
PREFACE

Commissioner Jonathan S. Adelstein*

It is a pleasure for me to introduce this edition of the *CommLaw Conspectus*. The articles in this issue continue the tradition of fine legal scholarship and in-depth analysis of communications law topics, from the evolution of competition in the local market through a case study of Signaling System Seven, to an international survey of successful universal access models, to an argument for treating spectrum as private property. In addition, this issue contains a novel article that advances an argument for extending privilege to “litigation communications specialists.”

Considering these topics and looking ahead at some of the upcoming challenges facing the Federal Communications Commission, I am struck by the growing need to address access issues for all Americans as communications take an ever more prominent role in our personal lives. While at the Commission, my primary mission is to serve the public interest. At its most basic level, I believe that means securing access to communications for everyone, including those the market may leave behind. To this end, I believe that the Commission must serve the public interest by paying special attention to modernizing universal service, promoting wireless technology and services through improved spectrum management, and preventing media consolidation from shrinking access to the public airwaves.

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Universal Service

The telecommunications industry is at a crossroads, driven by the rise of broadband and its revolutionary implications. Both service providers and policy-makers face bigger challenges – and even bigger opportunities – than we have seen in the past one hundred years of the telephone. From telecommuting, to distance learning, to high definition video, to telemedicine, broadband breaks through geographic barriers and transforms communities. Broadband enables new and innovative services that give consumers unparalleled levels of control and flexibility with their communications devices. In many areas of the country, cable and telecommunications companies are rapidly deploying broadband facilities and are increasingly competing to serve mass market customers. We must continue to encourage broadband deployment by increasing incentives for investment and by promoting competition. We can do both with a policy framework that is flexible and keeps pace with rapid technological changes.

Increasingly, voice, video, and data will flow to homes and businesses over broadband platforms. In this new world, we must promote a comprehensive rollout to all Americans, including those from rural, insular, and other high-cost areas, Native Americans and other minorities, people with disabilities, non-English speakers, and low-income consumers. If we do not, those left behind will be more disadvantaged than ever, and our society overall will not enjoy the economic and social benefits that come with having all segments of our population connected.

It may be reasonable to believe that the market alone will bring competitive broadband options to much of America, but history tells us that there are pockets of this country that are only served as a result of federal and state universal service programs and the commitments made by community-based providers. The federal Universal Service Fund supports telecommunications services for rural America, for low income consumers, for schools and libraries, and for rural telemedicine facilities. With that commitment to universal service, we have achieved remarkable success. Telephones are considered ubiquitous in this country. We enjoy more than a 95% penetration rate for phone service. Nearly all of our country is merely a phone call away from emergency assistance.

All of the reasons for which we viewed telephone service as “essential” will ultimately apply to broadband and the innovative services that it permits. In this increasingly global economy, we must give our communities the tools and technology that they need to be competitive. Nowhere are these values better showcased than in our Schools and Libraries/E-Rate program, which has played such an important role in the deployment of broadband. Since its in-

ception, the E-Rate program has opened up a new world of learning and opportunity for millions of school children and library patrons. The E-Rate enables our children to learn the skills they need to succeed in this Internet Age and will be critical to our nation's long-term competitiveness in the global marketplace.

In the 1996 Telecommunications Act, Congress articulated a vision in which all Americans have access to advanced services. To achieve these high aspirations, we must ensure that our universal service programs remain on solid footing and that they are able to continually evolve just as technology does.

Managing Spectrum in the Public Interest

When thinking about the federal role in ensuring access to the latest technologies, the Commission is also charged with managing the nation's spectrum in the public interest. Spectrum will be the lifeblood for much of this new communications landscape. I have set out an approach I call a "Framework for Innovation" that establishes ground rules for issues like interference, while, to the greatest extent possible, allowing innovation in the marketplace to drive the development of spectrum-based services. My goal is to maximize the communications and information that flow over the nation's airwaves. We have achieved remarkable results by improving our spectrum management policy. The marketplace has responded with an explosion of new opportunities for consumers, like "wi-fi" and new licensed wireless broadband services.

