

taking on that obligation. This argument about the loss of universal service because of the carrier-of-last-resort impacts is without merit.

Competition is coming to the telecommunications industry. This bodes well for telecommunications customers. Federal action to stunt competition in parts of the market, while arguments are hashed out on the interLATA front, is a move in the wrong direction. State commissions should decide on the need for and pace of competition in the states. While there are many advantages to establishing a national policy on telecommunications, and many good points are spelled out in the legislation, the preemption of the states on dialing parity is not one of them.

Again, I commend your attempts to rectify this portion of the pending telecommunications bill. Please contact me if you have questions on my position on this matter.

This letter of support for your amendment is independent of the merits of and schedule for interLATA relief for the RBOCs.

Sincerely,

CHERYL L. PARRINO,
Chairman.

STATE OF WISCONSIN,
DEPARTMENT OF JUSTICE,
June 2, 1995.

Hon. RUSSELL D. FEINGOLD,
U.S. Senate, Washington, DC.

DEAR SENATOR FEINGOLD: The undersigned state attorneys general would like to address several telecommunications deregulation bills that are now pending in Congress. One of the objectives in any such legislation must be the promotion that fosters competition while at the same time protecting consumers from anticompetitive practices.

In our opinion, our citizens will be able to look forward to an advanced, efficient, and innovative information network only if such legislation incorporates basic antitrust principles and recognizes the essential role of the states in ensuring that citizens have universal and affordable access to the telecommunications network. The antitrust laws ensure competition and promote efficiency, innovation, low prices, better management, and greater consumer choice. If telecommunications reform legislation includes a strong commitment to antitrust principles, then the legislation can help preserve existing competition and prevent parties from using market power to tilt the playing field to the detriment of competition and consumers.

Each of the bills pending in Congress would lift the court-ordered restrictions that are currently in place on the Regional Bell Operating Companies (RBOCs). After sufficient competition exists in their local service areas, the bills would allow RBOCs to enter the fields of long distance services and equipment manufacturing. These provisions raise a number of antitrust concerns. Therefore, telecommunications deregulation legislation should include the following features:

First, the United States Department of Justice should have a meaningful role in determining, in advance, whether competition at the local level is sufficient to allow an RBOC to enter the long distance services and equipment manufacturing markets for a particular region. The Department of Justice has unmatched experience and expertise in evaluating competition in the telecommunications field. Such a role is vital regardless of whether Congress adopts a "competitive checklist" or "modified final judgment safeguard" approach to evaluating competition in local markets. The Department of Justice will be less likely to raise antitrust challenges if it participates in a case-by-case analysis of the actual and potential state of

competition in each local market before RBOC entry into other markets.

Second, legislation should continue to prohibit mergers of cable and telephone companies in the same service area. Such a prohibition is essential because local cable companies are the likely competitors of telephone companies. Permitting such mergers raises the possibility of a "one-wire world," with only successful antitrust litigation to prevent it. Congress should narrowly draft any exceptions to this general prohibition.

Third, Congress should not preempt the states from ordering 1+intraLATA dialing parity in appropriate cases, including cases where the incumbent RBOC has yet to receive permission to enter the interLATA long distance market. With a mere flip of a switch, the RBOCs can immediately offer "one-stop shopping" (both local and long distance services). New entrants, however, may take some time before they can offer such services, and only after they incur significant capital expenses will they be able to develop such capabilities.

In conclusion, we urge you to support telecommunications reform legislation that incorporates provisions that would maintain an important decision-making role for the Department of Justice; preserve the existing prohibition against mergers of telephone companies and cable television companies located in the same service areas; and protect the states' ability to order 1+intraLATA dialing parity in appropriate cases.

Thank you for considering our views.

