

## Chapter 20

# The Progress and Proposals for a Civil Rights Agenda in the Communications Policy Arena

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### Introduction

This is a report on the progress of and threat to civil rights principles at stake in the making of communications policy. It is an honor to make such a contribution to the Citizens' Commission on Civil Rights biannual report on federal civil rights and enforcement. It may even come as a surprise to the reader that a contribution focused on communications policy is included in this report. Popular discourse (as offered, for example, in the pages of *The New York Times*) does not necessarily admit that any set of principles has an impact on communications, other than fairly limited views of the First Amendment, technology, and the market.

Occasionally, a small community of activists who focus on market failures and consumer protections are able to participate in the debate over communications policy. However, these public interest advocates tend to focus on "consumer" issues (Is the consumer being overcharged for the service she receives? Is information about the consumer being used improperly? Does the consumer have access to a product?), rather than issues of equality and democratic accountability. While these advocates have much in common with civil rights advocates, their concerns are distinct. This paper then is also an argument that the arena of communications is, and should be, informed by the

deeply rooted considerations of civil rights advocacy.

Communications policy encompasses a very large field of activities that touch on civil rights concerns. These activities include employment, ownership, the deployment of service, federal licensing of public property, privacy, access to government information, public participation in government rulemaking, the accountability of publicly supported institutions, and other areas. This paper will not provide a comprehensive look at all of the civil rights considerations in the communications policy arena. It will only provide a brief assessment of a few key communications policy considerations handled during the Clinton Administration. We will focus on equal employment opportunity and ownership, and the deployment and support for advanced telecommunications services.

It may also be useful to note at the beginning that these particular concerns are the province of an independent agency, the Federal Communications Commission (FCC). The FCC is a relatively small administrative agency led by five commissioners appointed by the President with the consent of the Senate. Two commissioners are chosen from the Democratic party, two are chosen from the Republican party, and the Chairman is usually from the party of the President. Over the past four years, the FCC has been led by its first African American

Chairman, William E. Kennard, a Democrat, and it was the first FCC with members of minority groups to hold the majority of votes (three), Kennard, Gloria Tristani, and Michael Powell. Kennard, Tristani, and Susan Ness were the Democrats on that commission. Powell and Harold Furtchgott-Roth were the Republicans.

In 2001, the FCC was led by Michael Powell. All of the other commissioners left at the end of their terms, or resigned. The Powell Commission is comprised of Republicans Kathleen Q. Abernathy, Kevin J. Martin, and Democrat Michael J. Copps. As of this writing, Jonathan S. Adelstein, a legislative assistant to Senate Majority Leader Tom Daschle, is the odds-on favorite to be selected as the second Democrat.

The FCC is funded by an annual appropriation from Congress. And, perhaps as important, its charge is to establish regulations under authority of statute. Five short years ago, in light of sweeping technological developments in the communications arena, there was a sweeping revision of the 60-year-old Communications Act. Much of what follows will examine the Kennard FCC's implementation of the 1996 Telecommunications Act with a focus on those provisions designed to further the equitable deployment of telecommunications services.

In brief, I make the following proposals:

- The next administration, under either the Federal Communications Commission or a combination of agencies, such as a task force comprised of the National Telecommunications and Information Administration (NTIA), Small Business Administration (SBA), and the FCC, should conduct a Croson/Adarand analysis to determine whether there is any justification to employ race-based measures to advance Equal Employment Opportunity regulations and efforts to increase minority ownership in the communications industry.
- The next administration should review the impact of the relaxed ownership rules in radio on both minority ownership opportunities and the service to minority communities. It should also review whether federal small business loans are sufficient to allow underrepresented groups to participate in the market for communications companies.
- The next administration should continue its efforts to improve access to telecommunications service on Indian land. A yearly review should be conducted to determine whether these efforts are working.
- The FCC, perhaps in concert with other federal agencies, such as the Departments of Housing and Urban Development, Health and Human Services, Education, Agriculture, and the Interior, should devote more resources to inform those eligible for Lifeline and Link Up support.
- The E-Rate program, which subsidizes the telecommunications capability of schools, libraries, and rural health care centers, should be continued.
- The next administration should keep its promise to invest \$400 million to create and maintain more than 2,000 community technology centers in low-income neighborhoods by 2002.
- The next administration should determine with better accuracy whether deployment of advanced telecommunications services occurs in a way that avoids poor and minority communities. Once we have better information we can deter any possible information redlining

by informing private decision-makers about the true value of minority markets receptive to advanced services, encouraging state or municipal deployment in underserved markets, or providing private industry with incentives to deploy in those markets.

These actions will help to ensure that minorities and the poor will have equal access to the public airwaves and the National Information Infrastructure.

## I. The Past Is Not Even the Past

That civil rights issues claim a place in the debate over communications policy should not be a surprise. There is an all-too-often-ignored historical relationship between the modern civil rights movement and communications policy. It is arguable that the starting point of the so-called public interest movement related to communications began in the early 1960s at the National Arts Club in New York City, with a conversation held by three civil rights leaders: Martin Luther King, Jr., Andrew Young, and Everett Parker.

Dr. King wanted Parker to do something about the television stations in the south. King was particularly concerned about the practices of television stations licensed to serve communities in Alabama. Among the practices that concerned King and other civil rights leaders was the regular local termination of the network signals whenever a program was transmitted about the “Negro Movement.” Instead of an interview with Dr. King or Thurgood Marshall, southern viewers were often entertained with a sign which read: “Sorry Cable Trouble.” In addition, many stations, particularly in the south, did not broadcast local issues of concern to blacks, did not employ blacks, and

did not allow blacks to advertise on their station. As Kay Mills writes in *Changing Channels: The Civil Rights Case that Changed Television*, the actions of these federal licensees with control over public property were as much civil rights issues as was the segregation of passengers by bus companies that traveled on interstate highways.<sup>2</sup>

After a tour of the south, Parker decided to focus his attention on stations in the state capitol of Mississippi. In Jackson, Parker joined forces with local NAACP and civil rights activists, most notably Aaron Henry and Robert L. T. Smith, to challenge two network affiliates (WLBT — the NBC affiliate, and WJTV — the ABC affiliate) and ultimately the FCC.

