

# **LAW AND POLICY AT THE INTERSECTION OF MEDIA, TELECOM AND CIVIL RIGHTS**

## **Size and Importance of the Media and Telecommunications Industries**

- The media and telecommunications industries comprise one sixth of the U.S. economy. Among the key sub-sectors by 2004 advertising revenues are:
  - Internet: \$10 billion
  - Radio: \$21 billion
  - Broadcast Television: \$42.5 billion
  - Cable and Satellite Television: \$54.1 billion
- The telecommunications industry dwarfs all of them, with \$291 billion in subscriber revenues in 2003.
- These industries are America's greatest exports. They largely define and transmit our culture to the rest of the world. Broadcast television has the single greatest influence of any institution on American elections.

## **State of Minority Media Ownership**

- According to a 2002 MMTTC study, minorities own 4.2% of all full power commercial radio stations and 1.3% of all full power commercial television stations. These holdings comprise less than 1% of industry asset value. The vast preponderance of the dollar value of these assets represents the right to use the publicly owned radio frequency spectrum.
- The vast majority of minority owned stations are technically inferior AM stations or low powered FM stations. Disproportionately, these stations are licensed to towns some distance from central cities. The FCC is considering several proposals that would make it easier for outlying stations to relocate closer to their audiences.
- According to a 2002 MMTTC study, 52% of minorities who work in the radio industry work for the 4.2% of radio stations that are minority owned.
- Out of over 400 cable channels available in all or parts of the United States, only TV One, The Black Family Channel, SiTV and the just-launched Africa Channel are minority controlled.
- The National Association of Minority Media Executives (NAMME) reports that the lack of financial and other resources available to minority media owners has forced such owners to merge with or form joint ventures with mainstream media conglomerates - thereby offering minority media owners only superficial control over programming, advertising sales, and human resources.

- Minority ownership in the telecom sector, including wireless, is negligible, with a few small companies holding licenses in a handful of rural communities.
- According to a 2002 Media Metrix report, amongst the top fifty most visited websites in the U.S., only one Internet company (Indian-owned Infospace) could be classified as minority-owned.

### **Minority Employment in Broadcasting**

- A 2005 RTNDA/Ball State University survey shows that although minorities comprise over 33% of the population, they are only 21% of the television news workforce and 8% of the radio news workforce. Minorities were 15% of the radio news workforce in 1995, before the FCC virtually stopped enforcing its Broadcast EEO Rule. That means that since the FCC essentially stopped enforcing its Broadcast EEO Rule, minority employment in radio news has dropped by almost half. Actually, it's much worse than that. The percentage of minorities working in the news departments of non-minority owned, English language stations (which represent 93% of the radio industry) is only about 2% -- no better than it was in 1968 when the FCC banned discrimination in broadcast employment.
- The RTNDA study also found that minorities are just 12% of the TV news directors, and 7% of the television general managers. Minorities are 26% of the news reporters and 23% of the news anchors, but only 8% of the weathercasters, 13% of the sports reporters and 10% of the sports anchors.
- A study released in October 2005 by the Writers Guild of America-West found that minorities comprised just 10% of television writers. Seven of the top 10 shows for African American writers aired on UPN, including each of the top five shows.

### **The Extent of the Digital Divide**

- According to a recent Pew Internet & American Life Project Study (October, 2005), 57% of African-Americans go online, compared with 70% of whites.
- According to the Pew 2005 study, little progress has been made over the last three years to improve access: 22% of Americans say they have never used the Internet or email and do not live in Internet-connected households, compared to 23% of such individuals in 2002.
- According to a 2003 U.S. Census survey, just 37% of Hispanics (age 3 and older), have Internet access, compared with 65% of non-Hispanic whites.
- Broadband access has added another layer to the Digital Divide: according to the U.S. Census, in 2003, 14.2% of African-Americans and 12.6% of Hispanic Americans lived in broadband households, compared to 25.7% of whites.

- Telephone penetration -- having a dial tone in one's home -- varies substantially according to income and wealth. In some neighborhoods in Harlem it is as low as 75%. In Puerto Rico it is 65%, with some towns lacking any telephone service at all. On Native American reservations it ranges from 50 to 75%. Telephone service to the home is vital if a person is seeking employment, needs an ambulance, or needs police assistance.
- The gap in technology amongst cell phone users is much narrower. According to the Pew Study, in February 2004 74% of white American adults said they have a cell phone, compared with 73% of African American adults.