Very truly yours,

Tom Udall, Attorney General of New Mexico; James E. Doyle, Attorney General of Wisconsin; Grant Woods, Attorney General of Arizona; Winston Bryant, Attorney General of Arkansas; Richard Blumenthal, Attorney General of Connecticut; M. Jane Brady, Attorney General of Delaware; Garland Pinkston, Jr., Acting Corporation Counsel of the District of Columbia; Robert A. Butterworth, Attorney General of Florida; Calvin E. Holloway, Sr., Attorney General of Guam; Jim Ryan, Attorney General of Illinois; Tom Miller, Attorney General of Iowa; Carla J. Stovall, Attorney General of Kansas; Chris Gorman, Attorney General of Kentucky; Scott Harshbarger, Attorney General of Massachusetts; Hubert H. Humphrey, III, Attorney General of Minnesota; Jeremiah W. Nixon, Attorney General of Missouri; Joseph P. Mazurek, Attorney General of Montana; Heidi Heitkamp, Attorney General of North Dakota; Drew Edmondson, Attorney General of Oklahoma; Charles W. Burson, Attorney General of Tennessee; Jan Graham, Attorney General of Utah; Jeffrey L. Amestoy, Attorney General of Vermont; Christine O. Gregoire, Attorney General of Washington; and Darrell V. McGraw, Jr., Attorney General of West Virginia.

Ms. MOSELEY-BRAUN. I thank the Chair. I say to my colleague, I am not here to speak on this specific legislation, although it is obviously important and significant legislation. I am here to speak as if in morning business and with the indulgence of the sponsors and managers of the bill, I ask unanimous consent to be allowed to speak in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. MOSELEY-BRAUN. I thank the Chair.

WELL WISHES TO CARDINAL BERNARDIN

Ms. MOSELEY-BRAUN. At the outset, Mr. President, I would like to call to the attention of my colleagues and call for the prayers of the American people in behalf of his eminence, Cardinal Joseph Bernardin. It has been recently diagnosed that Cardinal Bernardin is suffering from a form of cancer that is very difficult to overcome, and certainly we are all saddened by his condition and the physical pain that he must be undergoing presently but at the same time confident that secure in his faith he will find comfort at this time in the prayers and the well wishes from the millions of people in this country who love him dearly.

Cardinal Bernardin has been the leader of the archdiocese of Chicago for over a decade now and is an integral part of the community and Illinois and, indeed, of the church community throughout this Nation. We all wish him the very best. We wish his health returns to him. But in the event that it might not, we wish him the strength of his faith and the prayers of people who care about him and the leadership he has provided in regard to matters of faith for our country.

SUPREME COURT DECISION IN ADARAND VERSUS PENA

Ms. MOSELEY-BRAUN. Mr. President, I should like to address the issue of the Supreme Court decision in Adarand versus Pena.

Mr. President, on Monday, a closely divided Supreme Court handed down a 5 to 4 decision in the case of Adarand versus Pena. Adarand involved a challenge to the provision in the small business act that gives general contractors on Government procurement projects a financial incentive to hire socially and economically disadvantaged businesses as subcontractors. In its opinion, the Court held that all racial classifications imposed by the Federal Government will henceforth be subjected to a strict scrutiny analysis. Strict scrutiny, Mr. President, is a very difficult standard to meet. Indeed, it is the most difficult standard the Court applies. Accordingly, Federal racial classifications will be found constitutional only if they are narrowly tailored measures that entail further compelling Government interests.

At the outset I think it is important to note that under our system of government, the Constitution is what the Supreme Court says it is. Accordingly, "strict scrutiny" for Federal Government race programs is now the law of the land. Ever since I studied constitutional law in law school, I have had a profound respect for the Supreme Court and all that it represents in our system of laws.

Having said that, however, Mr. President, I still believe that the Adarand decision was bad law. Clearly, the

Adarand case would not be the first time that the Supreme Court has ruled in a way that was just plain wrong. Who can forget the infamous Dred Scott case in which the Court stated that a black man had no rights which whites were bound to uphold, and that they were, indeed, mere property? Or Plessy versus Ferguson, which held that segregated facilities were in fact constitutional? Or the Bradwell case, in which the Supreme Court upheld Illinois' refusal to grant a law license to women and stating:

Man is, or should be, women's defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life.