Spectrum is a finite public resource, and as such, it should benefit as many people as possible. In order to maximize our country's use of it, we need to improve access to spectrum-based services. We cannot afford to let spectrum lie fallow. We need to do more to get spectrum in the hands of people who are ready and willing to use it. Thus, the Commission has been taking a fresh look at some of our service and construction rules to ensure that our policies do not undercut the ability of carriers to access unused spectrum -- whether they are in underserved areas or have developed new technologies.

The Commission also needs to improve access to spectrum by those providers who want to serve rural areas, particularly community-based providers. Operators across the country need better access to spectrum, which could drive broadband deployment deeper and further into rural America. We have to be more creative with a term I have coined, "spectrum facilitation." That means stripping away barriers -- regulatory or economic -- to get spectrum into the hands of operators serving consumers at the most local levels.

With new guidelines to facilitate a more robust secondary market and new proceedings exploring the development of so-called smart radios that can maximize spectrum use, we are moving closer to achieving our goal of ensur-

ing that all Americans have access to the latest wireless technologies, no matter where they live. We also are making available new bands for unlicensed spectrum use and updating our rules to further promote the phenomenal growth of unlicensed services.

The wireless industry is marked by dynamic competition, due in no small part to the regulatory framework that the Commission has adopted. In the future, we should continue to apply only those rules that truly benefit the public interest so as to avoid undermining these healthy competitive conditions.

Media Diversity

As we have seen over the past couple of years, Americans are very concerned about their media. No one should forget that the airwaves belong to the American people, and nowhere is it more critical to preserve their access to what the Supreme Court has called the “uninhibited marketplace of ideas.”¹ . The Commission should continue to promote the priorities that have always formed the basis of our public interest policy as envisioned by Congress: diversity, competition and localism. Specifically, we should encourage a broad range of voices and viewpoints as central to the health of our democracy.

2004’s election coverage underscored the urgent need for media reform, as the major networks opted to show a mere one hour of political convention coverage on most nights and many local stations opted for campaign messages to be conveyed through negative campaign advertisements instead of local commentary and coverage. Still other stations threatened to use their control of dozens of stations across the country for their own political purposes. This portends a dangerous trend that is the outgrowth of the increasing consolidation in our nation’s media.

Yet the public demands far broader access to the public airwaves. Nearly three million people contacted the FCC last year voicing their opposition to continued media consolidation. The opposition has come from all sides – from ultra-conservatives to ultra-liberals and everyone in-between. It has been one of the most bipartisan issues I have seen in all my years in Washington. Hopefully, the Commission will be more responsive to the public in subsequent media ownership reviews.

We allow corporations who receive a license to use the airwaves to profit from that use. But, given that the airwaves belong to the public, people have a right to know what they will get in return. As we enter the new digital broadcasting frontier, there should be a clear set of public interest guidelines that will ensure that every broadcaster adheres to baseline standards. These guide-

¹ Red Lion Broad. v. FCC, 395 U.S. 367, 390 (1969).

lines should be concrete and measurable. This is especially important for digital television and radio where a broadcaster can transmit multiple programming signals. The public should understand how those extra channels will be used in *its* interest. But even though most television broadcasters are already broadcasting digitally, the Commission has not updated broadcasters' public interest obligations for the digital environment. We need to do so immediately so everyone knows the rules of the road.

Broadcasters who serve their communities exceptionally well should be proud of their efforts, but it is up to the FCC to ensure that *all* broadcasters pitch in. All are equally accountable to their local communities. We must chart a course toward more coverage of local civic and electoral affairs. We need to inspire more civic participation in our society, reaffirming the social compact of broadcasting.

As we have seen from the recent media debate, Congress clearly considers the communications industries as far more than makers of consumer goods and services. All communications fields involve externalities that are not fully captured in the marketplace. Communications technologies are the way people become informed and participate in society. These technologies bring us up-to-date with our friends and relatives. They educate us with stories, images, and people's creativity. They expand our horizons – from our neighborhoods to our towns and cities, our country, and the world around us. They literally bring the world to our fingertips.

It is the Commission's duty to protect every segment of the public in its access to technologies that convey information necessary to stay well-connected in our society. As you read these pages, I hope you will realize the new, innovative ways that you can contribute to the public's access to essential and emerging communications technologies.

