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Articles

BROADCAST TECHNOLOGY AS DIVERSITY OPPORTUNITY: EXCHANGING MARKET POWER FOR MULTIPLEXED SIGNAL SET-ASIDES
By Michael M. Epstein..... 1

This Article proposes an access system based on a theory of quid pro quo: a bargained-for-exchange in which broadcasters would trade media access for market power. Under this quid pro quo approach, the FCC would administer a scaled metric whereby the greater a media company's audience reach, the more access that company must provide to citizens with diverse and local content. Since digital technology permits broadcasters to "multiplex" their television signal bandwidth into multiple signal programming streams, an opportunity exists for the government to require public access to one or more of these programming streams in return for relaxing caps on broadcast ownerships that currently prevent a company from owning stations that reach more than 39% of the national television audience.

YOU SAID WHAT? THE PERILS OF CONTENT-BASED REGULATION OF PUBLIC BROADCAST UNDERWRITING ACKNOWLEDGMENTS
By Andrew D. Cotlar 47

Public broadcast stations in the United States are forbidden to air promotional announcements in exchange for payment from commercial entities. However, these stations must acknowledge any financial contribution from donors that support particular programs without promoting the goods and services offered by those donors. While the FCC has attempted to maintain the conceptual distinction between promotional and nonpromotional information, it has struggled to apply this distinction within the context of an evolution in advertising practice.

As a result, many noncommercial educational licensees find it difficult to apply the FCC's rules. A careful analysis of how the FCC underwriting determinations yields the unmistakable conclusion that the entire process has become a clear lesson in the perils of content-based regulation. The FCC enforcement process is inconsistent and opaque and subjects nonprofit entities to potentially economically crippling fines while impinging on the

editorial integrity that is the hallmark of their First Amendment liberties. This Article concludes that Congress should revise the prohibition on promotional messages in favor of allowing limited commercial content by eliminating any restrictions on content, as long as announcements do not interrupt programming and are limited in length. This solution would get the FCC out of the business of content analysis, would preserve the integrity of public broadcasting, and would be consistent with what surveys demonstrate is the public's attitude toward commercialism in the nonprofit media.

MUNICIPAL BROADBAND: CHALLENGES AND PERSPECTIVES
By Craig Dingwall 69

This Article reviews the status and challenges of municipal broadband and provides recommendations for responsible municipal broadband deployment. The Author reviews broadband demand; possible justifications for and the status of municipal broadband deployment; speed, feature and price considerations; regulatory and technical issues; and relevant laws and legislation. The Author offers specific national policy recommendations and concludes that government/industry partnerships offer perhaps the best solution for municipal broadband deployment where broadband needs aren't met.

OPENING BOTTLENECKS: ON BEHALF OF MANDATED NETWORK NEUTRALITY
By Bill D. Herman.....107

This Article calls for mandated "network neutrality," which would require broadband service providers to treat all nondestructive data equitably. The Author argues that neutral networks are preferable because they better foster online innovation and provide a more equitable distribution of the power to communicate. Without mandated network neutrality, providers in highly concentrated regional broadband markets will likely begin charging content providers for the right to send data to end users at the fastest speeds available. The Author demonstrates that regional broadband competition and forthcoming transmission technologies are unlikely to prevent broadband discrimination, ad hoc regulation under current statutory authority is ineffective in dissuading even grossly anticompetitive network discrimination, and several providers' executives have explicitly outlined their plans to begin discriminating. Additionally, the Author rebuts a congeries of arguments against network neutrality mandates, including appeals to management of network congestion, the call for multiple special-purpose networks, the suggestion to postpone regulation, and predictions of regulatory capture.

THE LEGAL STATUS OF SPYWARE
By Daniel B. Garrie, Alan F. Blakley & Matthew J. Armstrong 161

This Article examines the legal status of Spyware under federal and common law in the United States of America. The Authors begin with a technical overview of Spyware technology, which covers Spyware's functionality, methods of dispersion, and classification. The Authors then analyze the treatment of Spyware under the Computer Fraud and Abuse Act, the Stored Communications Act, the Wiretap Act, and under general tort claims of trespass to chattels, invasion of privacy, and intrusion upon seclusion. The Authors conclude that none of the aforementioned causes of action provide an adequate remedy at law for Spyware victims. Moreover, the Authors note that even if an adequate cause of action were to exist, Spyware developers could avoid civil litigation by operating solely within Spyware friendly

jurisdictions. The Authors speculate that an appropriate solution would be for the legislature to require all Spyware programs to contain multi-click End User License Agreements. Not only would this approach protect consumers by enabling them to make informed decisions and creating an effective cause of action against Spyware distributors, it would also help the Spyware industry as a whole by legitimizing commercially viable Spyware programs.

Note

THE INFORMATION QUALITY ACT: THE LITTLE STATUTE THAT COULD (OR COULDN'T?)
APPLYING THE SAFE DRINKING WATER ACT AMENDMENTS OF 1996 TO THE FEDERAL COMMUNICATIONS COMMISSION
By Kellen Ressmeyer 219

In December 2000, Congress passed the Information Quality Act – a two sentence rider to a 712-page Appropriations Bill. The Information Quality Act, which seeks to ensure the quality of government-disseminated information, places the White House Office of Management and Budget in a supervisory role. The Office of Management and Budget subsequently finalized a set of mandatory Guidelines applicable to all federal agencies. Among other things, the Guidelines require adherence to the scientific standard articulated in the 1996 Amendments to the Safe Drinking Water Act where such agencies engage in risk analysis to human health, safety, and the environment. As of the date of this writing, the FCC has not incorporated this scientific standard. Accordingly, this Note's argument is two pronged: First, the FCC engages in risk analysis that falls within the Office of Management and Budget's mandate; and second, the FCC must adopt or adapt the scientific standard articulated in the 1996 Amendments where it engages in such risk analysis.

Book Review

ANALYZING THE WORLD BANK'S BLUEPRINT FOR PROMOTING "INFORMATION AND COMMUNICATIONS"
By Sherille Ismail 241

This Review provides a summary and brief analysis of foreign private investment, the book's blueprint for reform, and how investments have fared in promoting economic growth and reducing poverty. The book is a valuable asset for governments, scholars, investors, and the international community seeking to serve end users in developing countries.