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Articles

COMMUNICATIONS POLICY FOR 2006 AND BEYOND

By Reed E. Hundt and Gregory L. Rosston..... 1

In this Article, the Authors propose sweeping changes to the current telecommunications regulatory regime. With impending reform in telecommunications laws, the Authors argue that an important first step is the creation of a bipartisan, independent commission to examine and recommend implementation of more market-oriented communications policy. Through maximizing the operation of the markets, the authors argue that communications policy will better serve its goals of increasing business productivity and consumer welfare through the better services and lower prices. Important steps to achieve optimal market operation include deregulating retail prices where multifirm competition is available, minimizing the cost of public property inputs, overhauling universal service, assigning greater jurisdictional authority to federal regulators, and significantly reorganizing the FCC. The Authors argue that the timely implementation of these policies is crucial for achieving United States telecommunications policy goals.

COSTS AND CONSEQUENCES OF FEDERAL TELECOMMUNICATIONS REGULATIONS

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Federal regulation of telecommunication profoundly affects United States consumers, determining what services are priced above and below cost, what kinds of technologies and services are offered and when, and what firms are allowed to compete. In this Article, the Author surveys the voluminous literature on the economic costs and outcomes of these regulations, focusing predominantly on the effects of regulation on prices, quantity, quality of service, and overall consumer and social welfare. The Author estimates costs and assesses outcomes for ten types of federal telecommunications regulated activity: telecommunications regulatory spending, long-distance access charges, universal service funding, local number portability, enhanced 911, miscellaneous wireless mandates, spectrum management, satellite regulation, unbundled network elements, and resale of the incumbent's services. The Article highlights particularly inefficient and costly regulations while also drawing attention to regulations that have a significant positive outcome for consumers. The Author concludes with an overall estimate of the cost of federal telecommunications regulation to United States consumers.

**WHY STOVEPIPE REGULATION NO LONGER WORKS: AN ESSAY ON THE NEED
FOR A NEW MARKET-ORIENTED COMMUNICATIONS POLICY**

By Randolph J. May 103

In the ten years since the 1996 Telecommunications Act, the telecommunications industry has undergone profound technological and marketplace changes. May argues that the “techno-functional constructs” of the statute regulate services based on increasingly obsolete definitions. This Article argues that those changes have undermined the “stovepipe” regulatory scheme of the 1996 Act. In an increasingly diverse and competitive marketplace, the “stovepipe” model of regulation should be left in the dustbin of history. Instead, May argues that a new market-oriented regulatory regime focusing on consumer welfare through the application of antitrust principles should form the basis of a new regulatory model.

**A MODEL FOR EMERGENCY SERVICE OF VOIP THROUGH CERTIFICATION
AND LABELING**

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The diffusion of VoIP technology promises revolutionary changes to a century-old model of voice telephony. Though these changes bring extraordinary opportunities, they also bring challenging policy implications for businesses and regulators. In this Article, the Authors examine the technical difficulties of providing the same quality and dependability of emergency services in VoIP-based telephony as consumers have come to expect from PSTN-based telephone networks. Given the technical complexity and heterogeneity of VoIP, the Authors propose industry self-regulation through an advanced certification framework as a more effective alternative to direct government regulation. After surveying a number of successful self-regulatory regimes, the Authors conclude that a multitier certification scheme will best meet regulator and consumer expectations of timely and highly intelligible emergency calls that provide the critical information necessary for effective emergency services.

**MEASURING MEDIA MARKET DIVERSITY: CONCENTRATION, IMPORTANCE,
AND PLURALISM**

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The Third Circuit’s rejection of the FCC’s application of its Diversity Index in setting Cross-Media Limits in *Prometheus Radio Project v. FCC* represented a significant setback for the FCC’s media ownership policies. This Article argues that the FCC’s Diversity Index is fatally flawed because it fails to simultaneously account for two assumptions shared by the FCC and the Third Circuit: diversity in a media market increases with ownership concentration, and an individual entity’s contribution to diversity increases with the weighted market shares of that entity’s outlets. The Author proposes an alternative index that does satisfy both assumptions before applying the proposed index to a sample test case using the FCC’s Altoona, Pennsylvania sample market. After applying the proposed Hill Index and the Noam Index to the Altoona sample market, the Author argues that both represent better approaches to media diversity than the FCC’s Diversity Index. Ultimately, the Article concludes that the adoption of an alternative to the FCC’s Diversity Index is an important first step to binding regulators from abusing discretion in making Cross-Media Limits decisions.

Note

TOWARD A LIMITED RIGHT OF ACCESS TO JURY DELIBERATIONS

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Jury deliberations receive extensive protection from public examination. These protections make jury deliberations much less accessible to the public than most other governmental deliberations. This Comment examines the constitutional, common law, and statutory protections for jury deliberations and the dangers that these protections seek to prevent. The Author argues that a limited post-verdict right of access to jury deliberations could restore public faith in the jury and could eventually improve the quality of jury deliberations. The Author suggests a possible framework that would provide the public with a limited right of access and still address the primary concerns that led to the current protections. The Comment concludes with a postscript addressing the use of audiovisual equipment in the jury room.

Book Review

THE CONTINUING ROLE OF STATE POLICY

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A review of Hernan Galperin's *New Television, Old Politics: The Transition to Digital TV in the United States and Britain*, Cambridge University Press, 2004. Based on comparative case studies in Britain and the United States, this book analyzes the transition to digital television in both countries, considers governmental regulatory strategies, and focuses on the impact of various factors, including political influence and market and technological changes.