JOURNAL ON TELECOMMUNICATIONS & HIGH TECHNOLOGY LAW
is published semi-annually by the
Journal on Telecommunications & High Technology Law,
Campus Box 401, Boulder, CO 80309-0401

ISSN: 1543-8899

Copyright © 2008 by the
Journal on Telecommunications & High Technology Law
an association of students sponsored by the
University of Colorado School of Law and the
Silicon Flatirons Center for Law, Technology, and Entrepreneurship.

POSTMASTER: Please send address changes to JTHTL,
Campus Box 401, Boulder, CO 80309-0401

Subscriptions
Domestic volume subscriptions are available for $45.00. City of Boulder subscribers please add $3.74 sales tax. Boulder County subscribers outside the City of Boulder please add $2.14 sales tax. Metro Denver subscribers outside of Boulder County please add $1.85 sales tax. Colorado subscribers outside of Metro Denver please add $1.31 sales tax.

International volume subscriptions are available for $50.00.

Inquiries concerning ongoing subscriptions or obtaining an individual issue should be directed to the attention of JTHTL Managing Editor at JTHTL@colorado.edu or by writing JTHTL Managing Editor, Campus Box 401, Boulder, CO 80309-0401.

Back issues in complete sets, volumes, or single issues may be obtained from: William S. Hein & Co., Inc., 1285 Main Street, Buffalo, NY 14209. Back issues may also be found in electronic format for all your research needs on HeinOnline http://heinonline.org/.

Manuscripts
JTHTL invites the submission of unsolicited manuscripts. Please send softcopy manuscripts to the attention of JTHTL Articles Editors at JTHTL@colorado.edu in Word or PDF formats or through ExpressO at http://law.bepress.com/expresso. Hardcopy submissions may be sent to JTHTL Articles Editors, Campus Box 401, Boulder, CO 80309-0401. Unfortunately, JTHTL cannot return manuscripts. JTHTL uses THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (18th ed. 2005) for citation format and THE CHICAGO MANUAL OF STYLE (15th ed. 2003) for a style guide.

Cite as: 6 J. ON TELECOMM. & HIGH TECH. L. __ (2008).
THE UNIVERSITY OF COLORADO SCHOOL OF LAW

FACULTY, 2007-08

BARBARA A. BINTLIFF, Nicholas Rosenbaum Professor of Law and Law Library Director. B.A., Central Washington State College; J.D., M.L.L., University of Washington.

HAROLD H. BRUFF, Charles Inglis Thomson Professor of Law. B.A., Williams College; J.D., Harvard University.

MAXINE BURKETT, Associate Professor of Law. B.A., Williams College; J.D., University of California, Berkeley.


EMILY M. CALHOUN, Professor of Law. B.A., M.A., Texas Tech University; J.D., University of Texas.

PAUL F. CAMPOS, Professor of Law. A.B., M.A., J.D., University of Michigan.

DEBORAH J. CANTRELL, Associate Professor of Law. B.A., Smith College; M.A., University of California, Los Angeles; J.D., University of Southern California.

HOMER H. CLARK, JR., Professor Emeritus. A.B., LL.D., Amherst College; LL.B., LL.M., Harvard University.

RICHARD B. COLLINS, Professor of Law and Director of the Byron R. White Center for the Study of American Constitutional Law. B.A., Yale College; LL.B., Harvard University.

JAMES N. CORBRIDGE, JR., Professor Emeritus. A.B., Brown University; LL.B., Yale University.

NESTOR DAVIDSON, Associate Professor of Law. A.B., Harvard University; J.D., Columbia University.

TED J. FIFLIS, Professor of Law. B.S., Northwestern University; LL.B., Harvard University.

WAYNE M. GAZUR, Professor of Law. B.S., University of Wyoming; J.D., University of Colorado; LL.M., University of Denver.

DAVID H. GETCHES, Dean and Raphael J. Moses Professor of Natural Resources Law. A.B., Occidental College; J.D., University of Southern California.

LAKSHMAN D. GURUSWAMY, Professor of Law. LL.B., Sri Lanka; Ph.D., University of Durham, U.K.

MELISSA HART, Associate Professor of Law. B.A., Harvard-Radcliffe College; J.D., Harvard University.

DAVID S. HILL, Professor of Law. B.S., J.D., University of Nebraska.

CLARE HUNTINGTON, Associate Professor of Law. B.A., Oberlin College; J.D., Columbia University.

