

---

## PREFACE

David A. Irwin \*

It is with the greatest pride and pleasure that I introduce readers to the current edition of *CommLaw Conspectus: Journal of Communications Law and Policy* (“*CommLaw*”). *CommLaw* and I have long and deep roots, reaching back to its conception and first edition.

In the mid-1980s, I “trial-ballooned” the concept of a journal dedicated to contemporary communications law and policy issues with student Rick Rhodes. The following year I had as my student Dorothy Kukier, *CommLaw*’s first Editor-in-Chief. Over the years, I have seen *CommLaw* grow and mature into the exceptional journal it is today, widely read and cited by courts, counsel, and authors. I look forward to the future, when as co-faculty advisor, I can work with *CommLaw*’s Executive Board and staff to maintain and grow its reputation for excellence and scholarly analysis.

For the past few years, *CommLaw* has been the moving force behind a national telecommunications and information-age symposium. This year’s theme looked at the 1996 Telecommunications Act in the context of whether it has become obsolescent in the era of Internet voice, data, and video services. The 1996 Act was intended to legislate competition in all telecommunications markets and foster deregulation of competitive markets and the sun-setting of rules. The Keynote Address of this year’s conference was given by CUA Law graduate and now FCC Commissioner, Kathleen Q. Abernathy, who believes it plain that the industry would benefit from updated legislation.

Commissioner Abernathy spoke candidly of her views of the FCC’s successes and failures under the 1996 Act. Providing her blueprint for the future, she focused on her own Nascent Services Doctrine which posits that there should be a heavy presumption against extending legacy “monopoly” rules to new services and technologies, but not to the detriment of social policy goal such as E-911 and Universal Service.

Lead articles in this edition discuss, in the context of “payola,” the undis-

---

\* David A. Irwin is the Director of the Law School’s Institute for Communications Law Studies. He has been Adjunct Faculty since 1985.

closed pay a frequent TV conservative commentator received to laud the positives of the No Child Left Behind Act, the transition to digital television from analog in the context of lessons learned from Germany and Great Britain, and important legal and public policy issues pertaining to indecency over licensed airwaves.

In today's frenzied media world, words can take on new or broader meanings. For example, "payola" historically elicited thoughts of bribery in the music-radio business. But the concept may be broader. In *Payola, Pundits & the Press: Weighing the Pros and Cons of FCC Regulation*, author Clay Calvert explores payola issues from a unique angle. The Department of Education, eager to promote the No Child Left Behind Act, apparently funneled \$240,000 to conservative commentator and frequent media guest, Armstrong Williams. In return for this sum of money, Mr. Williams was to tout the strengths and positives of this educational initiative. Calvert asserts that Williams violated certain rules of professional conduct, but questions whether current payola laws are effective in cases like this, and more broadly, improving journalistic credibility and uncovering bias in the media. Calvert calls for legislation to require on-air journalists to divulge their political party.

In *Constitutional Malfunction: Does the FCC's Authority to Revoke a Broadcaster's License Violate the First Amendment?*, author Matthew Klopp takes on the issues pertaining to indecency over our airwaves. The article addresses the FCC's rulings intended to curb indecency such as Janet Jackson's infamous "wardrobe malfunction" and Bono's use of the "F" word at the Grammy awards. Klopp argues that the FCC's action of revoking a broadcaster's license acts as a prior restraint in violation of the First Amendment. The article is in four parts. Part I gives the history and current state of indecency regulation under the FCC. Part II particularizes the Supreme Court precedents on prior restraints in a First Amendment context. Part III is analysis of whether license revocation constitutes a prior restraint. And, Part IV suggests to the FCC a number of regulatory alternatives.

*The Road to Analog Switch-Off: How the United States Can Turn Off Its Analog Television Service Without Significant Service Disruption* by Andrew D. Cotlar deals with the cut-over from analog broadcast television to digital. The author draws on lessons that may be learned from Germany and Great Britain. The transition need not be harsh, sudden or disorienting. He calls for a gradual cessation, broadcast power reductions, publicity and public relations and that the process be done on a rolling geographic basis.

These articles are the underpinnings of another quality edition of *CommLaw Conspectus*. The Executive Board and staff of *CommLaw* have done themselves proud.