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On the Verge of Information Apartheid: The Future of Governmental Intervention to Address the Digital Divide: The Need for a Broader Constituency

Gaurav Kalra*

On February 10, 1999, a bill was introduced to terminate the e-rate program (e-rate program requires providers of telecommunications and information services to support such services for schools and libraries at a discounted rate) of the Federal Communications Commission (FCC).\(^1\) Some felt that the FCC e-rate proposal was inefficient as well as a usurpation of congressional authority.\(^2\) Governmental regulation and support of telecommunications infrastructure is not a new congressional issue. In the early 1930s, policymakers were faced with legislation (Communications Act of 1934) that would increase governmental regulation of the radio. The radio was viewed as a tool for educational and cultural development. There was some reluctance to give the private sector full control of the development, exercise, and dissemination of this technology. During the Senate Debate of the Communication Act of 1934, there was some push to encourage the government to take adequate measures to ensure radio access for educational institutions:

The educational, religious, labor, and other groups, however, realizing how this wonderful instrument for education radio has been monopolized for private profit, have organized, and they have unanimously demanded that legislation whereby the Radio Commission will be directed to assign a fair portion of the radio facilities to educational and other non-profit-making bodies be enacted by Congress. Those that control the radio industry, if we may call it such, are short-sighted. I think they ought to be willing to concede to the

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* Boalt Hall (University of California School of Law) J.D., 2001. Author was a volunteer at a 5th grade classroom at a public school in East Oakland. There is one computer in the classroom. That computer is not connected to the internet.

1. H.R. Cong. Res. 692, 106th Cong. (1999). All sponsors and co-sponsors (17 total) of the bill were Republicans.

2. See Before the House Subcomm. on Commercial and Admin. Law, House Comm. on the Judiciary, 106th Cong. 3 (July 29,1999) (prepared testimony of Thomas A. Schatz, President of Citizens Against Government Waste).
educational institutions of America an opportunity to go upon the air and at seasonable hours.³

Although Congress has a long history of addressing technological development, support for governmental intervention has not always been constant. Before the government can address the digital divide, it must establish a constituency for such effort. Minority community spokespersons and members can partner with the government in addressing the digital divide by assisting in the creation of a multiracial constituency. I will briefly cover some existing governmental efforts to address the digital divide. I will highlight areas where the government should more aggressively assist communities in need. Finally, I will outline some ways to discuss the digital divide that minority and government leadership should use to facilitate the development of a multiracial digital divide constituency.

Minority leadership has a unique opportunity to build alliances with other working people in an effort to create greater internet. Some governmental and community leaders, minority and non-minority, have used race-specific language to discuss the digital divide. Minority communities do have distinct needs and concerns regarding technological inequity. However, minorities—many of whom are working class people—share significant common interests with other working class Americans as well as other Americans that value technological equity. Minority leadership should quickly deracialize the discussion regarding the digital divide to facilitate the development of a multiracial constituency.

For the purposes of this analysis, the digital divide will be defined as the gap in the resources available in different communities for high technology.⁴ There are many other opportunities for further scholarship and research on technological equity that are beyond the scope of this paper but are equally deserving of targeted analysis.⁵ Furthermore, a focus on the

³. See Bernard Schwartz, The Economic Regulation of Business and Industry 2469-2470 (Chelsea House Press 1973) (Mr. Hatfield’s comments during a Senate debate, 73rd Congress, 2d Session, May 15, 1934).

⁴. See Mika Brzezinski, Computer Education in Public Schools Gets Increasingly Sophisticated: Digital Divide Remains (CBS television broadcast, May 31, 1999) (“But fewer than 40 percent of Americans own even one PC. This gap between the haves and the have-nots, sometimes called the ‘digital divide’”). For a race specific definition of the digital divide see Editorial, High-Tech Access Closes Digital Divide, Austin Am.-Statesmen, Oct. 3, 1999 at J2 (defining digital divide as “the uneven use of computers between minorities and whites”). See also Patricia Horn & Martha Woodall, Digital Divide Widens US Racial, Economic Gap Growing with the Internet, Denv. Post, July 9, 1999, at A-01(quoting Larry Irving, Undersecretary, commerce Dep’t, “The digital divide. . . is one of America’s economic and civil rights issues”). For more on the need to frame race-based remedies in non-racial terms, see William Julius Wilson, The Bridge Over the Racial Divide: Rising Inequality and Coalition Politics 95 (Univ. of Cal. Press 1999) (“In the face of growing attacks on programs of ‘racial preference,’ some analysts, including those who support multiracial coalition building, have called for a shift from an affirmative action policy based on race to one based on economic class or financial need.”).

