new regulations, and new practices designed to protect our nation’s critical communications infrastructure and enhance the ability of law enforcement and intelligence agencies to investigate those who would do us harm. The U.S. communications providers could do so consistent with their responsibilities to customers and to shareholders. That partnership, based upon rules developed over decades, has been strained by the vast changes since 9/11. In the few years since the attacks of that day, the industry has had to digest innumerable new and untested obligations. At the same time, the government has struggled to develop procedures for addressing the legitimate privacy and other concerns implicated by its new powers. The reach of these changes—from new authorities to demand customer information, to more stringent scrutiny of proposed mergers—has affected nearly every aspect of a communications provider’s daily work. This Article attempts to look across the regulatory environment at the scope of these changes to identify the issues that have arisen for both the government and industry participants.

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Since the grant of the first Commercial Mobile Radio Service (“CMRS”) license over twenty years ago, the wireless industry has grown from a service of convenience to one that is indispensable. What once was a device used for

sporadic phone calls now is viewed by many Americans as a source of invaluable communication and security. As the wireless industry matured, government officials turned to the mobile phone as a way to make the United States safer. E-911, the Communications Assistance for Law Enforcement Act (“CALEA”), Wireless Priority Service (“WPS”), and Outage Reporting all were initiated on the wireless platform in the name of safety. The FCC implementation proceedings for each of these initiatives have differed markedly. In an advanced technology area such as wireless, government goals may best be achieved by relying on industry experts, because the technology is so sophisticated and constantly developing that the legislative and regulatory process at times cannot keep pace. This Article reviews wireless public safety and Homeland Security initiatives in three phases and explores the evolution of Homeland Security regulation of the wireless industry.

**NEW OBJECTIVES FOR CFIUS: FOREIGN OWNERSHIP, CRITICAL  
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Global economic integration creates new risks for national security. Foreign ownership of telecommunications service providers is an area of expanding concern. Foreign ownership could multiply opportunities for espionage by increasing foreign entities’ access to U.S. communications and networks as well as increasing the complexity of defenders’ tasks. Foreign ownership could make law enforcement communications interception more difficult. Foreign ownership could also increase the ability of a potential opponent to disrupt critical infrastructure and the services the foreign-controlled entities provide. These concerns create interest in improving existing processes for managing the risks associated with foreign ownership—such responsibility principally lies with the Committee on Foreign Investment in the United States (“CFIUS”)—and in developing new methods or authorities to mitigate risk. This Article analyzes how to manage and preserve communications interception capabilities and defend against potential service disruptions or intelligence activities in a period of integrated, global telecommunications enterprises where foreign ownership of, or participation in, national networks, is increasingly routine.

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This Article explores the many perspectives on Voice over Internet Protocol (“VoIP”). The notion of the Article is not to resolve the definitive approach to VoIP. Rather, this Article suggests that the process of the approach has itself become muddled. Individuals quibble, contrasting the superiority of one perspective over another, negating the reason why they were looking in the first place. This Article is the second part of a project to survey and analyze state VoIP policy. The first part of the project surveyed state VoIP regulatory activity. This part seeks to place that precedent in a centrifuge, segregating out different groupings of precedent to determine whether patterns or lessons might emerge.

**VIRGINIA CELLULAR AND HIGHLAND CELLULAR: THE FCC ESTABLISHES A  
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In 1996, Congress passed the first substantial rework of the Communications Act of 1934. This Act was intended to benefit consumers by encouraging competition and establishing a series of explicit mechanisms for assuring universal service. One of the outcomes is the creation of significant controversy over the federal, and in some cases, state universal service subsidy for the class of telecommunications providers typically known as wireless or cellular and defined by federal statute as “commercial mobile radio service” (“CMRS”). Incumbent local exchange carriers (“ILECs”) characterize these subsidies as a windfall and as unnecessary to provide wireless phone service. They argue that federal and state universal service funding is intended to subsidize high-cost local telephone service—not wireless service—which is substandard compared to landline service. CMRS providers assert that the federal Act was designed to create competition and that their services provide consumers alternatives as well as quality and convenient service with mobile advantages not offered by landlines. This Article will examine two recent FCC decisions and a Federal-State Joint Board on Universal Service Recommended Decision that are impacting the regulatory landscape. These decisions will affect the manner in which the FCC and state public utility commissioners deal with the eligible telecommunications carrier designation affecting the viability of companies, the scope of services to consumers, and the allocation of hundreds of millions of universal service dollars annually.

**Note**

**DISCRIMINATORY FILTERING: CIPA’S EFFECT ON OUR NATION’S YOUTH  
AND WHY THE SUPREME COURT ERRED IN UPHOLDING THE  
CONSTITUTIONALITY OF THE CHILDREN’S INTERNET PROTECTION ACT**

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Congress introduced the Children’s Internet Protection Act (“CIPA”) in order to filter obscene and indecent material in response to a perceived threat to members of the public, specifically minors, who are exposed to pornographic material on the Internet. The provisions of CIPA have provoked tension between two competing interests: protecting minors from cyberpornography, and safeguarding First Amendment rights. This Note argues that the Supreme Court erred by upholding the constitutionality of CIPA. As a result of the Supreme Court’s decision, the nation’s youth will have restricted access to constitutionally protected information. The Court improperly relied on a provision of the Act permitting adults to request that library filters be disabled upon request. Part II of this Note provides background on CIPA and the litigation surrounding it. The decisions of both the district court and the Supreme Court are analyzed in detail. Part III explains what an Internet filter is and how filters work in the context of CIPA. Part IV identifies the burdens that libraries face as a consequence of CIPA. Part V recognizes several less-restrictive alternatives to the implementation of CIPA. Part VI expounds upon the substantial effect that CIPA will have on today’s youth. The Note concludes by arguing that CIPA simply does not accomplish what it was designed to do.

## Book Reviews

### DIGITAL CROSSROADS

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A review of *Digital Crossroads: American Telecommunications Policy in the Internet Age*, by Jonathan E. Nuechterlein and Philip J. Weiser, MIT Press, 2005. Most practitioners of communications law are familiar with the necessity of teaching themselves enough economics, engineering, and politics to practice competently and comfortably in an area that is inherently interdisciplinary. Likewise, many professors who teach telecommunications from a variety of disciplinary perspectives are familiar with the frustration of locating a text that competently introduces students to this interdisciplinary subject matter. *Digital Crossroads* answers these challenges with a work that introduces telecommunications policy to beginners and edifies the experienced practitioners on gaps in history and knowledge. The scope of the book is ambitious, covering not only common carrier law and policy, but video media as well. Most importantly, the book keeps the reader's eye trained on the horizon by unifying the details of policy with higher level themes in regulation—and its candid acknowledgement that the only constant in the field of telecommunications is change.

### LOOKING BEYOND THE DIGITAL DIVIDE

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A review of Anthony G. Wilhelm's *Digital Nation: Toward an Inclusive Information Society*, MIT Press, 2004. An important attempt to frame the debate about the importance of technological literacy, this book explores world-wide successes and failures to bring technology to the masses and provides a plan to accomplish it in the United States.