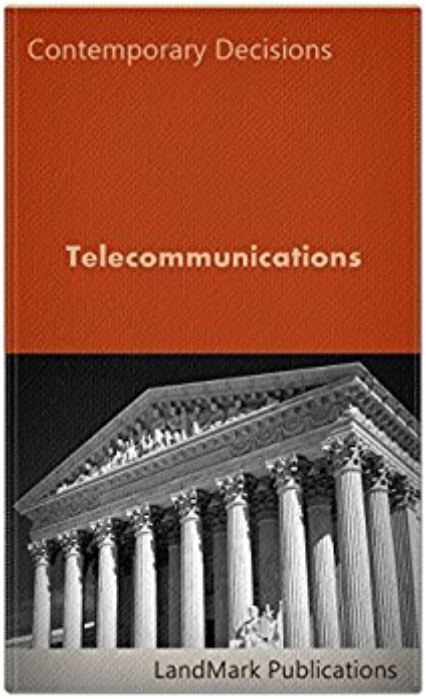
Telecommunications (Litigator Series)



Synopsis

THIS CASEBOOK contains a selection of 177 U. S. Court of Appeals decisions that discuss and analyze issues affecting the telecommunications industries. The selection of decisions spans from 2004 to the date of publication. In the Nineteenth Century, American courts began imposing certain obligations â ” conceptually derived from the traditional legal duties of innkeepers, ferrymen, and others who served the public â ” on companies in the transportation and communications industries. As the Supreme Court explained in Interstate Commerce Commission v. Baltimore & Ohio Railroad Co., 145 U.S. 263, 275, 12 S.Ct. 844, 36 L.Ed. 699 (1892), "the principles of the common law applicable to common carriers... demanded little more than that they should carry for all persons who applied, in the order in which the goods were delivered at the particular station, and that their charges for transportation should be reasonable." Congress subsequently codified these duties, first in the 1887 Interstate Commerce Act, ch. 104, 24 Stat. 379, then the Manns-Elkins Act of 1910, ch. 309, 36 Stat. 539, and, most relevant here, the Communications Act of 1934, ch. 652, 48 Stat. 1064. [Citations Omitted.] Verizon v. FCC, 740 F. 3d 623 (DC Cir. 2014) Although the nature and scope of the duties imposed on common carriers have evolved over the last century, see, e.g., Orloff v. FCC, 352 F.3d 415, 418-21 (D.C.Cir.2003) (discussing the implications of the relaxation of the tariff-filing requirement), the core of the common law concept of common carriage has remained intact. In National Association of Regulatory Utility Commissioners v. FCC, 525 F.2d 630, 642 (D.C.Cir.1976) ("NARUC I"), we identified the basic characteristic that distinguishes common carriers from "private" carriers â ” i.e., entities that are not common carriers â ” as "[t]he common law requirement of holding oneself out to serve the public indiscriminately." "[A] carrier will not be a common carrier," we further explained, "where its practice is to make individualized decisions, in particular cases, whether and on what terms to deal." Id. at 641. Similarly, in National Association of Regulatory Utility Commissioners v. FCC, 533 F.2d 601, 608 (1976) ("NARUC II"), we concluded that "the primary sine qua non of common carrier status is a quasi-public character, which arises out of the undertaking to carry for all people indifferently." (Internal quotation marks omitted). Verizon v. FCC, ibid.

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