

INTELEVENT 97

**Remarks by
Commissioner James. H. Quello
U. S. Federal Communications Commission**

**Monday, 29 September 1997
Kempinski Hotel
Budapest, Hungary**

One of the joys of being a public speaker is having yourself introduced. Usually, the laudatory comments can only be matched by a self prepared personal resume. Anyway, I'm grateful for the preposthumous eulogy while I'm here to enjoy it and enjoy your company.

Even with or without eulogistic remarks, I'm delighted to be here to renew valued friendships and to become better informed on important international communications issues.

I have always believed that the unofficial informal atmosphere of Intelevent is specially conducive to frank open exchanges of informative viewpoints and I appreciate your contribution to my global communications education.

Of course a major factor in my special affinity for Intelevent is your president Ron Coleman, a longtime valued friend and a prominent respected communications figure in Washington.

I'm especially pleased to be at an Intelevent conference honoring the memory of Walter Werner, the former head of ITU and the revered co-founder of Intelevent.

All this is happening as I am about to leave the FCC. it is the first time in my 23+ years, I have witnessed three lame ducks (I must admit very active lame ducks) and one unfilled vacancy. That means four new Commissioners. I have met the nominees and believe our general counsel and my good friend, Bill Kennard, is eminently well qualified to be an effective FCC chairman. I believe the future FCC will be in responsible dedicated hands. I'm pleased too that many experienced members of the FCC and also my past and present personal staff will be active participants and lend expertise to the commission administration.

The FCC International Bureau will be in exceptionally capable hands with Regina Keeney designated as Bureau Chief. She has distinguished herself in a wide variety of important leadership positions at the FCC and the Senate communications committee. She could lend expertise and charm as a future Intelevent speaker.

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As for me, I'm a happy camper, particularly after the generous showing here winding down my FCC career. I like to gloat I haven't missed an FCC meeting or an award in 23 years. This summer I announced plans to remain on the job until someone is confirmed and in my place or until I reach mental pause. Estimates are that the new commission will be in place sometime before November 1st.

Looking back, there were numerous intriguing challenges throughout the years. But the one most indelibly imprinted in my mind was my all-time record-breaking 8-day initial confirmation hearing in 1974. It broke the record for all regulatory agencies.

When undergoing this unprecedented confirmation inquisition, I remembered the warning of my Congressional Godfather, John Dingell, who said, "Jim, Why do you want the damn job - you are going to get beat up by Congress and overruled by the Courts."

There's some truth in Big John's statement, but being an FCC Commissioner is still the most important and intriguing job I ever had and we do, or are expected to, exercise independent judgment. Also, it is not all bad being a regulatory "kissie" rather than a higher paid "kissor," for 23 years. Also I served during fascinating years of innovative developments.

Just look at what happened to the communications media since April 30, 1974, the date I started as an FCC Commissioner.

Personal computers were just introduced and there was no thought then that they would become a dazzling new communications device. The Internet was unheard of. The cable industry was in its infancy in 1974. Mobile phones were also in their infancy. There were no superstations, no HBO, CNN or Showtime. VCRs had not yet been introduced. Congress had no idea of granting FCC auction authority. And no one ever contemplated a government agency would raise over 20 billion dollars for the U.S. Treasury.

All of these things have become commonplace today and they have transformed the world of communications in just 23 years. The communication multichannel, multifaceted, interactive capabilities are mind-boggling and deserve a full text treatment in some future speech. Also, international communications, open markets and cross-ownership among countries are growing at a rate considered inconceivable 20 years ago.

Also, the FCC influence far exceeds its relatively diminutive size. An agency numbering fewer than 2500 people is responsible for regulating telephone, television, cable, radio, satellite and wireless industries that account for approximately 10 percent of the Gross National Product!

Official accomplishments? I guess my greatest official accomplishment was being appointed by the President and confirmed by the Senate to the FCC four different times. Of

those, the longest and shortest hearings were most memorable. Naturally, the shortest was the most gratifying.

Overall, the profound changes that have taken place since I began my tenure in 1974 are too numerous for a single Keynote Address. Indeed, this entire conference is devoted to the subject of the effects on investment of the emerging competitive global communications marketplace.

As I stated recently to another group of investment advisors, I find it amusing that I am asked for my perspective on investment decisions in telecommunications. I am amused for two reasons: First, as a sitting U.S. government official, I am severely limited in what stocks I can own and companies in which I can invest and investment tips are out of the question. Second: my history in investments has been fraught with missed opportunities. For example,

Even a brief survey of the many changes that we are experiencing in technological, regulatory, and investment strategy would take more than my allotted time. Therefore, I will confine my comments to my perspective on what I think lies ahead. I will do this by answering what I consider to be the four most important questions in today's worldwide communications markets.

