

## **Internet Access as a Social Right: Implications for Social Citizenship**

Abstract: Emerging information technologies such as the Internet challenge us to think about whether access to the technology should be a privilege or a right. In recognition of the emergent social demand for broadband access, this paper urges a reconsideration of Internet access as a social right. This examination looks at how information has accumulated rights over time in the US. A distinction is made between the availability of information, which is tied traditionally to civil rights, and the accessibility of information, which is tied to social rights. The U.S. has a strong foundation in information availability, reflective of the way that communication is regulated more as a civil than a social right in the U.S. However, a comparison between the Communication Act of 1934 and the Telecommunication Act of 1996—the only two acts in which communication policy was federally legislated—reveals that at one time, communication was once considered a social right. A regime shift between the 1934 and 1996 Acts reframed communication within a market-based rationale assuming that free markets are best able to support civil rights and economic growth. As a result, access to services that were once considered a social right for all have become a privilege for some, reflecting an overall shift in which individuals are treated less as citizens and more as consumers. This trend is indicative of a scaling back of social rights, and arguably, a scaling back of social citizenship rights in the U.S. Rights expansion or shrinkage, as seen in the availability and access of information, can provide an indicator of the strength of social citizenship.

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## INTRODUCTION

Citizenship scholars have under-theorized information as a set of rights. The few studies that examine information in terms of citizenship tend to concentrate on specific aspects of information as a civil right, such as the protection of freedom of speech and ideas, the protection of intellectual property through copyright, and the shielding of information through privacy rights (Richstad and Anderson 1981; Boven 2002; Lessig 2001). Even authors who have theorized about the nature of information in a social welfare state tend to emphasize the protection of information as content or final product, and not as a means towards ensuring equitable access to social rights or as a social right in itself. Instead, these stories underscore the emphasis on information as a civil right (Splichal 1994, Mosco 1999; Jakubowicz 1994; Cohen 2001; Kellner 1991; Raboy 1991; Calabrese 1991).<sup>1</sup>

By emphasizing information as a civil right, we have created a disconnect that keeps us from thinking of how information would be utilized within a set of rights in a social welfare, market state. While we claim to live in an information technology society, current fashion puts public attention on the technology of information rather than on the information itself. Dan Schiller makes a similar observation when he argues that information has taken on a radically different property in a post-industrial society. He suggests that the way that we think of information fundamentally informs the kind of policies that we craft to regulate it. As opposed to treating information as a *resource* that is waiting there to be used anytime, he urges us to see information as a *commodity*, which would allow us to theorize about the social aspects of information, from its organization to production including the institutions that mediate and regulate it (2007). Employing such an unfashionable yet critical way of thinking would go a long way towards establishing information as a social right.

I suggest that one way to think about information in the United States is to look at the rights that information has accumulated over time. While there is a strong historical precedent for legislating civil rights in order to ensure the availability of information, there is less politicization around social rights as a means to ensure access to information.<sup>2</sup> Yet the different roles of information as a civil or social right suggest that they are complimentary and strongest when one comes with the other. Attention to this deep connection should be a strong part of rights reasoning around availability and access to information.<sup>3</sup>

Accessibility of information makes the availability of information meaningful. But without a universal guarantee of access to information for citizens, how much meaning does the availability of information as a right hold?<sup>4</sup> This is a relevant and timely

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<sup>1</sup> Raboy (1991) comes close to calling it a social project and Murdock and Golding (1989) proposed an extension of media access as a social right, but this was in the late 1980's when media access was a traditional broadcast model.

<sup>2</sup> This observation is of no surprise as the U.S. has a weaker set of social rights and arguably a weaker form of social citizenship in comparison to other social citizenship state (Gordon and Fraser 1998).

<sup>3</sup> For example, the right to vote is a stronger right when one understands the political system or the right to enter the labor market is stronger when one has a career path. The purpose of education as a social right is to enable citizens to make these kinds of decisions associated with political and civil rights. The same could be argued for information as a social right.

<sup>4</sup> In my discussion of availability, I refer to this as the individual's right to make information available as in publication of books, and the individuals' right to obtain information made available by the state.

question for social citizenship-esque states as the transmission of information in Western and globally integrated countries is conducted primarily over the Internet. Increasingly, large portions of personal, social, economic and political activity are mediated online. Businesses charge fees for not using their online interface and social services. Applications for many jobs are only accepted via email. Even some government services have made it easier to conduct activity online than in person. At first glance it would appear that if one does not have access to the Internet, one's social rights could be severely constrained.

Despite the increasingly critical role of the Internet as a medium in everyday life, we have yet to see a strong re-politicization of information rights through the support of information access in a way that reflects this new universal need. One way to consider bringing about this transformation would be by using a rights reasoning approach.

In this sense, the two most fundamental properties about rights are that they are universal and based on real needs (Kennedy 2002). A rights based approach is not a normative understanding of needs, but a consensus among citizens that a certain "thing" is a necessary social provision. The end goal of a rights reasoning is to depoliticize the right by legislating it in an act, thereby grounding it within institutions.

This exploratory paper urges for a reconsideration of Internet access as a social right in the United States.<sup>5</sup> For this reconceptualization to be realized, Internet access must be considered a fundamental, universal social need in and of itself, not as a secondary need or a special need of low-income or rural communities. As more segments of life are rapidly moving online, the number of online users has not grown at the same pace.<sup>6</sup> The high costs of Internet access exclude a large portion of society and as a result, those without Internet access are often the last to receive timely information.

When new communication technologies emerge, the more popular will become more integrated into the fabric of social life. As they do, these new "disruptive" technologies challenge popular understandings of what level(s) of access should be guaranteed to the new medium. Point in case, the telephone was considered a luxury in the U.S. when it was introduced in the late 19<sup>th</sup> century, but by the early 1930's, the underlying technology had become highly commodified. The telephone underwent a social transformation that rendered it a necessary medium of communication for all the people of the United States. The Communication Act of 1934 established a legislative precedent to treat telephony (the most popular medium of communication at the time) as a social right. It wasn't until six decades later that the 1996 Telecommunication Act reversed this development in deciding that access to information would no longer be legislated. The Internet, which was quickly becoming the most pervasive medium of communication at the time, was to be grounded in a market rationale without guarantees for access.<sup>7</sup> It is here that I support my proposal for transforming Internet access into a social right by arguing that the introduction of the 1934 Act provides us with a historical

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<sup>5</sup> This is not to say that other scholars have not entertained or seriously understood the association. For example, Horwitz's description of telephone access in the early 1900's, that it was a social fabric of life could be interpreted that it was received more along the lines of a social right, than a civil right (1989)

<sup>6</sup> The figures for annual Internet usage shows that 15% of those who live in households with income under \$30,000 have broadband compared with 57% of those in households whose incomes exceed \$75,000 (Pew 2006). When compared to the rest of the world, the U.S. is in 24<sup>th</sup> place for broadband access (Point Topic 2007).

<sup>7</sup> Although at the time of the 1996 Act, the Internet was not the most pervasive form of communication, it is today and yet we are still regulating it with the rules from the 1996 Act.

precedent for legislating access to communication. If the 1934 Communications Act legislated telephony as a social right, then we should be able to consider the same for the Internet.

The expansion and shrinkage of rights reflects “new patterns of citizenship” that demonstrate a “new regime[s] of rights” (Turner 2001: 204-5). In this vein, I argue that changes in the policy regimes that govern access to communication reflect the degree in which social citizenship is practiced. There has been a regime change in the norms that govern access to communication, which is now reflected in how Internet access is treated more as a civil than a social right. The questions of access is left up to the individual to secure through the market, instead of a combined effort by the state to work closely with the market to provide incentives to companies to offer equitable access. Hence, information as a right accumulates different kinds of rights depending on the social context of citizenship. This very rights accumulation can be seen in the history of U.S. telecom policy.