⁵. For example, there are some who contend that FCC regulations have caused technological inequity. The Center for the New West, a Denver-based think tank, released a report contend-
digital divide, with a focus on internet access, is not to imply that internet access is the most pressing issue for technological equity.6

The internet access gap between the technological “haves” and “have-nots” has raised some pressing questions. Ms. Symons, a public high school librarian in Juneau, Alaska, as well as the president of the American Library Association, asks:

1) How do we as a nation ensure that all children—not just those whose parents or school can afford online connections—are prepared to live, work and govern in a society transformed by technology?

2) How do we ensure that access to online information is not limited to a powerful and privileged few?7

If community leaders and governmental officials share Ms. Symons’ concerns, they will be well advised to carefully frame the digital divide in a manner that creates a large constituency.

Although the government has been active in defining and researching the digital divide, there are many that contest the validity of the assertion of technological inequity. Some opponents of digital divide intervention point out: 1) the digital divide represents income inequality; 2) many people don’t have computers because they don’t need them; and 3) there is no correlation between a home computer and entrance into the “new economy.”8 Opponents of digital divide intervention point out that income alone does not explain the discrepancies between internet access and use.9

Additional apprehension of the digital divide issue may stem from the way it is being framed, as a possible racial or civil rights issue, in contrast to a non-racial presentation focusing on the issue of access. Vice President Al Gore has referred to the digital divide as a “civil rights issue meriting an all out crusade.”10 One editorial comment gave a strong reservation of framing the digital divide as a racial issue by pointing out that there are no laws preventing minorities from buying computers and furthermore the comment emphasized the economic sources of the discrepancy.11


9. See Net Losses? SLATE MAG., July 9, 1999 (stating that the difference alone cannot be explained by income. For instance, more than a third of white families earning between $15,000 and $35,000 per year owned computers, while only one in five black families in that same income range did).


11. Id.
Underlying much of the digital divide debate, on both "sides", is the "universal service" principle. The universal service concept is a reimbursement to telephone companies for the difference between the cost of providing service and the amount charged to any one customer. More broadly, the universal service principle refers to the public policy of providing a mechanism through which telecommunications service is made available to as many members of society as possible. There must be broad-based support and understanding of the universal service principle for the government to address the digital divide. A multiracial constituency should build upon the history of the universal service principle and advocate for internet access for all society members.

There are strong reasons for the government to address the digital divide. Educational opportunity correlates directly to civic engagement, and a decrease in public welfare. The federal governmental has a strong interest in training a competent workforce. William Daley, Secretary of Commerce (1999), states in the forward to the "Falling Through the Net: Defining the Digital Divide" report:

With the emerging digital economy becoming a major driving force of our nation's economic well being, we must ensure that all Americans have the information tools and skills that are critical to their participation. Access to such tools is an important step to ensure that our economy grows strongly and that in the future no one is left behind.

According to Richard Riley, the government has a key role in preparing young people to enter college as well as the workforce. Riley cites increasing technological demands of society and work as a primary justification for governmental intervention. The states may not be in a position to address widespread inequality because they lack the institutional capacity to create national change.

The government has an obligation and interest in training its workforce to adapt to technological changes. One recent study concluded that the lack of an adequately trained workforce is the biggest impediment to high tech growth. Given the connection between education and the workplace, the

14. Id. at 30 (n. 1).
15. Id. at 38.
16. Id.
17. See Public Education in America (Harold Cressman & Harold W. Benda eds., 2nd ed. 1961) (stating that the states vary widely in their ability to support an adequate educational opportunity, and only the federal government can do this).
18. See Susannah Malarkey, Top Ten List: Lessons Learned from Study Missions to the Silicon Valley; the Research Triangle, NC; Boston, MA; and Austin, TX, at http://www.technology-alliance.com/topten.html (last visited Nov. 23, 1999).
government should lead the movement to increase the technological skills of young people. One commentator stated: "[a]ccess to technology tools and the skills and knowledge they develop is an essential component of a competitive school system. If our children are going to be competitive in a 21st century workplace they must have these skills."\(^\text{19}\) The federal government is in an excellent position to help identify educational standards and goals as they relate to the national workforce.