The coalition lost their challenge to the Jackson stations’ licenses at the FCC in May 1965. Later that summer, the Reverend Dr. Everett C. Parker filed suit against the FCC in the U.S. Circuit Court of Appeals for the District of Columbia. The Office of Communications of the United Church of Christ argued that the white-only programming of the stations violated the Fairness Doctrine and was not “in the public interest” of either black or white viewers in Jackson, Mississippi. The FCC argued that citizens did not have the right under the law to challenge a station’s license or the FCC’s decision. In 1967, the Appeals Court, in an opinion by Warren Burger, overruled the FCC. That ruling ultimately led to the loss of WLBT’s license, and perhaps more important it gave all citizens a right to enforce the obligation that federal licensees were to operate in the public interest — and that meant all of the public, even minority groups.<sup>3</sup>

Because it recognized the civil rights of viewers in relationship to both the industry and the federal agency that regulates the industry, the *United Church of Christ* decision has been characterized by one historian as the “Magna Carta for active public participation in broadcast regul-

ation.”<sup>4</sup> This renewed civil rights focus on broadcast stations led the Kerner Commission to examine the role of media in exacerbating the racial tensions that ultimately resulted in the widespread urban rioting in the late 1960s. The Kerner Commission warned that television stations “have not communicated to whites a feeling for the difficulties and frustrations of being a Negro in the United States . . . The world that television and newspapers offer to their black audience is almost totally white. . . .”<sup>5</sup>

While federal regulation of all communications industries has always referred to the necessity of broadcasters (radio and television stations) and common carriers (telegraph and telephone companies) to operate “in the public interest,”<sup>6</sup> it was not until the involvement of the civil rights community, through protest and court action, in the late 1960s and 1970s that the public had any real say about its interest. Though many advances were made during this period, much was reversed in the mid-1980s and 1990s. The next few years may determine whether the setbacks of the past 20 years will be reversed or solidified as we enter a future where communications becomes more important than ever to our society.

## II. EEO and Ownership

One direct outcome of both the Kerner Commission and the *UCC v. FCC* focus on the lack of service to minority communities was the establishment of equal employment opportunity guidelines.<sup>7</sup> The FCC is charged with regulating “interstate and foreign communications services so that they are available, so far as possible, to all people of the United States, without discrimination the basis of race, religion, national origin, or sex.”<sup>8</sup>

However, the FCC required more of broadcasters (and cable entities) than simply refraining from discrimination. In order to demonstrate that a broadcast licensee had met its responsibility to serve in the public interest, broadcasters were required to “carry out a positive continuing of specific practices designed to ensure equal opportunity in every aspect of station employment policy and practice.”<sup>9</sup> Those provisions called for an accounting of minorities and women employed at the stations and asked the stations to compare the numbers of minorities and women on staff to the number of minorities and women in the station’s service area. The FCC also asked stations to send job announcements to places where likely candidates might be found.<sup>10</sup>

The FCC rationale for requiring a report of hiring statistics and outreach efforts was twofold: (1) hiring without broad outreach may exclude minority and women candidates; and (2) a licensee who discriminates against minorities and women would not be inclined to serve the needs and interests of all sectors of its community of license.<sup>11</sup>

### A. Lutheran Church

In 1998, the U.S. Court of Appeals ruled that the FCC’s EEO reporting and outreach rules were an unconstitutional violation of equal protection.<sup>12</sup> Judge Silberman considered the requirement to report on minority hiring as a condition of the broadcast license to be a race-based government hiring program triggering “strict scrutiny.” Noting *Adarand v. Peña*, 515 U.S.C. § 200, 226 (1995), Judge Silberman wrote:

*We do not think it matters whether a government hiring program imposes hard quotas, soft quotas, or goals. Any one of these techniques induces an employer to hire with an eye toward meeting the numerical target. As such, they can and*

*surely will result in individuals being granted a preference because of their race.*

Judge Silberman went on to write that even if the Supreme Court's decision in *Metro Broadcasting v. FCC*, 497 U.S. 547 (1990) was good law, that court's finding that diversity was "important" was not a determination that it was "compelling." Moreover, the remedy (outreach and reporting on staff composition) is not narrowly tailored, as there was no evidence "linking low-level employees to programming content."<sup>13</sup>

In response to *Lutheran Church*, the FCC froze enforcement of its EEO regulations. After the *Lutheran Church* decision, several studies on employment in the broadcast industry demonstrated that minorities were not especially well represented. In January 1999, a coalition of minority organizations also began a protest against the program schedules of the national networks, which featured mainly white actors. The Center for Media and Public Affairs, Children Now, and the Tomas Rivera Institute provided studies that supported the claims of underrepresentation.<sup>14</sup> And a yearly study released by the Radio-Television News Directors Association, for example, finds that minorities are underrepresented in television news staffs, and that few minorities were in a position to determine either news or news hires.<sup>15</sup> After months of embarrassing headlines, and threats of boycotts ("black-outs" and "brown-outs"),<sup>16</sup> most of the major networks announced agreements to put more minorities on the air and improve hiring practices.<sup>17</sup>

In January 2000 the Commission issued modified EEO requirements for broadcast and cable operations. Those rules required broadcasters to widely disseminate information about job openings, place information detailing outreach efforts in their public file, and submit a statement of compliance with the FCC's EEO rule. In addition, broadcasters with ten or more full-time employees

must submit their annual EEO report, but these reports will not be used to determine fitness to serve as a public trustee, they will be used "only to monitor industry employment trends and reporting to Congress."<sup>18</sup>

David Honig, who filed extensive briefs at both the Appeals Court and the FCC as counsel for the Rainbow/PUSH Coalition, the NAACP, and the Minority Media and Telecommunications Council, argued, "The effect of this ruling is that broadcasters understand that if you discriminate, you are going to lose your license." He also said, "These are the best recruitment rules we can probably hope for."<sup>19</sup> While the first statement is highly unlikely, the second is undoubtedly true.

The fundamental premise of the FCC in adopting equal employment opportunity rules to apply to federal licensees remains sound. Local broadcasters play an important and unique role in community discourse. They are given a license to a scarce portion of the public electromagnetic spectrum by the federal government. In that public space they are protected by the federal government from interference by others. They are also given special "must carry" rights over local cable operations.<sup>20</sup> Local broadcasters are the most relied upon source for news, political discussion, and emergency information.<sup>21</sup> In exchange for their special status in our communities, broadcasters are, in theory, required to act as public trustees, providing free over-the-air service for the public good of all segments of their community of license. Congress, the FCC, and the Supreme Court have recognized a link between broadcast employment and the expression of views on that broadcast station.<sup>22</sup> But today, as was the case in the mid-1960s, the gift of this scarce, protected, powerful federal license is not tied to any demonstration that the licensee employs on a nondiscriminatory basis.