1. What are the key changes in technology?
2. What are the changes in the regulatory philosophy in response to such innovations?
3. What are the changes in legislative responses to the regulatory evolution driven by technological advances? And,
4. What are the changes in the investment landscape resulting from these other developments?

But first, let me jump to the "bottom line." The result of all the technological innovations and deregulatory initiatives such as liberalization and privatization is an unprecedented convergence. Convergence is a catch phrase that has been bandied about for many years. It is used to describe the ability of a provider of voice or video or data communications to get into each others' markets using new digital technology. I am using 'convergence' here to also refer to the unprecedented spate of mergers between corporate entities.

The news media are filled with stories about what I think has been unfairly characterized as "merger mania" in the communications industries. The desire to grow is being driven by the demands of the marketplace and is not unique to communications companies. Larger entities have more resources to compete more effectively and efficiently.

A similar trend is underway in banking and other service sectors of the economy. When I last spoke at INTELEVENT 95, I reviewed the mergers and consolidations in the broadcast industry. In 1997, we are also seeing increasing merger activity among the traditional telephone companies, that is, the providers of voice transmission. They are forming alliances that are both vertical, by combining hard wired voice transmission operations, and horizontal, by offering others services such as video and data transmission by wire, by cable, or by wireless mobile technologies.

Until recently, the commentators feared what some viewed as the onslaught of media giants. The specter of "media monopolies" was used to strike fear in the hearts of bureaucrats. The doomsayers theorized that media conglomerates were possible because of the limited supply of the fundamental transmission element, that is, radio frequency spectrum for broadcasting and mobile communications and limited capacity on cable and copper wire transmissions systems. That is why regulators were vigilant to review proposed changes in ownership.

But now, in 1997, we face a changed world and must likewise adapt our view accordingly. More than one media commentator has speculated that we are moving away from an historical period of spectrum scarcity to a new era of multiple and competitive choices for information distribution, whether it is broadcast programming or data and voice transmission. I wholeheartedly share that view.

Communications providers exercising business judgment clearly foresee the economies of scale and scope that larger multinational conglomerates can bring to bear in building out services in the fight for market share. For example, Deutsche Telekom and France Télécom were each allowed to invest twenty percent in Sprint, the third largest U.S. long distance provider. British Telecommunications (BT) recently acquired MCI. This was a merger of an entrenched former national telephone service provider in the United Kingdom with an aggressive classically entrepreneurial company that helped to break the AT&T grip on telephone service in the United States.

Such mergers and buyouts are relatively simple compared to others that are planned. We have read reports that the German industrial giant Mannesmann A.G. has agreed to pay \$1.3 billion (U.S. dollar equivalent) to join forces with struggling Olivetti S.p.A. of Italy. Mannesmann's investment will ultimately rise to a 49.9 per cent share by the year 2000 in a new venture, to be based in The Netherlands, that will include Omnitel Pronto Italia, Olivetti's mobile phone unit, and Infostrada, the ground-based voice and data transmission company.

Mannesmann's investment strategy will cut out France Télécom's minority stake in Omnitel. France Télécom had planned to expand its minority interest to replace Bell Atlantic as Olivetti's major partner in Infostrada. Bell Atlantic holds equity stakes in both Omnitel and Infostrada but had begun negotiations to withdraw from Infostrada, the wireline entity.

Obviously, the players are wagering big stakes. Advances in technology and liberalization in regulatory philosophy are having the expected effect. Now, it is up to the relevant regulatory bodies to show their faith in these developments by considering carefully, and approving when warranted, such business alliances.

For what it is worth, I will give you my "shorthand" version of mergers. I have always maintained that, "Big is not necessarily bad." Coming from my first career as a successful TV applicant and manager of a 50,000 watt clear channel radio station that was tops in local and national marketplace, I look at prospective mergers from a businessman's point of view. After twenty-three years as a public servant, in my second career, looking out for the "public interest," I have added a corollary to my analysis. I now say that, "Big is not necessarily bad; but, huge needs a careful look."

I believe that multinational enterprises should be given the opportunity to exploit the desires of both consumers and telecommunications policy makers to spur innovation and competition where the incumbent is either unwilling or unable to meet the challenge. Policy makers around the globe are increasingly realizing that an efficient and ubiquitous telecommunications infrastructure can stimulate the domestic economy.

In the United States, competition and deregulatory policies have been a notable success. For the past four years, investment in telecommunications is up over 11% per year. The investment in wireless technologies alone has increased more than 250% since 1993 and is projected to rise to more than \$50 billion in the coming decade. Job growth in the telecommunications sector is 65% higher than in the overall economy. Eight million of the 12 million new jobs that have been created since 1992 have been in the information sector.