In section one, I show that to consider Internet access as a social right, we must unpack and un-attach the assumption that information on a whole is always coupled with civil rights. This problematic association reaches back to Marshall’s theory of modern social citizenship (1998). I then review other proposals that align communication with sets of rights outside of the social citizenship framework and I explain why their proposals fall short. In section two, I compare how communication has changed from a social good in the Communication Act of 1934 to a market good in the Telecommunication Act of 1996. In section three, I examine how practices from the 1996 Act reflect three neoliberal trends: the privileging of corporate over individual needs, market forces over government oversight and market goods over public goods.<sup>8</sup> I then explain what these trends mean for social citizenship. In section four I propose an understanding of information rights based on Schudson’s framework of the periodic changes in the “good citizen.” Schudson argues that the practice of citizenship has transformed several times in the U.S., and along with these changes comes a different emphasis on the role of rights and the exercise of rights for citizens (1998).

Before I proceed, I introduce several distinctions that will provide the tools by which to navigate my argument. The first is the distinction between civil and social rights. In a social citizenship model, there are three sets of universal rights: civil, political and social rights.<sup>9</sup> Civil usually refers to speech rights, political to political participation, and social to access to public goods or services deemed as universally necessary. Most relevant to this paper’s discussion are the role of civil and social rights.<sup>10</sup>

Thinking of information as a civil and social right also respectively maps onto my second distinction, the consumer versus the citizen. Goods conceived of as civil rights more often than not leaves the question of access to the good for individuals, leaving room for the market to interact with individuals as consumers, while goods conceived as

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<sup>8</sup> There are more than three practices that illustrate this shift, but in this paper I highlight three.

<sup>9</sup> This original framework was provided by T.H. Marshall, in which I will explain in the next section (1947/92).

<sup>10</sup> Civil rights make the capitalistic system, because it gives individuals the right to free association and a legal framework to enter the market. Social rights, such as education, are an enabling right; they give citizens the capacity to exercise political rights, such as voting, or civil rights, such as free speech.

a social right tend to involve the state (along with the market to a certain degree) in ensuring more equitable access to the social good for citizens.

The third distinction I make is between information availability and information accessibility. In the U.S., the former has a strong history tied to civil rights, while the latter has a weaker history because of its association with social rights. I provide here an anecdote from The Hitchhiker's Guide to the Galaxy to clarify this critical distinction between availability and access (Adams 1980). The main character, Arthur Dent, was upset when a demolition crew showed up at his house to demolish it without any prior notice. The crew insisted that Arthur had been given a fair chance to learn of this available information. To verify this, he finds out that this information was actually "on display" in a locked filing cabinet of a nameless bureaucratic office.

This story illustrates how availability of information is not equivalent to accessibility of information. Now let us say this happens in a market economy where citizens with varying levels of economic resources have varying levels of access to the filing cabinet. Without equal access to the filing cabinet, then the information really is not available to all citizens. Using these fundamental distinctions: civil versus social, consumer versus citizens, availability versus accessibility I can then begin to explain the contemporary dimensions of accessibility to information.

To clarify terms of reference, I refer to mediums that conduct information sending on electromagnetic spectrum as "access to communication." This refers to the actual medium or devices in which information is exchanged, such as the telephone, Internet, television, cellphones, spectrum, etc. Before information was conducted over the airwave spectrum space, it was communicated over more traditional mediums, such as newspapers. I refer to the process of finding information as the "availability of information," which is simply about the availability of the data, not the medium in which data is sent or stored. Information can be available but not accessible.

What are the pay-offs for looking at market shifts in telecommunication through the lens of citizenship? Economists, communication and media analysts, lawyers and policy makers have all been active in the discussion of communications.<sup>11</sup> All of these approaches collectively contribute to a rich body of rigorous and critical scholarly analysis on telecommunication policy and its effects, but usually sociologists are not part of this conversation. Examining information rights through a sociological lens allows us to look at the very institutions that policies are rooted in. In this case, we can examine the grounding and shifting of rights within the modern framework of citizenship by looking at regime shifts in telecom regulation.

My overall goal is to show how conceptions of information as a right have changed throughout history. My theoretical project is to show that historically, the availability of and access to information have been conflated with each other, and at many times muddled by scholarly analysis. My end objective is to show that with all of

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<sup>11</sup> Most economists side with neo-liberal calls for complete deregulation, citing the legal confusion and technological un-innovation that has followed the 1996 Act (Crandall 2005). While I sympathize with these calls for unfettered market growth and technological innovation, we can see from examples such as North Korea or Estonia, that governments can play a facilitating role in technology innovation and market development while setting clear legal terms. Just because the 1996 Act is not successful does not mean that regulation itself is useless.

the assertions that the global economy is in an information technology phase, more attention is given to technology than the information. I maintain that a renewed attention on information itself will allow us to ask about the structural roles that shape how information is handled as a commodity (Schiller 2007). And although part of that “handling” is done through technology, we should not focus entirely on the technology, but also the institutions that mediate its use. The introduction of new technologies invariably present a new set of social questions to be addressed by institutions, such as who has access to the technology, to what degree should people be guaranteed access, and when does it become a social need—all questions that can be touched upon by a discussion of citizenship.

## SECTION 1 – Setting the Discussion

In this section, I argue that to consider Internet access a social right, we must question the *de facto* assumption that access to information is coupled with civil rights. This assumption has its roots in T.H. Marshall’s history of modern citizenship. I then show other proposals for reimagining Internet access as a right and conclude with a discussion that favors the use of Schudson’s conceptualization of the changing notions of U.S. citizenship.

### Traditional to Revised Citizenship Frameworks

In Marshall’s version of modern citizenship, fully developed capitalistic markets in the 18<sup>th</sup> century determined labor relationships and citizenship rights. Three sets of distinct rights emerged, one after the other, beginning with civil, then political, and lastly social rights (1949/92).<sup>12</sup> The economic transition from feudalism to industrialization during the 1700’s led to the emergence of civil rights, which ensured an individual’s freedom in the marketplace.<sup>13</sup> Guarantees of civil rights, specifically freedom of speech, provided the legal framework for two citizens (or now two corporations) to form a private contract.

Free markets were contingent upon the right to freedom of speech and freedom of association to make such contracts in the first place. In early capitalism the degree of commodity and idea circulation in the marketplace was contingent upon the degree of accessible communication (Horwitz 1989). The assumption is that the civil right to freely sell one’s labor is predicated upon the free circulation of information about that labor. Those with the most access to information had the ability to make the most informed market decisions. As such, the degree of mobility in capitalistic markets is tied to the level of access to information and the communication infrastructure.

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<sup>12</sup> Citizenship expanded in the 1800’s to include political rights that guaranteed political participation. Lastly, social rights were added in the 1900’s to guarantee basic social provisions to guarantee a minimum standard of living.

<sup>13</sup> The transition meant that labor was detached from an individual to be sold and bought as a commodity, hence labor power. For labor power to be mobile, civil rights ensured that individuals could freely associate with whomever. Marshall found this (rights as supportive of economic mobility) most conflicting—the principles of formal equality that resided in citizenship competed with the principles and production of inequalities that rested in capitalistic markets. He contended that this tension would be the centripetal problem of social citizenship that would be mediated and complicated by the introduction of additional rights.

Therefore information and communication of it is critical to freedom of speech and free markets. But based up on my distinction, civil rights do not guarantee accessibility of information, only the availability of information. The longstanding assumption that free markets are critical to civil rights is thus traced back to the very emergence of civil rights, which leads to the heart of Marshall's work: principles of formal equality (social citizenship) compete with principles of market fundamentalism (capitalism), with the latter determining who has access to social goods. One way to remedy this fundamental tension of the inclusionary framework of citizenship in 18<sup>th</sup> century England was the role of social rights, which sustained and ensured fair access to other rights, such as civil or political. In particular, social rights created social programs designed to protect individuals from the whims of the market. Thus, social services played a critical role in supporting a healthy market.

My urging for Internet as a social right falls in line with Marshall's diagnosis of the role of social rights in social citizenship model. Uneven access to the Internet – a necessary social good – means that some Americans have access to timely information (and by extension, valuable information about social services) while many more do not. While social programs such as education play a critical role in producing a dynamic labor force, access to timely information via the Internet also plays a critical role in who can participate in the economy. However, modern day regulators and corporations assume that the principles of open communication are thought to work best when complimenting principles of free markets (Huber 1999; Crandall 2006). Thus we will see in the next section that the conceptual ties of civil rights as supportive of a free market are still strong.