J. DENNIS HYNES, Professor Emeritus. B.A., LL.B., University of Colorado.

HOWARD C. KLEEME, Professor Emeritus. B.A., LL.B., University of Colorado; LL.M., Yale University.

SARAH A. KRAKOFF, Associate Professor of Law. B.A., Yale University; LL.B, University of California, Berkeley.

MARK J. LOEWENSTEIN, Nicholas A. Rosenbaum Professor of Law. A.B., J.D., University of Illinois.
DAYNA BOWEN MATTHEW, Associate Dean for Academic Affairs and Professor of Law. A.B., Harvard-Radcliffe; J.D., University of Virginia.
KRISTINE H. MCCORD, Assistant Dean for Admissions and Financial Aid. B.S., University of North Carolina; J.D., George Mason University.
SCOTT A. MOSS, Associate Professor of Law. B.A., M.A., Stanford University; J.D., Harvard Law School.
CHRISTOPHER B. MUELLER, Henry S. Lindsley Professor of Procedure and Advocacy. A.B., Haverford College; J.D., University of California, Berkeley.
ROBERT F. NAGEL, Ira C. Rothgerber, Jr. Professor of Constitutional Law. B.A., Swarthmore College; J.D., Yale University.
HELEN L. NORTON, Associate Professor of Law. B.A., Stanford University; J.D., University of California, Berkeley.
PAAUL OHM, Associate Professor of Law. B.S./B.A., Yale University; J.D., University of California, Los Angeles.
VERONICA PARICIO, Assistant Dean for Career Development. B.A., Dartmouth College.
SCOTT R. PEPPET, Associate Professor of Law. B.A., Cornell University; J.D., Harvard University.
COURTLAND H. PETERSON, Nicholas Doman Professor of International Law Emeritus. B.A., LL.B., University of Colorado; M. Comp. L., University of Chicago; Dr. Jur., University of Freiburg (Germany).
WILLIAM T. PIZZI, Professor of Law. A.B., Holy Cross College; M.A., University of Massachusetts; J.D., Harvard University.
CAROLYN B. RAMSEY, Associate Professor of Law. B.A., University of California, Irvine; A.M., Stanford University; J.D., Stanford University.
WILLIAM E. RENTFRO, Professor Emeritus. B.A., University of Colorado; Th.M., LL.B., University of Denver.
PIERRE J. SCHLAG, Associate Dean for Research and Byron White Professor of Constitutional Law. B.A., Yale University; J.D., University of California, Los Angeles.
AMY J. SCHMITZ, Associate Professor of Law. B.A., Drake University; J.D., University of Minnesota.
DON W. SEARS, Professor Emeritus. B.S., J.D., Ohio State University.
PETER N. SIMON, Professor Emeritus. B.S., M.D., University of Wisconsin; J.D., University of California, Berkeley.
LAURA SPITZ, Associate Professor of Law. B.A., University of Toronto; LL.B., University of British Columbia Faculty of Law; J.S.D., Cornell Law School.
MARK SQUALLACE, Professor of Law and Director of the Natural Resources Law Center. B.S., Michigan State University; J.D., University of Utah College of Law.
NORTON L. STEUBEN, Professor Emeritus. A.B., J.D., University of Michigan.
ARTHUR H. TRAVERS, JR., Professor Emeritus. B.A., Grinnell College; LL.B., Harvard University.
LORENZO A. TRUJILLO, Assistant Dean for Students and Professional Programs and Professor Attendant Rank. B.A., University of Colorado; M.A., University of Colorado; Ed.D., University of San Francisco; J.D., University of Colorado.
MICHAEL J. WAGGONER, Associate Professor of Law. A.B., Stanford University; LL.B., Harvard University.
PHILIP J. WEISER, Professor of Law, Associate Dean for Research, and Executive Director of the Silicon Flatirons Telecommunications Program. B.A., Swarthmore College; J.D., New York University.

MARIANNE WESSON, Professor of Law and Wolf-Nichol Fellow. A.B., Vassar College; J.D., University of Texas.

AHMED A. WHITE, Associate Professor of Law. B.A., Southern University and A & M College; J.D., Yale University.

CHARLES F. WILKINSON, University’s Distinguished Professor and Moses Lasky Professor of Law. B.A., Denison University; LL.B., Stanford University.

Research and Clinical Faculty

NORMAN F. AARONSON, Clinical Professor, Legal Aid and Defender Program. A.B., Brandeis University; J.D., Boston University.

MARGARET ANN ENGLAND, Clinical Professor, Legal Aid and Defender Program. B.A., University of Michigan; J.D., University of Denver.

