

RECEIVED

DOCKET FILE COPY ORIGINAL

**Office of the People's Counsel
District of Columbia**

JUL 27 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY



1133 15th Street, N.W. • Suite 500 • Washington, D.C. 20005-2710
(202) 727-3071 FAX (202) 727-1014
(TTY/TDD) (202) 727-2876

Elizabeth A. Noël
People's Counsel

July 27, 1994

RM 8491

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Re: Petition for Rulemaking to Adapt the Section 214 Process to
the Construction of Video Dialtone Facilities

Dear Mr. Caton:

Please find enclosed an original and four (4) copies of the
Reply Comments of the Office of the People's Counsel of the
District of Columbia.

Do not hesitate to call me with any questions.

Very truly yours,

A handwritten signature in cursive script that reads "Elizabeth A. Noel".

Elizabeth A. Noel, Esq.
People's Counsel

No. of Copies rec'd
List ABCDE

044

RECEIVED

JUL 27 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Petition for Rulemaking to Adapt)	RM 8491
The Section 214 Process to the)	
Construction of Video Dialtone)	DA 94-621
Facilities)	
)	
Petition for Relief from Unjust)	
and Unreasonable Discrimination)	
in the Deployment of Video Dialtone)	
Facilities)	

REPLY COMMENTS OF
THE OFFICE OF THE PEOPLE'S COUNSEL
OF THE DISTRICT OF COLUMBIA

I. INTRODUCTION

The Office of the People's Counsel of the District of Columbia (OPC-DC) hereby submits its Reply Comments in response to comments filed in the above-captioned proceeding. OPC-DC is the statutory representative of public utility ratepayers in the District of Columbia. See D.C. Code Ann. § 43-406 (1981).

II. DISCUSSION

I. Discrimination on the Basis of Race or Income Level in the Deployment of Technology is Contrary to the Public Interest.

On May 23, 1994, the Center for Media Education, the Consumer Federation of America, the Office of Communication of the United Church of Christ, the National Association for the Advancement of Colored People, and the National Council of La Raza ("Petitioners")

filed petitions for relief and rulemaking. In both of these petitions, Petitioners allege that Regional Bell Holding Companies ("RBOCs") are engaging in electronic redlining. Specifically, Petitioners allege that RBOCs are planning deployment of video dialtone technology in a discriminatory manner: intentionally deploying the technology in upper-income, predominantly white areas, while ignoring low-income, predominantly minority areas.

OPC-DC's response to redlining on the basis of race is unequivocal: excluding neighborhoods from deployment of technology because of the racial makeup of that area is unjust, unreasonable and in direct contravention to the public interest. Accordingly, any effort by the RBOCs to deploy technology on such a basis must be vigorously opposed.

OPC-DC also agrees with the New York Department of Public Service and the Pennsylvania Public Utilities Commission that excluding low-income neighborhoods from deployment of basic technology will only serve to increase the gap between rich and poor.¹ As a result of excluding such neighborhoods, important technologies and their applications, such as education and medical services, may be only available to upper-income families. Those who currently have better than average access to education and health care, will only be better served; those who are underserved

¹ See Letter to Acting Secretary William F. Caton from William J. Cowan, General Counsel, New York State Department of Public Service (July 11, 1994); In the Matter of Petition for Rulemaking to Adapt the Section 214 Process to the Construction of Video Dialtone Facilities Comments of the Pennsylvania Public Utility Commission (July 12, 1994).

will only be pushed further from access to these services.

The Commission, however, in considering these Petitions, must carefully balance another important regulatory principle: a technology should not be deployed unless the regulated telephone service provider establishes a full economic justification for the service. In other words, a service provider must establish that the costs of the technology are fully covered by revenues generated from consumer demand. If a technology is not economically justified, captive residential customers -- who can least afford it -- are generally required to bear these unrecovered costs in rates.

In order to determine whether a service is economically justified, first costs must be accurately ascertained. Unfortunately, the Commission has not yet acted on these extremely important cost allocation and separations issues. In its Order released July 18, 1994, in the New Jersey Bell Video Dialtone Application, File No. W-P-C 6840, the Commission approved New Jersey Bell's application, while deferring consideration of the cost allocation and separation requirements. OPC-DC submits that it is exceedingly important for the Commission to ensure that the costs of video dialtone service follow revenues and that all costs and revenues be separated to the interstate jurisdiction.

The second step in ensuring that a technology is economically justified is to determine the demand for services arising from the deployed technology. Demand for services cannot not be drawn on racial or income lines. For example, in the District of Columbia, some lower income, primarily minority, neighborhoods, have

subscribed at a higher rate to certain discretionary telecommunications services than residents of other more affluent areas.² To exclude such areas merely because of race or income characteristics is not in the interests of either ratepayers or service providers.

OPC-DC respectfully urges the Commission to proceed cautiously in acting on the instant Petitions. Any action by the Commission that can be used by the RBOCs to justify uneconomic deployment of technology is not in the interest of telephone ratepayers.³ In such a case, those most vulnerable subscribers could be directly harmed by higher rates. Ratepayers should not be guarantor of RBOC shareholders' investment risks.

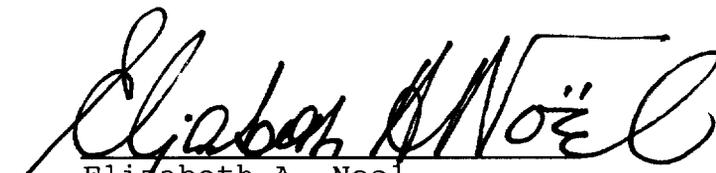
²The Office does not take a position on whether the demand for these discretionary services is attributable to improper marketing practices or to legitimate consumer demand.

³For example, in the worst case scenario, a regulated service provider might justify deployment of technology where demand does not support it on the basis that the company is complying with Commission rules.

III. CONCLUSION

OPC-DC joins Petitioners in condemning any electronic redlining on the basis of income and race, but asks the Commission to consider fully the regulatory principle of economic justification in fashioning the appropriate remedy.

Respectfully Submitted,



Elizabeth A. Noel
People's Counsel

Sandra Mattavous-Frye
Associate People's Counsel

Michael McRae
Assistant People's Counsel

Office of the People's Counsel
of the District of Columbia
1133 15th Street, N.W.
Suite 500
Washington D.C 20005-2710
(202) 727-3071

Dated: July 27, 1994

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of July, 1994, a copy of the Office of the People's Counsel's Reply Comments were served on the following parties of record:

Angela J. Campbell
Citizens Communications Center Project
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001

By Mail

Andrew Jay Schwartzman
Media Access Project
2000 M Street, N.W.
Washington, D.C. 20036

By Mail

A handwritten signature in black ink, appearing to read 'Rosalind Manson', is written above a solid horizontal line.

Rosalind Manson
Legal Intern