In retrospect, it is amazing how far we have come in our thinking about competition and deregulation. I agree with the analyst who noted that:

Opening the telecoms operating environment to competition is no longer a purely ideological concept: advances in technology now make it practical, policy changes make it possible, and, moreover, customers want it.

A brief discussion of history might be helpful. Just a few years ago, a small club consisting of a few carriers held what seemed to be permanent and exclusive franchises to provide the many services that constitute the communications sector. Understanding where to invest used to involve a relatively straight forward process of buying into the notion that the "system is the solution." Until quite recently, the international telecommunications "rules of the road" were absolute, unbending, and unavoidable.

The International Telecommunications Union (ITU), a subset of the United Nations' "umbrella" of organizations, provided the forum for setting the basic rules for everything from technical and operating standards, to allocating spectrum, and establishing tariffing and

compensation regimes. The ITU member nations engaged in a nominally "collaborative" process among "foreign correspondents."

Technological innovation and changes in policy and regulation, however, have made it possible for competitors to vie for previously captive customers. Fast changing technology, new market access initiatives and liberalizing policies have combined to alter radically the global telecommunications marketplace. Bureaucracies have had to scramble to incorporate some flexibility into their regulatory schemes. The need for flexible regulatory structures to accommodate innovative technologies has spawned a deregulatory philosophy.

In light of these significant changes, we must ask ourselves a baseline question: Why do some policy makers maintain allegiance to outmoded regulatory principles that support the existence of monopolies when they recognize that evolving and converging technologies make new market entry possible? An ever increasing number of previously closed communications markets are becoming contestable, to use the economists' term, yet many regulators cling tenaciously to "safeguards" created to protect against perceived abuses of a monopoly provider.

Analyzing emerging investment opportunities in evolving telecommunications markets can no longer be accomplished successfully by viewing the "fundamentals"-- innovations in technology, regulatory policy development and legislative responses, as discrete factors. Modern day analysis must confront the legacy of too many years of intense government oversight of a unified monopoly providing "common carrier" services. These outdated policies include:

Economic policies favoring the view that telecommunications is a natural monopoly and that the incumbent retains exclusive control of all or most sectors;

Political policies, including a national commitment to making services available throughout a nation regardless of traffic density and the potential to recoup investments;

Industrial policies supporting the insulation of domestic manufacturers and service providers from foreign competition;

Technology policies endorsing the view that a single enterprise can provide all available service innovations on an optimal scale;

Social policies mandating government intervention to support universal service objectives instead of reliance on the free interplay of market forces because of a fear of pricing volatility and rate increases;

Laws discouraging market entry or reserving markets to the regulated monopoly;

Treaties or other multinational commitments precluding procompetitive initiatives;

Foreign relations concerns about international comity that can temper or even foreclose efforts to foster competition, particularly in "developing" countries;

National security interests defeating market access liberalization (e.g. encryption); and,

Labor relations issues that could jeopardize liberalizing initiatives that result in reduced employment, at least initially, in the telecoms sector.

In sum, the "old order" was inflexible and maintained by pervasive government involvement. It supported monopolies, nationalism, and closed markets. The "old order" continued to be the analytical paradigm because technological innovations in telecommunications, when coupled with deregulatory or liberalizing policies, threatened the ability of any one government to centrally manage the communications sector of the economy and to control the flow of information within its borders.

The good news is that technological and business imperatives have combined in recent years to challenge the old cartelized and comfortable status quo. The fledgling privatization and deregulatory initiatives that have taken hold around the world have created new businesslike incentives to replace the outdated notions of social engineering by over-regulatory "experts" in government bureaucracies.