### **New Imaginations for Communications as a Right**

With the growth of the Internet, scholars from various fields have theorized about online rights. Bovens (2002) makes the most moderate and realistic proposal by positing information rights as a fourth set of rights, in addition to civil, political and social. Part of this new package of information rights, includes Internet access, which Boven views as necessary to the “social functioning of citizens.” Not only is he calling for a new set of rights, he is making the case for an entirely new category of rights which then expands the framework of social citizenship itself beyond the three broad categories of rights. But many of the rights that fall under information rights in his model, such as Internet access, could be considered a social right, therefore questioning the practical utility of his conceptualization beyond an interesting exercise that theoretically rethinks rights.

Other scholars have taken rights reasoning of Internet access a step further with radical propositions to create a new category of rights beyond the social citizenship framework. Frankenfeld (1992) calls for technological citizenship; Hauben (2007) and Argote (2007) propose a netizenship framework; and Mosco (2000) calls for cyber-citizenship (Odzer 1997).<sup>14</sup> An alternative idea is to place access to information in the realm of human rights, as proposed by Melder, Birdsall and Rasmussen (2003). All of these scholars are calling for a democratization to Internet access under new citizenship

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<sup>14</sup> Mosco's (2000) explanation of cyber-citizenship is one of the more sophisticated arguments. He calls for the importance of creating a “culture of technology” that creates the conditions to include the technology haves and have-nots.

frameworks, but actually what they are proposing (equal Internet access) can be folded under the existing framework of social citizenship as a social right. Some of the problems with these proposals is not their ultimate goal of equal Internet access, but in the mechanisms for how they envision this goal to be reached.

All of these calls for new Internet rights are grounded in global citizenship frameworks and while this make for intellectually attractive projections, their basic assumption is that what is good for the West, is good for the entire world. These proposals are laden with technological determinism<sup>15</sup> and even more seriously, with technological chauvinism. The next flaw is that by calling for new forms of global rights, they assume that the Internet is a boundary-less territory and beyond the regulation and surveillance of nation-states. A rudimentary examination of Internet networking shows that this is not the case. The switching mechanisms and bandwidth for the Internet are still regulated by national governments and access is completely determined by sovereign states. Currently there is no existing international precedent for handling communication rights outside the nation-state, holding nations accountable to international Internet treaties, and defending these rights or much less enforcing these rights on sovereign states (Raboy 1998). There are no ratifying bodies in place to even institutionalize a new set of global rights. Advancing an entirely new set of rights overlooks the possibilities of expanding existing categories of rights to accommodate new social needs.<sup>16</sup>

The goal of the historical comparison in the next section is to make a case for communication to be repoliticized along the lines of social rights within a social citizenship nation framework. I will argue in the next section that a repoliticization of access to communication as social right took place in the early 1900's, leading up to the 1934 Act that universalized telephone access. The 1934 illustrates that communication access was once recognized as a public good, yet years of policy change have left us with a telecomm sector too dependent on market forces to truly support Internet access as a social right.

## **SECTION 2 – UNIVERSAL ACCESS FROM 1934 TO THE PRESENT**

As society changes, so do its needs. For example, when it became apparent that a national network of individuals who could efficiently access telephone service was an important public interest in the US, a revision of communication as a social right took place in the Communication Act of 1934, which established the policy of universal access to telephone service for all citizens.

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<sup>15</sup> Technological determinism is the assumption that technology itself will determine desired outcomes, such as social equality and improved quality of life.

<sup>16</sup> International institutions like the International Telecommunication Union (ITU), Internet Corporation for Assigned Names and Numbers (ICANN) are limited to select non-governmental organizations, transnational telecommunication companies and nation-state representatives. These organizations do not represent all countries as they are selective about who sits on these boards. The ITU and UNESCO would need to open up to a broader range of participants for any truly international agreements to succeed (Keane 1995).



This section examines the regime shift in universal access between two federally legislated telecommunication policies: the Communications Act of 1934 and the Telecommunication Act of 1996. The Act of 1934 established universal access to telephony, which suggests that access to telephone service was once formally considered a critical social right. The 1996 Telecommunication Act diverged from the 1934 Act's commitment to universal access. This drift is due to changes in justification for regulation: in favor of regulating telephony as a public good is now increasingly abandoned for regulating communication as a market good. This narrative sets up a meaningful background in which to discuss citizenship theory around information rights.

### Early 1900's: From Universal Chaos to Universal Access

The emergence of telephony as a public good is critical to the passing of the 1934 Act and an understanding of how access to communication can be considered a social right. A struggle in the definition of what kind of good communication stood for: private or public led up to the act. To understand this struggle, we must examine how access to communication was framed on a federal level and social level.

Two critical decisions by the federal government in the early 1900's had and continue to have a long-lasting impact on the way access to communication is regulated in the United States (Robinson 1989). The first decision was when the government determined in the early 1900's that the communications infrastructure would not be a federal utility, such as the postal service, but a commercially operated industry. Independent communication businesses were allowed to exist and charge customers for service.

The second resolution was when President Hoover announced in 1921 to the entire telecommunication industry that the airwaves in which businesses were conducting commercial activity were legally public space, thereby abolishing private ownership of spectrum space (Robinson 1989).<sup>17</sup> Because the government deemed access to communication as a private activity taking place in public space (the electromagnetic spectrum), regulation has always been and continues to oversee private use of public space.<sup>18</sup> These two resolutions shaped the ultimate role of telecommunication policy, which is to regulate market activity in public space in the name of public interests and healthy markets.<sup>19</sup>

Interestingly, these two outcomes shaped how companies advocated for or against a natural monopoly. The largest telecomm company, AT&T, argued for a telephony monopoly while smaller independent companies argued against a monopoly. Although they advocated for different processes, both sides insisted that their position would best serve the public interest and the market. AT&T's argument won. Considering that this was during the New Deal Era, when anti-trust laws from the Sherman Act of 1894 to the Clayton Act of 1914 had been already been established and were being carried through: how the largest company, already accused of predatory

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<sup>17</sup> At the time, airwave activity referred to radio, television broadcast, and telephony.

<sup>18</sup> Spectrum space was established as public property in the 1927 Radio Act and reinforced again in the 1934 Communications Act.

<sup>19</sup> Except for one year where the government took over the airwaves in 192\_ and immediately handed it back to the companies.

monopoly behavior, convinced the government that a monopoly run by AT&T would be the best choice for the public interest was quite a feat.

AT&T framed competition as harmful to the public interest and to market growth and their point of view won over the regulators. There are two aspects that are necessary to understand this framing: the social reception of the telephone in the 1900's, and the government's logic in siding with AT&T in the passing of the 1934 Act, which enshrined telephony in public interests. I will discuss the former aspect below.

The social reception of the telephone in the early 1900's is critical to understanding how access to the telephones came to be seen as an absolute social necessity and how AT&T was able to capture the public understanding to position themselves as the best company to take care of America's telephone industry. Fisher's sociological history of the telephone reveals that telephones transitioned from being a novelty to a common-place object during the early 1900's (1992).<sup>20</sup> The telephone was seen as a necessary tool for business, weather, health and city emergencies. For example, farmers conducted business and personal matters with telephones. The role of the phone as a form of security against geographic isolation was critical. It was used to warn farmers of tornadoes or floods, to get medical help for humans and animals, and to report accidents. Farmers could get this critical information to make decisions about their crops and livelihood because of the technological medium. The mundane usage here shows that a profound connection of access to communication is integral to accessing information.

Farmers initially did not have access to telephones. They demanded it, but telephone companies of all sizes would not build out to rural areas.<sup>21</sup> From the beginning, discrimination to telephone service was rampant. As a response, rural farmers constructed and maintained their own self-capitalized, not-for-profit phone lines (Fisher 1992). The end-result over years of unregulated telephone infrastructure, was a chaotic, overlapping and inefficient system. Hundreds of independent telephone companies (with AT&T being the largest) and thousands of rural telephone cooperatives,<sup>22</sup> all operated independently of one other. Therefore if a person had a telephone line with company A, they could not connect to customers in company B or C and so on. The industry was chaotic to the extent that there was no unifying standard and no mandate for networks to be connected to each other.