Moreover, weak EEO guidelines for broadcasters will undoubtedly not stop at

small radio stations such as the one operated by the Lutheran Church Missouri Synod. EEO rules applied to broadcasters and to cable operations alike. And in our new digital environment, similar rules will likely be extended to any party providing communications services, whether by wire or broadcast or satellite.<sup>23</sup>

In 2000, the FCC promulgated a new set of EEO policies that required that broadcasters and cable operators recruit broadly. The FCC provided two options. Under Option A media companies could choose from a laundry list of recruitment methods, such as “job fairs . . . and interaction with educational and community groups.” Under Option B, they would have to keep information on the race or gender of job applicants. The FCC made clear that the annual employment reports would not be used for “screening renewal applications” or “assessing EEO compliance,” but “only to monitor industry employment trends.”<sup>24</sup>

Fifty state broadcaster associations challenged the new FCC EEO rules, and the court of appeals in the District of Columbia ruled that Option B was unconstitutional in light of *Adarand*, because “the Commission promises to investigate any licensee that reports ‘few or no’ applications from women or minorities” and thus broadcasters were “sub silentio” pressured to recruit women and minorities.<sup>25</sup>

In June 2001, the FCC’s request for the entire panel of the court of appeals to review this ruling was denied.<sup>26</sup> As a result, the Commission has suspended the EEO rules and forms except for the prohibitions against discrimination.<sup>27</sup>

In December 2001, the FCC proposed a new set of EEO rules that are essentially Option A of the rules proposed in 2000. In brief summary these rules would, if adopted and approved by the court, require broadcasters and cable operators to: (1) widely disseminate information concerning a job vacancy; (2) provide notice of full-time job

vacancies to recruitment organizations requesting such notice; (3) engage in longer-term recruitment initiatives such as job fairs, scholarship programs, and community information events; and (4) collect listings of full-time jobs identified by title, along with utilized recruitment sources, advertisements, total number of interviewees for each job, the date the job was filled, and documentation of the performance of the required longer-term initiative. This information is required to be placed in the public file annually and will be submitted to the Commission midway through the license term.<sup>28</sup>

The problem, of course, is not the FCC EEO rules. The problem is the application of a law promulgated in *Crosby* to federal agencies in *Adarand*, and the specific application of the *Crosby* disparity standard to an industry as dynamic as communications. Unfortunately, the FCC has never conducted a *Crosby/Adarand* analysis, and that is the first step that needs to be taken by the new administration.

If the FCC does not have the resources to conduct a full *Adarand* study, the next administration should convene a task force comprised of NTIA, SBA, and the FCC to conduct an analysis to determine whether there is any justification to employ race-based measures to advance EEO regulations, as well as efforts to increase minority ownership in the communications industry.

## B. Ownership

Some may argue that the focus on employment is wrong, that instead civil rights advocates should be concerned about ownership. In the late 1970s, in recognition of the lack of progress made with stricter employment policies than those in place today, the FCC ruled that minority ownership was essential to create a diverse range of messages over the public’s airwaves. Civil

rights leaders were at the forefront of the battle for rules to promote minority ownership; among those testifying before Congress in support of such rules in 1974 were Ron Brown, on behalf of the National Urban League, and Joseph Rauh, Jr., on behalf of the Leadership Conference on Civil Rights.<sup>29</sup> Policies promoting minority ownership were established by the FCC,<sup>30</sup> and reaffirmed by the Supreme Court in the *Metro Broadcasting* decision of 1990.<sup>31</sup>

In April 1995, however, Congress (with Republicans finally in control) teamed up with President Clinton (chastened by Democratic defeats in the mid-term election) to kill the most effective method for increasing minority ownership, the tax certificate.<sup>32</sup> With minority-owned broadcast licenses stuck at around three percent,<sup>33</sup> the loss of an incentive to sell to minorities makes any progress beyond that invisible ceiling impossible. And in June 1995, in reaction to the Supreme Court's *Adarand* decision,<sup>34</sup> the FCC rescinded rules designed to help women and minorities participate effectively in the spectrum auctions for PCS licenses.<sup>35</sup> At a Department of Commerce hearing on minority ownership, testimony about the impact of media concentration made possible by relaxed ownership rules and continuing barriers to sufficient financial resources suggests little progress will be made in increasing the number of minority owners of communications companies.<sup>36</sup>

In 1999 and 2000, the Kennard FCC commissioned a series of studies under the authority of section 257 of the Telecommunications Act to identify and eliminate market entry barriers to the communications industry. These studies included:

- *Diversity of Programming in the Broadcast Spectrum: Is There a Link Between Owner Race or Ethnicity and News and Public Affairs Programming?*, prepared

by a team of researchers from Santa Clara University;

- *Study of the Broadcast Licensing Process*, prepared by KPMG LLP Economic Consulting Services, consisting of three parts: "History of the Broadcast Licensing Process"; "Utilization Rates, Win Rates, and Disparity Ratios for Broadcast Licenses Awarded by the FCC"; and "Logistic Regression Models of the Broadcast License Award Process for Licenses Awarded by the FCC";
- *FCC Econometric Analysis of Potential Discrimination: Utilization Ratios for Minority- and Women-Owned Companies in FCC Wireless Spectrum Auctions*, prepared by Ernst & Young LLP;
- *Study of Access to Capital Markets and Logistic Regressions for License Awards by Auctions*, prepared by Professor William Bradford at the University of Washington; and
- *Whose Spectrum Is It Anyway? Historical Study of Market Entry Barriers, Discrimination and Changes in Broadcast and Wireless Licensing 1950 to Present*, prepared by the Ivy Planning Group LLC.<sup>37</sup>

These studies were preceded by "When Being No. 1 Is Not Enough," a report on discriminatory advertising practices, issued by Kofi Ofori of the Civil Rights Forum on Communications Policy.<sup>38</sup>

While these reports do not substitute for a comprehensive *Adarand* study, they suggest both substantial barriers to minority participation in media ownership, and they suggest that minority ownership does have an impact on diversity of content, particularly news and public affairs. As was discussed in the Policy Forum on Market Entry Barriers held in December 2000,

substantive efforts are needed to correct the lack of minority participation in the media industry, particularly in light of relaxed media ownership rules.<sup>39</sup>

In January 2001, the National Telecommunications and Information Administration (NTIA) released *Changes, Challenges, and Charting New Courses: Minority Commercial Broadcast Ownership in the United States*, a report on minority ownership of broadcast stations. Among other things it found that minorities, taken as a whole, have made some gains since 1998. In 2000, 187 minority broadcasters owned 449 full-power commercial radio and television stations, or 3.8% of the 11,865 such stations licensed in the United States. However, minority owners' share of the commercial television market decreased in 2000. The 23 full-power commercial television stations owned by minorities in 2000 represented 1.9% of the country's 1,288 such licensed stations.<sup>40</sup>

The next administration should continue to review the progress of minority ownership, and in particular review the impact of the relaxed ownership rules in radio on minority ownership opportunities and service to underserved communities. It should also review whether federal small business loans are sufficient to allow underrepresented groups to participate in the market for communications companies.