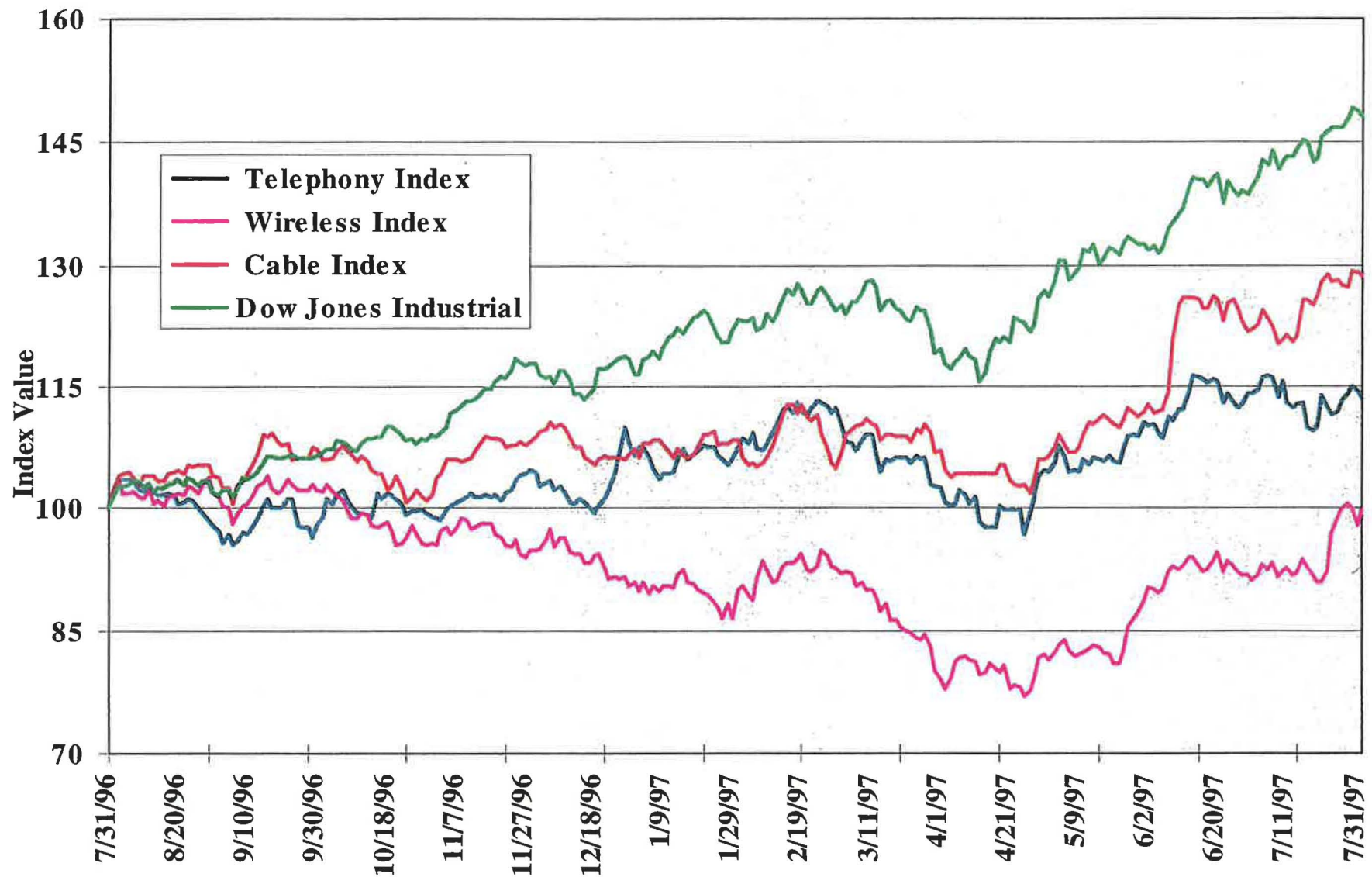
In my opinion, "that is the way it is" or should be for worldwide communications. Before I close, let me update you on the roll-out of digital television (DTV) in the United States. Since I have been talking to you about this subject for many years, this would not really be an Intelvent speech without a brief discussion of my "first love:" free, over-the-air broadcasting.

The Federal Communications Commission, in its Orders regarding DTV, tried to give broadcasters flexibility to develop business plans that would best preserve free over-the-air broadcast television. That is why we did not require HDTV. Broadcasters must remain competitive to assure that free over-the-air broadcast continue to thrive in this new competitive era, and at least some multicasting may be necessary to achieve that goal. However, to the extent broadcasters use their spectrum for ancillary services, we would expect to levy appropriate fees for use of the spectrum.

It is an exciting challenging communications world facing three new commissioners and a new chairman with advanced technologies, computerizations, convergence and expanding international inter-relationships.