### **The 1934 Act: Corporate Monopoly in the name of Public Interests**

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<sup>20</sup> The telephone was seen as a social necessity among middle- to upper-class urbanites and rural farmers in the early 1900's. Popular advertisements in magazines for middle- to upper-class families, emphasize popular attitudes around the telephone in the house. Around the time period of World War One (1920's), the family budget for a middle-class included a line-item for a telephone. Telephone installation rates were higher than actual calls places. People were installing lines even when they did not use it because of the popular conception that it as necessary service (This parallels cellphone adoption rates, where many people buy cellphones not for daily use, but for emergency use). Doctors and their middle-class patients had fully integrated the telephone into their communication protocol by 1924.

<sup>21</sup> Although people of all regions and classes asked for their neighborhoods to be serviced, there was evidence that even the largest company, AT&T Bell, would not construct service in non-middle class, non-urban and non-white communities. Even blacks with the same level of income as whites were serviced at a lower rate than their white economic counterparts (Fischer 1992).

<sup>22</sup> In the US Census count of 1907, 17,702 separate private rural circuits, 565,000 telephones, 468,000 miles of wires were in service (Brooks 1975).

If the government had mandated that all networks connect to each other, this chaos could have been resolved. But the 1934 Act established telephony as a natural monopoly.<sup>23</sup> In this case, the power of AT&T to successfully convince the government rested in the notion that a natural monopoly would best serve the public interest to extend telephone service to all citizens, who could then use the service for conducting business in an efficient way. Their argument supported the idea that easy communication supported market growth, an idea that goes back to Marshalls' discussion of the free communication and free labor as supportive of each other.

The Communication Act of 1934 was passed and within the act telephony was acknowledged as a natural monopoly. The Federal Communications Commission (FCC) was established as a new regulatory infrastructure to guarantor the public good of telephony (Horwitz 1989).<sup>24</sup> In return, AT&T agreed to keep rates low and affordable, not discriminate against customers, and offer high quality services to all individuals. The origin of the notion that all individuals should have access is found within the language of the 1934 Act. The notion of universal access and the beginnings of access to telecomm as a social right was introduced when AT&T agreed to not discriminate against customers. The act mandated

“...to make available, so far as possible, to *all the people of the United States* a rapid, efficient, nationwide, and worldwide wire and radio communication service with adequate facilities at reasonable charges.....”<sup>25</sup>

The clause, “to all the people of the United States,” is a critical aspect of this 1934 Act because it sets the precedent of “universal access.” Essentially, the Act made “...a clear statement that access to communications network is such a basic part of social life that it was now a necessity” (Aufderheide 1999: 20). Access to telephone networks was thus enshrined as a social right. However, there were not immediate programs created to ensure that this right was carried through.

It only later on in the 1960's were new tariffs created to bring more users into the network. Complex cross-subsidies were levied on all customers to build out rural telephony and increase the overall size of the network. And indeed the network of users did grow. But this did not happen without its own set of problems and not to mention that it took at least 30 years for this process to begin and only did it begin when the government mandated AT&T to expand its services. While these tariffs and cross-subsidies are definitely a nod to the social need of telephone, the implementation was inefficient and placed the burden of universal access on individuals. Most importantly,

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<sup>23</sup> A basic understanding of a monopoly is when a one company has most of the control over a product or service and uses this control of resources to set the value and determine who has or does not have access to the goods and can or cannot compete. A natural monopoly is the idea that an entire industry's goods are more efficient when in the control of one entity, instead of several. AT&T argued for a normative version of a natural monopoly, a statutory monopoly that calls for government prohibition of competition (Thierer 1994). Other examples of government sanctioned natural monopolies include, electricity, mail, and water services.

<sup>24</sup> The Act itself did not introduce any new regulatory infrastructures, nor did it give AT&T the legal rights to run the “natural monopoly.” Rather, the act created a cartel-style management of existing companies by handing over the entire industry of telephony to AT&T (Horwitz 1989). This created some controversy, at the time, the government was convinced that telephony was truly a “natural monopoly” and treating it any other way would return to a state of chaos.

<sup>25</sup> [www.fcc.gov/Reports/1934new.pdf](http://www.fcc.gov/Reports/1934new.pdf) italicization is author's emphasis.

only when AT&T realized that it stood to be fined from the government did it begin to work with governments on increasing its network.

### Whither Universal Access?: From Inefficient Subsidies to Overturned Monopolies

The next time the telecommunication industries experienced a radical reorganization was in 1984, when the FCC broke up AT&T's monopoly on local service. This reorganization supported universal access in name, but in practice it created new barriers to the telephone infrastructure through taxes and higher rates.<sup>26</sup> In addition, the FCC allowed for an increase in local rates to make up for the lost fees provided by its parent company. "AT&T and FCC manipulated rates so that service might be extended universally" (Horwitz 1989:152). The combination of the increase in rates and the new taxes, deregulation did not lessen burden of access on individual subscribers. As Horwitz argued,

"...regulation barely secured these broader ends of equity and fairness...as the technologies themselves change and the separation between them becomes more problematic, the broader notions of the public interest lose their material and legal moorings. This underscores the other great irony of deregulation." (1989: 16)

Deregulation in this case was ineffective, because by mandating universal access at the same time but allowing corporations to indiscriminately tax all their customers, the goal of universal access becomes harder to realize.

As a result, by 1990, 46 states had telephone welfare programs that subsidized installation and/or monthly service. Yet these state administered programs were mired in bureaucratic inefficiency and failed to reach the most disadvantaged citizens (U.S. FCC 1990). Telecommunication as a social service was not strengthened by these attempts at universal access. In the government's attempt to break up the AT&T monopoly, rates skyrocketed. Telephone welfare did little to reach disadvantaged individuals and to completely fulfill the mandate of universal access, and even the FCC has admitted the failure of these programs (79-82: U.S. FCC 1990).<sup>27</sup> Indeed, this was the first step in the confusion of telephony from a social right to a market commodity, and the beginning of a conversion from thinking of users not as citizens but as consumers. As a result, there is a thinning of social citizenship, where long-standing social rights become stigmatized as "welfare hand-outs" and incumbent upon the individual or nuclear family to fulfill the social need (Fraser and Gordon 1998).

The idea of a "free market" was upheld as a guiding telephone access worked for those who could afford the service, despite the obvious point in case here that the market did not work so well in equalizing access. And the market actually became not-so-free when telephone welfare was implemented by regulators in the form of high cross-subsidies that ended up increasing the burden of universal access on *individuals*, *not corporations*.

<sup>26</sup> It mandated that all telephone subscribers, regardless if they use long-distance or not, to pay a tax to ensure universal access to a long-distance network.

<sup>27</sup> At the time of the Act, telephone penetration rates held steady around 93% in the 80's and 90's (U.S. FCC 1990).

## The 1996 Telecommunications Act: Reinstating Distinctions, Reinterpreting Universal Access, and Reforming Public Space

The next federal attempt to institutionalize universal access took place in the Telecommunication Act of 1996. Yet, the act actually did very little to universalize telephone service because by that time, because it was already a universal technology, with over 94% of households with telephones.<sup>28</sup> Because the FCC did not ensure that AT&T take immediate measures in the 1934 Act, by the time of the 1996, the 1934 inspired definition of public interest lost its original luster, sidelining the implicit acknowledgement to telephony as public interest for individuals. In essence, the 1996 Act created a "bipolar quality to current communication policies" because it was full of contradictions and confusion (Aufderheide 1999: 7). As a result of the legal chaos, expansion of services did not speed up or spread out initially.

One of the cornerstones of this Act was the founding of the Universal Service Fund (USF), the first comprehensive federal program in the 63 years since the 1934 Act created to carry out the existing policy mandate of universal telephone access. This legislation appeared to strengthen social citizenship by treating communication as a necessary social provision. However, a closer examination reveals that the Act of 1996 did little to democratize access to communication for individual citizens.