### III. Separate and Unequal Access

The National Telecommunications and Information Administration of the Department of Commerce (NTIA) has helped to make prominent a new term for inequality in the new century — the “digital divide.” While the term has been useful in drawing attention to the ever-present fact of inequality in America, it has also come to mean

many different things to many people, and conversely it has come to have less and less shared meaning to all. Our focus here is on the unequal access to what is now called the National Information Infrastructure: the analog and digital network of telephone, microwave, cellular, and common carrier cable operations through which all Americans are able to share information.

Like our small roads and many-lane highways, this network is intimately connected to interstate commerce. While much of this network is privately owned, it is all regulated and protected by various levels of government. And much of the research and development that upgrades it (such as the creation of the Internet) comes courtesy of taxpayer contributions.<sup>41</sup> Thus, our relationship with this “Information Superhighway” is not merely as consumers but as citizens. Consumer issues of affordable rates and fraud are important concerns. Concerns about unequal deployment are distinct and just as important. What follows are brief reports on disparities in access to Internet service, access to advanced telecommunications service, and access to basic telephone service; and a very brief analysis of federal policy addressing those disparities.

#### A. Access to Internet Service

In October 2000, NTIA issued its fourth report on the digital divide, “Falling Through the Net.” NTIA found that despite increased Internet access by all groups, significant gaps remain. The access rates for black households in August 2000 was 23.5%, and for Hispanics the rate was 23.6%. Asian Americans and Pacific Islanders had access rates of 56.8% and white Americans had access rates of 46.1%.

Hispanics and blacks at incomes below \$15,000 have access rates of 5.2% and 6.4%, respectively. Asian Americans at comparable income levels have access rates of 33.2%.

The overall rate for access to the Internet for households with incomes below \$15,000 is 12.7%.<sup>42</sup>

## B. Access to Advanced Telecommunications Service

The above figures note mere access to the Internet, but they do not report on the quality of that access. Anyone who uses the Internet for simple research (to assist with a high school homework assignment, for example) knows there is a major difference between a regular dial-up telephone service and a high-capacity (allowing more data), high-speed service. These advanced communications services, also known as broadband, are increasingly available over modified cable service, satellite, digital wireless, fiber, and other telephone-based technologies (ISDN and DSL).

NTIA reports that 4.4% of all U.S. households had access to the Internet at home via advanced telecommunications services, while 37.7% had access via regular dial-up services. There was little disparity regarding access to advanced telecommunications services between racial groups (Asian Americans — 11.7%, whites — 10.8%, blacks — 9.8%, and Hispanics — 8.9%) among online households. Households with incomes of \$75,000 or greater have access to advanced services at a rate of 13.8%, while households with incomes under \$15,000 have rates of 7.7%. Note that the low-income rates are inflated most likely by students reporting income of less than \$5,000 but advanced access at a rate of 9.9%.<sup>43</sup>

The FCC also released a report on access to advanced telecommunications services in August 1999 and noted the following:

- Those outside of large population centers, including rural customers, are particularly vulnerable *to not being served by market forces alone* (emphasis

added). There is at least one subscriber to high-speed service in 57% of the sample small-town zip codes, but only 13% of the more sparsely populated towns had a subscriber to high-speed service.

- Survey data indicate that low-income consumers are particularly vulnerable to not having affordable access to high-speed services. Of the zip codes with the lowest household income, only 42% include a high-speed subscriber. On the other hand, data show that, of zip codes with the highest household income, 90% include a high-speed subscriber.<sup>44</sup>

## C. Access to Basic Telephone Service

As important as the disparity is between those who have access to the Internet, there is a lingering disparity over basic telephone service. In 1999, NTIA reported that having a telephone varies significantly according to income, education level, race, age, household makeup, and whether you live in a rural or urban area.

Only 78.7% of the lowest-income households (i.e., less than \$5,000 annually) have telephones. If you are poor and living in a rural area, a household's chances are approximately three out of four of owning a phone. At the opposite end of the spectrum, if a household earns more than \$75,000 and is located in central city and urban areas, it is particularly likely (98.9%) to own phones.

Approximately 95.0% of all white households have phones, regardless of where they live. This contrasts sharply with minority households, particularly those such as rural-dwelling American Indians/Eskimos/Aleuts (76.4%), Hispanics (84.6%), and blacks (85.4%).

The disparity based on race/origin is also affected by income level. At the highest income level (\$75,000 or higher), there is virtually no difference among household

penetration rates. At the lowest income level (less than \$15,000) the disparities are pronounced: American Indians/Eskimos/Aleuts (72.3%), blacks (78.1%), and Hispanics (81.9%) have the lowest penetration rates, compared to Asians/Pacific Islanders (90.9%) and whites (89.1%).<sup>45</sup>

Telephone penetration in Indian Country is appallingly low. The Navajo Reservation, covering large areas of Arizona, New Mexico, and Utah, reports that 81.6% of their households are without phone service.<sup>46</sup> Imagine a parent at home late at night faced with the emergency illness of her small child, afraid or too far away to run to a neighbor, and with no telephone in sight, no ability to dial 911. This was the situation faced by one Navajo family.<sup>47</sup> It is a situation that confronts 5.7 million American households in the information age.

