Telecommunications Law

SYLLABUS

Professor Akilah N. Folami

Fall 2013

REQUIRED TEXTS


NOTE: There may be additional course material that I distribute over the course of the semester.

OFFICE HOURS

Mondays and Wednesdays 10:00 to 11:30 am and by appointment.

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COURSE OVERVIEW

This introductory course will examine the market structure and regulation of the communications industry as well as the relationship between the communications industry and the several branches of government. You will be introduced to various topics including licensure of spectrum, regulation of broadcast radio and television, cable television, satellite, telephone services, and the Internet. Specifically, you will be introduced to the process of administrative agency rulemaking by the Federal Communications Commission (the “FCC”). We will monitor ongoing FCC rulemaking proceedings and analyze the government’s considerations in crafting communications law and policy.

CLASS ATTENDANCE, TARDINESS, AND PARTICIPATION

Attendance: This is not a lecture class, but a class based on discussion and the exchange of ideas. Accordingly, students are expected to attend every class, and to be on time for every class. Each class will begin promptly.

The rules of the New York State Court of Appeals and the American Bar Association require law students to be in good and regular attendance in the courses for which they are registered. To comply with these rules, you must attend at least 85% of
the regularly-scheduled classes in this course. Thus, you may not have more than four (4) absences of this class.

I will provide sign-in sheets for each regularly-scheduled class, which shall be the dispositive evidence regarding your absence from a given class. Each student is responsible for signing in. Falsification of sign-in sheets is a violation of the Code of Academic Conduct.

If you exceed the permitted absences by failing to sign in, you will be administratively withdrawn from the course. No prior notice may be given, and you will receive notification from the Office of Academic Records indicating the withdrawal. Any such withdrawal may have serious ramifications for your financial aid, academic standing, and date of graduation. If you are excessively absent from several classes, you may face additional sanctions, including but not limited to denial of certification of good and regular attendance to the New York State Board of Law Examiners, or other state bar examiners.

If you believe you must be absent from class for more than the permitted number of classes, you should contact the Office of Student Affairs as soon as possible. Accommodations may be made for students who must be absent for religious reasons and in cases of truly compelling hardship. Any request for an exception must be accompanied with appropriate documentation.

**Tardiness:** I will circulate the sign-in sheet at the beginning of each class. If you are not present at that time, you will be marked absent. If you are late, please see me at the end of class and before I leave the classroom to ask me to change your absence mark to a tardy mark. For purposes of this policy, two tardies may affect your class participation grade and/or may be counted as one absence.

**Class Participation and Discussion Leaders:** Again, this is not a lecture class. Although I expect to deliver some lectures, the bulk of the class will consist of discussion and active participation on your part. I will also call on students randomly. Having students who are prepared will make for a much more interesting class for all of the students. Students who are unprepared more than once will have this counted against their final grade.

In addition, two students will serve as discussion leaders for designated classes. For more detailed information, please read the memo “Guidelines for Writing Assignments and Class Participation” that I have prepared for this class.

**GRADING POLICY**

**Writing Assignments:** Students have the option of writing a 25-page research paper (fulfilling the Writing I requirement); or, writing 3 reflection/response papers (8) pages each over the course of the semester (fulfilling the Writing II requirement). For
more detailed information, please read the memo “Guidelines for Writing Assignments and Class Participation” that I have prepared for this class.

**Research Paper Option:** There are two formal deadlines for the research papers (Writing I). For more detailed information, please read the memo “Guidelines for Writing Assignments and Class Participation” and the attached Chart that I have prepared for this class. *No late papers* will be accepted for any of the assignments.

**Response Paper Options:** The reading response papers (Writing II) are due by noon two days before the designated class in which one of the synthesized reading assignments will be discussed. For more detailed information, please read the memo “Guidelines for Writing Assignments and Class Participation” and the attached Chart that I have prepared for this class. *No late papers* will be accepted for any of the assignments.

**Final Grade:** Your grade will be based upon the score that you earn on either your response paper or your research paper, and upon your classroom participation (which incorporates your class presentation grade). Subject to my discretion, grades may be adjusted up to account for consistent and exceptional class participation, or down to account for repeated absences or failure to be properly prepared.

**Reading Assignments**

**8/19**

(1) Introductory Reading:

a. Early History of Broadcast Regulation pgs. 52-56, 123-128.

b. Early History of Telephone Regulation pgs. 331-339.

c. Cable Regulation and Print pgs. 435-441, and 181-184.

**8/21**

d. Internet Regulation pgs. 713-718, 722-726.

e. Overview of Communications Regulation pgs. 3-16

**8/26**

(2) Federal Regulation and the FCC

a. Statutory Regulation of All Telecommunications pgs. 19-25
   i. Early Telephone Statutory Regulation pgs. 339-341
   ii. Communications Act of 1934, as amended by Telecommunications Act of 1996
1. pg. 879 (Title I—Section 1…Read purpose and intro sections)
2. pgs. 881-883 (Title II-Telephone Regulation…Read section 201 up to “Extension of Liens” section)
3. pgs. 910 (Title III-Radio…Read sections 301 to 310)

NOTE: Feel free to skim the rest of the statute if you like.

b. The FCC pgs. 25-39

8/28

(3) Defining and Regulating Spectrum Generally pgs. 43-47
(4) Spectrum Management and Zoning pgs. 73-80
(5) Broadcast Regulation
   a. Rationales for Broadcast Regulation pgs. 56-76

9/2

b. Managing Broadcast through Monitored License Distribution pgs. 123-148

9/4

i. Other Methods of License Distribution pgs. 149-165 (up to “Lotteries and Auctions”).