Internet access was never added to the scope of communication mediums covered by the act. As such, this omission was no accident. The Internet, a new communication technology at the time, was and still is radically different from the telephone. While both transmit information, the Internet allows one to access information at any given time, store information, post information to an audience and conduct activities central to everyday life. Both telephone and cable industry experts were fully aware of broadband Internet and VOIP technologies during the run-up to and the passage of the 1996 Act (Huber 1999). They knew that the artificial yet stable boundaries that divided communications and information infrastructures were about to be radically blurred, but it worked to their benefit that the 1996 Act maintained a legislative distinction between telephony and information because it left the question of Internet access up to companies, not the government. Another practice that began in the 1990's and gained more popularity after the Act was passed was the auctioning off of spectrum space to the wealthiest wireless telephone carriers. This was a critical moment in the handling of the public spectrum that has massive implications for communications as a social right in which I will explain in the next section.

These three practices: implementation of the USF, omission of Internet access from key regulatory clauses and selling of spectrum space, reflect underlying changes in federal approaches to telecomm policy-making, from a corporate to paternalistic ideas of governments as protector of social rights to a neoliberal market-driven approach. All of these practices demonstrate a regime shift of corporate needs trumping over individual needs, market forces being privileged over government oversight, and access to telecommunication infrastructure becoming a market good instead of a public good. As a result, telecomm regulators increasingly favor policies and legislation that benefit

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<sup>28</sup> It took over 50 years to reach this figure through a complexly inefficient cross-subsidy model.

certain groups of individuals and companies instead of all citizens. Already there is a consistent agreement among communication scholars that the Act did much more for corporations than individuals, although it appeared to usher in progressive measures. Let us examine how these measures have played out.. (Ackerman 1999; Aufderheide 1999; Huber 1999).<sup>29</sup>

### Section 3 – Practices Reflecting Neo-Liberal Aspects

In section one I showed that access to communication is a vital component of social rights. What we take to be self-evident—communication as a civil right—is not so evident. The second section traced the change from the 1934 Act in which communication was specifically defined as a social right, to the 1996 Act in which access to telecom moved away from social rights towards. These two policies reflect a regime transition from corporate paternalism to a neoliberalism, and from the notion that governments should regulate access to telecom, to an emphasis on market driven consumerism. I ground my analysis with pre-existing research that argues that one of the consequences of a neoliberal logic are that telecommunication policies from the 1996 Act and on tend to privilege consumers over citizens, a process that reverses the 1934 Act that established access to communication as a social right (Aufderheide 1999).

#### 3.1 Corporations over individuals

The first neoliberal trend in telecom policy-making, the privileging of corporations' needs over individuals', is reflected in the two telecom practices that are found in the 1996 Act. The first is a problematic distinction between "telephone" and "information" services. The wording of the Telecommunications Act of 1996 distinguished telephone service providers as "telecommunication carriers" and Internet providers as "information carriers." Both industries lobbied to retain these artificial distinctions, since it allowed companies to minimize regulation and its impact on profits (Aufderheide 1999). For example, the USF, mandated universal access only to telephone service and not all kinds of information services, such as Internet. Since the 1996 Act established Internet providers as a distinct category from telephone services, cable providers can sell cable Internet service (and later, digital "telephone" services like Voice Over IP - VOIP) while remaining exempt from the USF.<sup>30</sup> While this exemption enables them to offer competitive rates, it also frees them from having to guarantee affordable cable Internet for low-income individuals.<sup>31</sup> Essentially, those who benefited the most from Internet services were not all citizens, but select consumers.

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<sup>29</sup> Policy experts have even argued that the 1996 Act was a business deal between major telecommunication players and the government, with profits as the most important goal (Crandall 2005; Huber 1999).

<sup>30</sup> All telecommunications (analog and digital) travel on publicly-owned electromagnetic spectrum space property. For example, landline telephone calls and DSL Internet service that is delivered through telephone lines all travel on the same pipes.

<sup>31</sup> For example, companies can offer low prices on VOIP, but this is only useful for those who can afford Internet service in the first place. Essentially, corporations offering Internet-based services get out of the USF, giving them free-reign to offer service to their targeted customers at the expense of all potential customers.



The second practice that reflects a privileging of corporate over individual needs is a sub-program of USF, E-rate, a subsidy program for Internet access, which purports to guarantee Internet access for individuals. But this program is only for schools, hospitals and libraries, thereby benefiting institutions directly, not individuals. While individuals can use the Internet at these public institutions, they do not have direct access in their own home like most middle- to upper-class users. Additionally, the subsidies for E-rate come from the USF (CRS 5:2001). Telephone service providers who do have to participate in USF have passed the economic obligations of the USF partially onto individuals in the form of a monthly surcharge. Individual telephone subscribers, not corporations, pay for Internet access at institutions.<sup>32</sup>

Although the 1996 Act established the USF fund as an attempt to serve public interests, in actuality this fund did little to benefit individuals. The greatest beneficiaries of the USF and E-rate have been the industry and institutions involved, and not the individuals. By targeting institutions, it puts all the emphasis on getting access to the institutions and actual access and usability among individuals is an afterthought. E-rate brackets off Internet service as a social right, but only for public schools, hospitals and libraries, completely ignoring individual citizens. Individuals bear the costs for a limited concept of universal access that only benefits select public institutions, and worst off these initiatives fail to reach the least advantaged. Private consumers are paying for the taxes on modified version of communication social rights. If regulators really were thinking about public interests, then individuals would be able to participate in E-rate.<sup>33</sup>

### 3.3 – markets know how over government know how

The second neoliberal trend, the privileging of market know-how over government know-how, evident in the 1996 Act is regulating the telecom market to be more open to competition without counterbalancing this approach with more social oversight. As a result, the original goal of regulation in the name of public interests shifts to regulation in the name of efficient markets.

Historically, telecommunication regulation has been framed as an issue of public interest.<sup>34</sup> President Hoover declared in the 1927 Radio Act that "the ether (electromagnetic spectrum) is a public medium, and its use must be for a *public benefit*," indicating that communication has long been considered a public good (Aufderheide

<sup>32</sup> While E-rate has had a sizable impact in increasing Internet access from 35% to 95% in public schools, when examined on the level of individual student achievement, no significant benefit was found (Goolsbee and Guryan 2006).

<sup>33</sup> The most recent attempt to lobby for Internet access as a social right in the U.S. was the Universal Service for Americans Act, introduced in January 2007 to amend the Communications Act of 1934, requiring each communications service provider to support universal service for *all* communication technologies. Although this act is the first policy attempt to include Internet access in universal service for all citizens, there are two problems. First, the targeted beneficiaries are "rural Americans," not all disadvantaged Americans. Secondly, funding for universalized Internet access is supposed to come from a broadening of the existing USF tax from the 1996 Act (that taxes all landline subscribers) to include Internet service as recipient of collected taxes. This act would not take the burden of the Universal Service Fund tax away from individual telephone subscribers. If anything, a broadening of the tax base to include Internet access may result in tax increases. Future attempts to revamp universal service cannot rely on a tax base composed of telephone subscribers. Telecommunication experts overwhelmingly agree that any form of forced universal service that creates a welfare-like program defeats the purposes of universal access (Mosco 1989; Crandall 2005).

<sup>34</sup> I refer to public interest using Aufderheide's definition, that this refers to every stakeholder in the process, hence every citizen.

1999).<sup>35</sup> The 1934 Act follows up on this declaration by legislating telephone access as a universal need, which “clearly embody principles of social equity” and the “principle that access to information and to the means of communication is part of being a citizen.” (Horwitz 1989:14). The 1934 Act made the government, in particular the FCC, as the sole caretaker of public interests in the area of telecomm.<sup>36</sup>

The 1996 Act goes to the other extreme of paternalism and promotes market fundamentalism. Regulation embodies a neoliberal marketplace approach to the public, which treats people more like consumers than citizens (Aufderheide 1999: 5). Nowhere in the act, even in the USF or its sub-program E-rate, are measures to be found that ensure that Internet access be made available to all citizens. This oversight is a neo-liberal approach that overwhelmingly privileges markets over governments in ensuring access to social goods.

