

Communications Law (181-R01)

Fall 2021
Tuesdays and Thursdays
8:10 pm – 9:35 PM

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OBJECTIVE: This class will introduce students to U.S. communications law. We will focus on the way in which statutes, regulations, and public policy all interact to create and shape what we think of broadly as communications law in the U.S. We will consider how the development and adoption of specific technologies and services (voice telephony, broadcasting, cable, mobile communications, internet access) have converged and disrupted communications policy, and we will discuss some of the practical aspects of a day-to-day communications law practice. By the end of the semester, students will be familiar with a broad sweep of communications law and policy so they can think critically about how technological innovation and other factors will shape this field moving forward.

COURSE SCHEDULE: This is an online course that meets by Zoom on Tuesdays and Thursdays from 8:10 – 9:35 PM ET.

OFFICE HOURS: I am not planning on having set office hours. If anyone would like to schedule time to speak with me outside class hours, please email me and we can set up a time to talk by Zoom. I'm also happy to stick around after class most nights.

INSTRUCTOR: This class is taught by Jim Lamoureux. Professor Lamoureux is head of Government Relations and Public Policy at Roku. He's been a practicing communications and media lawyer for over two decades. Before Roku, he was a communications regulatory and policy lawyer at Microsoft. Before that he was a regulatory and policy lawyer at AT&T, first at the "old" AT&T (the long-distance company, if anyone still remembers what that means), then SBC (again, if anyone remembers what that was), and then the "new" AT&T after SBC acquired the old AT&T. Before that he was a litigation associate with the firm (McKenna & Cuneo) that is now Dentons in Washington, D.C. He got his law degree from U.C.L.A. and his undergrad from Northwestern.

We'll be discussing various policy topics in this class, and, as someone who has been an advocate on several of the topics we'll be discussing, particularly on net neutrality and internet access regulation, Professor Lamoureux has his own opinions. Any views expressed by Professor Lamoureux during this course are his own and may not reflect the views of his employers or George Mason University.

LEARNING OUTCOMES: By the end of the course students should:

- Have a basic understanding of the fundamentals of U.S. communications law and the public policies that drive communications law.
- Be conversationally fluent in the practical aspects of U.S. communications law
- Be able to think critically and apply the basic policy principles of U.S. communications law to new issues, services, and technologies.

REQUIRED TEXT: Stuart Minor Benjamin & James B. Speta, *Internet and Telecommunications Regulation* (Carolina Academic Press, 2019). Additional course materials may include relevant news articles, FCC Orders, and court opinions.

SUGGESTED READING: Students are encouraged to sign up for free, daily email newsletters on a variety of topics related to the communications sector (Politico's Morning Tech and the various *Fierce* bulletins (*Fierce Telecom*, *Fierce Wireless*, and *Fierce Video*) are two such examples). You can also subscribe to the FCC's Daily Digest or follow its blog and Twitter feed. If you're thinking of considering a career in communications law, I recommend adding *Newton's Telecom Dictionary*; Steve Coll's *The Deal of the Century: The Breakup of AT&T*; *Federal Telecommunications Law* by Peter Huber, Michael Kellogg and John Thorne; and Jonathan Neuchterlein and Philip Weiser's *Digital Crossroads* to your bookshelf.

Classroom Policy: The course will consist of lectures and interactive discussions, and possibly some guest lecturers throughout the semester. Participation, questions, and vigorous debate are strongly encouraged at all times. All classes will be virtual and recorded in Teams. No one is permitted to record classes using any other method. Students are encouraged to mute their microphones if they are not speaking. Vigorous class discussion is encouraged, so students should feel free to un-mute their microphones if they want to jump in, or raise their hand, either physically or virtually in Teams if their prefer. Group chat is permissible during discussion. I will use the Teams attendance features to track attendance during class.

Students must use their MasonLive email account to receive important University information, including communications related to this class. I will not respond to messages sent from or send messages to a non-Mason email address.

