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THE POLITICS OF RACE ON THE ELECTRONIC  
HIGHWAY: AN ANALYSIS OF THE VIDEO  
DIALTONE REDLINING CASES, AND THE NYNEX  
CONSENT DECREE IN ROXBURY

*Madeleine Mercedes Plasencia\**

**We're All in the Telephone Book**

"We're all in the telephone book.  
Folks from everywhere on earth  
Anderson to Zabowski,  
It's a record of America's worth.

We're all in the telephone book.  
There's no priority  
A millionaire like Rockefeller  
Is likely to be behind me.

For generations men have dreamed  
Of nations united as one.  
Just look in your telephone book  
To see where that dream's begun.

When Washington crossed the Delaware  
And the pillars of tyranny shook,  
He started the list of democracy  
That's America's telephone book."

— *Langston Hughes*

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Want to reach out and touch someone? “By law, telephone service is easy . . . . Just call the phone company and place an order, and in a few days, you’re connected to the rest of the world.”<sup>1</sup> In this essay, I will discuss access to telephone and communication services. Under the Telecommunications Act of 1996, the Federal Communications Commission (FCC) is empowered to ensure and enforce access to worldwide wire and radio communication service “*without discrimination on the basis of race, color, religion, national origin, or sex.*”<sup>2</sup> Contemporary telecommunications scholarship, commentary and litigation has focused on intellectual property and sovereignty rights.<sup>3</sup> This essay will focus on the provision of communications services in the manner mandated by the non-discriminatory purpose. The FCC, lacking human capital and (perhaps the political will) has taken no action to enforce this provision. As telecommunications companies began building an infrastructure to develop new technologies they began engaging in discriminatory practices. The author proposes that evidence of discrimination, which precipitated the law, provides the foundation for the Telecommunications Civil Rights Movement.

In 1995, Chairman of the FCC, Reed Hundt commented on the discriminatory practices that the companies employed. He warned that “[u]nless we act wisely, the information superhighway will be like one of those road projects that ripped apart neighborhoods and divided the rich and poor.”<sup>4</sup> Contrast Vice-President Al Gore’s proclamation at the signing ceremony of the Telecommunications Act on February 6, 1996, that “the

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<sup>1</sup> Dwight Silverman, *No Universal Agreement on “Net”, Debate on Need for Access Spirited*, THE HOUSTON CHRONICLE, Jul. 5, 1996, at B1.

<sup>2</sup> 47 U.S.C. § 151 ( Supp. II 1994).

<sup>3</sup> See, e.g., Rosemary Coombe, *Left Out on the Information Highway*, 75 OR. L. REV. 215 (1996); Keith Aoki, *Intellectual Property and Sovereignty*, 48 STAN. L. REV. 722 (1996).

<sup>4</sup> Howard Bryant, *Will there be redlining in Cyberspace?*. BLACK ENTERPRISE, Jul. 1, 1995.

Berlin Wall of the telecommunications industry [has] crumbled.”<sup>5</sup> The ideology of privatization and Gore’s allusion to universal access to the market is a utopian fantasy of an idealized polity that contrasts sharply with the darker vision, the dystopia that seems more consistent with the reality that regulators confront today. Tianamen Square supporters used fax machines to reach their supporters; the Berlin Wall tumbled live on CNN. Yet, residents of the poorest sections of Los Angeles missed the communications revolution of the last century—the invention called the telephone.<sup>6</sup> For instance, “one out of every five renters in Watts . . . does not even have a telephone.”<sup>7</sup> Evidence of widespread discrimination by telecommunications providers over the last decade prompted administrative agencies nationwide to acknowledge the need for response.<sup>8</sup> A few examples are illustrative. In this essay I will discuss the discriminatory practices that were uncovered in the *Roxbury* case and the Video Dialtone cases.