Another example of the neoliberal logic, in which markets are presumed to be better regulator than governments, relates to the regulation of spectrum space. When President Hoover declared spectrum space to be public property in 1927, regulators gave telecom companies short-term licenses for operation within the spectrum under the supervision of the FCC.<sup>37</sup> The underlying logic was that governments were better suited to be the overseer of such precious and limited space than markets (Huber 1999).

Since the 1996 Act, the government is no longer a distributor of licenses for operation within spectrum space, but an auctioneer. The FCC now holds auctions for telecom companies that wish to use spectrum space for broadcast or digital communication. Only the largest and wealthiest companies are able to compete and purchase rights to who gets to use spectrum space. The underlying logic now appears to be that markets are better suited than governments to oversee usage of public spectrum space. This new level of market involvement suggests that regulatory priorities have shifted from protectionism and monopoly for the sake of public interests, to neo-liberal free-market competition for the sake of a few big companies.<sup>38</sup> Citizens as clients have taken a backseat to select consumers as customers.

### 3.2 Public to private property

In 1994, the FCC began to auction off spectrum space to the highest bidders in order to generate revenue for the government (Crandall 2005). Recent developments in auction spectrum and definitions of universal access in the 1996 Act were supposed to increase competition, not ensure that the same players solidified their place in the market. Yet, the FCC handled the spectrum auctions as sales of private, not public property, which ultimately benefitted the current corporations, not new entrants.

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<sup>35</sup> Italic is emphasis by the author

<sup>36</sup> Aufderheide argues that the government becoming the sole overseer of telecomm led to a paternalistic approach to markets, which ultimately hurt the public because it stalled innovation and competition (Aufderheide 1999).

<sup>37</sup> This approach, called the “Beauty Contest,” has been criticized for letting the government to have too much discretion in deciding which companies would receive a licenses: often, licenses were handed out based on arbitrary and personal decisions, benefitting established companies and hurt new entrants to the market (Kempler).

<sup>38</sup> In essence, two tracks were created in the 1996 Act, a fast track for companies to enter the competition and a slow track for individuals gain access to the Internet (Ackerman 1997: 77).



The logic underlying recent auctions, suggests a growing belief that market-based approaches to public property stimulates economic growth. Accordingly, the FCC is regulating in the public interest by generating revenue by increasing the value of spectrum space (McDowell 2000).<sup>39</sup> As a result the FCC is more of a market player than a market regulator.

Quasi-privatization of valuable spectrum property points to the trend that “liberalized models of infrastructural competition are widely attested to deserve hegemonic status as modes of distributing many types of goods and services previously considered to be by” public goods (Graham and Steven 2001: 91). The last auction to take place in 2008 has already received much criticism for being badly designed because instead of creating more competition, it solidified the market dominance of the two largest communication companies (Olga 2008).<sup>40</sup> Essentially, winners of the auction were companies who had enough capital to invest in long-term operation on public spectrum property.<sup>41</sup>

Consequently, the corporations with the most “desirable” region of the spectrum have more power to decide which regions to serve, or which regions to offer an increased variety of services. One of the effects of badly run auction spectrums is that wealthier neighborhoods and regions have more varied service options.<sup>42</sup> Graham and Marvin note that since the 1996 Act, “there has been a notable shift from treating the user population as a largely homogenous group of citizens, with notional or formal rights, to a heterogeneous group of consumers, carefully differentiated according to how lucrative they are to serve” (2001: 236). In essence, badly designed auctions allow the market to be the sole dictator of the price of communication.

## Conclusion

Since 1934, the goal of regulating for “public interests” has radically shifted. While the 1934 mandated that AT&T attend to the public interests of telephony for all *individuals*. Markets have replaced governments as caretakers of public goods. If the very medium in which all of Internet communications will travel through is entirely dominated by corporations with minimal socially minded government oversight, few social correctives will ensure equal and fair access to this public medium for all citizens.

The problem is not merely that companies are motivated by profit and treat citizens only as consumers, but that this motivation is not coupled with a regulatory oversight to ensure public interests. With less regulatory oversight, a few dominant

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<sup>39</sup> This means that the FCC “is not a disinterested group in the dealings,” and Pestle and Miles go as far to say “the FCC is in a conflict of interest position because it has been directed by Congress to help balance the Federal budget by selling off airwaves for cellular service” (1997, quoted in McDowell 2000).

<sup>40</sup> The big winners of the most spectrum space were AT&T and Verizon, already the two largest communication companies in the U.S. who control 75% of the country’s total wireless service revenues and nearly 53% of U.S. wireless subscribers.

<sup>41</sup> Economists point out that public auctions raise large amounts of money that can potentially pay for social services. Yet it is not auctions themselves that are wrong or ineffective, it is badly designed auctions that award additional spectrum space to already dominant corporations.

<sup>42</sup> Newly liberalized communication markets post 1996 Telecommunications Act means that providers can now “cherry pick only the most lucrative business and professional customers’ from across the urban landscape” (Schiller 1999: 52, cited in Graham and Marvin 2001: 236).

industry companies cherry-pick their own customers so that those who “already have service or who can afford to get connected to the existing system” and as a result it is too often that “the urban poor will be overlooked” (Kalbermatten 1999).<sup>43</sup> As a result, policies that are supposed to regulate a public good for all citizens become policies that regulate a private good for consumers who can afford the service. Market based citizenship works best for privileged consumers and not all citizens.

As markets become the ultimate determinant of how social goods are distributed, civil rights are increasingly de-coupled from social rights. As a result, social citizenship is weakened and civil rights are guaranteed primarily and most strongly to the strongest market participants. This is reflective of an overall neoliberal shift in treating individuals less as citizens and more as consumers, and indicative of a trend in the scaling back of social rights, thereby a scaling back of social citizenship.

## **SECTION 4 – Changing Citizenship, New Rights**

In looking at how access to communication has changed throughout the last century in the U.S., it is evident that a regime shift in telecommunication regulation reflect deeper assumptions of how access to information should be managed and in effect, access to communication technologies. The historical narrative from the previous sections sets up a meaningful background to revisit the questions that I initially raised, which is how information rights changes as new technology emerges.

The telephone transformed from a luxury to a socially important commodity. This transformation led to a change in the kind of rights attached to the technology and a creation of an infrastructure developed to regulate the usage. When it was seen as a social necessity, a set of complimentary social rights were legislated to compliment this need. The same could be argued for the Internet, that as it becomes less of a privilege and more a need, then this changes the kinds of rights associated with it.

As such I will argue that changes in technology’s capacity to mediate information may shift the kinds of rights attached to information. Schudson’s work has argued that over time, the core concept of citizenship in the U.S. has changed (1998). He traces four broad shifts in what an ideal citizen looks like. Depending on the time period of citizenship, different sets of concern, and in effect, rights, were at the forefront of popular discussion in politics.

In early U.S. history, the deferential citizen was the first model of a good citizen. This kind of ideal citizen deferred to the voted leaders. There was little talk in this period about citizens being informed of information as they yielded to their political representative. This “politics of assent” gave way to the early 19<sup>th</sup> century’s loyal citizen, where loyalty to one’s political party was valued. The late 19<sup>th</sup> and early 20<sup>th</sup> century’s progressive era gives way to the informed citizen. It is in this period that the right to information became salient in American history, hence why Schudson refers to this model as a “politics of information.” It was believed that information and news should be made available and produced independent of party papers so that citizens could

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<sup>43</sup>Quoted in Graham and Marvin (2001: 223).

formulate opinions independent of political parties, as parties were seen as corrupt political machines. Complimenting the informed citizen is the newest model, the expressive citizen. This is a rights conscious citizen who demonstrates, litigates, sues, and advocates. Schudson has argued that as the concept of a “good citizen” has changed in the US, so do the kind of rights that are fought for by citizens. Extending his argument, I would argue that information rights changes from one right to another depending on the kind of citizenship that is practiced.