And certainly, Mr. President, a number of my more conservative colleagues would say that the Court was wrong in its ruling in Roe versus Wade.

Nevertheless, the Adarand decision is now the law of the land. The question now before us is how will we achieve the goal of true equality in light of this new hurdle? What should we as a Nation do with the continuing legacy of what was called "the peculiar institution" of slavery and Jim Crow and its aftermaths?

The most important step I believe that we can take in light of this decision is to begin an honest dialog on the issue of race. The racial issue is clearly the most volatile and controversial issue to come before the Court. Indeed, it is one of the most volatile and controversial issues of our time.

As Justice Ginsburg noted in her dissent, the Court applies a mere "intermediate" review for classifications based on gender, while reserving its highest review of strict scrutiny for classifications based on race.

The irony of the Adarand case is that the individual who won the contract at issue, Mr. Gonzalez, is not black; he is Hispanic. The contract at issue was awarded to a Hispanic subcontractor, yet every opinion, both the majority opinions and the dissents, including Justice Thomas' opinion implies but does not state that the driving issue at stake in Adarand is affirmative action for blacks. The opinions in the Adarand case underscore the myth that affirmative action only helps black people. The reality of affirmative action is that other minorities, and women, have benefited as much if not more than blacks as a group, and particularly black men.

Affirmative action, Mr. President, was a response to the legacy of slavery. It was a positive action to give a boost or, if you will, to mainstream a community which had been segregated by law and which had threatened to become a permanent caste in American society.

I believe that the originators of affirmative action showed great wisdom and forethought in the programs that they designed to bring black people into the economic mainstream. They recognized that black people had been

legally barred from the opportunity to pursue quality education, to serve in the military, to hold a decent, high paying job, to pursue employment, and to participate fully in our economy as well as in our society. The creators of affirmative action sought to give a boost to black people by lifting them up, by allowing specific preferences for groups.

Now, the issue of preferences when it comes to affirmative action is really a curious intellectual side bar. We have and take for granted all kinds of preferences which serve policy goals and reflect our society's values. There are preferences for veterans, never mind whether the individual veteran ever saw a battle. And I think we would all agree that it is a good thing to reward people who took time out of their private lives to serve our country in the military. There are preferences for seniors. I do not know too many people who would disagree that getting to the golden years ought to have some support from society as a whole. There are preferences for residents of a State or city in public employment, and a host of others that we could mention.

So why then is the notion of affirmative action so fraught with controversy? And why are preferences so bad only when they arrive in the context of race? Justice Scalia, who wrote separately in the Adarand case, argues the following: He argues that it is tough cookies; slavery happened; it is too bad; and now you are on your own and nothing ought to be done about that.

What Judge Scalia's decision fails to recognize is that it is in the interests of the entire country, of all of us, to take steps to resolve the legacy of slavery and of Jim Crow. If affirmative action is undone, there will be a very real cost to society as a whole, black and white, and others alike, all of us. The imperative for change, the imperative for diversity that affirmative action provided will have been removed and once again minorities and women will find it more difficult, if not impossible, to enter the economic mainstream.

And that cost will not just be borne by the women and minorities who are likely to see opportunity shrink away. It will be borne by our society as a whole. Affirmative action is about far more than just equal opportunity. It is about our country's economic prosperity. We are one people. We are one America. We share a collective responsibility to guide our Nation in a constructive direction of opportunity for all. And we will all win when America makes it possible to tap the talent of 100 percent of its workers.

Now, I know there is a particular controversy about why members of this generation should be required or called on to do anything to pay for, if you will, the "sins of their fathers" and what happened in this country 100 years ago. Justice Scalia again expressed this antipathy when he argued in this opinion in Adarand that there

can be no "creditor" or "debtor" races. There is a great deal of resentment, we are told, by the angry white male toward the favoritism shown to blacks in this country.