Thanks to the e-rate program, 98% of public schools and libraries are now wired to the Internet. However, as Bill Gates has pointed out, our schools' teaching of media, telecom and Internet literacy is uneven at best, particularly in inner-city schools. Minority children disproportionately lack the basic skills needed to succeed in an information-based society.

### **Benchmarks in the Civil Rights Media Reform Movement**

- 1951: NAACP complaint against "Amos and Andy"
- 1955: Office of Communication of the United Church of Christ is founded
- 1969: Black Efforts for Soul in Television (BEST) is founded
- 1972: Benjamin Hooks becomes first minority FCC commissioner
- 1973: The National Black Media Coalition (NBMC), National Hispanic Media Coalition (NHMC), Native Americans for Fair Media, and Asian Americans for Fair Media are all founded. Only NHMC survives today.
- 1973: NBMC submits 61 minority ownership and EEO proposals to the FCC (the FCC rejects all of them in 1976)
- 1977: Benjamin Hooks becomes Executive Secretary of the NAACP
- 1986: On December 18, the day after the FCC suspended its distress sale and minority comparative hearing policies, MMTTC is founded. Congress restores the policies in 1988
- 1996: MMTTC co-founder Bill Kennard becomes first minority to chair the FCC
- 1998: The Rainbow/PUSH Coalition creates the Media and Telecom Project

### **The Evolution of General Civil Rights Law Affecting Communications**

- 1961: Burton v. Wilmington Parking Authority (Supreme Court): establishes that a business substantially serving a governmental interest cannot engage in race discrimination
- 1971: Diaz v. Pan Am (5<sup>th</sup> Circuit): bars “customer preference” discrimination; in Diaz, a male seeking to become a flight attendant was rejected on the theory that male airline passengers prefer women to serve them as flight attendants. If that theory prevailed, almost any business could resume discriminating by claiming it had to satisfy customers’ supposed preferences.
- 1976: Washington v. Davis (Supreme Court): holds that a race-neutral government program is not invalid even though it impacts one racial group more than others
- 1976: NAACP v. Federal Power Commission (Supreme Court): since EEO does not contribute to any purpose of the Power Act, the FPC need not adopt an EEO rule; but (in dictum) the FCC’s EEO rule, by contrast, is justified because it advances program diversity, a goal of the Communications Act
- 1983: Bob Jones University v. U.S. (Supreme Court): a private institution that discriminates may not receive a government benefit in the form of a tax exemption
- 1989: City of Richmond v. Croson (Supreme Court): a local ordinance (in this instance, creating a minority contracting program) must be reviewed under “strict scrutiny”, a high standard requiring the proponent to demonstrate that the program is “narrowly tailored” to address a “compelling governmental interest.”
- 1990: Metro Broadcasting v. FCC (Supreme Court): upholds the FCC’s Distress Sale and Minority Comparative Hearing policies under the relaxed standard of “intermediate scrutiny”
- 1995: Adarand Constructors v. Peña (Supreme Court): overrules most of Metro Broadcasting, holding that a federal program, like state or local programs, must be evaluated under strict scrutiny. A potentially compelling governmental interest is remedying the present effects of past discrimination.
- 2003: Grutter v. Bollinger (Supreme Court): holds, for the first time, that diversity in education is a compelling governmental interest; the program in Grutter (at the University of Michigan’s law school) was narrowly tailored to address that interest

### **Key Provisions of the Communications Act of 1934 as amended**

- Section 151: FCC must ensure nondiscrimination by its regulatees (amended in the 1996 Telecommunications Act to add race and gender to the forms of nondiscrimination regulatees must practice)
- Section 257: FCC to eliminate regulations that impose barriers to entry on small, minority and female owned businesses (added in the 1996 Telecommunications Act)
- Section 303(g): Expansive FCC authority to promote the public interest
- Section 309: Power to deny a broadcast license or license renewal
- Section 310(b): Limitations on foreign ownership
- Section 312: Power to revoke a broadcast license
- Section 315: Political broadcasting “equal time” provisions and basis for the (former) Fairness Doctrine
- Section 403: Expansive FCC investigatory powers