H. PATRICK FURMAN, Clinical Professor, Legal Aid and Defender Program, and Director of Clinical Programs. B.A., J.D., University of Colorado.

COLENE ROBINSON, Clinical Professor, Juvenile and Family Law. B.A., Valparaiso University; J.D., Loyola University School of Law, Chicago.

JILL E. TOMPKINS, Instructor and Director of the Indian Law Clinic. B.A., The King’s College; J.D., University of Maine.

Law Library Faculty

BARBARA A. BINTLIFF, Nicholas Rosenbaum Professor of Law and Law Library Director. B.A., Central Washington State College; J.D., M.L.L., University of Washington.

ALICIA BRILLON, Reference Librarian. B.A., M.L.I.S., University of Washington; J.D., Seattle University.

GEORGIA K. BRISCOE, Associate Director and Head of Technical Services. B.S., Washington State University; M.A., University of San Diego; M.L.S., University of Michigan.

YUMIN JIANG, Technical Services Librarian. M.S., University of Illinois, Urbana-Champaign; M.A., University of Wisconsin.

SCOTT MATHESON, Head of Public Services and Instructor. M.L.S., University of Washington; J.D., University of Washington.

ALAN PANNELL, Reference Librarian. B.A. University of Oklahoma; J.D. Western New England College; M.A. University of Arizona.

KAREN Selden, Catalog Librarian. B.S., Pennsylvania State University; M.L.S., Simmons College.

JANE E. THOMPSON, Head of Faculty Services. B.A., University of Missouri; M.A., J.D., University of Denver.

Legal Writing and Appellate Advocacy Faculty

AL CANNER, Legal Writing Professor. B.A., Brandeis University; J.D., University of Colorado.

LOUISA HEINY, Legal Writing Professor. B.A., J.D., University of Colorado.

DEREK H. KIERNAN-JOHNSON, Legal Writing Professor. A.B. Princeton
Natalie Mack, Legal Writing Professor. B.S., University of South Carolina; J.D., University of Colorado.
Gabrielle M. Stafford, Legal Writing Professor. B.A., University of Pennsylvania; J.D., Boston University.
Todd M. Stafford, Legal Writing Professor. B.A., Southern Methodist University; J.D., Duke University.

Research Associates

J. Brad Bernthal, Research Associate, Telecommunications. B.A., University of Kansas; J.D., University of Colorado School of Law.
Kevin L. Doran, Research Fellow, Energy & Environmental Security Initiative. B.A., Andrews University; J.D., University of Colorado.
Douglas S. Kenney, Research Associate, Natural Resources Law Center. B.A., University of Colorado; M.S., University of Michigan School of Natural Resources and Environment; Ph.D., Cornell University.
Kathryn M. Mutz, Research Associate, Natural Resources Law Center. B.A., University of Chicago; M.S., Utah State University; J.D., University of Colorado.
Jill Van Matre, Research Associate, Silicon Flatirons Telecommunications Program. B.S., Indiana University; J.D., University of Colorado.

Adjunct, Adjoint and Visiting Faculty

Robin D. Barnes, Professor of Law, University of Connecticut, Hartford, Connecticut. B.A., J.D., State University of New York at Buffalo; LL.M., University of Wisconsin.
The Honorable Michael Bender, Justice, Colorado Supreme Court, Denver, Colorado. B.A., Dartmouth College; J.D., University of Colorado School of Law School.
George Brauchler, Deputy District Attorney, First Judicial District, Golden, Colorado. B.A., J.D., University of Colorado.
Steven Clymer, Attorney at Law, ACCORD Dispute Resolution Services, Boulder, Colorado. A.B., St. Louis University; J.D., Case Western Reserve University.
Christine A. Coates, Attorney at Law, Boulder, Colorado. B.A., Houston Baptist University; M.Ed., University of Houston; J.D., University of Colorado.
Tom Connolly, Chairman of the Board and CEO, Aeroturbine Energy Corporation and Partner, Connolly Rosania & Lofstedt, PC, Colorado. B.A., Ohio State University; J.D., Ohio State University School of Law.
The Honorable Wiley Daniel, Judge, United States District Court for the District of Colorado. B.A., J.D., Howard University.
Mark Fenster, Associate Professor of Law, University of Florida, Gainesville, Florida. B.A., University of Virginia; M.A., University of Texas; Ph.D., University of Illinois; J.D., Yale University.
ROGER FLYNN, Executive Director, Western Mining Action Project, Boulder, Colorado. B.S., Lehigh University; J.D., University of Colorado.