Despite the difficulties in predicting the ramifications for those not connected to the internet, there is growing concern regarding the possible implications. One New York Times writer states:

It is clear that people without Internet skills are increasingly likely to be less competitive in school and in the workplace. But what about as consumers? Are they missing out on shopping opportunities and information? Are they likely to end up the captive customers of unwired retailers who will do what some inner-city grocery stores do now – offer limited quality and selection at high prices?\(^\text{20}\)

Given the possible effects of off-line communities in America, the government should explore immediate efforts to address the digital divide.

The e-rate was one example of attempted governmental intervention to address the digital divide. The Telecommunications Act of 1996 changed the funding base for Universal Service by requiring all telecommunication carriers to support Universal Service.\(^\text{21}\) Under the 1996 Telecommunications Act, large telecommunications companies are required to offer all schools (K-12) as well as public libraries the lowest institutional rate for internet and telephone services.\(^\text{22}\) Although the e-rate would cost telecommunications companies a great deal, lawmakers felt the cost would be displaced by deregulation.\(^\text{23}\)

There have been targeted critiques of the e-rate. One commentator felt the e-rate (referred to in the article as the "Gore tax") was an unconstitutional tax and "unnecessary" since the volunteer efforts of the private sector were adequate.\(^\text{24}\) Furthermore, there is dispute whether the characterization of the e-rate as a fee based service is misleading and


\(^{23}\) Id.

whether the e-rate is more akin to a tax (which would need to be passed by Congress).\textsuperscript{25}

The vocal opposition to the e-rate may have contributed to the program reduction. The FCC voted to keep a scaled back version of the e-rate program in June of 1998.\textsuperscript{26} Many educators were concerned about the decision. National Education Association President Bob Chase stated: "This agreement is deeply disappointing, because it says we are willing to leave half our children behind on the journey to the 21st century."\textsuperscript{27} What further complicates the debate is that the e-rate program has been characterized as a partisan issue (e.g., the "Gore tax") in which democrats are portrayed as supporting an illegal "tax" while the republicans have been accused of not supporting education and investment in the future work force.\textsuperscript{28} The partisan nature of the e-rate debate is one example demonstrating that there is not broad-based support for technological equity, specifically access to the internet.

Although the government can do a great deal to facilitate internet access and infrastructure, the government should strongly consider encouraging the private sector as a partner in this effort. An example of government facilitation of private sector involvement in addressing the digital divide is providing tax subsidies for individuals and corporations that donate their computers to schools.\textsuperscript{29} There is strong support in the business community for increasing the technological training of students due to the recognition that computer literacy is necessary for the new generation of entrepreneurs.\textsuperscript{30} There are also strong developments of civic engagement and philanthropy in the high tech community.\textsuperscript{31}

Despite the efficacy of private-sector digital divide intervention, there is still a need for government to complement private sector efforts in addi-


\textsuperscript{26} Kenneth R. Bazinet, UPI Focus: FCC Saves E-rate, But Reduces Program, UNITED PRESS INT'L, June 12, 1998, available at LEXIS, News Library, Wires File (the reduced program costs long-distance carriers $1.275 billion over 18 months in contrast to the original program that would have cost $2.25 billion over 12 months).

\textsuperscript{27} Id.

\textsuperscript{28} See Glass, supra note 22.

\textsuperscript{29} See S. 542, 106th Cong. (1999) (a bill to amend the Internal Revenue Code of 1986 to expand the deduction for computer donations to schools and allow a tax credit for donated computers).

\textsuperscript{30} See Education Success = Business Success: Hearings On S. 542 Before the Senate Comm. on Small Business, 106th Cong. 143-149 (1999) (prepared statement of Carol L. Ball, President and CEO, Ball Publishing, Inc., for the U.S. Chamber of Commerce, stating that "computer literacy of our high school graduates is a necessity to foster the next generation entrepreneurs [sic]. This legislation is a step in the right direction to provide businesses with the necessary incentives and teachers and students with the necessary computer equipment.").

