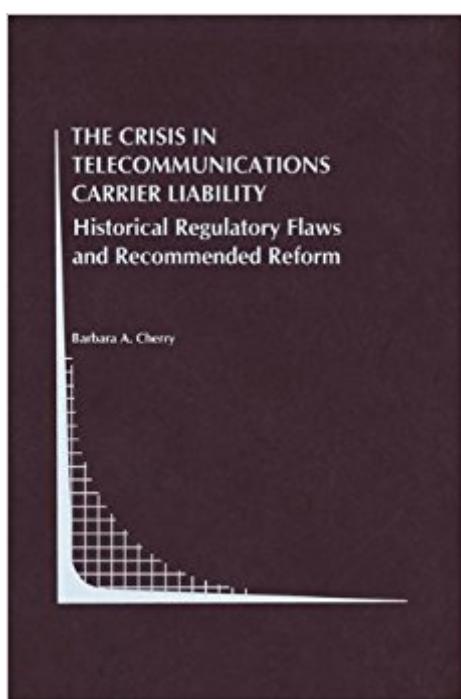


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The Crisis In Telecommunications Carrier Liability: Historical Regulatory Flaws And Recommended Reform (Topics In Regulatory Economics And Policy)



Synopsis

My curiosity with the economic efficiency and social benefits of provisions used by telecommunications carriers to limit their liability to customers for damages arising from service interruptions and network outages is a longstanding one. It began with the changing state regulatory environments in the late 1980's while representing AT&T as an attorney before numerous state legislatures in the Midwest. As telecommunications carriers faced the ramifications of deregulation, several legal consequences came to the fore. One important consequence was the impact of changing regulatory rules and requirements on the carriers' abilities to continue to limit their liability for damages to customers in a non-tariffed world. As a result, one of my responsibilities while employed by AT&T was to seek legislative relief in some state jurisdictions which would enable the continued use of limited liability provisions notwithstanding other deregulatory developments in the industry. In my capacity as an attorney, I succeeded in this task in the few jurisdictions for which I was given the charge. However, as an economist, these efforts piqued my interest regarding the economic effects of such limited liability provisions on consumer interests. What liability rules for the industry would really better serve general societal interests? As my career evolved, which involved returning to graduate school to pursue my Ph. D. and becoming the Director of Public Policy Studies at Ameritech, I had the opportunity to pursue interdisciplinary research in telecommunications policy issues.

Book Information

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Among the myriad works attempting to explain what, if any, fundamental logic guided Congress's 1996 decision to amend the 1934 Communications Act, only an exceptional few succeed. One that does, however, is Professor Barbara Cherry's "The Crisis in Telecommunications Carrier Liability." Cherry's work employs an historical and institutional approach to decipher seemingly counter-intuitive liability provisions saddled upon incumbent local exchange carriers and inter-exchange carriers. Rather than focusing exclusively on the text of the Telecommunications Act of 1996, Cherry weaves together a rich tapestry of legal and regulatory history on the one hand, with social policy objectives such as universal service on the other hand. This warp is deftly manipulated with a weft of institutional context to provide one of the most coherent and complete explanations of the state of telecommunications law as it exists today in the United States. The contradictions between social policy objectives and the over-arching concern for opening the last mile to competitive entry by unbundling the network elements (Section 251) is thoroughly addressed in Cherry's work. She manages this tension well and proposes well-informed policy remedies obviously aimed at a lawmaking audience. Cherry's work benefits from her industry experience as well as her academic style. It is a must read for any student of telecommunication regulation theory as well as telecommunications policy-makers everywhere. It should be included on the syllabi of communications programs nationwide. I unequivocally give this book my highest recommendation, and hope that it will spark the kind of informed policy debate it was intended to generate.

The concept of common carriage is generally assumed and universally misunderstood. One aspect of the historical mythology that is contorted beyond recognition is the liability of common carriers for the goods carried. If a telegraph, telephone (or dare I say Internet network) mangles the message and causes harm, what liability does that carrier have - and more importantly - why? Barbara Cherry looks at the theoretical underpinnings of the regulatory position and how liability faces new challenges in the post telecom act of 1996 era.

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