

BOOK REVIEW

Digital Crossroads

Digital Crossroads: American Telecommunications Policy in the Internet Age, Jonathan E. Nuechterlein & Philip J. Weiser, Cambridge, Mass., MIT Press, 2005, 670 pages.

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Most practitioners of communications law are familiar with the necessity of teaching themselves enough economics, engineering, and politics to practice competently and comfortably in an area that is inherently interdisciplinary. Likewise, many professors who teach telecommunications from a variety of disciplinary perspectives are familiar with the frustration of locating a text that competently introduces students to this interdisciplinary subject matter.

Even more difficult is finding a reasonably contemporary text that covers the territory. Gerald Brock's *Telecommunications Policy for the Information Age: From Monopoly to Competition*¹ is an excellent and admirably succinct review of the law and economics of telecommunications policy from the assembly of the network up through the mid-nineties, but it stops there. Other works review the

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1. GERALD BROCK, *TELECOMMUNICATIONS POLICY FOR THE INFORMATION AGE: FROM MONOPOLY TO COMPETITION* (1998).

Telecommunications Act of 1996 ("Telecommunications Act") and the early stages of its implementation. But up until now, no work has attempted a medium range retrospective that links the pre-1996 story of communications policy with the short but sinuous history after 1996.

Accessibility of the text is another issue. While textbooks like *Telecommunications Law and Policy*² and *Federal Telecommunications Law*³ are good tools for law students and LLM candidates, there is no contemporary work that opens the door on the interdisciplinary study of communications policy for students in the social sciences without training in the law.

There is also the challenge of historical continuity. So much of communications policy rests upon the decisions and compromises of the past. Without a firm grounding in what has gone before, it is impossible to participate critically in contemporary policymaking.

For example, a brief tour of the various Computer Inquiries is essential to understanding the contemporaneous distinction between information services and telecommunications services.

*Digital Crossroads: American Telecommunications Policy in the Internet Age*⁴ admirably answers these challenges with a work that introduces telecommunications policy to beginners and edifies experienced practitioners on gaps in history and knowledge. The scope of the book is ambitious, covering not only common carrier law and policy, but video media as well. This scope is atypical for such a work; more commonly, the scope of a text in this field is confined to either common carrier or mass media. But the broad scope makes sense in view of the convergence theme of the book. Convergence has generally been an overworked concept in the past decade, but the authors here make it real, explaining why the digitization of media has superseded a specialized approach to transmission media.⁵

The text spans just over 450 pages, backed by a statutory appendix and a meticulously compiled list of "Notable Commentaries" that serves as a bibliographic summary of scholarly commentary since the enactment of the Telecommunications Act. The list of authorities and endnotes comprise nearly everything worth reading to shed light on why we are where we are in telecommunications policy and makes it valuable as a reference work as well as a narrative text.

2. STUART MINOR BENJAMIN ET. AL., *TELECOMMUNICATIONS LAW AND POLICY* (2001).

3. PETER W. HUBER ET. AL., *FEDERAL TELECOMMUNICATIONS LAW* (2004).

4. JONATHAN E. NUECHTERLEIN & PHILIP J. WEISER, *DIGITAL CROSSROADS: AMERICAN TELECOMMUNICATIONS POLICY IN THE INTERNET AGE* (2005).

5. *Id.* at 23–26.

The approach of the book is boldly interdisciplinary, with the authors, two lawyers, making no apology for wading into explanations of economic and engineering subjects that telecommunications policy students and practitioners simply must understand. Key chapters in this theme include “Introduction to Wireline Communications,” “A Primer on Internet Technology” and “Monopoly Leveraging Concerns and the Internet.” Other chapters cover the essentials of the statutory and regulatory landscape, such as “Wireline Competition Under the 1996 Act” and “VoIP and Proposals for ‘Horizontal’ Regulation.”

An exceptionally well conceived and timely chapter is Chapter 9, “Intercarrier Compensation,” in which the authors treat the historical layering that has produced the current system and the economics behind it. It does this in a unique way, by working backwards from more recent controversies, such as reciprocal compensation for ISP traffic, to explain the roots of the compensation schemes and how they fit together – or do not fit together. With the FCC poised to take the wrench to intercarrier compensation system, the economic engine of the carrier industry, this discussion is a particularly good tune up for experienced practitioners.

