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## Introduction

Carl B. Hilliard

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# CALIFORNIA WESTERN LAW REVIEW

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## ANNUAL COMMUNICATIONS LAW ISSUE

### INTRODUCTION

CARL B. HILLIARD\*

The use of increasingly strained legal models to regulate the explosion of new services in a rapidly changing market is the subject of this issue of the Law Review. Changing and merging technology is driving the telecommunications industry into the information services sector of the economy where there is more competition and less regulation. The technological differences that permitted easy classification of communications services have long since worn away.

In *Debalkanize the Telecommunications Marketplace*, Nicholas Allard and Theresa Lauerhass describe the different, inconsistent, and contradictory rules applied to regulate services using different types of delivery systems to provide programming to the home video market. At the heart of the problem is the slavish effort of Congress, courts, and commissions to codify the rules for new delivery systems in terms of technology instead of the nature of the service provided. The authors argue that the use of legally demarcated technical boundaries to define communications services creates unintended barriers to the deployment of new, different, or alternative technologies. They propose the adoption of "technology-neutral" laws to regulate such services and suggest that general classifications will permit the marketplace to function at its optimum level with as little government intrusion as possible.

*Collocation and Telecommunications Policy: A Fostering of Competition on the Merits?* by Alexander Larson and Douglas Mudd concerns the political and ideological struggle over the further expansion of competition in the provision of telephone service. The carriage of a long distance telephone call to and from the point of connection with a long distance company is termed "access service." Access service is generally provided by local telephone companies, although some competition is being felt from "Competitive Access Providers," or "CAPs." CAPs install fiber lines which

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\* ASSOCIATE PROFESSOR OF LAW, CALIFORNIA WESTERN SCHOOL OF LAW (ON LEAVE).

directly connect large corporations to long distance carriers. The focus of this article is a proposal under consideration by the FCC which would require local telephone companies to connect their facilities to CAPs. Such connection would allow the CAPs to use the local telephone company network and effectively compete in the access service market. The authors argue that this market is more apt to be a natural monopoly than a competitive one. Recognizing, however, that the general direction of the FCC's policy is towards liberalized entry, the writers posit a scenario in which CAPs are permitted to interconnect but the local telephone companies are unable to compete because of artificial price distortions created by universal service requirements and rate making policies. AT&T's experience with the Telpak tariffs demonstrates that this scenario is no idle worry. The authors conclude that true competition will only be realized if connection charges to the CAPs are high enough to prevent creamskimming or, in the alternative, the local telephone companies are permitted to reduce rates to meet the competition.

Terry Etter and Rick Rhodes explain the arcane ways of political broadcast advertising in *Determining Lowest Unit Charges: Good LUC!* The discussion centers on the new rules adopted by the FCC at the end of 1991. These rules were adopted in the wake of a surprise audit which revealed non-compliance with the Federal Elections Campaign Act's requirement that candidates for political office be charged no more for advertising than the broadcaster's lowest rate for comparable times. The authors contend that the non-compliance was attributable to the dramatic increase in the complexities of calculating variable advertising rates during the 1980s, coupled with laissez-faire regulatory policy which left the broadcasters with considerable latitude to determine which rates were applicable. The authors conclude that the new guidelines are a fair resolution of a complex problem.

Marcellus Snow's *Trade in Information Services in Asia, ASEAN, and the Pacific: Conceptual Issues and Policy Examples* examines the globalization of the service economy and the roles of various international organizations in regulating trade in information services. The author participated in a far reaching study of the economic relations between the United States and the seven ASEAN countries. This article contains an overview of the portion of that study which relates to the trade in services. The author concludes that "liberalized trade in services is a vital factor in sustaining economic growth" for developed and developing countries alike.

The Supreme Court's reluctance to determine the First Amendment status of cable television in *City of Los Angeles v. Preferred Communications*<sup>1</sup> has resulted in two different approaches to cable regulation in the appellate courts. The print model, which accords full First Amendment protection to cable, has been applied in several cases. At the same time, other courts have rejected the print model and upheld single franchise policies, access channels,

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1. 476 U.S. 488 (1986).

franchise fees, and renewal procedures. John Cole, in *The Cable Television "Press" and the Protection of the First Amendment—A Not So "Vexing Question,"* makes a strong argument for the application of the literal tradition of the First Amendment jurisprudence to cable television. He maintains that cable is an "electronic publisher" with First Amendment rights and no rational reason exists to impose public utility type restrictions.

Paul Grinvalsky's engaging Comment, *Idea-Expression in Musical Analysis and the Role of the Intended Audience in Music Copyright Infringement*, describes the difficulty in applying copyright law in cases where the ordinary senses are unable to discern differences which make a musical work new and original as opposed to an adaptation or variation of an existing piece. The writer contends the trier of fact in some music copyright disputes must have, if not a trained ear, at least an appreciative one. Ironically, this piece is such a clear and complete guide to music copyright conflicts that even my "numb-eared" generation might believe its use will enable them to discern the "minimum" amount of creativity necessary to constitute original expression in music. Even a reader with no interest in copyright law or music will enjoy reading this work.