### **Citizen Participation in Media Regulation**

- 1966: The D.C. Circuit issues Office of Communication of the United Church of Christ v. FCC (UCC I), which establishes citizen standing, both at the FCC and in Article III courts, to challenge license renewals and to appeal FCC denials of those challenges. The case involves WLBT-TV, Jackson, MS, which was owned by segregationists affiliated with the White Citizens Council and managed accordingly.
- 1969: In UCC II, after the FCC holds a kangaroo-court “hearing,” the D.C. Circuit vacates the FCC’s approval of the WLBT-TV license, finding that the FCC had exhibited “a curious neutrality in favor of the licensee.”
- 1972: The D.C. Circuit decides UCC III. The decision affirms the public interest value of voluntary legal reimbursements in settlements of civil rights cases involving broadcasters. The decision is a precursor to the 1976 Civil Rights Attorneys Fees Act.
- 1973: At an FCC public hearing, the two-day old National Black Media Coalition presents 61 recommendations for new minority ownership and EEO policies
- 1976: The FCC issues its NBMC decision, which rejects all 61 of the minority ownership and EEO proposals propounded by NBMC in 1973. Commissioner Hooks dissents in part as to 30 of the proposals.

- 2003: In the run-up to its ruling on broadcast ownership (below), the FCC establishes the Advisory Committee on Diversity for Communications in the Digital Age, with 29 experts as members
- 2004: On December 10, the FCC's Advisory Committee on Diversity meets to approve the last several recommendations among the 44 it has approved. The Committee has not met since then, although in March 2005, shortly before he left the FCC, Chairman Powell arranged for the Committee to be reauthorized for another two years.
- 2005: In Rainbow/PUSH Coalition v. FCC, the D.C. Circuit refuses to afford standing to Rainbow/PUSH in a case involving allegations that a St. Louis radio station discriminated in employment. This decision substantially narrows UCC I to cover only those situations in which the citizen group could show that the station's programming materially harmed them. Until this case, the D.C. Circuit had assumed that any local listener or viewer had Article III Standing to appeal the FCC's denial of a petition to deny a license renewal application on the basis of employment discrimination.

### **The FCC's Character Qualifications Jurisprudence**

- 1978: In Trustees of the University of Pennsylvania, the FCC denies the license renewal application of a public radio station whose parent (the university) abdicated its responsibility to control the station's operations and oversee its programming
- 1981: In RKO General, Inc. v. FCC, the D.C. Circuit holds that FCC regulatees have an affirmative obligation to come forward with the whole truth in response to a petition to deny; there are no "demurrers" in FCC practice
- 1986: The FCC's Character Policy Statement outlines when an FCC regulatee can be found unqualified due to lack of character, whether manifested in FCC-related misconduct or, in rare occasions, in non-FCC-related misconduct

### **The Law of Electronic Media Content**

- 1936: In Chicago Broadcasting, the FCC opens the door for racism in broadcast licensing when it refuses to grant a license to an otherwise qualified radio broadcaster who wanted to program a station in Yiddish (see also Voice of Detroit (1938) and Voice of Brooklyn (1940))
- 1945: In Associated Press v. FCC, the Supreme Court expressed a listener-centered view of the First Amendment – "it is the right of the listeners that is paramount"
- 1946: The FCC issues the Blue Book, which states that radio stations are expected to provide diverse programming