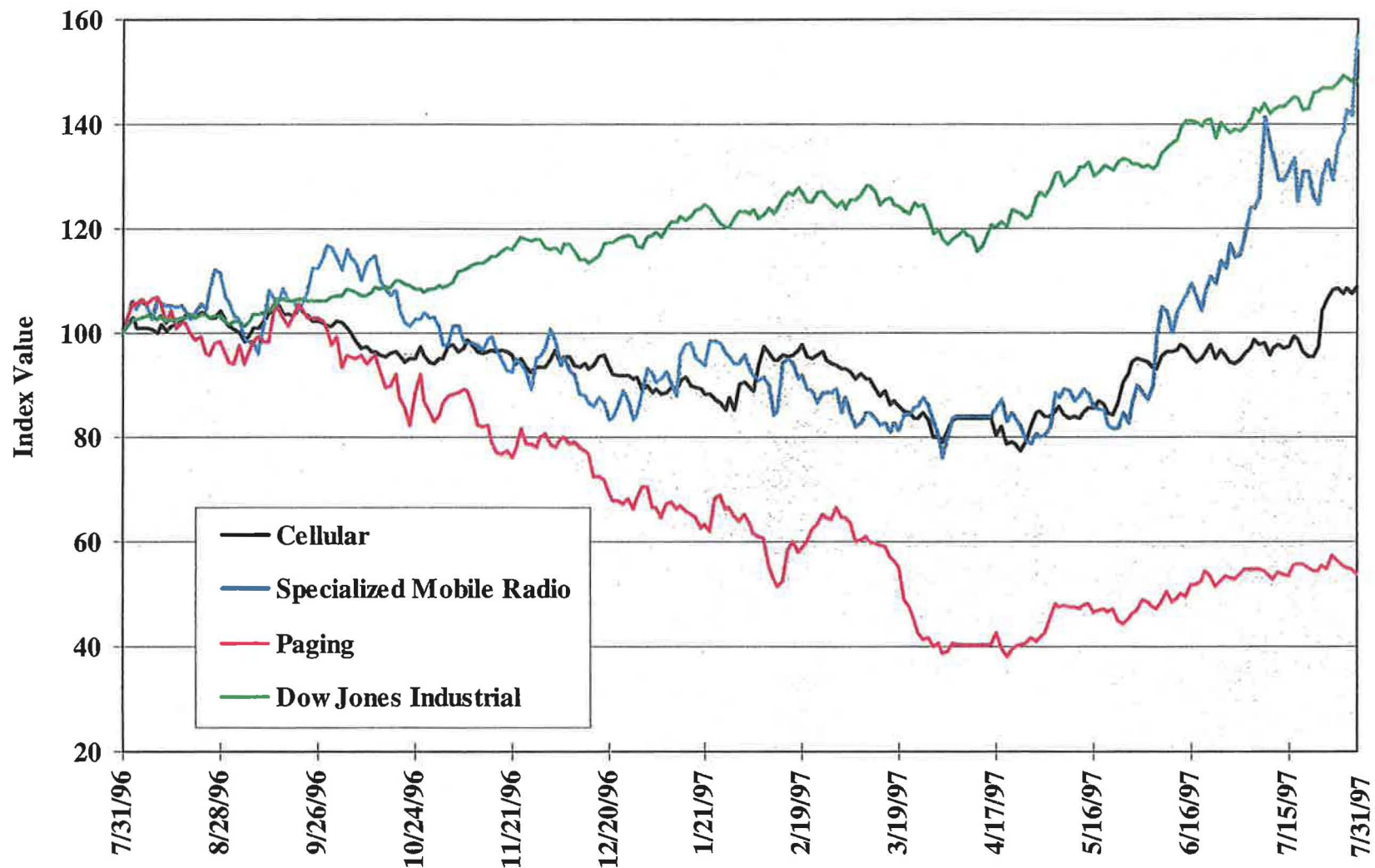
They have my best wishes for productive national and international communications comity and achievement.