GRADING: The overall grade for the class will be based on three components: class participation, written advocacy, and a final exam. The weight of each component will be: (1) class participation: 10%; (2) written advocacy: 25%; and (3) final exam: 65%. Mathematically, I will use a total of 1,000 points for the class, so the class participation will be worth 100 points, written advocacy will be worth 250 points, and the final will be worth 650 points.

- **Class participation:** will be based on *meaningful* contributions to classroom discussions throughout the semester.

- **Written advocacy:** students will track an ongoing FCC proceeding identified by Professor Lamoureux. Students will prepare a written “ex parte” no more than seven (7) pages responding to issues raised in the proceeding that will be due by email no later than the beginning of class **Thursday, Nov. 18, 2021**. Late submissions will not be accepted. If your submission shows a sent time stamp later than 8:10 PM ET, Nov. 18, 2021, it will not be accepted and you will receive zero (0) points for the written advocacy assignment.
- **Final Exam:** there will be a two-hour final exam on **Tuesday, December 7, 2021**, beginning at **6:00 PM ET**. As always, the GMUSL Honor Code applies to all portions of the class and the final.

Class Schedule and Readings: Just as the communications sector can be unpredictable at times, the list of reading assignments is subject to change. Professor Lamoureux will update the syllabus accordingly. Students are free to read ahead, but keep in mind that the syllabus could change. Unless otherwise instructed, however, students should come prepared to discuss all assigned materials for a particular class session.

CLASS	TOPIC	READING
Aug. 24	General intro to U.S. communications regulation landscape	B&S: <i>Preface</i> ; B&S: <i>Chapter One: Intro to Internet and Telecoms Regulation</i> ; 5 U.S.C. §§ 553 & 706; 47 U.S.C. §§ 151 & 152; Survey the FCC’s website (FCC.gov)
Aug. 26	Statutory basis and judicial interpretation of the FCC’s authority and jurisdiction	B&S: <i>Chapter Two: Telecoms Policy in Institutional Perspective</i> ; <u>Skim</u> Titles I, II, III and VI of the Communications Act; Read Title I, §§ 1 and 2 (47 U.S.C. §§ 151 & 152); <i>NBC v. U.S.</i> , 319 U.S. 190 (1943); <i>Louisiana Public Service Comm’n v. FCC</i> , 476 U.S. 355 (1986)

Aug. 31	Judicial interpretation of FCC's authority and jurisdiction cont'd.	<i>Huawei Technologies USA, Inc. v FCC</i> (5 th Cir. 2021); <i>Alliance for Community Media v. FCC</i> , 529 F.3d 763 (6 th Cir. 2008)
Sept. 2	Judicial interpretation of FCC's authority and jurisdiction cont'd.	<i>U.S. v. Southwestern Cable Co.</i> , 392 U.S. 157 (1968); <i>City of Arlington v. FCC</i> , 133 S. Ct. 1863 (2013)
Sept. 7	Intro to U.S. spectrum regulation	B&S Chapter Three: <i>Regulating the Spectrum</i>
Sept. 9	Understanding how spectrum is assigned by use	B&S Chapter Four: <i>Zoning the Spectrum</i> , §§ 4.A, 4.B, 4.E
Sept. 14	How spectrum is licensed	B&S Chapter Five: <i>Structuring and Assigning Licenses</i> <u>Skim</u> §§ 5.A & 5.B; Read § 5.C; <i>FCC LightSquared/Ligado Order</i> , FCC 20-48, 2020 WL 1963885 (rel. April 22, 2020)
Sept. 16	Unlicensed use of spectrum	B&S Chapter Four: <i>Zoning the Spectrum</i> , §§ 4.C, 4.D <i>FCC 6GHz Wi-Fi Order</i> , FCC 20-51, 2020 WL 2013310 (rel. April 24, 2020) <i>FCC 5.9 GHz Order</i> , FCC 20-164 (rel. Nov. 20, 2020) Survey Microsoft's public policy statements on rural broadband, white spaces and Microsoft's Airband Initiative. https://news.microsoft.com/on-the-issues/topic/rural-broadband/
Sept. 21	History of U.S. regulation of PSTN services	<u>Skim</u> B&S Chapter Six: <i>Early Telephone Regulation through Divestiture</i> and B&S Chapter Seven: <i>Control of Telephone Monopolies</i>