\textsuperscript{31} Some examples of high tech philanthropy are: (1) AOL launching helping.org to make philanthropy easy (see AOL Foundation Launches Helping.org, BUS. WIRE, Oct. 20, 1999, available at LEXIS, News Library, Wires File); and (2) AT&T Tech centers (see Femi Lewis, NAACP and AT&T Partner to Create Tech Centers, BLACK ENTERPRISE, Oct. 1999, at 19).
tion to organizing separate and distinct programs to address unmet needs. Low rates of underrepresented minority employment in high tech industries is one example where the private sector has not been able to adequately reach full participation.\textsuperscript{32} The juncture between high tech resources and inner city realities have led some groups to protest. Protesters in Silicon Valley chanted: “Intel, Intel, you’re no good, bring computers to the ‘hood’” followed by “Don’t throw us to the side, Close the Digital Divide.”\textsuperscript{33} A year later, Intel’s public affairs director stated in response to Jesse Jackson’s visit to the Silicon Valley that Intel “wants to do our part to close the digital divide.”\textsuperscript{34} The private sector is an essential partner in addressing the digital divide. However, the government must aid in identifying priorities of need and create incentives for business philanthropy.

The government should continue to provide internet access to underserved communities. Denying specific segments of the population internet access may isolate those segments. There is a danger that any technologically deprived and thereby isolated community may become politically irrelevant (won’t have access to information or a medium by which to exercise their voice) and economically paralyzed. Telecommunications networks have a significant impact on the lives of all Americans—as consumers, learners, and citizens.\textsuperscript{35} Having access to the internet may facilitate the ability to control financial affairs, pursue an education, acquire technical skills necessary for employment, apply for a job, work at a distance, and participate in the political and civic process.\textsuperscript{36}

How the digital divide is framed is of critical importance to establish broad-based support. When discussing the digital divide, leaders should do the following:

(1) Explicitly reference rural Americans as beneficiaries of governmental efforts to address the digital divide. Initially, it may not make “business sense” to build an infrastructure to connect rural Americans\textsuperscript{37}. However, to train a competent workforce the government may have a strong

\begin{itemize}
  \item \textsuperscript{32} See Mary Mosquera, Conference Calls for Narrowing Digital Divide, \textsc{TechWeb News}, at http://www.techweb.com/wire/story/TWB1999102250013 (Oct. 22, 1999) (“Minorities account for 10 percent of Silicon Valley’s high-tech workers, but 50 percent of California’s total college-age population. [S]chools need to be connected to the internet, and despite the federal government’s e-rate discounts for wiring, only 16 percent of schools in low-income areas have internet access.”).
  \item \textsuperscript{33} See Benny Evangelista, Protest the Digital Divide, \textsc{S.F. Chron.}, Aug. 6, 1998, at D1.
  \item \textsuperscript{34} See Benny Evangelista, Jesse Jackson Takes Stock of Diversity in Silicon Valley, \textsc{S.F. Chron.}, Mar. 2, 1999, at B1.
  \item \textsuperscript{36} Id.
  \item \textsuperscript{37} See Steven Oberbeck, Telecommunication Groups Prepare Rural Utah for Information Age, \textsc{The Salt Lake Tribune}, August 29, 1999(citing Phillip Burgess who stated, “The nation’s big regional telephone companies, such as US West, have a hard time justifying making an investment in rural areas.”).
interest in facilitating the development of rural networks. The telephone industry expressed some reservations about rural internet development. One commentator stated, “When companies start thinking about building a high-speed network there is definitely the “DDT” factor to consider—distance, [population] density and terrain.” However, rural America is an important voting constituency. Americans within this group must affiliate with governmental strategies to ameliorate the digital divide.

(2) Explicitly reference seniors as beneficiaries of governmental efforts to address the digital divide. It is important for seniors to identify as a beneficiary of governmental intervention to address the digital divide. One Microsoft representative stated, “The digital divide is fast becoming a serious problem for seniors in America. Many avenues are closed to older Americans because of a lack of computer skills, specifically in the job market.” Senior support for governmental intervention can be built if the digital divide is carefully presented.

(3) Present the digital divide as a non-partisan public policy issue. Rather than point out the current partisan nature of the digital divide debate, a new constituency should be developed that is built around the issues of job security and employment competitiveness in a global marketplace. Presenting the digital divide in a manner that unites Americans rather than highlights group differences (e.g., party politics, race-specific interests, urban in contrast to rural priorities), will increase the constituency in support of government intervention in the development and deployment of key technologies.

