

Telecommunications Law and Policy
LAWS 7241; TLEN 5240
Professors Ken Fellman and Preston Padden
Fall 2012

Time: Tue, Thur 4:15-5:30 p.m.

Credits: 3

Wolf Law, Room 305

Office Hours: Preston Padden, Tue & Thur, Wolf Law 1B41, by appointment

Ken Fellman, Tue and Thur, 3:00-4:00, Wolf Law 1B41

I. COURSE DESCRIPTION AND OBJECTIVES

This course surveys the basic principles underpinning our nation's telecommunications laws. In particular, we examine the legal and regulatory treatment of a number of related technologies — from telephony to wireless innovations to broadcasting and cable to the Internet — whose convergence challenges the efficacy of existing laws and established principles. The course focuses on whether regulation is warranted and how various regulatory tools are deployed. It analyzes administrative and statutory law, paying special attention to the design and implementation of the Communications Act of 1934, the Telecommunications Act of 1996 and the National Broadband Plan adopted in 2010. In addition, the course addresses the role played by antitrust, intellectual property, standards bodies, and constitutional law (particularly the First Amendment) in shaping our nation's telecommunications landscape.

It is the objective of this course to:

1. **Encourage Students to “think outside the box” and to seek innovative avenues to address complex and often conflicting public policy demands and meet their clients’ objectives.**
The professors will share their “real world” experiences (Fellman as an elected Mayor and as Past President of the National Association of Telecommunications Officers and Advisors and Padden as an executive/lawyer at Fox, ABC and Disney) to give vivid meaning to communications law concepts. This course will encourage Students to consider innovative approaches.
2. **Identify relevant and enduring telecom law concepts and arguments.**
Telecommunications technologies are defined by innovation and change. Telecommunications policy, however, is defined by certain enduring and recurring arguments and concepts. A priority of the course is to teach the key concepts and attendant arguments that are frequently articulated in the area of telecommunications law.
3. **Analyze telecom in an interdisciplinary manner.** The course will emphasize the intersection of economics, technology, policy and law. Economic forces — such as economies of scale and network effects — powerfully shape the incentives of telecommunications firms and customers. Meanwhile, technology innovation has enabled intelligence at the edges, mobile communications, and cross-platform competition which simply didn't exist 20 years ago. A theme of this course is that principled policy-making must be informed by technology and economics.
4. **Detail the power, procedures, and institutional competence of significant entities responsible for telecommunications law and policy.** This course addresses the

respective roles of Congress, the FCC, and the courts. We also consider the emerging functions performed by international entities, state and local governments, industry groups and standard setting bodies. In the United States, calls for statutory reform (e.g., rewrite the Communications Act of 1934) and administrative reform (e.g., rethink the role of the FCC) are common. The course analyzes the *status quo* approach to telecommunications as well as certain reform proposals in an intellectually honest manner.

II. GRADING

Item	% Grade	Comment
Final Exam	60%	Open book, time pressured
Short essays (due October 2 nd and November 27 th)	30% total (15% each paper)	Two short (3-5 pages, double spaced) essays during the semester on a class related topic. The first paper will address the Verizon – cable industry transaction on spectrum and marketing. We will discuss parameters early in the semester, and students are encouraged to read what you can about this pending transaction. The second paper will be on a topic to be determined during the semester, and may be one of the student's choosing, with prior approval from the professors. Students will be graded on both content (legal analysis), as well as grammar and spelling, and will have an opportunity to review areas of improvement in writing skills with the professors in advance of the final exam.
In-Class Performance (Class participation)	10% total	Exceptional performance in class participation will result in upward adjustment of this grade.
FCC Comment (Course Paper) (due: December 4 th)	20% (optional)	Students may elect to complete a Comment for filing into a real or suggested FCC docket. The Comment cannot hinder a grade but it can help. The paper grade will count 20% of a student's final course grade if it exceeds the final exam grade as adjusted for the class curve.

Short essays and class participation grade: You do not need an engineering, economic or legal background to do well in this course. You do, however, need to (1) be prepared on a daily basis (i.e., do not blow a reading assignment), and (2) exercise critical thinking skills in analyzing questions presented during class. Be forewarned: if you do not regularly do your reading prior to class and/or you do not regularly attend class, then this course is not for you. With this in mind, a heavy component of in-class activities will factor into your grade, including two short (3-5 pages, double spaced) essays addressing a class topic (either an assigned topic or a topic of the student's choosing, to be agreed upon in advance with the professors) to demonstrate whether you understand the reading and can critically analyze problems presented in class. Each paper will count for 15% of your grade. Students will be graded on both the substantive content of each paper as well as writing skills such as spelling and grammar. Students will also be given an opportunity to review the papers with your professors, and discuss areas of improvement, in preparation of the final exam.