CRAIG C. GARBY, Partner, Rothgerber Johnson & Lyons LLP, Denver, Colorado. B.A., University of Colorado; Graduate Research, Waseda University, Tokyo, Japan; M.P.A., Cornell University; J.D., Stanford University.


SCOTT E. GESSLER, Attorney at Law, Hackstaff Gessler LLC, Denver, Colorado. B.A., Yale University; J.D., University of Michigan; M.B.A., Northwestern University.

JASON D. HAINSLMAIER, Partner, Holme Roberts & Owen LLP, Boulder, Colorado. B.S., Northwestern University; J.D., Franklin Pierce Law Center.

ROGER A. HANSON, Principal, Hanson and Hunter Consulting. Ph.D., University of Minnesota.

ANDREW HARTMAN, Partner, Cooley Godward LLP, Broomfield, Colorado. A.B., University of Michigan; J.D., Georgetown University.

THE HONORABLE MORRIS B. HOFFMAN, Judge, Denver District Court, Denver, Colorado. B.A., J.D., University of Colorado.

BETTY R. JACKSON, Professor of Accounting, School of Business, University of Colorado, Boulder. B.B.A. Southern Methodist University; M.P.A., Ph.D., University of Texas, Austin.

JOHN LEBSACK, Shareholder, White and Steele, P.C., Denver, Colorado. B.A., Yale University; M.S., University of Colorado; J.D., University of Denver.

CAROL B. LEHMAN, Law Office of Carol B. Lehman, Lakewood, Colorado. B.A., Lawrence University; M.S., University of Wisconsin; J.D., University of Colorado.

THOMAS D. LUSTIG, Senior Staff Attorney, National Wildlife Federation, Boulder, Colorado. A.B., Washington University; M.S., University of Michigan; J.D., University of Colorado; Ph.D., Massachusetts Institute of Technology.


CHRISTOPHER NEUMANN, Associate, Greenberg Traurig LLP, Denver, Colorado. B.S., University of Notre Dame; J.D., Lewis & Clark Law School.

ROBERT NICHOLS, Adjunct Professor. B.A., Baylor University; J.D., University of Oklahoma.

THE HONORABLE NANCY E. RICE, Justice, Colorado Supreme Court, Denver, Colorado. B.A., Tufts University; J.D., University of Utah.

THE HONORABLE EDWARD J. RICHARDSON, Judge, Retired, State of Florida Circuit Court. A.S., Brevard Community College; B.S., University of Florida; J.D., Florida State University.

WAYNE STACY, Attorney, Cooley Godward, Denver, Colorado. B.S., Southern Methodist University; J.D., George Washington University School of Law.

NATHANIEL TRELEASE, President, WebCredenza, Inc., Denver, Colorado.
B.S., University of Wyoming; J.D., University of Wyoming; LL.M., University of Denver.

THE HONORABLE TIMOTHY M. TYMKOVICH, Judge, U.S. Court of Appeals for the Tenth Circuit, Denver, Colorado. B.A., Colorado College; J.D., University of Colorado.

PAUL WASHINGTON, President, LJS Holdings LLC, Berkeley, California. B.S., J.D., University of California, Berkeley.

LISA WAYNE, Attorney at Law, William Murphy & Associates, Baltimore, Maryland. B.A., University of Colorado, J.D., Pepperdine University College of Law.
FROM THE EDITOR

This final issue of the sixth volume of the Journal on Telecommunications & High Technology Law features five articles followed by two student notes that includes the winner of the 2007 Silicon Flatirons Writing Competition. In the first article, Professors Phil Weiser, Dale Hatfield, and Brad Bernthal report on how new technologies are impacting emergency 9-1-1 services and the resulting need for reform. They make several recommendations for changing both governance and funding models. The second article features the work of Charles Cooper and Brian Koukoutchos examining the principles of federalism and telecommunications deregulation. In their comprehensive article, these authors argue the case for broad preemptive federal deregulation across the telecommunications industry in light of the intermodal competition found within today's telecommunications world. Following on the deregulatory theme, Professor Rob Frieden examines the Federal Communications Commission's ("FCC") efforts to deregulate some next-generation network services through categorizing them as information services, while at the same time imposing obligations on other services, most notably Voice over Internet Protocol service providers. Professor Frieden explores the problems arising from these contradictory strategies. Professors Lynne Holt and Mark Jamison then discuss the issues of federal communications regulation and competitive access as they pertain to multi-unit housing complexes. They propose the need for a uniform set of rules regarding competitive access for multi-unit premises that are not dependent upon the type of technology platform being provided. In the fifth article, William Hebert and Professor Nicholas Economides discuss the intersection of patent and antitrust law, exploring the antitrust issues that arise when patent holders leverage their monopoly power into adjacent markets.