- 1949: FCC creates the Fairness Doctrine, finding authority to do so in Section 315 of the Communications Act
- 1960: The FCC issues the 1960 Programming Policy Statement, which expands on the 1946 Blue Book by declaring, among other things, that all broadcast stations are expected to serve the needs of minority groups
- 1963: In Broward County Broadcasting, the FCC designates a revocation hearing because a radio station proposed to broadcast Black music. The complainant was a suburban Ft. Lauderdale town to which the station was licensed. The town government wanted to prevent African Americans from moving into the town.
- 1965: In Columbus Broadcasting, the FCC, in dictum, establishes limits on a broadcast station's misuse of its license. When James Meredith sought admission to the University of Mississippi, the station incited a riot in which two people were killed.
- 1967: The Carnegie Commission on Public Broadcasting establishes the framework for modern public radio and television, including insulation from political interference
- 1969: In Red Lion Broadcasting v. FCC, the Supreme Court unanimously affirms the Fairness Doctrine and the scarcity rationale for broadcast regulation
- 1978: In Pacifica Foundation v. FCC, in an example of life imitating art, the Supreme Court holds that the FCC may prohibit, as indecent, broadcast programming containing the seven dirty words discussed in a George Carlin routine prophetically entitled "Seven Dirty Words You Can't Say on Television"
- 1981: The FCC essentially deregulates non-indecent radio content. It does the same for television in 1984.
- 1985: In Cattle County Broadcasting, the FCC refuses to prevent group defamation by a radio station
- 1987: In the Fairness Report, the FCC formally confirms its 1986 de facto repeal the Fairness Doctrine, paving the way for right wing talk radio
- 2005: Under Chairman Kevin Martin, the FCC undertakes several initiatives aimed at discouraging or punishing broadcast and cable companies for allegedly indecent programming
- 2005: In the wake of Hurricane Katrina, the FCC seeks comment on whether it should provide that Emergency Alert System (EAS) announcements should be available in languages other than English

## **The Law of Media and Telecom Ownership, including Minority Ownership**

- 1945: In Ashbacker Radio v. FCC, the Supreme Court holds that the FCC must hold an evidentiary hearing to decide which of two mutually exclusive applications is preferable under public interest standard
- 1955: In Southland Television, the FCC, giving full faith and credit to a state law that conflicts with the Communications Act, twice affirms the qualifications of the owner of a segregated movie theater to receive a television station construction permit
- 1956: In U.S. v. Storer Broadcasting, the Supreme Court upholds the FCC's refusal to consider granting a waiver of its bright-line rule against ownership, by a company, of more than seven television stations
- 1965: The FCC adopts the 1965 Policy Statement on Comparative Hearings, which holds that ownership diversity is a factor when granting new broadcast licenses
- 1965: The FCC adopts the Ultravision Rule, which imposes overly stringent financial qualifications standards on new broadcast applicants
- 1971: In Chapman Television, the FCC awards a Birmingham, AL television station construction permit to a company whose principal tried to cover up his part-ownership of a segregated cemetery and his role in preserving segregation there
- 1973: In TV 9, Inc. v. FCC, the D.C. Circuit requires the FCC to consider race as a factor in broadcast licensing, thus creating the Minority Comparative Hearing Policy
- 1977: FCC Chairman Richard Wiley establishes the Minority Ownership Task Force, which proposes the Tax Certificate Policy and the Distress Sale Policy
- 1978: Under Chairman Charles Ferris, the FCC adopts the Tax Certificate Policy and the Distress Sale Policy
- 1981: In Waters Broadcasting, the FCC underscores the nexus between minority ownership and program diversity, finding that an African American female applicant is preferred over a local white applicant for an FM construction permit in an all-White Michigan community. At the hearing, the African American woman demonstrated greater familiarity with the community's needs than did the other applicant. The FCC believed the community's residents would benefit by exposure to the views of African Americans. The D.C. Circuit affirmed in 1982.