Telecommunications Stock Indices



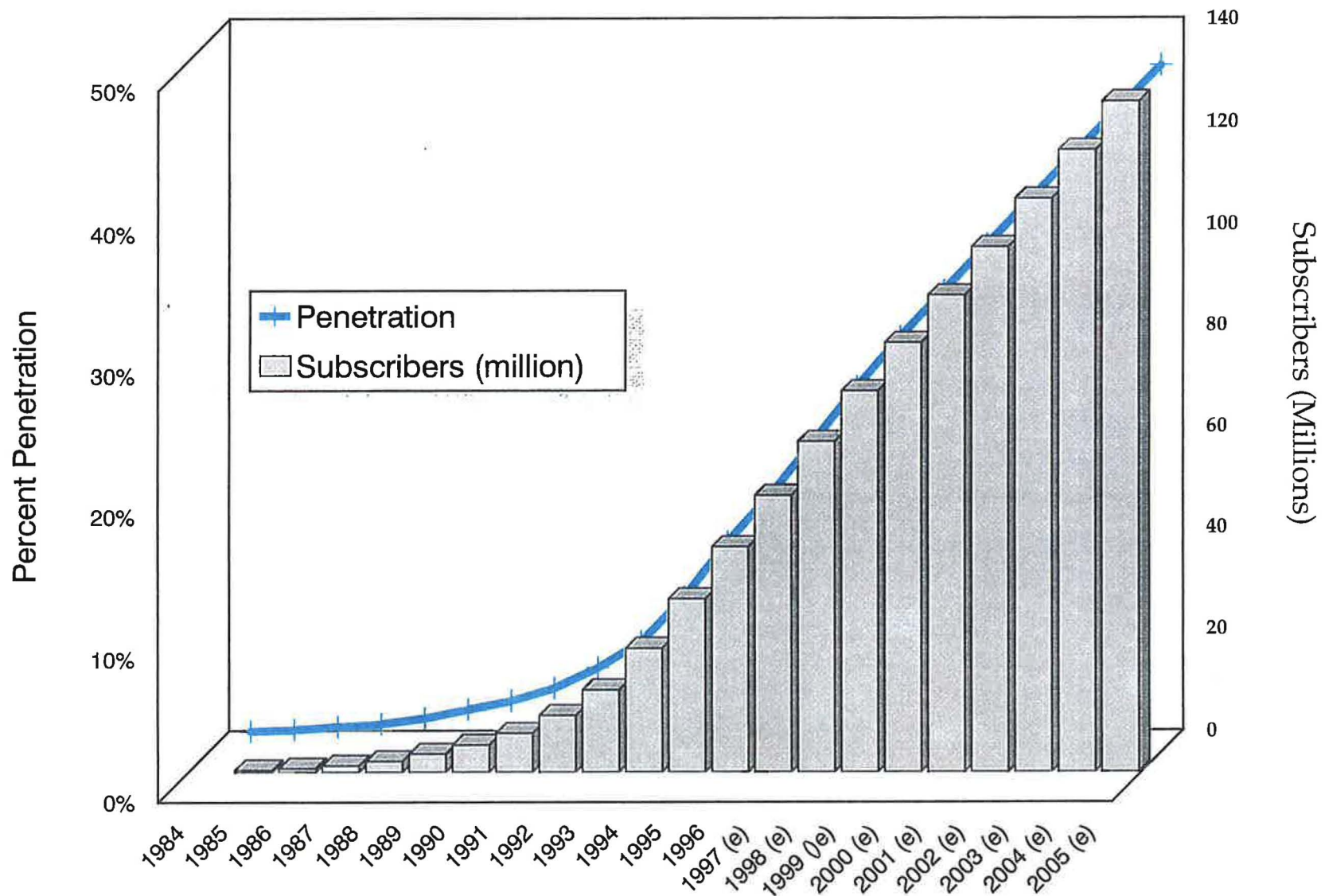
Source: Federal Filings (Westlaw)

Wireless Telecommunications Stock Indices



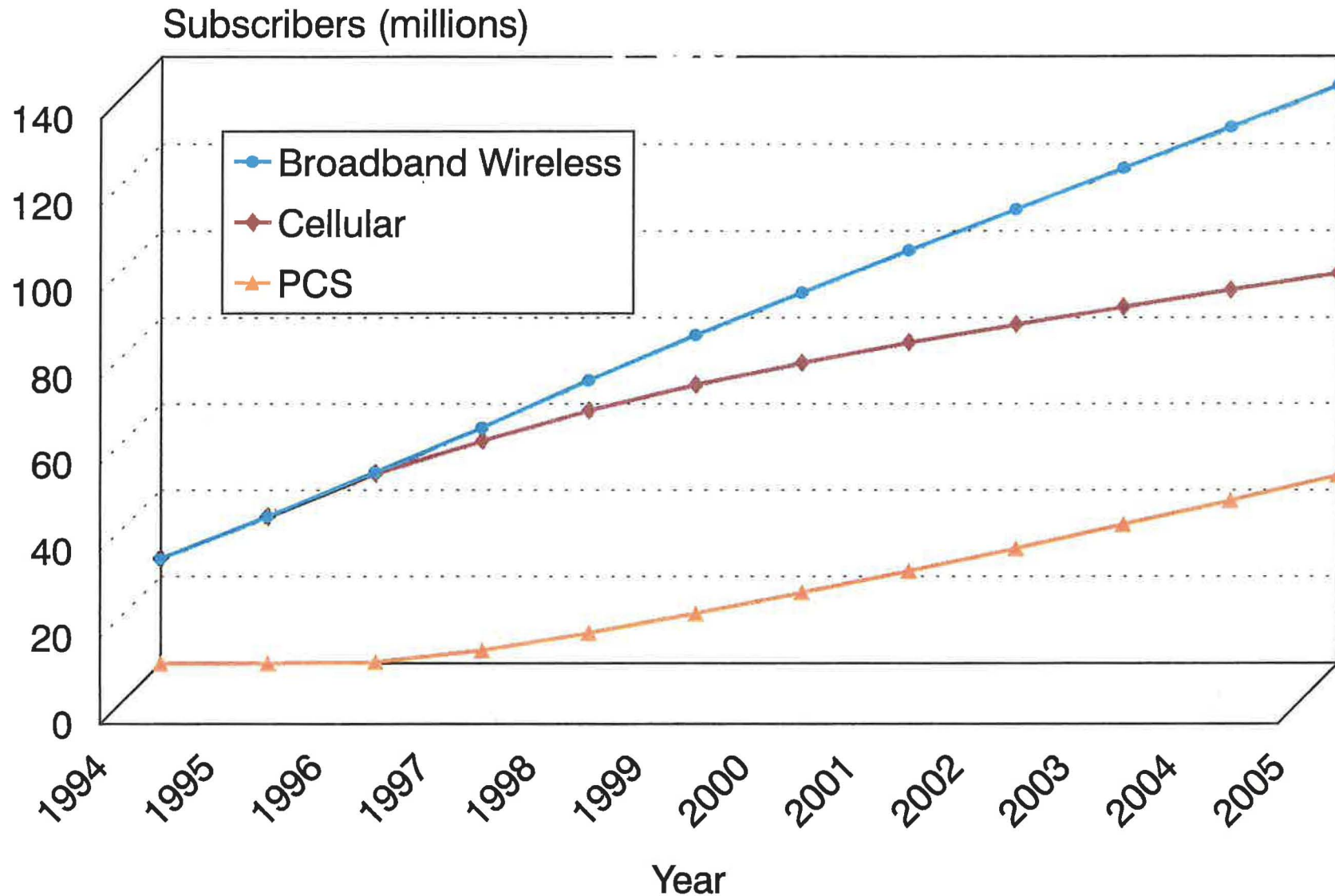
Source: Federal Filings (Westlaw)

