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Articles

ÜBERREGULATION WITHOUT ECONOMICS: THE WORLD TRADE ORGANIZATION'S DECISION IN THE U.S.-MEXICO ARBITRATION ON TELECOMMUNICATIONS SERVICES
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In April 2004, a World Trade Organization ("WTO") arbitration panel found that Mexico had violated its commitments under the Annex on Telecommunications to the General Agreement on Trade in Services ("GATS") by failing to ensure that Telmex, Mexico's largest supplier of basic telecommunications services, provide interconnection to U.S. telecommunications carriers at international settlement rates that were cost-oriented. The WTO panel deemed long run average incremental cost ("LRAIC") to be the appropriate cost standard for setting settlement rates. Mexico thus became obliged to change its domestic telecommunications regulations or face trade sanctions. The decision is the first WTO arbitration to deal solely with trade in services under GATS. This Article shows that both the U.S. complaint against Mexico and the WTO decision misunderstood or ignored critical economic facts and principles. Both conflated international settlement rates and domestic interconnection pricing, and failed to recognize the factors that would justify Mexico's permitting Telmex to charge a settlement rate exceeding LRAIC. Moreover, the U.S. government failed to understand that U.S. long-distance carriers were not passing reductions in Mexico's international settlement rate on to their U.S. customers. Finally, both the U.S. government and the WTO incorrectly defined the relevant market and incorrectly evaluated market power.

THE ROAD NOT YET TRAVELED: WHY THE FCC SHOULD ISSUE DIGITAL MUST-CARRY RULES FOR PUBLIC TELEVISION "FIRST"
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After having recently adopted a variety of complex decisions concerning the digital television transition, the Federal Communications Commission ("FCC") may be poised in the next year to address the issue of mandatory cable carriage of digital broadcast television signals. In this regard, it may reasonably consider the possibility of crafting digital carriage rules for public television stations first without ruling positively or negatively on carriage of commercial stations. This action may legitimately be based on the unique legislative and factual differences between the noncommercial and

commercial service and would be constitutionally permissible. This Article sets forth the legal basis for a "public-television-first" approach. Andrew D. Cotlar first discusses the digital television build-out and describes the role of public television stations that build-out. He then explains the FCC's 2001 ruling on digital cable carriage and its impact on public television stations. Lastly, Cotlar argues that a "public-television-first" approach is a reasonable, content-neutral, and therefore constitutionally permissible exercise of the FCC's authority to address the unique needs and circumstances of public television stations.

NONPROFIT SOLICITATION UNDER THE TELEMARKETING SALES RULE
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In 2003, the Federal Trade Commission ("FTC") revised its Telemarketing Sales Rule ("TSR") to establish a national Do-Not-Call Registry for commercial telemarketing. Congress directed the Federal Communications Commission ("FCC") to coordinate its telemarketing regulations under the Telephone Consumer Protection Act ("TCPA") of 1991 to achieve maximum consistency between the two agencies' telemarketing restrictions. Nonprofit solicitation is exempt from the national Do-Not-Call Registry, but is covered by other provisions of the FTC rule. The TSR created a new in-house no-call list requirement and imposed additional restrictions not previously known for nonprofit solicitors. The separate nonprofit provisions of the TSR raise unique issues regarding the scope of FTC authority and First Amendment rights of nonprofit organizations. These regulations are being disputed in separate litigation from the challenge to the national Do-Not-Call Registry. This Article looks at the current state of regulatory activity targeting charitable telephone solicitation. First, Rita Marie Cain examines the FTC's authority to adopt the provisions of the TSR that apply to nonprofit organizations. She argues that under free speech jurisprudence, charitable solicitation cannot be regulated like other commercial messages. Finally, Cain analyzes the new FTC restrictions on nonprofit solicitation to determine if they can withstand Constitutional scrutiny.

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COMPETITION VERSUS REGULATION: "MEDIATING BETWEEN RIGHT AND RIGHT" IN THE WIRELESS AND WIRELINE TELEPHONE INDUSTRIES
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The wireline telephone industry in the United States is the most complete and sophisticated system in the world, built under 100 years of strict government regulation. While the wireline telephone industry was built under a scheme emphasizing regulatory control, the infancy of the wireless telephone industry has been subject to increasing deregulation and reliance on free market forces to guide the industry's development. It has been suggested that this shift in policy reflects the acknowledged failure of strict government regulation. This Note argues that the shift in regulatory policy reflects a difference in circumstances between the development of the wireless and wireline industries, and that the effects of regulation in the wireline industry played a critical part in the initial success of the wireless industry. The historical development of the wireless and wireline industries are compared and specific attention is paid to the implications of the Telecommunication Act of 1996 and its wireless number portability provisions. This Note argues that differences between the two industries dictate different approaches to regulation, and details the benefits of the differing approaches. This Note concludes by examining the FCC's new role in regulating the telecommunications industry as reflected by a review of the wireless number portability implementation.

AN ARCHITECTURE FOR SPAM REGULATION
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Junk email, commonly referred to as "spam," is the current scourge of the Internet. In late 2004, unwanted email messages were being delivered at a rate of 12.4 billion per day. The variety of tools used to combat spam have failed to make a significant impact. Legislative efforts, such as the CAN-SPAM Act of 2003, met with substantial enforcement complications. The communications industry responded with a variety of technical advances, such as filters and blacklists, but those innovations are still unable to reliably distinguish between wanted and unwanted messages. Real coordination between legislative and technical spam control tactics has yet to happen, and it has been suggested that the consensus necessary to support such coordination is not available. This Note explains how spammers operate and suggests that failure to effectively combat spam may drive email users to other means of electronic communication. A short history of legal and technical responses to the spam problem is presented, including a look at how the First Amendment affects the effort to reduce spam. Authentication-based systems of regulating spam, proposed by private industry, are then examined in detail. This Note suggests alterations of those systems, allowing for greater First Amendment protection for message senders and greater individual control over receipt of messages. Finally, this Note concludes by arguing that an architectural framework based on these authentication systems would effectively enable legislators and the Internet industry to work together to reduce spam, backed by the support of an Internet community eager for the end of unwanted email messages.

Book Review

AN INTRODUCTION TO LESSIGIAN THOUGHT
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A review of *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity* by Lawrence Lessig. Lawrence Lessig is a frequent commentator and prolific writer on media and communications topics. His body of work touches copyright issues, radio spectrum policy, media ownership issues, and legal ownership and control of the physical platforms that deliver broadband content. In this 2004 publication, he focuses on copyright policy. Lessig's analysis is often more complex and interdisciplinary than most practitioners', yet manages to focus on the everyday effects of policy choices on everyday people. Thus, he addresses the recording industry's attempts to stamp out music piracy from a perspective of what will best work for the millions of Americans downloading music, instead of what approach most faithfully adheres to the traditions of copyright law or what approach best clings to misapplied notions of property or piracy. Lessig concludes the book with proposals to rebalance copyright law, keeping in mind both the interests of the artist and the interests of a free culture.