In June, 1994, the FCC took comments on claims made by various advocacy and consumer groups alleging that services for Video Dialtone were systematically not being made available, a practice known as redlining, in African-American, Latino and Asian communities.<sup>9</sup>

For nearly a decade, between 1990 through 1996, residents of the predominantly African-American and Latino neighborhood in Roxbury, Massachusetts, filed complaints with NYNEX, describing chronic extended outages of services. NYNEX

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<sup>5</sup> Susan Ness, *The New Telecommunications Marketplace* (visited on Dec. 30, 1997) <<http://www/fcc.gov/Speeches/Ness/spsn604.txt>>.

<sup>6</sup> Peter Y. Hong, *Losing the Cyber Space Race; On the Fast-Paced High-technology Track, Inner City Schools and Libraries are Taking Small Steps to Catch Up*, L.A. TIMES, at 12.

<sup>7</sup> See *id.*

<sup>8</sup> John D. Podesta, *Unplanned Obsolescence: The Telecommunications Act of 1996 Meets the Internet*, 45 DEPAUL L. REV. 1093 (1996).

<sup>9</sup> Laura B. Randolph, *Blacks in the Fast Lane of the Information Superhighway*, EBONY, Jan. 1, 1995. These groups include the Center for Media Education, Consumer Federation of America, the Office of Communications of the United Church of Christ, the National Association for the Advancement of Colored People, and the Council of La Raza.

linesmen had steadily refused to enter this and other under served neighborhoods. The outages culminated in a lawsuit brought by the Attorney General of the Commonwealth of Massachusetts (AG) on behalf of the residents of Roxbury.<sup>10</sup>

### THE VIDEO DIALTONE (VDT) REDLINING CASES.

In June, 1994, the FCC took comments on claims made by various advocacy and consumer groups alleging that services for Video Dialtone were systematically not being made available in African-American, Latino and Asian communities.<sup>11</sup> VDT, a now-abandoned system, would have provided films by request over the telephone, in direct competition with cable television. In addition, VDT allowed for other video images to be received for "face-to-face" telephone conversations. These services were mapped out in affluent, predominantly White communities.<sup>12</sup> The Baby Bell companies that applied for the licenses for VDT carefully bypassed huge minority communities, a practice known as redlining, in Dayton, Ohio, and Chicago.<sup>13</sup> Denying discriminatory animus, the Bell companies nonetheless scrapped plans for VDT services once an FCC investigation was underway.<sup>14</sup> Blaming economic and other business reasons, the Bell companies terminated any further efforts to market or research and develop VDT.<sup>15</sup> Yet the companies offered no

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<sup>10</sup> Initial Brief of the Attorney General at 1, *Petition of Residents of the City of Roxbury Requesting an Investigation into the Quality of Telephone Service Provided by NYNEX to Mission Hill Area Subscribers*, (Aug. 9, 1996) (D.P.U. 96-30).

<sup>11</sup> FCC Report Telecomm Publishing Group, *U.S. West Rebutts Redlining Charge; FCC Takes Comment on Claim*, Jun. 16, 1994.

<sup>12</sup> See Nathaniel Sheppard, Jr., *Without Access: It's a Road to Nowhere*, EMERGE, Oct. 31, 1996.

<sup>13</sup> See *id.*

<sup>14</sup> See Steve Lohr, *Data Highway Ignoring Poor, Study Charges*, N.Y. TIMES, May 24, 1994, at A1. See also Phillips Business Information, Inc., *Cable Remains Steadfast Despite OVS Certifications*, INTERACTIVE VIDEO NEWS, Oct. 28, 1996.

<sup>15</sup> *Satellites and Telcos Still Not Seriously Hurting Cable*, VIDEO WEEK, This Week's News, Jul. 10, 1995, at 2.

evidence of studies done or other data which would indicate that the choice to deploy VDT in predominantly White neighborhoods had been only the result of economic factors.<sup>16</sup>