Cellular and PCS Subscribership Is Growing

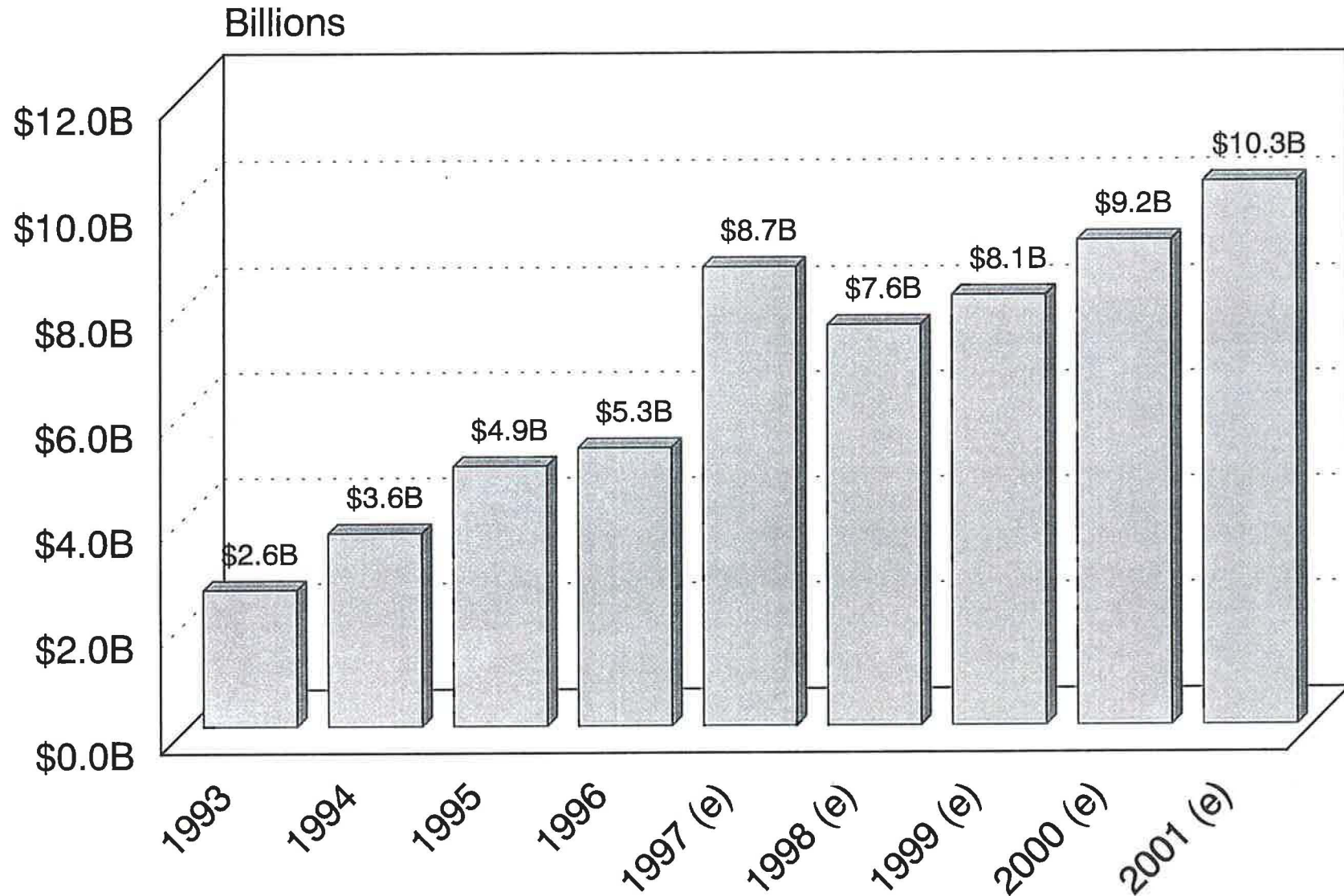


Source: U.S. Department of Commerce; DLJ, CTIA