- 1981: The FCC creates the Commission on Minority Broadcast Financing (the “Rivera Commission”, after its Chairman, FCC Commissioner Henry Rivera. Mr. Rivera serves today as the Chair of MMTC.)
- 1982: The FCC adopts the Rivera Commission’s financing recommendations favoring minority control of company where most of the equity is owned by others
- 1982: The FCC repeals the Ultravision Rule because of the Rule’s adverse impact on minority ownership
- 1982: In NLT Corp., the FCC stretches to find that a licensee did not interfere with another licensee’s efforts to sell a station to minorities, but holds that such misconduct could be disqualifying on character grounds. The D.C. Circuit affirmed.
- 1984: The FCC holds a hearing on “no urban/no Spanish” dictates, considering evidence that many multinational companies deliberately refuse to advertise on certain stations because those stations caters to minority audiences. The FCC suggests that the complaints ought to be filed at the FTC. They are, and the FTC responds that the complaints should be filed at the FCC.
- 1985: The FCC adopts the “Mickey Leland Rule,” allowing broadcasters to have “attributable interests” in two more TV, AM or FM stations than otherwise then permitted under the local ownership rules if the two additional stations are controlled by minorities
- 1986: On December 17, with no prior notice or warning, the FCC suspends the Distress Sale Policy and the Minority Comparative Hearing Policy. On December 18, MMTC is founded.
- 1988: Congress prohibits the FCC from spending money to suspend or repeal the Distress Sale Policy and the Minority Comparative Hearing Policy
- 1988: In Salt City, the FCC (through its Review Board) affords MESBICs the same financial credence afforded to nonminority banks
- 1990: In Metro Broadcasting v. FCC, the Supreme Court (5-4) upholds the Minority Comparative Hearing Policy and the Distress Sale Policy, finding them justified under the “intermediate scrutiny” standard as means of advancing program diversity. This decision is largely overruled in 1995 by Adarand’s holding that the correct standard of review is “strict scrutiny” under which a race-conscious program must be “narrowly tailored” to address a “compelling governmental interest.”
- 1992: FCC Chairman Alfred Sikes creates an informal minority ownership task force, which holds a conference for minority media entrepreneurs

- 1992: Following the FCC’s minority media entrepreneurs conference, the FCC seeks comment on whether to give ownership rule waivers to companies that propose to “incubate” minority broadcasters
- 1992: In Bechtel v. FCC (and in another case with the same name in 1993) the D.C. Circuit strikes down the FCC’s presumption that a local owner will generally provide broadcast service superior to the service an absentee owner would provide. Bechtel essentially ends comparative hearings when the FCC fails to come up with new criteria to be used to choose among mutually exclusive applicants.
- 1993: Congress authorizes the FCC to issue wireless licenses using auctions, and the FCC begins to do so, using a “designated entity” structure that provides bidding advantages to small and minority owned businesses
- 1995: Congress hears an exaggerated complaint that one (of 200) minority owned companies wishing to take advantage of the Tax Certificate Policy was over-leveraged and might not be genuine. In response, Congress repeals the Tax Certificate Policy (attaching repeal to a must-sign tax bill sent to the President on April 13). Two months later, the Supreme Court decides Adarand.
- 1995: In the wake of Adarand, the FCC suspends the use of minority ownership as a selection criterion for the winners of wireless auctions, promising to undertake the research necessary to re-establish minority ownership as a designated entity attribute. These studies later become known as the “Section 257 Studies” (see below).
- 1996: In the Telecommunications Act of 1996, Congress dramatically changes the law of media and telecom ownership. Among other things, the Act:
  - Adds race and gender discrimination to the types of discrimination prohibited by Section 151, the first section of the Communications Act, which generally provides that the FCC is created to oversee the operation of a national and international system of communications operating without discrimination
  - In Section 257, requires the FCC to issue triennial reports on its efforts to eliminate “market entry barriers” – regulations that impede small, minority and female businesses from gaining a stake in FCC-regulated industries
  - Provides that FCC broadcast construction permits will be issued through auctions, thus ending the comparative hearing process and mooting TV 9
  - Creates the Telecommunications Development Fund (“TDF”) which was to have helped fund minority broadcast and telecom entrepreneurs
  - Directs the FCC to repeal the local radio ownership limits, mooting the Mickey Leland Rule and paving the way for Clear Channel to grow to 1,215 radio stations