Students are encouraged both to be active participants in classroom discussion, and to electronically share thoughts and analysis on current issue of interest with class and professors. At least once during the semester, each student will be asked to begin a class by offering a 5 minute analysis of what you find to be the key issues of interest in that day's reading assignment.

The historical development of telecommunications law in the United States that we will address early in the semester will influence our analysis and discussion of current events. Your professors will periodically share information on current telecommunications legal and policy issue with the class via email, and students are encouraged to engage in online discussions with the class about these issues.

FCC Comment; Course Paper: You have the alternative to individually complete a 7-15 page paper which should be styled as a Comment for filing in a pending or suggested docket before the FCC (double-spaced, Times New Roman 12 point font (page limit is exclusive of title page, appendices and references)). In advance of writing the paper, please send Preston and Ken an e-mail concerning your proposed topic and get confirmation that the proposed topic is appropriate. The Comment cannot hinder a grade but it can help. The paper grade will count 20% of a student's final course grade *if and only if* the Comment grade exceeds the individual's final exam grade as adjusted for the class curve.

Final exam: The 3 hour final exam will be open book, however, like most exams, it will be time-pressured such that you will have a limited amount of time to review your notes.

III. PROCEDURES

Submission of assignments; deadlines. All written assignments are due for in-class students by 1:00 p.m. Mountain time on the due date. No exceptions to deadlines will be made absent emergency.

Policy on Academic Honesty. Your research, analysis and writing in this course should reflect your own work. Your professors take plagiarism seriously and, if you plagiarize, such action is grounds for failure of the course and referral to the Honor Council. *A simple rule: if language is not your own, you need to set it off in quotes and provide attribution.* Other questions concerning academic integrity are less bright-line: any questions about whether or not an act constitutes academic dishonesty are welcome. All incidents of academic misconduct shall be reported to the Honor Code Council (honor@colorado.edu; 303-725-2273). Students who are found to be in violation of the academic integrity policy will be subject to both academic sanctions from the faculty member and non-academic sanctions (including but not limited to university probation, suspension, or expulsion). See the University honor code at < <http://www.colorado.edu/academics/honorcode/> > and < <http://www.colorado.edu/policies/honor.html> >.

Religious Obligations. Your professors will make every effort to reasonably and fairly deal with all students who, because of religious obligations, have conflicts with scheduled exams, assignments or required attendance. Students with religious obligations that conflict with a test or other assignment should contact the instructor at least two weeks in advance to arrange an alternative time or assignment. See the University policy at < http://www.colorado.edu/policies/fac_relig.html >.

Classroom and Course-Related Behavior. Students who exhibit disruptive course-related behavior may be subject to disciplinary action. *When you are in class, do not surf the Web, send e-mail or text messages, or use Internet access in an abusive way.* Violation of this policy will result in a lower class participation grade. Additionally, professional courtesy and sensitivity are important — particularly when relating to topics such as race, culture, religion, politics, sexual orientation, gender variance, and nationalities. For further information concerning classroom behavior, see the University policy at

< http://www.colorado.edu/policies/class_behavior.html > and
< http://www.colorado.edu/studentaffairs/judicialaffairs/code.html#student_code >.

Policy on Discrimination and Harassment. The University of Colorado at Boulder policy on Discrimination and Harassment (<http://www.colorado.edu/policies/discrimination.html>), the University of Colorado policy on Sexual Harassment, and the University of Colorado policy on Amorous Relationships applies to all students, staff and faculty. Any student, staff or faculty member who believes s/he has been the subject of discrimination or harassment based upon race, color, national origin, sex, age, disability, religion, sexual orientation, or veteran status should contact the Office of Discrimination and Harassment (ODH) at 303-492-2127 or the Office of Judicial Affairs at 303-492-5550. Information about the ODH and the campus resources available to assist individuals regarding discrimination or harassment can be obtained at <http://www.colorado.edu/odh>.