This issue also features two student notes. First, Patrick Thiessen, the winner of the 2007 Silicon Flatirons Writing Competition and one of the journal's Associate Editors, critiques the Real ID Act of 2005. He presents the different legal arguments that states could make to challenge this federal law and the obligations it imposes upon the states. Lastly, Note and Comment Editor Kaydee Smith examines the idea of a Global First Amendment. She discusses two recent bills that Congress has considered to increase freedom for the Internet globally and makes recommendations on which bill is mostly likely to succeed in its goals.
This issue, along with the entire volume six, would not have been possible without the efforts of our fine Articles Editors Conor Boyle, Brian Geoghegan, Scott Grayson, and Karam Saab. I wish to thank them for all their hard work over this past year. In addition, endless gratitude goes to our Note and Comment Editors Tina Amin, Scott Challinor, Gil Selinger, and Kaydee Smith who have spent these past two semesters working with our Members to produce excellent student notes, some of which you will see published in volume seven. I also wish to thank both our Executive Editor Carin Twining, who provided essential oversight to the entire journal's operations, and our Managing Editor Todd Blair, who kept our finances and meetings in good order.

Once again, our Production Editor Michael Beylkin deserves many thanks for his countless hours reviewing each article and putting each issue into its final form. The Journal is also indebted to Assistant Production Editor Mike Boucher who continues to volunteer his time to help us whenever and wherever production needs a helping hand. Our Associate Editors Joe Chen, Ed Hafer, Venu Menon, Patrick Thiessen, and Mike Varco have also continued to give generously with their time, providing assistance on a wide variety of tasks—from additional cite checking to editing a student note or two. To them and to the whole crew, I give my thanks for making this my most rewarding year in law school.

Phil Weiser and Paul Ohm, our faculty co-advisors, along with Brad Bernthal, Dale Hatfield, Jill Van Matre, Anna Noschese, Cindy Gibbons, the Silicon Flatirons Advisory Board, and our Office Manager Martha Utchenik all deserve special thanks. While the Journal is a student-run organization, it would not succeed as it has without their encouragement and the time and effort they give to support our work.

I would like to acknowledge the hard work our incoming editorial board has already done. I am certain that Hiwot Molla, Kyaw Tin, Erin McLauthlin, John Bergmayer, and Chris Larson will do an excellent job overseeing the production of volume seven.

Last but not least, I wish to thank my family whose support, advice, and encouragement have made my experience working on the Journal possible.

Along with the entire board of editors, I am pleased to offer this last issue of the sixth volume of the Journal on Telecommunications & High Technology Law.

David B. Wilson
Editor-in-Chief
CONTENTS

ARTICLES

THE FUTURE OF 9-1-1: NEW TECHNOLOGIES AND THE NEED FOR REFORM
Philip J. Weiser, Dale Hatfield, & Brad Bernthal.................................213

FEDERALISM AND THE TELEPHONE: THE CASE FOR PREEMPTIVE FEDERAL DEREGULATION IN THE NEW WORLD OF INTERMODAL COMPETITION
Charles J. Cooper & Brian Stuart Koukoutchos .............................293

NEITHER FISH NOR FOWL: NEW STRATEGIES FOR SELECTIVE REGULATION OF INFORMATION SERVICES
Rob Frieden ..................................................................................373

FEDERAL REGULATION AND COMPETITIVE ACCESS TO MULTIPLE-UNIT PREMISES: MORE CHOICE IN COMMUNICATIONS SERVICES?
Lynne Holt & Mark Jamison .........................................................425

PATENTS AND ANTITRUST: APPLICATION TO ADJACENT MARKETS
Nicholas Economides & William N. Hebert .....................................455

SILICON FLATIRONS WRITING COMPETITION

THE REAL ID ACT AND BIOMETRIC TECHNOLOGY: A NIGHTMARE FOR CITIZENS AND THE STATES THAT HAVE TO IMPLEMENT IT
Patrick R. Thiessen.........................................................................483

STUDENT NOTE

A GLOBAL FIRST AMENDMENT?
Kaydee Smith..................................................................................509