Electronic redlining surfaced as a widespread practice with VDT.<sup>17</sup> Action occurred and there was an immediate reaction. On May 23, 1994, the center for Media Education, Consumer Federation of America, the Office of Communications of the United Church of Christ, the National Association for the Advancement of Colored People, and the National Council of La Raza filed a petition for rulemaking. These advocacy groups also filed a petition for relief with the FCC "to issue an interpretive rule to clarify that 'applicants seeking to construct and operate video dialtone facilities are already required to adhere to the objectives of universal service and the avoidance of discrimination on the basis of income level, race or ethnicity.'"<sup>18</sup> The petition alleged that Regional Bell Operating Companies (RBOCs) sought to offer VDT service only in the District of Columbia and surrounding suburban counties, carving out majority-black Prince Georges county.<sup>19</sup> Consumer groups also outlined the same practice occurring in southwest Denver.<sup>20</sup> The practice seemed even more widespread than just the RBOCs. The infrastructure for hi-tech services was being constructed along color-lines across the country. NYNEX, Bell South and Pacific Telesis Group were selective in replacing outdated copper coaxial cables with fiber optic cable needed for more efficient voice, video and data transmission.<sup>21</sup> Pacific Telesis targeted Silicon Valley, San Diego, the San Fernando Valley and Orange County carefully slicing around heavily concentrated lower

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<sup>16</sup> *See id.*

<sup>17</sup> Laura B. Randolph, *Blacks in the Fast Lane of the Information Superhighway*, EBONY, Jan. 1995, at 98B.

<sup>18</sup> *Groups Petition FCC for Prohibition of "Electronic Redlining" By RHCs*, Advanced Intelligent Network News, June 1, 1994 available in LEXIS, Nexis Library News File.

<sup>19</sup> *See id.*

<sup>20</sup> *See id.*; see also FCC Report Telecomm Publishing Group, supra note 11.

<sup>21</sup> *See Personal Technology Info Highway May Bypass Poor*, ATLANTA CONSTITUTION, June 12, 1994, available in LEXIS, Nexis News File at H10.

income and/or minority areas.<sup>22</sup> Larry Irving, Jr., Assistant Secretary for Communications and Information and Administrator, National Telecommunications and Information Administration of the U.S. Department of Commerce, has stated that African Americans ought to sound the alarm in the area of access to emerging telecommunications services. Secretary Irving stated, "We are at the starting gate of a new era.... [African Americans should] make sure that their communities and local elected officials are on top of this issue. They must become active."<sup>23</sup> Federal governmental statistics demonstrate an ever-widening gap between the information "haves" and "have-nots" increasingly drawn on color lines.<sup>24</sup>

#### NYNEX UTILITIES COMMISSION HEARING AND CONSENT DECREE IN ROXBURY, MA.

For nearly a decade, between 1990 through 1996, residents of Roxbury, Massachusetts filed complaints with NYNEX.<sup>25</sup> The complaints alleged chronic extended outages, multiple interruptions, static, and third party conversations on their lines, along with poor customer and repair services. During this decade, complaints with NYNEX centered around NYNEX having allowed telephone service (and hardware) to deteriorate in Roxbury. In addition, the decade of poor to no service in Roxbury culminated in an outage of service, which lasted over a week in January 1996. As a result of the decade of complaints, a lawsuit was brought by the Attorney General of the Commonwealth of Massachusetts on behalf of the residents of Roxbury.

During a heavy rainstorm on January 12, a very old cable situated under the trolley tracks of Boston dropped off a wall and sagged to the bottom of a water-filled manhole. The cable was

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<sup>22</sup> *See id.*

<sup>23</sup> Sheppard, *supra* note 12.

<sup>24</sup> Falling Through the Net, A Survey of the Have-Nots in Rural and Urban America, U.S. Dept. of Commerce, (visited Dec. 30, 1997) <<http://www.ntia.doc.gov/ntiahome/urb-rur.txt>> .

<sup>25</sup> Initial Brief of the Attorney General, *supra* note 10.

soaked in water.<sup>26</sup> As a result, about 300 residences, businesses and institutions, including nursing homes, were without telephone service.<sup>27</sup> For the period between January 12, through and including January 19, Roxbury residents received no telephone service.<sup>28</sup> The waterlogged cable put the predominantly Black neighborhood out of service for over a week without 911 police and fire emergency service<sup>29</sup> and thirty-five medical alert phone subscribers were stranded without telephone service.<sup>30</sup>

