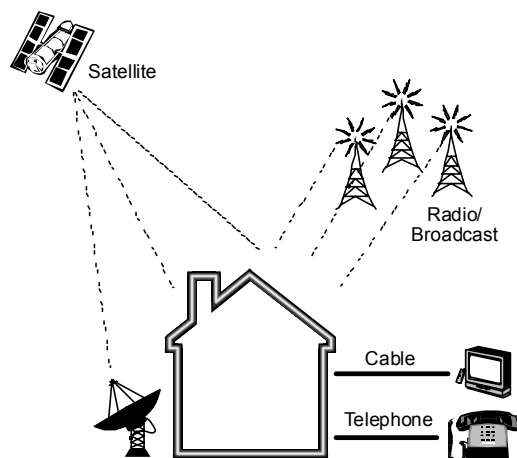

PREFACE

The theme of almost any law school casebook is apparent from the outset. An administrative law casebook, for example, pulls together materials about governmental administration. A copyright text similarly considers a particular combination of exclusive rights recognized in a range of creative works. Thus, even though an administrative law text will consider agencies as diverse as the Environmental Protection Agency and the Federal Aviation Administration and even though a copyright text will similarly examine works as varied as paintings, sculptures, and computer software, in each of these texts it is easy to understand why such seemingly disparate materials are bundled together into a single coherent conversation.

The implicit logic of a telecommunications text, however, may be less transparent. Why should statutes and regulations related to broadcast radio, broadcast television, cable, satellite, wireline telephony, cellular telephony, and the Internet all be considered in a single volume? Do these communication mechanisms really have that much in common? Why not divide the book into two, for example, featuring technologies used for one-to-many communication in one volume, and technologies used for one-to-one information exchanges in another? Why, in short, a book on telecommunications law writ large?

The insight, we think, is that telecommunications technologies are all to some degree substitutable, and therefore much of telecommunications law is about making sure that society uses the right resources to accomplish the right task. Television content, for example, can be delivered over the airwaves, but it also can be delivered by wire. Television by wire can be a pay service or an advertiser-supported service, just as broadcast television can operate in either form. Notably, shifting television from the airwaves to wires frees up the airwaves for other uses, such as cellular telephony.

Almost every telecommunications issue plays out exactly the way the television issue played out above: a question that starts by focusing on one telecommunications topic inevitably has implications for virtually every other. Thus, it is hard to consider any one branch of telecommunications in isolation. It is the combination of broadcast, cable, telephone, and Internet regulation that together determine how wire, air, and other telecommunications resources are allocated as between all their myriad competing uses. Because almost any telecommunications resource can be put to more than one telecommunications use, telecommunications topics are necessarily interconnected.



Information Pipelines into the Home. There are many pathways into the modern home, each to one degree or another capable of delivering information services.

This same point explains why sometimes this text will dabble into discussions of media that seem peripheral to telecommunications issues, for example the markets for videocassettes and music albums. After all, one question broadcast policy has to answer is the question of why any of the airwaves should be devoted to the delivery of music via radio given that music aficionados can purchase their favorite tunes at the local store or over the Internet. It might be that the airwaves could be put to better use by making possible various portable Internet services than by, instead, transmitting Eminem's latest musical offering. Here again, no telecommunications topic can be studied in complete isolation.

There are other reasons why broadcast radio, broadcast television, cable, satellite, wireline telephony, cellular telephony, and the Internet should all be brought together into a single conversation. For example, in all of these markets, one of the main concerns motivating regulation is the worry that competition is either unworkable or undesirable. To give but one example, policymakers have long worried that the economics of local telephone service are such that either only one firm can survive in the long run ("competition is unworkable") or a single firm can provide a given quality of phone service at lower total cost than can multiple competitors ("competition is undesirable"). Policymakers in this area therefore continually struggle with the question of whether regulation should displace competition as the principal mechanism for ensuring good performance. Similar arguments that regulation might have advantages over competition arise in every telecommunications market; this is therefore another reason to consider all of these topics in a single conversation.

Finally, any attempt at separating the various strands of telecommunications is further confounded by the phenomenon of technological convergence. Not only are broadcast, cable, telephony, and the Internet substitutable and interconnected, but also the lines between them are blurry, and becoming more so over time. More than merely substituting for each other, televisions,

telephones, and computers increasingly are each other. That provides yet another reason to treat them all together in one coherent conversation.

Of course, this blurring of technological lines contrasts sharply with the regulatory regime, which has long put broadcast, cable, telephony, and the Internet into separate legal categories and subjected them to quite different rules and regulations. Technologies may be converging, but the legal world is still significantly balkanized. Indeed, one way to articulate the current state of telecommunications law is to say that society is today in the middle of a transition process that will likely result in not only technological but also legal convergence. But how long that transition will take, and on whose terms the law and the technology will converge, remain open issues. During this period, battles will therefore erupt not only over technology but also over the guiding legal regime. And the stakes for all players, including not only the firms but also the regulators, are quite high.

All of these considerations make both organizing and writing a casebook a major challenge. We would do a disservice to our readers—particularly as many are likely to be lawyers and law students—if we let a focus on technological convergence blur the important distinctions between the legal regimes for broadcast, cable, telephony, and the Internet. At the same time, we would fail to capture important technological developments if we treated these legal categories as wholly separating each technology from the others. We have therefore sought an approach that attempts to capture the richness and complexity of the regulatory regime while emphasizing the ways that telecommunications technologies cross the lines that regulators have written in the sand. Accordingly, we have organized the book along the four main dimensions suggested here—broadcast, cable, telephony, and advanced services—yet, at the same time, each section offers contrasts and questions that cross these somewhat artificial boundaries and thereby help to explain how telecommunications policy is necessarily linked from topic to topic.

Now, some acknowledgments. This text grew out of an earlier book written by Tom Krattenmaker, and so first and foremost our thanks to Tom for getting us started back in 2001. Karl Auerbach, Jack Balkin, Dale Hatfield, Karl Mannheim, John Roberts, Peter Shane, and Jim Speta also have contributed significantly to this project over the years. We owe each sincere thanks for helping us think through issues. Our thanks go to Stanley Besen and Lucas Powe as well. While their contributions came to us through Krattenmaker, those suggestions nevertheless benefit the book still today. Sincere thanks, too, to the family at Carolina Academic Press. Linda, you especially have been supportive of our work on this project; we genuinely appreciate everything you do for us and our readers. A growing army of assistants have helped us bring this project to completion, including, from the University of Chicago, Adam Bellack, Barry Blonien, Sapna Kumar, Martha Pacold and Danny Sokol; from Duke University, Neylân Gürel and Dana Norvell; from the University of San Diego, Mike Whittaker; and from Boalt Hall, Madeline Burgess, Elizabeth Field, Chris Swain, Larry Trask, and Steve Vercelloni. Their work taken together has been so valuable to us. Lastly, our families have been enormously patient as this

project lurched forward, allowing us to work intensely when we needed to and being there to laugh with us when things were going wrong. To them, our love; nothing of what we do would matter without all of you in our lives.

One final word before we step aside: the materials included in this book have been ruthlessly edited for style, length, and clarity. To avoid clutter, we have left almost all of those changes unmarked. While we are confident that none of our edits altered the meaning of the relevant passages, we do want to warn readers that the materials have been edited so as to maximize their value in the educational setting and, thus, attorneys looking to cite materials in court documents are advised to look to the original sources before quoting any of the materials excerpted here.

With that, we welcome you to the text. We hope you find your study of telecommunications to be a rewarding one.

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