9/9 NO CLASS

9/11

ii. Auctioning Spectrum Licenses pgs. 165-179

c. Managing Broadcast through Ownership Limits pgs. 576-584 (up to “IV. Cross Ownership Rules”)

9/16

i. Broadcast Ownership cont’d pgs. 584-605

9/18
d. Federally Imposed Public Trustee Obligations on Broadcast—Fairness Doctrine pgs. 181-204.

9/23
e. Federally Imposed Public Trustee Obligations on Broadcast—Political Broadcasting Rules pgs. 204-214


9/24

9/30
h. Federally Imposed Public Trustee Obligations on Broadcast —Indecency: cont’d pgs. 248-262

10/2
i. Federally Imposed Public Trustee Obligations on Broadcast—TV Violence? pgs. 262-274

10/7
i. ----Children’s Educational Television pgs. 275-282

j. Broadcast Public Trustee Obligations—Children’s Educational Television cont’d pgs 282-296

10/9
i. Deregulating Broadcast (HANDOUT)

(6) Digital Television--Intro pgs. 297-312

10/14
a. Digital Television--Intro cont’d pgs. 312-320

b. Digital Television cont’d—Federally Imposed Public Interest Obligations on DTV? pgs. 320-327

(7) Cable Regulation
a. Policy Considerations pgs. 441-452

10/16

i. Satellite Radio—Similar Policy Considerations as with Cable, 452-456

b. Managing Cable through Ownership limits pgs. 605-614

c. Managing Cable through Federally Imposed Public Interest “like” Obligations

   i. PEG and Leased Access pgs. 456-461

10/18

ii. Shared Content and Cable Television pgs. 479-484

   1. Satellite Television (DBS) and Shared Content—Similar Considerations as with Cable pgs. 484-497

10/23

iii. Must Carry and Cable Television pgs. 497-525

   1. Satellite Television (DBS) and Must Carry—Similar Considerations as with Cable pgs. 525-530

10/25


(9) Indecency Revisited

a. Telephone Indecency pgs. 831-840

b. Cable Indecency pgs. 533-541 [STOP at O’Connor’s Opinion]

10/30

c. Cable Indecency cont’d pgs. 541[Beginning at O’Connor’s Opinion]-562

d. Internet Indecency pgs. 840-847

11/4

e. Internet Indecency cont’d pgs. 847-861
(10) Other Considerations for Internet Regulation

a. Copyright Infringement (HANDOUT)

11/6


11/11

(12) Telephone Regulation: Rationale for Regulation pgs. 331-337 (review/skim again)

b. Telephone Regulation—History (Monopoly Pre-Divestiture) pgs. 343-350 (skim quickly)

c. (Additional: Current Events Presentations)

11/13

d. Telephone Regulation—Rate Regulation and Universal Service pgs. 363-375

e. (Additional: Current Events Presentations)

11/18

f. Broadband and Broader Access Concerns pgs. 375-383 (skim briskly)

g. (Additional: Current Events Presentations)

11/20

Current Events Presentations

11/25

Current Events Presentations
Your research paper should be a legal analysis addressing any one of the topics we will discuss during the semester. If you would like to choose a topic that is not within the confines of the topics covered in this class, you will need my approval in advance.

- **NOTE:** You may want to peruse the syllabus and assigned reading materials or other material that I distribute during the course of the semester to find a topic of interest to you.

Your reflection paper(s) should be an analysis of two different reading assignment(s) assigned on the syllabus.

**DUE DATES**

**Research Papers:**

- Emailed Topic and Intro Paragraph due on October 9th.
- Draft due on October 30th by noon. It accounts for 25% of your writing assignment grade.
- Final due November 25th by noon. It accounts for 75% of your writing assignment grade
- Please submit draft and final paper on TWEN in the Assignment Drop Box.

**Response Papers:**

- First Response Paper is due on September 25th by noon.
- Second Response Paper is due on October 30th by noon.
- Third Response Paper is due on November 25th by noon.

The scope of your response paper can only cover material read or discussed within the due date periods. You must analyze and synthesize two
different reading assignments. Please submit on TWEN in the Assignment Drop Box link. Your first response paper is worth 20% of your written assignment grade and the remaining two papers are weighted equally for the remaining 80% of your written assignment grade.

**FORMAT**
- **For Research and Response Papers:** Please use footnotes and not endnotes. Bluebook format is required for research papers.
  - Margins may not be more than one-inch all around.
  - Use a twelve (12) point Times New Roman font.
  - Number all pages, excluding first page of the paper.
- **For Response Papers only:** please include a cover page to your paper that has a few sentences identifying the two different reading assignments that you are analyzing and the central theme of your paper that connects the two assignments. Additionally, bluebook format is required for response papers to the extent external material is cited.

For further detail, please refer to the memorandum posted on TWEN in the Telecom Law site under Course Materials, titled, “Guidelines for Writing Assignments and Class Participation.”

**LENGTH**
- Your *research* paper should be twenty-five (25) pages in length.
- Each of the three (3) *response* papers should be eight (8) pages.
Basis of Grade for the Final Paper and/or Response Papers

For the draft and final papers, the grade of the final paper will be based on its cogency, its coverage of the issues, grounding in law and policy, and of course organization, structure, and its conformity to general rules of grammar. In addition, incorporating relevant analysis will be rewarded higher grades than merely regurgitating previous law review articles.

For individual response papers, the grade of the response paper will be based on its cogency, its coverage of the assigned readings, the level of reflection and analysis, which may include incorporation of other materials, and of course organization, structure, and its conformity to general rules of grammar. In addition, incorporating relevant analysis and reflection will be rewarded higher grades than merely regurgitating what was assigned in the reading.

Again, for further detail, please refer to the memorandum posted on TWEN in the Telecom Law site under Course Materials, titled, “Guidelines for Writing Assignments and Class Participation.”