But, Mr. President, if blacks were so favored as a group in America, how many white Americans do you know would want to wake up tomorrow and change places? How many white males would want to wake up tomorrow morning and be black? The fact is that racism is a reality in this country, an unfortunate one but reality, and affirmative action is one method by which we attempt to change that reality.

The majority opinion in Adarand fails completely to address this. Those in the majority I think would prefer to close their eyes and pretend that racism simply does not exist, but it does. And the fact that it does is what makes the Adarand decision such bad law.

Some have suggested that in response to the Adarand decision we work on a case-by-case basis to evaluate every Federal affirmative action program and save those that can meet the strict scrutiny test. I agree that this is an appropriate and necessary activity and one that needs to be part of our response.

The fact is we have an obligation to make Government accountable to review all programs to see if they are achieving the ends for which they have been designed. And so the issue is not one of review but one of retreat and one of retrenchment.

Mr. President, others have suggested that the approach ought to be one now, instead of affirmative action, to speak of reparations—the old "40 acres and a mule" analogy. This approach may seem absurd at first blush but, quite frankly, if you read the Court's opinion in the Adarand case, it really becomes the logical conclusion. Justice O'Connor's majority opinion stated group remedies were inherently suspect; instead, Justice O'Connor stated that remedies should be targeted to individuals who have been the victims of racism. So descendants of slaves who were promised 40 acres and a mule would, therefore, be the logical beneficiaries of Justice O'Connor's formula.

Still others have called for a nationwide apology about slavery, similar to that apology that many are currently pressing the Japanese to issue in response to their actions in World War II—or similarly, frankly, to the apology recently given by the United States Government for its internment of Japanese Americans during World War II.

The point is that what we really need and what we have to search for are new solutions, solutions that will provide opportunity to those who face the higher barriers imposed by racism and discrimination. These solutions, I believe, will come in as many different forms as the problems that we face as a Nation. For blacks, those solutions

must include access to quality education, access to capital, and assistance with institution building.

For women, we must make efforts to shatter the glass ceiling that limits participation at the highest levels and perpetuates the old boy network. For Asian Americans, we must seek to remove the mystery that surrounds the Asian community, when even fourth- and fifth-generation Americans are viewed with suspicion as foreign or not real Americans. I am certain, Mr. President, there are as many other worthwhile suggestions that will come forward in the coming weeks, and I look forward to considering and debating these and other suggestions. But the point is that I think the Adarand decision becomes a starting point, a take-off point for us to begin to have an honest dialog about where we are going in this Nation and how we can go there together.

While I have the utmost respect for those who come forward with new ways to provide opportunity to all, I still, frankly, find it irresponsible that some would merely seek to limit opportunity without putting forward any new proposals, folks who would suggest that repealing our current efforts to provide opportunity without proposing any new solutions. This, in my opinion, is nothing more than a thinly veiled laissez-faire attitude toward diversity that is, at best, shortsighted.

Instead of a deconstructionist approach, tearing down affirmative action and putting nothing in its place, I encourage my colleagues to join in developing creative solutions to the legacy of discrimination in this country. For guidance, I believe we can look to the countless individuals, the men and women around this country who are already working in the communities to ensure that the American dream is available for all of us and not just for some of us.

And consider for a moment the example of LISC, Local Initiative Support Corporation. LISC was established in 1979 to provide financing and technical know-how to nonprofit community organizations, know-how these groups used to develop low- and moderately affordable housing and attract commercial investments, create jobs and expand services in underserved neighborhoods. We need to build on successes such as these rather than give up on the dream of true equality in America. There are enough success stories out there, there are enough examples of people working together to forge a true network, a true quilt of diversity that will reflect the best that is America. I believe we have an obligation to look to those examples and to replicate them wherever we can.