Sept. 23	U.S. regulation of VoIP	<p><i>Pulver Free World Dial-up Order</i> 19 F.C.C.R. 3307 (FCC 04-27)(rel. Feb. 19, 2004);</p> <p><i>Vonage Order</i> 19 F.C.C. R. 22404 (FCC 04-267)(rel. Nov. 12, 2004);</p> <p><i>VoIP 911 Order</i>, 20 F.C.C.R. 10245 (rel. June 3, 2005).</p>
Sept. 28	VoIP regulation cont'd	<p><i>Minnesota PUC v. FCC</i> 483 F.3d 570 (8th Cir. 2007);</p> <p><i>Charter v. Lange</i>, 903 F.3d 715 (8th Cir. 2018);</p> <p><i>WebEx USF Order</i> 31 F.C.C.R. 13220 (rel. Dec. 16, 2016).</p>
Sept. 30	Intro to internet regulation	<p><u>Skim</u> <i>B&S Chapter Twelve - Introduction and Evolution</i>;</p> <p>Read <i>Chapter Fourteen – Regulating Broadband Networks</i> §§ 14.A & B;</p> <p>47 U.S.C. § 1302 [Sec. 706 of the 1996 Telecoms Act]</p>
Oct. 5	Intro to net neutrality in the U.S.	<p><i>B&S Chapter Fourteen Regulating Broadband Networks</i> § 14.C, <i>Net Neutrality</i>, pp. 740 – 808;</p> <p><u>Skim</u> <i>Microsoft Craig Mundie ex. parte</i> (Oct. 18, 2002);</p> <p><u>Skim</u> Tim Wu, <i>Network Neutrality, Broadband Discrimination</i> (April 23, 2005)</p>
Oct. 7	Net neutrality	<p><i>B&S Chapter Fourteen Regulating Broadband Networks</i> § 14.C, <i>Net Neutrality</i>, pp. 816 – 844;</p> <p><i>Mozilla v. FCC</i>, 940 F3d 1 (D.C. Cir. 2019);</p> <p><u>Skim</u> <i>U.S. Motion for Preliminary Injunction against California net neutrality statute and California's opposition to Preliminary Injunction Motion</i>;</p> <p>To compare with international net neutrality initiatives, peruse</p>

		<p><i>EU Net Neutrality Regulation</i> https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2015:310:FULL&from=EN</p> <p><i>Canada Net Neutrality Framework</i> https://crtc.gc.ca/eng/archive/2017/2017-104.pdf</p>
Oct. 12	NO CLASS	
Oct. 14	Online intermediary liability before and after the Communications Decency Act	<p>B&S Chapter 15 – <i>Internet Platform Regulation</i> §§ 15.B&C;</p> <p><i>Cubby v. Compuserve</i>, 776 F. Supp. 135 (S.D.N.Y. 1991); <i>Stratton Oakmont, Inc. v.</i></p> <p><i>Stratton Oakmont, Inc. v. Prodigy Servs. Co.</i>, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995);</p> <p>The <i>Communications Decency Act</i>, 47 U.S.C. § 230;</p>
Oct. 19	The debate over Sec. 230	<p><i>Executive Order Preventing Online Censorship</i> (May 28, 2020) https://www.whitehouse.gov/presidential-actions/executive-order-preventing-online-censorship/;</p> <p><i>NTIA Petition</i> in response to the Executive Order https://www.ntia.gov/files/ntia/publications/ntia_petition_for_rulemaking_7.27.20.pdf;</p> <p><i>PACT Act</i>;</p> <p><i>Health Misinformation Act</i>;</p>
Oct. 21	Online platforms as common carriers	<p>B&S Chapter 15 <i>Internet Platform Regulation</i> § 15.C. <i>Are Platforms Public Utilities?</i></p> <p><i>Ohio AG Complaint to declare Google a Common Carrier under Ohio Common Law</i> (June 18, 2021);</p> <p>For an international comparison, <u>skim</u>:</p> <p><i>Online Platforms and Digital Advertising</i> (Competition and Markets Authority, July 1,</p>