In August 2000, the FCC released the 60<sup>th</sup> anniversary edition of *Statistics of Communications Common Carriers* (if you have access to high speed Internet service you might have the patience to download it “free of charge”). In 1999, 94.6% of households had access to basic telephone service. Over 11% of the households in Mississippi are without telephone service, the worst telephone penetration rate (88.8%) in the country. The next worst states are President Clinton’s Arkansas (90.1%), Oklahoma (90.5%), and the nation’s capital, which is in a dead heat with the home state of House Energy and Commerce Chair Billy Tauzin (R-Louisiana) at 90.8%.<sup>48</sup>

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Unequal access to the National Information Infrastructure affects nearly every part of our lives today. It amplifies and reinforces inequalities in education, health care, financial services, job opportunities, and political information.<sup>49</sup> Though affordability is an issue for many Americans, there

is another issue that is more subtle and invisible: deployment. Both of these concerns can be addressed by federal and state policies.

#### D. Universal Service

Universal service is, like “the public interest” and “all men are created equal,” a flexible concept that mirrors our national shifts (if not certain progress) over time. There is a debate over the origin of the term,<sup>50</sup> and there are efforts to redefine it in this new digital era.<sup>51</sup> We acknowledge this conversation only to suggest that civil rights considerations should inform this discussion.

Risking oversimplification in the interest of clarity, universal service will be described here as it is established in the 1996 Telecommunications Act and the FCC’s interpretation of that Act. Section 254 of the Act allows the FCC to establish subsidies for an “evolving level of telecommunications services” at “just, reasonable, and affordable rates.” Those subsidies are to be provided by “all telecommunications carriers providing interstate telecommunications services.” The Act specifically notes as beneficiaries “low-income consumers and those in rural, insular, and high-cost areas.” Elementary and secondary schools, libraries, and rural health care providers are also to be provided subsidies in a program known as the E-Rate. And the goal of the Act can be understood to provide these beneficiaries “reasonably comparable” access to those services and to those rates provided in urban areas.<sup>52</sup>

In response to the Act, the FCC offers universal service support to: (a) telecommunications carriers in rural, insular, and high-cost areas, where telecommunications services are often more expensive to provide; (b) low-income consumers, through the Lifeline program (which provides monthly reductions in service charges) and Link Up

program (which provides reductions in initial connection charges); and (c) elementary and secondary schools, libraries, and rural health care providers through the so-called “E-Rate” program. In addition to these subsidies, the Department of Education is providing support to community technology centers that provide advanced telecommunications access to underserved areas.

### 1. Universal Service Support to Insular Areas

Regarding support to insular areas, the most significant advances have been policies to provide telecommunications services to Indian Country. On June 8, 2000, the FCC substantially reduced the price of basic local phone service for income-eligible customers on tribal lands; streamlined the process for receiving universal service support for companies that seek to serve tribal lands as an eligible telecommunications carrier; and, created additional incentives for wireless carriers to serve tribal lands.<sup>53</sup> These efforts should be continued and reviewed by the next administration.

### 2. Lifeline and Link Up

The Lifeline and Link Up programs directly benefit eligible low-income consumers. The federal Lifeline program provides between \$3.50 and \$7 per month to providers to enable them to reduce eligible consumers’ monthly charges. The amount of federal support will vary depending on decisions made by the state commission (such as whether to provide state support and how to determine eligibility). But eligible low-income consumers in every state, territory, and possession will receive at least a \$3.50 reduction on their telephone bill in the form of a credit against their \$3.50 per month subscriber line charge as a result

of the federal universal service support program. The reduction applies to a single telephone line at qualifying consumers’ principal place of residence.

Link Up offers eligible low-income consumers: (1) a reduction in the local telephone company’s charges for starting telephone service (the reduction is one-half of the telephone company’s charge or \$30.00, whichever is less); and (2) a deferred payment plan for charges assessed for starting service, for which eligible consumers do not have to pay interest. Eligible consumers are relieved of paying interest charges of up to \$200 which are deferred for a period not to exceed one year.<sup>54</sup>

Lifeline and Link Up programs have been very effective in subsidizing telephone service for the poor; unfortunately, little effort is made to let the poor know they are eligible for subsidized telephone service. There have been strong efforts demonstrating the effectiveness of outreach in increasing participation in these programs, such as the program managed by the Public Utility Law Project in New York, created in cooperation with the State of New York and Verizon (formerly NYNEX and Bell Atlantic).<sup>55</sup> But there remain significant numbers of people eligible for these subsidies who simply don’t know they exist.<sup>56</sup>

The FCC, perhaps in concert with other federal agencies, such as the Departments of Housing and Urban Development, Health and Human Services, Education, Agriculture, and the Interior, should devote more resources to inform those eligible for Lifeline and Link Up support.

### 3. The E-Rate Program

Despite numerous attacks by conservative opponents as the “Gore Tax,”<sup>57</sup> the FCC’s implementation of the so-called E-Rate program can be called a substantial success in reducing inequality of access in minority communities.<sup>58</sup> By 1999, after the first two

years, the E-Rate program committed \$3.65 billion to over 50,000 schools and libraries. Roughly one million public school classrooms were connected to modern telecommunications networks. Fully 70% of 1999 funding went to schools from the lowest income areas, and portions of those funds will reach 70% of the schools under the Bureau of Indian Affairs. In addition, the program connected nearly 13,000 community libraries.<sup>59</sup> In year three of the program, \$4.72 billion has been requested,<sup>60</sup> suggesting a continued role for this subsidy support of schools, libraries, and rural health care centers. This program should be continued.

### E. Support for Community Technology Centers

In May 2000, Commerce Secretary William M. Daley announced the award of a \$100,450 contract to the Virginia Polytechnic Institute in Blacksburg, Virginia, to survey 100 Community Technology Centers (CTCs). According to Daley, "The role that Community Technology Centers play in helping to bridge the digital divide cannot be overstated."<sup>61</sup>

In September 2000, Education Secretary Richard Riley awarded a one-year \$2 million contract to support community technology centers, "especially those in lower-income and hard-to-reach rural areas." The funds are being used to support a group of Community Technology Centers, under the name America Connects Consortium, which in turn will provide technical assistance to other CTCs. CTCs are at the center of efforts to close the information technology divide because, unlike many schools, libraries, or health care facilities, they are able to provide those in economically disadvantaged areas with after-hours ready access to the Internet.<sup>62</sup>

The Department of Education has requested additional funds to establish 1,000

CTCs in low-income and rural neighborhoods across the country. As of this late date, those funds have not been approved by Congress. Then-Governor George Bush promised to "invest \$400 million to create and maintain more than 2,000 community technology centers every year." And former Vice President Al Gore set a goal of creating 2,000 Community Technology Centers in low-income neighborhoods by 2002.<sup>63</sup> There seems to be bipartisan support for CTCs aimed at assisting low-income communities' access to the Internet.