(4) Present the digital divide in a race-neutral manner. As presented earlier, the digital divide has been referred to as a “civil rights issue.” In addition, there are various definitions of the digital divide—some are racially neutral and some are racially specific. Since there has been an increasing political and social intolerance for race-specific measures to address inequity, presenting the digital divide in a racially neutral manner will maximize the size of the digital divide constituency. Some sociologists describe our current political climate as one in which conservatives have attempted to unite white Americans around anger at the federal government and racial minorities. To account for this possible political climate, justi-
fying governmental involvement in addressing the digital divide as some type of civil-rights issue may intensify racial animosity and decrease the propensity for broad-based support for governmental intervention. Furthermore, it may be strategic to frame policies that will benefit racial minorities using racially-neutral language.

(5) Present the digital divide as a global workforce issue and not as an issue of educational equity. Many American workers are insecure about keeping their jobs. For example, a 1994 nationwide poll indicated that 40% of American workers worried that they might have their wages reduced or be laid off. This is in part due to fears of globalization. Technological development has also caused many workers to feel fear regarding full employment. Wilson states, "Whereas educated workers are at least keeping pace with the increased use of information-based technologies and microcomputers, less sophisticated workers face the growing threat of job displacement in certain industries." Hence, there is a growing group of workers who feel displaced by technological change and have consistent fear over job security. This large group of Americans should recognize that governmental intervention in addressing the digital divide will provide more opportunities for Americans to gain access to technology. The government should tap this large constituency as a primary source of support for pro-active governmental intervention to address the digital divide.

42. For a recent example of a racial analysis of the digital divide, see Henry Louis Gates, Jr., Editorial, One Internet, Two Nations, N.Y. TIMES, Oct. 31, 1999 ("few African-Americans have been compelled to sign on to a medium that offers little to interest them."). In response to Gates' comments, see Robert Chandler, Letter-to-the-Editor, Little to Interest Them? The World Wide Web is the Greatest Source of Knowledge and Information That Has Ever Existed, N.Y. TIMES, Nov. 3, 1999, at A24.

43. See MARABLE MANNING, BLACK LEADERSHIP 183-184 (Columbia Univ. Press 1998). ("Black Americans overwhelmingly are working people, who share common class interests with workers of different racial and ethnic backgrounds. [T]he enhanced power of African American and labor movements will place greater pressure on government to support more-progressive social policies like affirmative action and vocational training programs, which disproportionately aid racialized minorities.").

44. The digital divide is of utmost importance with respect to educational equity. However, given the contemporary interrogations of the government's role in facilitating quality educational equity, a workforce framing may enlarge the digital divide constituency and minimize political complications. Furthermore, racial minorities should highlight non-racial variables that intensify racial oppression. See WILSON, supra note 4, at 45, 51 ("racial bias continues to be an important factor that aggravates black employment problems. Nonetheless, it is important to be aware of nonracial economic forces that have sharply increased joblessness and declining real wages among many African Americans in the last several decades.") and WILSON at 51 ("The computer revolution is a major reason for the shift in the demand for skilled workers.").

45. See WILSON, supra note 4, at 30.

46. Id. at 32 (noting that "in a recent survey of a random sample of the American public, 68 percent of the respondents overall, and 72 percent of on-college graduates surveyed, expressed concern about American companies sending jobs overseas.").
The digital divide debate is interesting for several reasons. First, it illustrates that civic and political leaders must carefully frame issues of equity to maximize support. Second, it highlights the unfortunate partisan nature of government involvement in addressing educational opportunity and technological access. Third, the digital divide indicates that our national leadership, at all levels and from all political parties, has not been able to reach consensus or even compromise on issues that are key to our nation’s technological growth and global competitiveness. The government should continue to address the digital divide. A key step in developing the government’s role in this area is the development of a new constituency of Americans that support the narrowing of the digital divide.

Minority leadership has a unique opportunity to partner with the government in efforts to democratize technology. For the government to continue to address the digital divide, a significant constituency must support such efforts. Minority leadership should support existing government efforts to address the digital divide and encourage greater support to address issues of technological inequity for communities of severe need. Along with such governmental support, minority leadership should establish a multiracial group of Americans concerned about technological equity and its link to opportunity as well as education in the 21st century. Race-specific language to discuss the digital divide sometimes fosters division among different racial groups. The digital divide separates those with access from those without access. Support to address the digital divide will be more effectively established by the digital divide constituency identifying along the common interest of access rather than perceived race specific needs. Ironically, distinct minority groups will be better served from such a multiracial movement. Discussions regarding African American internet access in East Oakland should reference rural White farmers in Ohio. Community by community, a sense of unity will begin to form and our national leaders will be able to establish the support necessary to address a primary social justice issue of the 21st Century—access to the internet, for all.