		2020)(https://assets.publishing.service.gov.uk/media/5efc57ed3a6f4023d242ed56/Final_report_1_July_2020_.pdf)
Oct. 26	Intro to platform copyright protection and the DMCA	B&S <i>Chapter 15 – Internet Platform Regulation §§ 15.B&C Internet Copyright Regulation;</i> 17 U.S.C. § 512
Oct. 28	Universal Service	<i>Chapter Thirteen, Universal Service: from Telephony to Broadband;</i> 47 U.S.C. § 254; <i>Rural Digital Opportunity Fund Order, FCC 20-5 (02-07-20)</i>
Nov. 2	Regulation of MVPD services	B&S: <i>Chapter Eight: Multichannel Video Foundations Introduction;</i> B&S: <i>Chapter Nine: Shared Content § 9.C</i> <u>Skim</u> Title VI of the Communications Act; read §§ 601, 602, 621 <i>Office of Consumer Counsel v. Southern New England Tel. Co., 515 F.Supp.2d 269 (D. Ct. 2007)</i> <i>Sec. 621 Third Report and Order, FCC 19-80 (rel. 08-02-19)</i>
Nov. 4	Compulsory Copyright, Retrans. Consent and Must-Carry	B&S: <i>Chapter Nine: Shared Content § 9.A, 9.B</i> <i>AT&T Retrans Complaints Order, FCC-20-122 (09-15-20)</i>
Nov. 9	Program Access, Program Carriage, and current efforts to regulate OTT video services	B&S <i>Chapter 10 – Shared Content, §§ 10.B, 10.C, 10.D</i> <i>Sky Angel, 25 F.C.C.R. 3879 (rel. April 21, 2010)</i> Check out https://www.locast.org/ and be prepared to discuss it. <i>Texas Municipality Franchise Fee Class Action Complaint Against Netflix and Hulu (E.D. TX, Aug. 11, 2020).</i>

Nov. 11	Merger review	B&S: <i>Chapter 11 – Antitrust and Merger Review</i> §§ 11.A1 – 11.A.5
Nov. 16	Merger review cont'd	5B&S: <i>Chapter 11 – Antitrust and Merger Review</i> §§ 11.A.6 – 11.C
Nov. 18	Wrap up	ADVOCACY ASSIGNMENT DUE NO LATER THAN BEGINNING OF CLASS Current Topics, other regulatory functions of the FCC, and future of communications regulation
Nov. 23		REVIEW SESSION
Dec. 7		6:00 PM FINAL

ACADEMIC INTEGRITY: It is expected that students will adhere to the Antonin Scalia Law School Honor Code. The Honor Code prohibits lying, cheating, or stealing. This includes a student obligation to never represent the work of anyone else as their own, and to never provide or accept unauthorized assistance on any school related assignment. The Honor Code is available here: <https://sls.gmu.edu/honor/>.

ACADEMIC REGULATIONS - [Click Here](#)

CLASSROOM ACCOMMODATIONS: Disability Services at George Mason University is committed to providing equitable access to learning opportunities for all students by upholding laws that ensure equal treatment of people with disabilities. If you are seeking accommodations for this class, please visit <http://ds.gmu.edu/> for detailed information about the Disabilities Registration Process. Faculty may not receive or respond to requests for an accommodation. All requests must be handled by the office of Disability Services. You may contact Disability Services directly via email at ods@gmu.edu or phone at (703) 993-2474. If you have any questions about how in-class or testing accommodations are implemented at the law school, please contact the Assistant Dean, Student Academic Affairs for more information.

EXAM CONFLICTS: In accordance with AR 4-4.1, excuses and requests for permission not to sit for an examination when scheduled must be presented, with appropriate documentation, to the Assistant Dean, Student Academic Affairs. Except in emergencies, such requests should be presented no later than two weeks before the date of the examination.