During this chaotic week, family and friends were trying to reach loved ones in Roxbury.<sup>31</sup> They alleged NYNEX representatives informed them that the reason the call was not going through was because the customer “didn’t pay their bill”<sup>32</sup> or that nothing could be done during this emergency because it was a “Martin Luther King holiday weekend.”<sup>33</sup> When NYNEX initially responded to the emergency, a crew was dispatched which refused to enter the manhole arguing that it was unsafe.<sup>34</sup>

The outraged residents of Roxbury petitioned the Massachusetts Department of Public Utilities (DPU) to investigate NYNEX for the poor quality of service to the Mission Hill area.<sup>35</sup> The Attorney General for the Commonwealth of Massachusetts joined in the investigation as representative of the consumers of the Commonwealth.<sup>36</sup> The Attorney General’s office took a role in

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<sup>26</sup> Alan Lupo, *Mission Hill Calling: Residents Take Nynex to Task on Phone Service*, THE BOSTON GLOBE, Apr. 7, 1996, at 1.

<sup>27</sup> Alan Lupo, *Being Heard by NYNEX ; Residents of Mission Hill Press for Solutions to Service Problems*, THE BOSTON GLOBE, City Weekly, City Edition, Apr. 21, 1996, at 1.

<sup>28</sup> Initial Brief of the Attorney General, *supra* note 10.

<sup>29</sup> *See id.* at 2.

<sup>30</sup> Alan Lupo, *Being Heard by NYNEX*, *supra* note 27.

<sup>31</sup> *See id.*

<sup>32</sup> *See id.*

<sup>33</sup> Alan Lupo, *Mission Hill Calling*, *supra* note 26.

<sup>34</sup> *See id.* (Union members of the crew contacted OSHA, the federal Occupational Safety and Health Administration which declared the manhole unsafe because it was situated under trolley tracks).

<sup>35</sup> Alan Lupo, *AG’s Office Widens Scrutiny of NYNEX*, THE BOSTON GLOBE, City Weekly, Update, Jun. 2, 1996, at 9.

<sup>36</sup> *See id.*



the investigation of NYNEX not only because of the one-week outage of service earlier that year. The AG was intent on exposing the reasons for “the multiday outages and outrageous service that Nynex has inflicted on this neighborhood for as long as residents can remember.”<sup>37</sup> The AG pursued the case in order to “identify for the department which neighborhoods in Massachusetts have had chronic extended telephone outages affecting large numbers of ratepayers.”<sup>38</sup>

On August 9, 1996, the AG instituted a proceeding before the DPU on behalf of the residents of Roxbury.<sup>39</sup> The regulatory proceeding addressed all of the issues raised in the petition. Following the briefing and hearings, the DPU entered a thirty-two page Order dated July 18, 1997.<sup>40</sup> The Order provided, most notably, that Bell Atlantic’s emergency response plan must include (1) a completed feasibility study for substitute cellular telephone services during major extended service outages (MESO); (2) a completed description of policies and procedures for the use of the emergency mobile trailer unit(s) during MESOs; and (3) a solution to its directory assistance problem plaguing Boston neighborhood subscribers. On December 1, 1997, the AG filed a brief providing comments concerning Bell Atlantic’s proposed emergency response plan for Massachusetts. Bell Atlantic filed a reply brief on December 15, 1997, and the matter has since been settled. Unfortunately, the redlining seen in Roxbury is not unique to Massachusetts. In September, 1996, the New York Public Service Commission fined NYNEX \$4.1 million for the same issues raised in the *Roxbury* case.<sup>41</sup>

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<sup>37</sup> See *id.* (quoting Daniel Mitchell, Assistant Attorney General handling the case).

<sup>38</sup> See *id.* (quoting Daniel Mitchell, Assistant Attorney General).

<sup>39</sup> Initial Brief of the Attorney General, *supra* note 10.

<sup>40</sup> See *Petition of over twenty customers of New England Telephone and Telegraph Co.*, (Jul. 18, 1997) (D.P.U. 96-30).

<sup>41</sup> Phillips Business Information, Inc., *NYNEX Ordered To Pay \$4.1 Million Penalty For Service Quality Performance*, COMMUNICATIONS TODAY, Aug. 26, 1996.