The authors have managed to avoid the pitfalls of some multi-authored books in which writing styles vary obviously from chapter to chapter. Such deviations often detract from the cohesion of the work by drawing the reader into speculation about who wrote which chapter. Through a careful if laborious process of cross-editing one another’s work the two authors have produced a work of seamless stylistic integrity.

And the authors have considerable personal experience to call upon in meeting these challenges. Both served in key decisional role affecting telecommunications policy decisions around the time of the implementation of the Telecommunications Act. Weiser, now an Associate Professor of Law and Telecommunications at the University of Colorado, served in the Justice Department’s Antitrust Division as principal telecommunications adviser to then Assistant Attorney General Joel Klein. Among his projects were the early engineering of the Section 271 long distance entry process and analysis of the first post-96 Act carrier mergers.⁶ Nuechterlein, a partner in the Washington, D.C. law firm Wilmer Cutler Pickering Hale & Dorr, served as Deputy General Counsel of the Federal Communications Commission.⁷

Though few would nominate telecommunications policy as fertile comic material, the authors have stoked the work with gentle humor. In

6. *Id.* at inside back dust cover. See also <http://spot.colorado.edu/~weiserpj/dc/bios.html> (last visited Apr. 13, 2005).

7. *Id.*

Chapter 7, "The Spectrum," an explanatory section on auctions and property rights is titled "The Easter Bunny Wins the Preakness," a wry reference to how wrong two then-FCC Commissioners turned out to be in predicting that the odds of spectrum auctions becoming a reality were "about the same as those on the Easter Bunny in the Preakness."⁸ The authors also take some license—appropriately so—in editorializing about the subject matter they explain, often with sharp candor. In Chapter 10, "Universal Service in the Age of Competition," they write:

From the short term perspective of many regulators, the political costs of genuine universal service reform may outweigh the benefits. And the 1996 Act contains no specific time frame for the elimination of the old implicit subsidies, leaving most regulators content to confront this challenge gradually. In effect, these regulators hope that, at least until they have moved on to their next jobs, competition will progress slowly enough that carriers of last resort . . . can stay financially healthy without any need for abrupt, politically controversial changes to the system. If this hope appeared tenable before the advent of VoIP, it now seems increasingly delusional.⁹

This provocative perspective on the intersection of policy process and substantive policy output is carried throughout the book, with a final chapter, Chapter 13, "The Future of Telecommunications Policy," even daring to grade the performance of key policy institutional actors along key metrics.¹⁰ Most do not fare too well.

The authors pass a light hand over one important topic, universal service, covering it in one short chapter.¹¹ Some readers will wish for a more in depth treatment of this issue that reaches beyond the confines of the high cost support mechanisms to the ever controversial schools and libraries program, for example. Likewise, the chapter on telecommunications standards rests heavily on the digital television transition as a case study,¹² probably not the sturdiest illustration of how standards, a highly structured area of telecommunication policy, works given that the course of the digital television transition has been driven more by the politics of broadcasting than the standard setting process.

A final challenge for a work in this field is its ability to remain current, or at least relevant. Regulatory, legislative and technology developments can swamp a work all too soon after its launch. But this work is positioned to have a great shot at righting itself in the waves. First,

8. NUECHTERLEIN, *supra* note 4, at 243.

9. *Id.* at 336.

10. *Id.* at 414, 419–29.

11. *See id.* at 353–54.

12. *Id.* at 395–405.

supplemental materials are available through the publisher's website,¹³ which presumably will provide a platform for author updates. Second, the text makes evident that both the authors and the publishers strove to make the work current at publication. Most importantly, the book keeps the reader's eye trained on the horizon by unifying the details of policy with higher level themes in regulation—and its candid acknowledgement that the only constant in this field is change.

13. See <http://mitpress.mit.edu/catalog/item/default.asp?sid=27343094-5934-4C0C-89BA-03973998592C&ttype=2&tid=10497> (last visited Apr. 13, 2005). See also <http://spot.colorado.edu/~weiserpj/dc/index.html> (last visited Apr. 13, 2005).