### F. Information Redlining

Subsidies are of very little help if the subsidized service is not available in your area. One result of living in a still very segregated society is that minorities and the poor are subject to the perceptions held by business decision-makers who don't live near them about the interest in or ability of minority or poor people to purchase "high-end" services. Decisions to deploy cable or fiber networks in wealthy communities based on assumptions that minorities could not or would not afford such services are not necessarily based on information but perception. The logic of the market seems to suggest that rapid deployment in wealthier neighborhoods is the most sensible way for communications companies to recover costs. As Santa Clara University Law School Professor Al Hammond has argued,

*[Advanced telecommunications] systems will first be built in communities perceived to possess the requisite dollars and demand. Many inner city and rural communities, as well as [older] near suburbs, are not viewed as desirable markets regardless of their actual consumption of telecom and video services. (emphasis added)<sup>64</sup>*

The NAACP, La Raza, and other civil rights groups have participated actively in the controversy generated by Ameritech's plan to deploy high-capacity wires in a manner that looked suspiciously like "information redlining."<sup>65</sup> Bell Atlantic originally proposed to wire every home and business with fiber optic cable, but apparently has focused on suburban areas, bypassing poorer urban communities.<sup>66</sup>

Market logic is not supported by market reality. As Pennsylvania State University Professor Jorge Schement points out:

*African-Americans subscribe to premium cable at nearly twice the rate of white households (45% to 26%), while Latino households fall in between (35%). Twenty-two percent of HBO's subscriber base comes from African-American households, amounting to 42% of all African-American homes. African-Americans order pay-per-view programs at twice the rate of whites, with Latinos again in between.*<sup>67</sup>

NTIA research also indicates that many of the most disadvantaged groups, in terms of computer and modem penetration, are the most likely users of online services featuring education and economic opportunity programs.<sup>68</sup>

Professor Schement argues that American ethnic groups make very different choices about what media services to bring into their homes based on a complex set of factors, including cultural preferences. But it is not difficult to understand why an African American household would choose to purchase a fix-cost premium cable service rather than a telephone with costs that may vary tremendously from month to month.

But how would an executive living in a gated and segregated community understand this, even assuming no bias?<sup>69</sup> Our surveys of decision-makers in media companies

have turned up all sorts of silly and ugly stereotypes (such as "Black people don't eat beef," and "Hispanics don't bathe as frequently as non-Hispanics").<sup>70</sup> These vestiges of slavery and Jim Crow mark our culture and warp our supposedly free market.

Segregation not only affects the perception of other by isolated executives, it affects entire communities. A cable company that does not deploy in a neighborhood because it has a large population of Latinos affects not only a Latino family but the schools and the health centers and the businesses in that community. As noted earlier, concerns about electronic redlining have been expressed since the early 1990s.<sup>71</sup> One result of that expression was the creation of section 706 of the Telecommunications Act.<sup>72</sup>

As mentioned above, in August of 2000, the FCC issued a report on the availability of high-speed and advanced telecommunications services in accordance with Section 706. Their national survey showed that there were 2.8 million total subscribers for these advanced services. Resulting in the conclusion that "that advanced telecommunications capability is being deployed in a reasonable and timely fashion overall." Those of us concerned about issues of equity may be disturbed about this conclusion given that the same report also demonstrated that certain groups "are particularly vulnerable to not receiving service in a timely fashion."<sup>73</sup> The mandate of section 706 was to determine deployment of advanced services "to all Americans."

The first challenge is to get a clearer report on deployment. As former FCC Commissioner Gloria Tristani notes:

*As the Report itself acknowledges, the zip code data are of limited usefulness, because providers were asked to report whether there is at least one subscriber in a particular zip code, not the number*

*of subscribers in a particular zip code. Thus, the data do not indicate the extent to which the presence of a broadband in a particular zip code indicates more widespread availability. The availability of data on actual numbers of subscribers in a particular zip code or data at a more granular geographic area would provide a better picture of the state of deployment.*

*Similarly, because providers were not required to distinguish between residential and small business customers, the data do not provide an accurate snapshot of deployment to residential users. In some zip codes, broadband and advanced services may be available to business users but unavailable, and perhaps unaffordable, to residential users. In addition, the available data do not track service providers with fewer than 250 lines installed to subscribers in any state. Accordingly, there may be a substantial number of small providers' lines that are unreported, another piece of data that is necessary for a more complete view of deployment.<sup>74</sup>*

Once we are able to determine with better accuracy whether deployment of advanced telecommunications services occurs in a way that avoids poor and minority communities, we can propose methods to deter this redlining. Those methods might include informing decision-makers about the true value of minority markets receptive to advanced services, encouraging state or municipal deployment in underserved markets, or providing private industry with incentives to deploy in those markets.

#### **IV. One More Challenge**

Those in and out of the government concerned about civil rights have continuing battles over affirmative action, hate crimes

and church burnings, housing and lending discrimination, inadequate education in re-segregated schools, racial profiling, underfunded enforcement of EEO laws, and a host of other concerns. How can this small band possibly take on one more challenge? Why should they put something as seemingly abstract as communications policy on a plate already overburdened?

Imagine the world of Jackson, Mississippi before Reverend Parker ventured there. The televised pictures of attack dogs and fire hose sprays and police beatings that took place in Birmingham and Selma, and so affected Northern viewers, went unseen in nearby Jackson. In Jackson, the images of black Americans were not those noble marchers but happy mammies and smiling coon caricatures with watermelon in hand. In Jackson, the sharecropper's son or daughter would not have seen the March on Washington, or heard Martin Luther King's dream of their future. Imagine having no recourse to this set of circumstances. Reverend Parker understood the damage done to the spirit of a people when they have no control over their own image, when their voice cannot be heard, when their conscience cannot be stirred to rebel or to hope or to vote. That is why ensuring civil rights considerations applied to local broadcasters was so important. If it was important to fight for equal education and an equal opportunity to benefit from the public road, it is important to fight for equal access to avenues of speech and information and equal opportunities to benefit from the information superhighway.