## OTHER EMPIRICAL DATA OF DISCRIMINATION.

Evidence already shows lack of telephones in the home is directly related to inadequate medical care.<sup>42</sup> An interview study conducted with 3,897 emergency room patients at Grady Hospital located in Atlanta showed that poor people with medical insurance put off seeing doctors due to living in dangerous areas, lack of transportation and lack of telephones.<sup>43</sup>

Public telephones do not create a panacea for the telephone have-nots.<sup>44</sup> In a survey by the New York Times, including more than 450 public telephones in 15 city neighborhoods from January 23, 1996, to February 2, 1996, it was found that nearly one-third of the public phones were broken.<sup>45</sup> Moreover, the location of public phones may not be accessible to many neighborhood residents. For example, “[i]n Bensonhurst, Brooklyn, and New Dorp on Staten Island, mile-long stretches of many residential streets had no public telephones.”<sup>46</sup> As one resident stated: “There are just not enough phones on the street.”<sup>47</sup>

The number of poor people who do not have a home telephone in certain neighborhoods in New York City is high—approximately twenty-five percent (25%).<sup>48</sup> By NYNEX’s own account, five to six percent of the 12,800 sidewalk pay phones are broken each day.<sup>49</sup>

As stated by the National Telecommunications and Information Administration (NTIA), “at the core of U.S. telecommunications

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<sup>42</sup> Bill Hendrick, *Coverage Is No Panacea for the Poor*, ATLANTA JOURNAL AND CONSTITUTION, June 22, 1994, available in LEXIS, Nexis Library, News File at A7.

<sup>43</sup> See *id.*

<sup>44</sup> See generally Allen S. Hammond, IV, *Universal Access To Infrastructure and Information*, 45 DEPAUL L. REV. 1067, 1076 (1996) (evidence of basic telephone service out of reach for many households surveyed).

<sup>45</sup> Alan Finder, *Phone Scarcity Complicates Fire Alarm Plan*, NEW YORK TIMES, Sunday, Late Edition at 49, Feb. 11, 1996, available in LEXIS, Nexis Library, News File.

<sup>46</sup> See *id.*

<sup>47</sup> See *id.*

<sup>48</sup> See *id.* at 54.

<sup>49</sup> See *id.* at 49.

policy is the goal of 'universal service' --- the idea that all Americans should have access to affordable telephone service."<sup>50</sup> The NTIA found that census data collected by the U.S. Bureau of the Census, U.S. Department of Commerce and other governmental census statistics on the subject of "universal service" were incomplete in at least two respects: (1) they did not include a geographic identifier; therefore telephone penetration in rural areas is not compared to suburbia or central cities; and (2) no data is collected on computer or modem ownership.<sup>51</sup>

The Census Bureau conducts the Current Population Survey (CPS) three times each year. The CPS includes questions on telephone subscription. Accordingly, in July, 1994, NTIA contracted with the Census Bureau to include questions on computer/modem ownership and usage in the CPS conducted in November, 1994. Further NTIA requested Census to cross-tabulate this information gathered according to several specific variables (i.e., income, race, age, educational attainment, and region) and three geographic categories --- rural, urban, and central city.<sup>52</sup> Hence, the NTIA analyzed the CPS data and developed findings published in July, 1995 (NTIA Survey). The NTIA Survey provides a more complete "portrait" of the characteristics of the "have-nots" in rural and urban settings. The findings demonstrate an ever-widening gap between the information "haves" and "have-nots."

The NTIA Survey showed: (1) information have-nots are disproportionately found in this country's rural areas and its central cities; (2) the lowest telephone penetration exists in central cities; (3) in terms of personal computers, no situation compares with that of the rural poor; (4) Native Americans (including American Indians, Aleuts, and Eskimos) in rural areas proportionately possess the fewest telephones, followed by Hispanics and rural Blacks. Black households in central cities and particularly rural areas have the lowest percentages of PCs, with central city Hispanics also ranked low; and (5) for those

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<sup>50</sup> See *supra* note 24.