It is of no surprise that the Communications Act of 1934 followed the heels of the Progressive Era, when the “right to information” was substantively introduced into the American vernacular (O’Brien 1981).<sup>44</sup> This is the period in history where the good citizen was the informed citizen. Reforms movements were popular and participation in politics entailed an independent information gathering process. The telephone during this period was seen exactly as such a medium that facilitated information gathering about topics ranging from weather to politics to health needs (Fischer 1989). This is reflected in the language of the 1934 Act that refers to telephony as a necessary medium for all.

A brief aside about the founding of the 1934 Act, in establishing telephony as a natural monopoly, the FCC regulators took a commerce-based approach to regulation (Horwitz 1989). Using the market to distribute a socially deemed good reflects how social rights in the U.S. were never unadulterated. Private institutions have been used all along to provide social provisions. From the beginning, social rights to communication were mediated through a market. This mixing goes to show that in the U.S., the government never purely administers social rights. Perhaps then this is not surprising that universal access was not an immediate success with telephony until the government mandated that AT&T increase its network by ensuring access to low-income and rural customers. Many of times, social rights in the U.S. are mixed in with markets and private concerns. Another aspect of rights that emerges from this story is that rights can be bundled together. A civil right can support a political right, while a social right can support a civil right.

Returning to the main argument, other than the 1934 Act, we have yet to see any other acts to ensure universal access to communication in the same way. Ushered in during a period that followed the Progressive Era (1890-1920), the New Deal was an era in which many of U.S.’s current social rights were created and/or strengthened. Since then, social welfare programs that were established in the 1930’s have disappeared or have weakened considerably.<sup>45</sup>

What we have seen in U.S. history is a strong and successful effort to legislate information as a civil right. The process began in 1945, when the executive director of the Associated Press, Kent Cooper, declared in a speech that “citizens are entitled to have access to news, fully and accurately presented. There cannot be political freedom in one country, or in the world, without respect for ‘the right to know’” (O’Brien 1981: 32). After that speech, the journalism association, Sigma Delta Kappa, became allies of

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<sup>44</sup> The first time the phrase the “right to know” was used, is found in Article 1, section 5 of the Constitution. Thank you to Michael Schudson for directing me to this citation.

<sup>45</sup> For example, recent attempts by President George Bush in 2000 called for a dismantling of one of the most entrenched social welfare programs, Social Security.

Congressman John Moss, who pushed for an act that would legally require the government to make information available to all. (O'Brien 1981). This resulted in the passing of the 1966 Freedom of Information Act (FOIA), legally requiring all federal levels of governments to make their records publicly available online. The FOIA demonstrates a time period in the U.S. where there was strong citizen support to ensure the right to the availability of information, a civil right.

The FOIA was updated with the Electronic Freedom of Information Act Amendments of 1996 (E-FOIA), which was an attempt to make federal information more easily accessible to the public by requiring federal agencies to put their material up online into the "Electronic Reading Room." The FOIA and the E-FOIA are examples of a commitment to making information available along the lines of civil rights, but not to making the access to the medium of communication accessible. The relationship between telecom infrastructure as a condition for the full exercise of citizen's civil rights have thus been articulated legislatively, but the social right needed to enable these civil rights—access to that infrastructure has been a decreasingly low priority.

Schudson's model proposes that we are now in a mixture of the informed and expressive citizen, which matches the kind of rights that have so far been legislated and enforced (1998). The informed citizen model ushered in the one of the strongest institutions for information civil rights. It seems timely for the expressive citizen model to call forth rights that would ensure the accessibility to information. As such, social rights ensure that individuals can exercise their civil rights. While information civil rights best supports a citizenship model that values information itself—the informed citizenship, I argue that information social rights best support a citizenship that values an active citizen—the expressive citizen. Therefore, the importance of access to communication not only fulfills what a comprehensive set of social rights *would* look like, but also what a comprehensive set of civil rights *should* look like. Could it be that the expressive citizen model could resuscitate the weak model of social citizenship found in the U.S., and in effect weak set of social rights to information in the U.S.?

This question can be explored through Gordon and Fraser stance that the U.S. has a weak form of social citizenship (1998). They posit that the U.S. has a contractual version of citizenship, where each side (the people and the state) has to put something in to get something out. This contractual conception of citizenship limits the development of social rights, while increasing the role of civil rights. As a result, citizenship in the U.S. is more a privilege than a right.

Without denying Gordon and Fraser's point of view, I suggest that they make this assertion about the privileged nature of rights because they are speaking to the thick history of civil rights in the U.S. While in name civil rights are universal, because the nature of civil rights tend to oblige the state to refrain from interference, this leaves room for the market to become a mediator in the right, which then the rights tends to regress back to a privilege. This can be best understood through a distinction borrowed from the discourse of human rights. Civil rights are seen as negative rights because it obliges the state to refrain from interfering in an individual's ability to do something. This in effect leaves a vacuum and opens the room for the market to play a more central role in providing access to the right. On the other hand, social rights are seen as positive rights because it obliges to state to intervene to assist individuals in their ability to do something (Shafir 2002). The state plays a more central role in mediating social rights.

Gordon and Fraser's argument that rights in the US are more a privilege holds precisely because the U.S. does not have a citizenship that is more grounded in civil rights than social rights. Yet could there be a way to imagine how a right stays more or less a right instead of slipping back into a privilege? I suggest that there could be two stages to how a right develops: civil and social, and which right it is more aligned with indicates the how regulator regimes regulate the right.

In terms of information rights, it has accumulated different rights through various historical periods. In the civil rights period, information has accumulated rights that focus on the availability of information. Information as a social right developed rights to the accessibility of information. What is interesting is that rights that begin in one form can turn into another form. Information does not just accumulate new rights, but old rights can take on additional characteristics. And this returns us to what Marshalls saw as most fruitful for a social citizenship, which is that as new needs emerge, new rights can be added to the basket of rights. And new rights do not only emerge out of institutional responses, but also from a combination of institutional forces, such as the market or regulatory regimes, and of conditions which make it possible for people to rally for an privilege to be guaranteed as a social need for everyday life.

Another way to handle what Gordon and Fraser see as a privilege model of citizenship is that the key to rights politicization is to make privileges readily universal for all citizens, which in theory solves the problem of unequal channels to a good. The key for information rights reasoning is to be conscious of for "who" rights accumulation moves access to a good from being a privilege to a right. This is especially important as Gordon and Fraser point out that many of times expansions of rights can shrink the right of others.

Returning back to the narrative of telecommunication policy, one aspect that could be considered for Schudson's framework is to ask how his model helps us understand why information rights is less important now? To do this, I think we would have to move beyond his fourth model and question what a fifth model of citizenship looks like. I have argued that the regulatory regime that crafted the 1996 Act governed telecom policy with a neoliberal logic. In this kind of regime, individual's social rights are in tension with corporations that act as if they are individuals with access to social rights, such as corporate welfare. Corporations, not public institutions or individuals, enjoy the social rights that come along with neo-liberalism. Schiller has already argued those corporations enjoy the fullest set free-speech rights (1989). Perhaps alongside the most recent model, the expressive citizenship, is a corporate model of citizenship, one that increasingly determines the kind of privileges consumers have access to. In this model, citizens take a backseat to the active consumer. This model operates with a neo-liberal logic that renders information as a social right as a secondary right to information as a civil right. If these are the consequences of a neoliberalism on one relatively limited part of larger social rights, then imagine the scope of impact on other long-held social rights in the context of neoliberalism.

Strong social rights need strong social institutions, especially in a capitalistic economy. Yet what happens when institutions that were created to regulate public goods side with market principles? One possible result, seen clearly in the 1996 Act, is a move towards market fundamentalism and away from the promise of truly universal

access. I suggest that this result derives from the assumed thick relationship between civil rights and the market. A self-perpetuating logic, which legitimates the market as the primary condition and outcome of an open communication markets, is used to regulate communication to maximize civil rights.