Perhaps it is difficult to imagine the world of Jackson, Mississippi, before Reverend Parker. Try this: Imagine a world where the predominant image of minority youth is televised mug shots of gangsters, either wanted or in handcuffs. Imagine a world where parents do not have access to a telephone to call to help their child. Imagine

a world where the poor do not have access to educational resources, or health care resources, or employment resources, because they cannot afford a telephone line, much less a computer. Imagine that they can afford advanced services but those services are deployed in a way that avoids their neighborhoods. This should not be hard to imagine because this is our nation.

This is the heart of the battle, and it is faced not only by black Americans but by Latinos and Asian Americans and poor whites. Communications policy is fundamental and crosscutting. Information infrastructure is as vital to health care and education and business as sewer systems and electricity. The communications policy debate is not a debate about gadgets or even markets. It is a debate about who gets to speak and to hear, and for what price, and to whom. It is a debate about the nature of our democracy.

Many, including this author, consider the 1996 Telecommunications Act a deeply flawed and compromised set of laws. But within it are important opportunities to preserve and extend concepts of equal access and public interest responsibilities. To the

degree that the next administration can ensure that all Americans benefit from new advances in communications technologies, civil rights considerations of equal opportunity and democratic participation must be an important part of their rulemaking.

It is not a matter of establishing new rights. The Communications Act obligates broadcasters, and cable operators, and telephone companies to operate in the public interest, convenience, and necessity. This obligation creates a set of rights bestowed upon broadcast viewers and listeners, and cable and telephone customers. Congress and the Supreme Court have made it clear time and again that balanced against the right of corporations it is the average American who enjoys the paramount right to speak, and the right to reasonable rates, and access to service, and to privacy. The challenge is not to establish a new set of rights, but to understand and articulate and give teeth to the set of rights we have. The problem is as old as the nation itself: those rights we do not protect with vigilance will slip away.

## Endnotes

<sup>1</sup> Mark Lloyd is the Executive Director of the Civil Rights Forum on Communications Policy, a project of the Tides Center. The Forum works to bring civil rights and community groups into the debate over our media environment by monitoring and reporting on state and federal legislative and regulatory action, and by conducting meetings and building coalitions. Previously, he worked as a communications attorney in Washington, D.C., representing both commercial and noncommercial communication companies for the firm of Dow, Lohnes & Albertson. He also has nearly 20 years of experience as a broadcast journalist, working as a reporter and producer at public and commercial radio and television stations, and at NBC and CNN. He is the recipient of several awards for his writing and reporting, including an Emmy and a Cine Golden Eagle. Mr. Lloyd is Chairman of the Board of Directors of the Independent Television Service (ITVS), an organization supported by the Corporation for Public Broadcasting to fund independent television producers. He also serves on several other national boards and advisory panels, including the Ad Council's Advisory Committee on Public Issues, the George Washington University National Task Force for Democracy Online, and the Leadership Conference on Civil Rights Education Fund. He received his Bachelor's degree from the University of Michigan and his law degree from the Georgetown University Law Center.

<sup>2</sup> K. Mills, Civil Rights Forum on Communications Policy, *Changing Channels, The Civil Rights Case that Changed Television* (1998).

<sup>3</sup> *Office of Communication of United Church of Christ v. Federal Communications Commission*, 359 Federal Reporter 2d 994 (1966).

<sup>4</sup> *Documents of American Broadcasting*, at 233 (F. Kahn ed., Prentice-Hall 1984).

<sup>5</sup> *Report of the National Advisory Commission on Civil Disorder, Otto Kerner, Chairman*, at 210 (Bantam 1968) (Kerner Commission Report).

<sup>6</sup> 42 U.S.C. § 307.

<sup>7</sup> *Window Dressing on the Set: An Update*. The last year the U.S. Commission on Civil Rights issued a report on minorities in the media was 1979. One staff person said anyone looking at TV can see the report had its desired effect so there was no need to continue the short-lived series. The fact that President Reagan came into office a year later and began an immediate attack on the Commission and its budget may also have had something to do with the Commission's lack of work in this area.

<sup>8</sup> 47 U.S.C. § 161, as amended (1997).

<sup>9</sup> 47 C.F.R. § 73.2080 (b) (1994).

<sup>10</sup> *Newhouse Broadcasting Corp.*, 37 Rad. Reg. 2d 141, decided Apr. 21, 1976.

<sup>11</sup> *In the Matter of Review of the Commission's Broadcast and Cable Equal Employment*

*Opportunity Rules and Policies*, Report and Order, MM Docket No. 98-204, released Feb. 2, 2000.

<sup>12</sup> *Lutheran Church–Missouri Synod v. Federal Communications Commission*, 141 Federal Reporter 3d 344 (1998) (“Lutheran Church”).

<sup>13</sup> *Lutheran Church* at 355-57.

<sup>14</sup> <<http://www.childrennow.org/newsroom/pr-7-18-00.htm>>, <<http://www.cmpa.com/factoid/diverse.htm>>, <<http://www.cmpa.com/archive/hisp2.htm>>.

<sup>15</sup> <<http://rtnda.org/research/womin.shtml>>.

<sup>16</sup> <<http://www.civilrightsforum.org/connect990715.htm#whitewash>>.

<sup>17</sup> <<http://www.civilrightsforum.org/connection000115.html#networks>>.

<sup>18</sup> *Report and Order* at 87-89.

<sup>19</sup> <<http://www.civilrightsforum.org/connection000201.html#FCC>>.

<sup>20</sup> <<http://www.fcc.gov/csb/facts/cblbdcst.html>>.

<sup>21</sup> <<http://www.roper.com/news/content/news10.htm>>.

<sup>22</sup> *Metro Broadcasting, Inc. v. Federal Communications Commission*, 497 U.S.C. § 547, 583 n. 34 (1990).

<sup>23</sup> S. Jennell Trigg, *The Federal Communications Commission’s Equal Opportunity Employment Program and the Effect of Adarand Constructors, Inc. v. Pena*, 4 CommLaw Conspectus 237 (Catholic University Law School Summer 1996).

<sup>24</sup> *Review of the Commission’s Broadcast Equal Employment Opportunity Rules and Policies*, 15 F.C.C.R. 2329, 120 (2000) (R&O).

<sup>25</sup> *MD/DC/DE Broadcasters Association v. Federal Communications Commission*, 236 Federal Reporter 3d 13 (2000).

<sup>26</sup> <<http://www.ll.georgetown.edu/Fed-Ct/Circuit/dc/opinions/00-1094b.html>>.

<sup>27</sup> *Equal Employment Opportunity Outreach Program Requirements*, 16 FCC Record 2872 (2001).