<sup>51</sup> See *id.*

<sup>52</sup> See *id.*

households with computers, Native Americans and Asians/Pacific Islanders registered the lowest position among those possessing modems.<sup>53</sup> Census data also showed that Whites are three times as likely to own computers as African-Americans or Hispanics.<sup>54</sup>

Contradicting the defenses offered by Bell Atlantic, small minority firms are more likely than other small businesses to use advanced services.<sup>55</sup> Additionally, most disadvantaged groups are proportionately the most enthusiastic users of on-line services that facilitate economic uplift and empowerment.<sup>56</sup> In a random poll of nearly 400 small businesses conducted by Dun & Bradstreet, it has been shown that small minority firms disproportionately use advanced technological services in their daily business.<sup>57</sup> For example, ninety-two percent (92%) of minority business owners said that technology has had a positive impact on their ability to provide high-quality customer service, as opposed to seventy-eight percent (78%) of all small business owners.<sup>58</sup> Nearly half, forty seven percent (47%) of minority businesses subscribe to an online service; small minority businesses "are more likely than other small businesses to use computers."<sup>59</sup>

### OF RIGHTS AND REMEDIES.

The creation of the Federal Communications Commission in 1934 was incidental to social and economic legislation which transformed the United States during the New Deal era. The FCC indeed already existed. The modern day FCC is a reorganized Federal Radio Commission with the regulatory jurisdiction that originally belonged to the Interstate Commerce Commission. The ICC was vested with the regulatory

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<sup>53</sup> *See id.* at 4.

<sup>54</sup> *See* Sheppard, *supra* note 12.

<sup>55</sup> *See supra* note 24, at 4.

<sup>56</sup> *See id.*

<sup>57</sup> Bevolyn Williams-Harold, *Riding The Technological Wave*, BLACK ENTERPRISE, Jun. 1997.

<sup>58</sup> *See id.*

<sup>59</sup> *See id.*

administration and supervision of two distinct areas: common carriers and telecommunications. The truth of the matter was that these areas hardly ever intersected. Consequently, the ICC whose original jurisdiction had been over common carriers became so preoccupied with railroad questions that it ignored telephone and telegraph common carriers.<sup>60</sup> So the FCC was given the jurisdiction previously had by the ICC.<sup>61</sup> Now the Telecommunications Act has taken us full circle. Once again the proliferation of technology has overwhelmed an administrative agency. The FCC is overburdened with regulating the affairs of telecommunications. This always vague and broad industry has become (and will continue to become) increasingly complex and indefinable. It is easy to see how the FCC has not addressed the problems of discrimination. Politicians continue to be concerned with this issue. Hence the problem of how the FCC will ensure that the non-discriminatory purpose of the Telecommunications Act of 1996 is given texture and definition.

In November, 1997, Eleven House Democrats in the Bell South region urged FCC Chairman Kennard to prevent “redlining” in some communities where they said most African Americans live.<sup>62</sup> The lawmakers noted that Blacks spend more on telecommunications services, including twenty percent (20%) more on long distance telephone service than Whites. Blacks pay more because businesses have decided not to serve them. The lawmakers ended the letter by suggesting that the FCC should “faithfully [implement competition, for] “to delay is to deny.”<sup>63</sup> Further, three county government officials from the DC area

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<sup>60</sup> S. REP. NO. 73-781, at 4; H.R. REP. NO. 73-1850, at 5; 73 CONG. REC. 10,313 (1934).

<sup>61</sup> See Hearings on S. 2910 *Before the Senate Committee on Interstate Commerce*, 73<sup>rd</sup> Cong., at 77 (1934) (testimony of then AT&T president, Walter Gifford); see generally GLENN O. ROBINSON, *The Federal Communications Act: An Essay on Origins and Regulatory Principle*, in A LEGISLATIVE HISTORY OF THE COMMUNICATIONS ACT OF 1934 (Max Paglin ed., 1989) (providing a thorough presentation of the federal administrative agencies).

<sup>62</sup> Communications Daily, *Telephony*, Nov. 7, 1997.