- Provides that every two years (since changed to four) the FCC must conduct a review of its ownership regulations and, if a rule is not “necessary in the public interest” the FCC must “repeal or modify” the rule
- 1996: In Infinity Broadcasting, the FCC grants a waiver of the multiple ownership rules, based in part on applicant’s promise to sell stations to minorities (other cases like Infinity were decided in 1979, 1980 and 1997)
- 1998: Senator John McCain proposes a new “tax deferral” policy to replace the former Tax Certificate Policy. The FCC, NAB and NCTA promptly endorse Senator McCain’s bill, but it still goes nowhere.
- 1999: The FCC authorizes the creation of television “duopolies” (two-station combinations) in most markets, but also adopts the Failing Station Solicitation Rule (the “FSSR”) to protect minority ownership opportunities
- 2000: The FCC holds a public hearing at which it releases five studies (the “Section 257 Studies”), which overwhelmingly justify race conscious remedies under Adarand
- 2001: In the Edwin Edwards case, the FCC finds that Sinclair Broadcasting created and unlawfully controlled another company so that Sinclair could exceed the number of stations it was permitted to own. With Commissioner Copps dissenting, the FCC allows Sinclair to buy most of the company’s stations anyway, while fining Sinclair and the other company \$40,000 each. In Rainbow/PUSH v. FCC (2002), the D.C. Circuit affirms on standing grounds, but does not create broad new anti-standing policy.
- 2003: The FCC deregulates broadcast ownership, with Commissioners Copps and Adelstein dissenting. The FCC ignores eleven civil rights organizations’ proposals and denies three more of their proposals, fails to discuss the Section 257 studies (which it had declined to put into the record), and repeals the FSSR without mentioning that the FSSR was created to protect minority ownership.
- 2003: The FCC issues its triennial Section 257 Report to Congress. The Report does not mention the Section 257 Studies, which were the principal FCC activity under Section 257 since 2000.
- 2004: The FCC puts the Section 257 studies out for public comment. Ten parties filed comments. The FCC still has not acted.
- 2004: In Prometheus Radio Project v. FCC, the Third Circuit vacates most of the FCC’s broadcast ownership deregulation decision, requires the FCC to consider the civil rights organizations’ proposals, reinstates the FSSR, and imposes a stay
- 2005: Congress terminates the Telecommunications Development Fund

## The Law of Electronic Media and Telecom Equal Employment Opportunity

- 1968: Based on the findings of the 1968 Kerner Report and acting on a petition for rulemaking filed by the Office of Communication of the United Church of Christ, the FCC proposes an employment nondiscrimination rule for broadcasting
- 1969: The FCC adopts the Broadcast EEO Rule, requiring nondiscrimination, and also proposes that broadcasters adopt EEO programs setting out how they will recruit broadly when jobs are open. The basis for the Rule is the advancement of program diversity.
- 1971: The FCC adds a recruitment component to the Broadcast EEO Rule, grounded in promoting diversity. Initially the Rule only covers minorities in broadcasting; in 1972 it is expanded to include women, and in 1974 it is expanded again to cover the cable industry.
- 1971: In response to the FCC's adoption of the Broadcast EEO Rule, several Historically Black Colleges and Universities (HBCUs) establish degree-granting programs in mass communications (Howard, Hampton, Texas Southern, Alabama State, Jackson State, Savannah State, Florida A&M, Tennessee State, Xavier, Southern University, Clark-Atlanta, Morgan State and Bowie State, among others)
- 1972: Stone v. FCC is decided by D.C. Circuit; the decision upholds the FCC's refusal to seek racial proportionality in broadcast employment
- 1975: The FCC designates for hearing in Rust Communications Group, where the renewal applicant said it recruited minorities when "feasible" and for "suitable" positions (secretaries or janitors). In 1979, the FCC renews the application.
- 1976: In Sande Broadcasting, the FCC holds that a broadcaster must recruit for each vacancy
- 1977: In Black Broadcasting Coalition of Richmond v. FCC, the D.C. Circuit reverses the FCC's award of a television license renewal when the station had not employed African Americans except as a janitor and had done virtually nothing to recruit minorities
- 1978: In Bilingual Bicultural Coalition on the Mass Media v. FCC ("Bilingual II"), the D.C. Circuit holds that the FCC must investigate when the record on a petition to deny doesn't allow the FCC to affirmatively find that a broadcaster did not practice race discrimination
- 1978: The FCC/EEOC Agreement allows either agency to handle discrimination complaints against an FCC regulatee; however, only the EEOC can provide relief to a complainant. The FCC can only provide relief to the audience, which it can

do by taking the license away or imposing remedial conditions on future operations.