<sup>28</sup> <[http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-01-363A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-01-363A1.pdf)>.

<sup>29</sup> *Broadcast License Renewal Act: Hearings on S. 16 et al. Before the Subcommittee on Communications of the Senate Committee on Commerce*, 93rd Congress 2d Session Part 1, at 325-329, 408-411.

<sup>30</sup> *Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 F.C.C. 2d 979 (1978).

<sup>31</sup> *Metro Broadcasting, Inc. v. Federal Communications Commission*, 497 U.S.C. § 547 (1990).

<sup>32</sup> K. Ofori and M. Lloyd, “The Value of the Tax Certificate,” 61 *Federal Communications Law Journal* 693 (1999).

<sup>33</sup> <<http://www.ntia.doc.gov/reports/97minority/overview.htm>>.

<sup>34</sup> *Adarand Constructors, Inc. v. Pena*, 115 Supreme Court Reporter 2097 (1995).

<sup>35</sup> *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Sixth Report and Order, P.P. Docket 93-253, FCC 95-301, released July 18, 1995.

<sup>36</sup> <[http://www.civilrightsforum.org/connectionaugust\\_2000.html#broad3](http://www.civilrightsforum.org/connectionaugust_2000.html#broad3)>.

<sup>37</sup> See, generally, <[http://www.fcc.gov/opportunity/meb\\_study/](http://www.fcc.gov/opportunity/meb_study/)>.

<sup>38</sup> <<http://www.civilrightsforum.org/fccadvertising.htm>>.

<sup>39</sup> <<http://www.fcc.gov/realaudio/mt121200.ram>>.

<sup>40</sup> <<http://www.ntia.doc.gov/opadhome/mtdpweb/01minrept/mtdpcontents00.html>>.

<sup>41</sup> There is a persistent myth that the Internet is unregulated. The Internet operates over a very regulated common carrier, cable, and satellite infrastructure. See <<http://www.isoc.org/internet-history/>>.

<sup>42</sup> <<http://www.ntia.gov/ntiahome/fttn00/falling.htm>>, checked at 11/20/00.

<sup>43</sup> <<http://www.ntia.doc.gov/ntiahome/fttn00/falling.htm>>.

<sup>44</sup> <[http://www.fcc.gov/Bureaus/Common\\_Carrier/News\\_Releases/2000/nrcc0040.html](http://www.fcc.gov/Bureaus/Common_Carrier/News_Releases/2000/nrcc0040.html)>.

<sup>45</sup> <<http://www.ntia.doc.gov/ntiahome/fttn99/part1.html#b>>.

<sup>46</sup> Marcia Warren *et al.*, *Native Networking: Telecommunications and Information Technology in Indian Country* (Benton Foundation 1999).

<sup>47</sup> <<http://www.civilrightsforum.org/connect990531.htm#native>>.

<sup>48</sup> <<http://www.civilrightsforum.org/connectionsept2000.html#comm>>.

<sup>49</sup> A. Hammond, "Standing at the Edge of the Digital Divide," in *The State of Black America* (Daniels *et al.* eds., National Urban League 1999).

<sup>50</sup> <<http://www.vii.org/univsvice/cacm.htm>>.

<sup>51</sup> <<http://www.benton.org/Library/Universal/Working1/working1.html>>.

<sup>52</sup> 47 U.S.C. § 254.

<sup>53</sup> <<http://www.fcc.gov/indians/>>.

<sup>54</sup> <[http://www.fcc.gov/ccb/universal\\_service/fcc97157/](http://www.fcc.gov/ccb/universal_service/fcc97157/)>.

<sup>55</sup> <[http://www.pulpsny.org/html/telephone\\_lifeline.html](http://www.pulpsny.org/html/telephone_lifeline.html)>.

<sup>56</sup> <<http://www.civilrightsforum.org/cra/llandlu.html>>.

<sup>57</sup> <<http://www.salonmagazine.com/21st/feature/1998/12/16feature.html>>.

<sup>58</sup> <<http://www.benton.org/e-rate/pressrelease.html>>.

<sup>59</sup> <<http://www.fcc.gov/learnnet/#us>>.

<sup>60</sup> <<http://www.slcfund.org/Announce.asp>>.

<sup>61</sup> <<http://www.ntia.doc.gov/ntiahome/press/2000/ctcpr50400.htm>>.

<sup>62</sup> <<http://www.ed.gov/PressRelease/09-2000/0921.html>>.

<sup>63</sup> <<http://www.ombwatch.org/ctc/fundnews.html#sep6b>>.

<sup>64</sup> A. Hammond, "Universal Access to Infrastructure and Information," *DePaul Law Review* 1067, 1082-1083 (1996).

<sup>65</sup> D. Stoltzfus, "Bells Accused of Redlining Video Dialtone," *The Record*, May 24, 1994, at C1.

<sup>66</sup> M. Peterson, "New Jersey Telephone Plan Neglects the Poor, Critics Say," *The New York Times*, Apr. 19, 1997, at A31.

<sup>67</sup> J. Schement, *Thorough Americans: Minorities and the New Media* (Aspen Institute 1997), available at <[http://www.aspeninst.org/old/c%26s/diversity\\_papers96\\_schement.html](http://www.aspeninst.org/old/c%26s/diversity_papers96_schement.html)>.

<sup>68</sup> <<http://www.ntia.doc.gov/ntiahome/fallingthru.html>>.

<sup>69</sup> For recent studies on current trends and effects of segregation, see <<http://www.huduser.org:80/periodicals/cityscpe/vol4num3/carr.pdf>> and <<http://www.huduser.org:80/periodicals/cityscpe/vol4num3/denton.pdf>>.

<sup>70</sup> <<http://www.civilrightsforum.org/fccadvertising.htm>>.

<sup>71</sup> <<http://www.ombwatch.org/info/infoacc.html>>, <<http://www.lis.uiuc.edu/review/winter1997/kahl.html>>.

<sup>72</sup> 47 U.S.C. § 706.

<sup>73</sup> <[http://www.fcc.gov/Bureaus/Common\\_Carrier/News\\_Releases/2000/nrcc0040.html](http://www.fcc.gov/Bureaus/Common_Carrier/News_Releases/2000/nrcc0040.html)>, <<http://www.civilrightsforum.org/connectionsept2000.html#comm>>.

<sup>74</sup> <<http://www.fcc.gov/Speeches/Tristani/Statements/2000/stgt043.html>>.