<sup>63</sup> *Id.*

have expressed concern in a letter to the FCC about cable TV franchise renewals.<sup>64</sup> NYNEX, Bell South and Pacific Telesis Group are replacing outdated copper coaxial cables with fiber optic cable.<sup>65</sup> Minority neighborhoods are being systematically under represented in these plans.<sup>66</sup> The officials have stated that “[c]able operators would prefer to continue old systems, modifying only in those neighborhoods where they see substantial additional revenue opportunities. . . . [C]able operators pick and choose which neighborhoods to rebuild” with fiber cable and new services that would allow.<sup>67</sup> As the emergence and accumulation of this evidence is being made at the highest levels of the Executive agencies and departments, the lack of relief for the injured parties cannot be reconciled with the mandates of Congress in enacting the Telecommunications Act of 1996.

#### WHAT THE FUTURE HOLDS FOR US.

“Once again, Congress has legislated with all eyes firmly fixed on the rear view mirror. The battles fought by the legislators were conceived of and framed prior to the phenomenal growth in the Net and especially the advent of the World Wide Web, the graphical sub-network on the Internet. As Business Week noted: ‘The Web Changes Everything.’”<sup>68</sup> But some things remain the same. Civil rights advocates ought to firmly fix eyes on the rear view mirror. Because apparently where we have been is where we are headed. Like the U.S. interstate highway system, access

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<sup>64</sup> Cable - Telco Report, *County Officials Ask FCC To Limit Effect of Troy Ruling*, Jul. 28, 1997. (The D.C. officials urged the FCC to limit any restriction on Troy cable franchising authorities in *TCI Cablevision of Oaklnad County, Inc. v. City of Troy, Michigan*, to the facts of that case. The officials feared that the FCC’s decision in the *Troy* case would limit D.C. cable regulators’ power to ensure that fiber optic and other high quality services and facilities would be constructed and maintained in the D.C. area without redlining).

<sup>65</sup> Bryant, *supra* note 4.

<sup>66</sup> *See id.*

<sup>67</sup> *See id.*

<sup>68</sup> Podesta, *supra* note 8, at 1109.

on the super highway of information has limited access. As one commentator has astutely noted:

Remember when the freeways were built, how minorities and the poor almost always wound up on the wrong side of the road the side without grocery stores and public transportation? Just like the railroad tracks before them, highways divided society by shade and income level. In a consumer culture with a racist history, money talked and people of color walked. Enter the so-called information super-highway (if you can afford it). Like the roads paved with steel and concrete, the ones being constructed with wire and digital technology are beginning to divide rich from poor, white from black and brown, haves from have-nots. In fact, a more apt metaphor might be the neighborhoods that were paved over by the concrete highways and the people who were displaced as a result. The question then becomes: Is the information superhighway from movies-on-demand to on-line libraries going to leave the disadvantaged in its dust? Because even if you lived on the poor side of the freeway, theoretically you could still get on the road. (No one calls the digital road of the future the information "free-way").<sup>69</sup>

As Vice-President Gore exalted the crumbling of barriers to the telecommunications field, the new era augurs deregulation, which could have an adverse impact on minority communities. With deregulation comes smaller telephone companies who may not be able to offer the technical and customer service available to larger incumbent companies. Price breaks and incentives are generally targeted at those who make international calls.<sup>70</sup> Those with a language barrier may increasingly become the targets of increased

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<sup>69</sup> Manuel Mendoza, *Information Highway Bypasses Poor Neighborhoods*, DALLAS MORNING NEWS, Sunday Three Star Edition, Showtime Section at H2 July 24, 1994, available in LEXIS, Nexis Library, News File.

<sup>70</sup> Keisha Anderson, *Getting the Message Straight*, BLACK ENTERPRISE, Feb. 1997, at 205, available in LEXIS, Mags file.

marketing and sales fraud.<sup>71</sup> Lower-income families situated in inner cities seeking out the cheapest telephone service would most likely become the largest group of telephone subscribers with inferior service from the smaller companies.<sup>72</sup>

If the measure of America's worth is that "we are all in the telephone book", do not measure America's worth until that dream is fulfilled.

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<sup>71</sup> *See id.*

<sup>72</sup> *See id.*