In many ways, the logic that is now used sounds like Marshall's view of 18<sup>th</sup> century England. Guarantees of civil rights, specifically freedom of speech, provided the legal framework for two citizens (or now two corporations) to form a private contract (Marshall 1949/92). Free markets were contingent upon the right to freedom of speech and association to make such contracts in the first place. To the extent that citizenship in 18<sup>th</sup> century England was predicated on owning property, a parallel can be drawn to today's telecom regulation and the way that only individuals with enough income or wealth to be able to afford complete communication access can enjoy the fullest benefits of U.S. citizenship. In both periods, citizens most informed about their full range of civil rights were those with the most access to information. Those with the most access to information could make the most informed market decisions. As such, the degree of mobility in capitalistic markets is tied to the level of access to information and the communication infrastructure.

Easy access to information communication technologies (ICT) along with digital literacy, and affordable technology, are critical factors for deciding who is and will be included in an economy (McNutt 2001). The question of access in this kind of information-based economy is too important to be left up to corporations to determine. This is a matter that should involve states on a level that is just as concerned with individuals accessing the Internet as it is with corporations accessing licenses to sell services. What I am suggesting is that since the U.S. already has a strong civil rights tradition in information rights and at one time in history communication was legislated as a social right, one way to ensure that our full range of civil rights are realized is to ensure the social right to the access of communication.<sup>46</sup>

## **SECTION 5 – CONCLUSION**

So what would Internet access as a social right look like? I am proposing that the just as the government ensures the accessibility of highways in which to drive one's car to work or the hospital, the government can also ensure the accessibility of information super highways in which use one's computer to handle labor-related activities or health-related concerns. People would still need to buy their own computers just like they buy their own cars and virtual highways would be paid for by federal tax dollars just like with physical highways.

In the early 1900's, the telephone was an important medium in which individuals communicated and accessed information. Over the years, as new regulation has attempted to update the act for new communication mediums, like the Internet, access to communication has slowly shifted from being defined as a social good to a market good. This regime shift questions the very institutional goals of regulatory agencies and for "whom" they are supposed to regulate for: citizens or corporations?

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<sup>46</sup> I ground this proposal in the concept of citizenship rights as based on status and not as practice. Therefore any citizen, regardless of level of civic engagement, enjoys the benefits of all rights.

Within the last 10 years, neo-liberal market policies have radically restructured social institutions. As a result, many social goods across the board are increasingly redefined as market goods that are available based on an individualistic cost-benefit analysis, instead of on a collective, common goods rationale.<sup>47</sup> Social citizenship declines when it does not support the greater social welfare.<sup>48</sup> As a result, there is a thinning of social citizenship, where long-standing social rights become stigmatized as “hand-outs” and incumbent upon the individual or nuclear family to fulfill the social need (Fraser and Gordon 1998). Recent trends in telecommunication regulation reflect this process: a dwindling of the social right to communication infrastructures. This regime shift calls for a timely revision of citizenship rights for information.

Exploring communication access from a rights-based approach is even more urgent now that the US is approaching the reality of a truly ubiquitous Internet Protocol (IP) network, where services, content and information can be continuously accessed online regardless of geographic positioning (Cowhey 2006: 24).<sup>49</sup> We must ask that near future of ubiquitous Internet access, who will be excluded due to high costs and skills barriers. What does this mean for a nation that claims formal equality between individuals when the differential starting points amongst individuals continues to grow, and efforts to decrease inequality cease to be less and less effective?

Working within a citizenship framework, my task here is to encourage citizenship scholars to take seriously the idea that access to the medium communication of in itself is a right, and arguably a social right. As such, my hope is to also speak to legal scholars and social activists that what makes a civil right meaningful is not just the strength of the right in its institutional enforcement and history, but also its ontological ties to social rights. Rights are strongest when they are bundled together.

My corollary task in urging for a rights reconsideration for Internet access is to address two common approaches by policy makers and practitioners who work on bridging the digital divide: a needs-based rationale and a technological solution.<sup>50</sup> Policy makers and community-based groups often employ the needs-based rationale that a certain community “needs” subsidized or funded Internet access because it is economically impoverished or socially marginalized.<sup>51</sup> According to a needs-based rationale, access to communication is then based on needs, not rights. Essentially this calls for some form of Internet welfare.<sup>52</sup> Whereas a rights based approach assumes

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<sup>47</sup> Schiller (1986), Schiller and Schiller (1988), and Schiller (2006), have written extensively about the commodification of information.

<sup>48</sup> It is necessary to ask what is an adequate level of social welfare. But for this case of Internet access, I have tried throughout this paper to explain that it is a social need, therefore a necessary service for all individuals to have live at an acceptable level of social welfare.

<sup>49</sup> To be sure, I am not suggesting a technophilic approach that assumes universal Internet access eradicates inequality. Rather, I am arguing that effective social and political shaping of policies can ensure that critical social rights actually reflect current social needs.

<sup>50</sup> This is a term that refers to the divide in those who use and do not use technology. In recent years the term now encompasses the idea that the digital divide is not simply about access to technology, but skills to use the technology.

<sup>51</sup> From my experience of working over five years with funders and non-profits on the “digital divide,” the most common rationale is based on specific needs of a community instead of as a right for all citizens. I

<sup>52</sup> I am not associating “welfare” with social stigma as in receiving public welfare. My use of “welfare” refers to redistribution policies.

that every individual has the *right* to Internet access, regardless of class or geographic region. As such, this provides a new framework for digital divide advocates, one that positions access to social goods based on rights, not needs.<sup>53</sup>

The second common approach by technologists and policy makers is to direct their efforts on the technology, such as building communication technology centers or infrastructural backbones. The expectations are that once the infrastructure is built, usage will become democratized and economic progress will follow (Drori 2006).<sup>54</sup> Yet, in the absence of meaningful social programs geared towards building and integrating online skills into daily activities, such as education or training programs, and practical considerations of usage requirements, such as investments in technological hardware, availability of technology does not necessarily increase usage. In which case, a rights reasoning approach to Internet access works well *alongside* these infrastructural efforts, for it can provide the kind of logic for governments to work with private companies to give incentives for build out. It can also provide community organizers a rights-based framework in advocating for funds to build local technology centers and offer policy-makers and corporations a new framework in which to imagine Internet access. Essentially, a rights based approach give pause to those who campaign for equitable barriers to technology by reframing their position from a *digital-divide* to a *rights-divide*, and to articulate clearly the distinction between *availability* of information and *access* to information.

Advocating for universal Internet access returns us to one of Marshall's reminder of the relative flexibility of the tradition of Western citizenship to incorporate new rights as new groups and needs emerge. One of the most lasting contributions of Marshall's account ties equality of economic opportunity to social rights. And for Marshall, each time citizenship was expanded it became stronger and richer. This leads me to believe that social citizenship as a framework is still a flexible and fruitful nation-state framework in which to argue for a revision of rights.

Although current communication policies have yet to reflect the Internet as a social need, this can be changed through a process politicization of Internet access as a social right that provides information to function at a basic standard of living –a social right that we cannot deny to any citizen. Accessibility is just as important as availability. What is at stake is that in light of the influence neoliberalism on policy decisions, access to services that were once considered a social right for all, become a privilege for some.

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<sup>53</sup> South Korea and Estonia are two different alternatives in which to approach Internet access. Both countries' desired goal was to stimulate market growth by providing government subsidies for private companies to build out to less populated areas and profitable regions. While both countries strived to reach universal Internet access, they reached this goal in different ways. While South Korea launched an intensive government program to educate individuals who were unfamiliar with the Internet (housewives, poor, prison inmates, and disabled), Estonia legislated that Internet access would be a human right. These two cases attest to the variability in which to construct rights to Internet access and should be studies more based on these crude facts. Now one objection to these even light-fare comparisons is that both South Korea and Estonia are incredibly geographically smaller countries than the U.S., therefore build-out for Internet access is much easier. I acknowledge this and agree, because certainly we cannot directly compare the U.S. and other countries of different sizes, but we can compare how the usage of a medium can be implemented in various ways.

<sup>54</sup> Drori is supportive of infrastructural build out. He finds them cost-effective for geographically dispersed regions, such as South Korea and Estonia (2006).



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