Mr. President, also, I would like to add that while some uncertainty may surround Federal Government set-aside programs, there are a host of other activities which are in no way jeopardized by the Adarand ruling. While efforts such as the set-asides in the

Small Business Act have been extremely important in helping to bring minorities into the economic mainstream, they, frankly, do not comprise the heart of this Government's efforts in regard to affirmative action.

Despite all the attention that has been focused on the set-aside program, the heart of affirmative action is not set-asides. The heart of affirmative action, on the other hand, is, in fact, to create a climate in which diversity can thrive and which allows women and minorities to succeed. The heart of affirmative action is about ensuring that the qualifications of women and minorities will be considered and not ignored.

Affirmative action does not seek to guarantee any individual a job or a contract. Rather, it seeks to give women and minorities a chance to succeed or fail, sink or swim, based on ability, not race or gender. Affirmative action, therefore, encompasses efforts such as recruiting at historically black colleges and universities, in addition to the Big Ten and Ivy League schools so that the most talented young African Americans will be considered for jobs and careers along with most talented white Americans. It includes the Executive order on affirmative action which requires the Federal contractors to maximize the percentages of women and minorities in their work force without ever requiring quotas or preferences.

In short, affirmative action is, at its heart, about ensuring equal opportunity, not equal results. Affirmative action is not a zero sum gain. It does not have winners and losers. We all win when we open up opportunity and stir the competitive pot to allow a real meritocracy to develop in this country, one that is color blind and gender neutral and does not insist that the shackles of the past are just accidents of birth for which we have no collective obligation as a Nation to remove and overcome.

Diversity is our strength, not our weakness—or it can be, anyway, so long as we do not allow those who would separate us on the basis of race or gender to prevail. This is not, Mr. President, "Let's all get along," and this is not paternalism, it is an acknowledgment that we are all in this together. We will all rise or fall, sink or swim, together as Americans. Recognizing that, let us not retreat. Instead, let us go forward together to build on the progress that has been made so far. It is in our collective and national interest that we do so. The future of our country, and nothing less important than that, hinges on our response at this time in our history to this very important longstanding issue of the character of the American society.

Thank you very much, Mr. President. I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PRESSLER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

TELECOMMUNICATIONS COMPETITION AND DEREGULATION ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 1301, AS MODIFIED

Mr. PRESSLER. Mr. President, I ask unanimous consent that the Stevens amendment No. 1301 be modified with the language I now send to the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is so modified.

The amendment (No. 1301), as modified, is as follows:

At the appropriate place insert the following:

In section 3(tt) of the Communications Act of 1934, as added by section 8(b) of the bill on page 14, strike "services." and insert the following: "services: *Provided, however,* That in the case of a Bell operating company cellular affiliate, such geographic area shall be no smaller than the LATA area for such affiliate on the date of enactment of the Telecommunications Act of 1995."

Mr. PRESSLER. I suggest the absence of a quorum.

The legislative clerk proceeded to call the roll.

Mr. LOTT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. Mr. President, I have a unanimous-consent agreement that has been read and approved by the distinguished Democratic leader. I would be glad to yield if he has a comment to make.

Mr. DASCHLE. I thank the Senator from Mississippi for yielding. This does represent a very good-faith effort on both sides to try to accommodate all Senators who have remaining amendments, and I think that as a result of this agreement, there is a likelihood that we can finish our work in the morning and begin voting sometime in the early afternoon.

I appreciate all Senators' cooperation and hope that we can agree that as a result of this, we will finish our work tomorrow sometime. I thank the Senator from Mississippi.

Mr. LOTT. I thank the Democratic leader. I commend him and our leader for working together to help bring this to a conclusion. Our two committee leaders, the Senator from South Dakota and the Senator from South Carolina, have certainly done their part. We are getting close. I hope we can finish tomorrow.

UNANIMOUS-CONSENT AGREEMENT

Mr. LOTT. Mr. President, I ask unanimous consent that debate on the 9