Students with Disabilities. If you qualify for accommodations because of a disability, please submit a letter from Disability Services (DS) to the instructor early in the course so that your needs may be addressed. DS determines accommodations based on documented disabilities (303-492-8671, Willard 322, www.colorado.edu/sacs/disabilityservices) Disability Services' letters for students with disabilities indicate legally mandated reasonable accommodations. The syllabus statements and answers to Frequently Asked Questions can be found at < www.colorado.edu/disabilityservices >.

IV. RESOURCES

The course will be taught primarily from *Telecommunications Law and Policy* (Third Edition 2012), by Stuart M. Benjamin, Douglas G. Lichtman, Howard A. Shelanski and Philip J. Weiser. Students must buy this book. Students also are strongly encouraged to purchase and read "You Say You Want A Revolution" (Yale University Press, 2000) by Reed Hundt. This book chronicles Mr. Hundt's tenure as Chairman of the FCC and offers vivid "real-world" insights to telecommunications policy making in Washington, D.C. Students may (but are not required to) buy *Digital Crossroads: American Telecommunications Policy in the Internet Age* (MIT Press, 2005), by Jonathan E. Nuechterlein & Philip J. Weiser. Various chapters from *Digital Crossroads* may be assigned during the semester, and will be available on TWEN.

The vast majority of statutes governing broadcast or telecommunications regulation are codified at Title 47 of the United States Code. Title 47 contains the Communications Act of 1934, as amended; the Telecommunications Act of 1996; the Communications Decency Act; the National Telecommunications and Information Administration Organization Act; the Telephone Disclosure and Dispute Resolution Act; the Communications Assistance for Law Enforcement Act; the Cable Communications Policy Act of 1984; the Cable Television Consumer Protection and Competition Act of 1992; and the Communications Satellite Act. Provisions of Title 47 are available in the law library and online. In addition, the FCC's administrative Rules are compiled at Title 47 of the Code of Federal Regulations. These rules contain detailed regulatory requirements that may not be set forth in Title 47 of the United States Code. The FCC's Rules should always be consulted whenever you are researching any telecommunications law topic.

Telecommunications policy is a dynamic area of law typified by rapid change. This is a course where topics in the syllabus will often connect to news headlines and business developments. Accordingly, it is important to keep yourself updated concerning news salient to

the course. It is recommended that you subscribe to the following free aggregation source: Benton's Communications-related Headlines: (<http://lists.benton.org/lists/info/headlines>).

V. SEMESTER SCHEDULE

Because of the fluid nature of the course, the following is subject to change. The professors may to narrow and focus some of the readings listed below. The complete reading assignments for some of the later classes may not yet be listed at the beginning of the semester. Students should consult this syllabus each week to verify the assignments noted below. To the extent possible, course changes will be announced during lectures. **Particularly if you are forced to miss a class period, please check the syllabus to see if an assignment or topic has changed.**

Class # (Date)	Unit	Topic (Lecturer – KF = Ken Fellman and PP = Preston Padden)	Reading (TLP = Telecommunications Law and Policy, DC = Digital Crossroads)
1 (8/28)	Introducing the Big Picture	<i>The Big Picture - (KF & PP) Introduction of over-arching themes; Why Regulate?</i>	TLP Chapters 1 & 2 [Optional for 1 st class. Will also be assigned for class 13.] National Broadband Plan, Executive Summary and “Recommendations” http://www.broadband.gov/download-plan/ [Optional: DC Chapter 1 – available on TWEN]
2 (8/30)	Introducing the Big Picture	<i>Regulating the Spectrum – (KF) Spectrum Scarcity and interference</i>	TLP Chapter 3
3 (9/4)	No class	<i>Students to attend Silicon Flatirons program: The Changing Dynamics of Video Programming</i>	
4 (9/6)	Post Silicon Flatirons program discussion	<i>(PP & KF) Students and professors to discuss takeaways and significant issues from the 9/4 program</i>	No reading assignment. All students are expected to participate actively in this class.
5 (9/11)	Spectrum/ Wireless	<i>New Thinking On Spectrum - Incentive Auctions, Sharing, Verizon/Cable Spectrum Deal (PP)</i>	TLP Chapter 4 Free Press Petition To Deny the Verizon Wireless/Cable deal. http://www.freepress.net/sites/default/files/resources/FP_VZWSpectrumCoCox_Petition_to_Deny_REDACTED.pdf
6 (9/13)	Administrative law issues/ Federal preemption	<i>Administrative Structures and Legislative Processes (KF)</i>	<i>Chevron vs. National Resources Defense Council</i> , 467 US 837 (1984) [available on TWEN] <i>City of Arlington, TX v. FCC</i> , 5 th Cir., Case No. 10-60039, Opening Brief (focus on pp. 18-35 and 57-62); Response Brief (focus on pp. 26-44); Reply Brief [available on TWEN]