- 1980: In Walton Broadcasting, the FCC finds that word-of-mouth recruitment is inherently discriminatory (see also the 1997 Jacor decision, discussed below, which amplifies on this holding)
- 1983: In WAVY-TV, the FCC refuses to investigate or hold a hearing when a television station's African American employees were disinvited to the station's Christmas party because the station chose to hold it at a segregated country club
- 1984: In Albany Radio and in Metroplex Communications, the FCC designates radio license renewal applications for hearing because the applicants misrepresented the number of minorities they had recruited; since this could have covered up discrimination, the FCC also designates EEO issues for hearing
- 1985: In Banks Broadcasting, the FCC refuses to hold a hearing or investigate when it was alleged, in sworn statements by 21 of the 22 African American employees of an AM-FM operation, that the stations paid African Americans 40% of what their white counterparts made and subjected two African American employees to involuntary servitude. Invoking the Pennsylvania Anti-Slavery Act of 1798, the Pennsylvania Human Relations Commission takes jurisdiction of the involuntary servitude cases. The litigation settles two days later, with all but one of the African American employees receiving compensation.
- 1989: In Catoctin Broadcasting, the FCC holds in dictum that a racial discriminator may not hold a broadcast license. However, it denies the license renewal application on other grounds. A job referral counselor testified that the station owner called to reject a secretarial applicant saying "don't you have any white girls to send me? This one would make charcoal look white."
- 1997: The FCC issues Jacor Communications, in which it affirms that the near-exclusive use of word-of-mouth recruitment is inherently discriminatory when the recruitment is done by employees in a racially homogeneous workplace
- 1998: In Lutheran Church/Missouri Synod v. FCC, the D.C. Circuit vacates the recruitment portion of the Broadcast EEO Rule. The Court holds that even using minority employment statistics as an application-processing tool unconstitutionally "pressures" broadcasters to hire minorities.
- 2000: Responding to Lutheran Church, the FCC adopts a new Broadcast and Cable EEO Rule. The new Rule reasserts the nondiscrimination requirement, and also includes two options from which licensees may choose for recruitment: the process-oriented "Option A", a menu with several means of recruitment, and the results-oriented "Option B", which allows licensees to show their recruitment efforts generated minority and female applicants. The only stated purpose of the

new Rule is preventing discrimination (unlike the 1971 Rule, which was based on promoting program diversity).

- 2001: In MD/DC/DE Broadcasters Ass'n. v. FCC, the D.C. Circuit vacates the 2000 Broadcast and Cable EEO Rule. The Court believes that even giving broadcasters the choice of using racial statistics to show that they recruited minorities is unconstitutional.
- 2002: Responding to MD/DC/DE Broadcasters, the FCC adopts a new Broadcast EEO Rule based only on "Option A" recruitment methods only; it promises to conduct random compliance audits of 5% of renewal applicants starting in 2003. Like the 2000 Rule, the 2002 Rule is justified only as a means of preventing discrimination, not promoting program diversity. Petitions for reconsideration were filed by 44 state broadcast associations and 48 national civil rights and minority organizations, unions and religious groups (led by MMTC and including Rainbow/PUSH). The reconsideration petitions are still pending.
- 2004: FCC broadcast EEO audits begin fourteen months late
- 2005: The FCC issues three decisions, each finding that a broadcast station subject to a random compliance audit did not recruit widely for each vacancy. One of the stations is Hispanic owned; another, in Hawaii, has minority employment at all levels mirroring that of the state; and the third is in an area of Missouri which has almost no minority residents.

### **Closing the Digital Divide**

- 1984: In the AT&T Consent Decree, Judge Harold Greene of the U.S. District Court for the District of Columbia breaks up AT&T and creates the Universal Service concept
- 1992: Congress places the Universal Service Fund under the direction of the FCC. Through four programs, the Fund ensures that rural and low-income consumers will have access to a dial tone.
- 1996: In the Telecommunications Act of 1996, Congress creates the "Schools and Libraries Program," also known as the e-rate, which underwrites Internet access in schools and libraries in low-income communities. By 2004, thanks to the e-rate program, 98% of the nation's public schools were wired. The program, once politically attacked as the "Gore Tax," now enjoys wide and bipartisan public support.
- 1997: National Telecommunications and Information Administration (NTIA) Director Larry Irving coins term "digital divide" and begins NTIA's publication of annual studies documenting the extent of the digital divide (the "Digital Divide Studies")

- 2001: NTIA stops publishing the Digital Divide Studies
- 2005: In NCTA v. Brand X Internet Services, the Supreme Court upholds the FCC's finding that cable modem service is an "information service" and thus not subject to common carrier regulation

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