			<i>City of Arlington</i> , 5 th Circuit Opinion: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-312098A1.pdf
7 (9/18)	Telephony	<i>Introduction To Telephone Regulation and Defining The Telephone Monopoly (KF)</i>	TLP Chapters 8 and 9
8 (9/20)	Advanced Services	<i>The Internet and Advanced Services (KF)</i>	TLP Chapter 18
9 (9/25) 	Broadcasting	<i>Broadcast Regulation (PP)</i>	TLP Chapter 5 NBC v. US [available on TWEN]
10 (9/27)	Broadcasting	<i>Broadcast Regulation (PP)</i>	TLP Chapter 6
11 (10/2)	Broadband Jurisdiction and Net Neutrality	<i>National Broadband Plan, Net Neutrality, Competition (PP & KF)</i>	TLP Chapter 19
12 (10/4)	Broadband Competition	<i>Student Debates on Net Neutrality and Broadband Competition</i>	No readings
13 (10/9)	National Broadband Plan	<i>Guest speaker: Blair Levin, former FCC Chief of Staff and principal author of NBP</i>	National Broadband Plan, Executive Summary and “Recommendations” section. http://www.broadband.gov/download-plan/
14 (10/11)	Regulating Speech	<i>Regulating Speech in Broadcast, Cable and Internet (PP)</i>	TLP Chapter 6, pp. 220-230 and 248-261; Chapter 15, pp. 550-562; Chapter 20, pp. 840-859
15 (10/16)	Cable	<i>Cable Television Regulation including Compulsory Copyright License, Retransmission Consent and A La Carte (PP)</i>	TLP Chapter 14, pp. 479-484, 488-524
16 (10/18)	Regulating Speech	<u>Fox Television Stations v FCC Debate</u> : Guest Speakers Tim Winter and Maureen O’Connell	<i>FCC v Fox Television Stations</i> : http://www.supremecourt.gov/opinions/11pdf/10-1293f3e5.pdf
17 (10/23)	Cable and Telephony	<i>The Role Of State and Local Governments In Telco and Cable</i>	(1) TLP Chapter 13, pp. 435 – 469. (2) City of Dallas, Tex. v. FCC , 165 F.3d 341 (5th Cir.1999) [Read

		<i>Regulation (KF)</i>	through the end of Section IV.A of the opinion, regarding The Cities' Claims – Exemption of OVS Operators from Franchise Requirements]. (3) Fellman Memo to Greater Metro Telecommunications Consortium, March 12, 2007. [available on TWEN]
18 (10/25)	Telephony and Cable	<i>The Telecommunications Act of 1996 (KF)</i>	TLP Chapter 11 DC Chapter 3, pp. 82-91 [available on TWEN]
19 (10/30)	Emerging Issues	<i>Online Video (PP)</i>	TLP Chapter 13, pp. 469-478
20 (11/1)	Field Trip	<i>Channel 7 studios</i>	No readings
21 (11/6)	Privacy	<i>Guest lecture with Prof. Paul Ohm</i>	Readings to be assigned.
22 (11/8)	Merger Review	<i>Merger Review (KF)</i>	TLP Chapter 17, pp. 667-704 DC, pp. 423-426 [available on TWEN]
23 (11/13)	Broadband	<i>Copyright and Piracy (PP)</i>	Readings to be assigned.
24 (11/15)	Congressional/FCC Relationships and Current Issues In Wireless Networks	<i>Guest Lecturer Brian Hendricks</i>	No readings. Students should think about and prepare questions for Q and A session.
25 (11/27)	Public Broadcasting and Public Safety Communications	<i>Guest Lecturer Dale Hatfield and KF</i>	Readings to be assigned.
26 (11/29)	Telephony	<i>Universal Service and Access Charge Reform Under the 1996 Act, After the National Broadband Plan, and in the States (KF) and possible guest lecturer Joshua Epel</i>	TLP Chapter 10, and Chapter 11, pp. 399-416
27 (12/4)	FCC and the <i>real</i> way public policy is made	<i>Student presentations on takeaways from Reed Hundt book</i>	<i>You Say You Want a Revolution</i> by Reed Hundt
28 (12/6)	Review	<i>Pre-Exam Review (KF & PP)</i>	No new readings!