Subscriber Growth for all Broadband Wireless, Cellular and

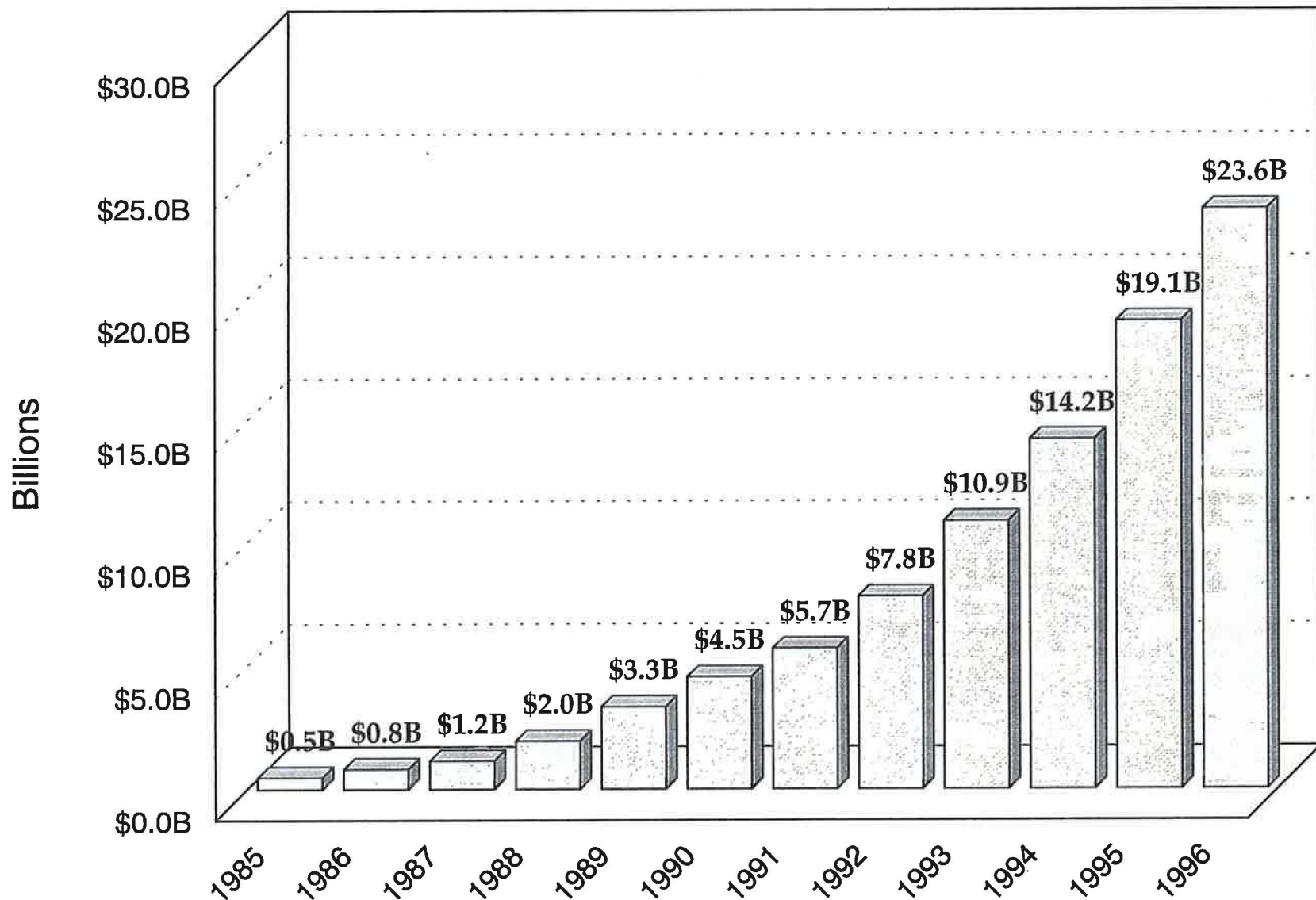


Capital Expenditures for the Wireless Industry through 2001



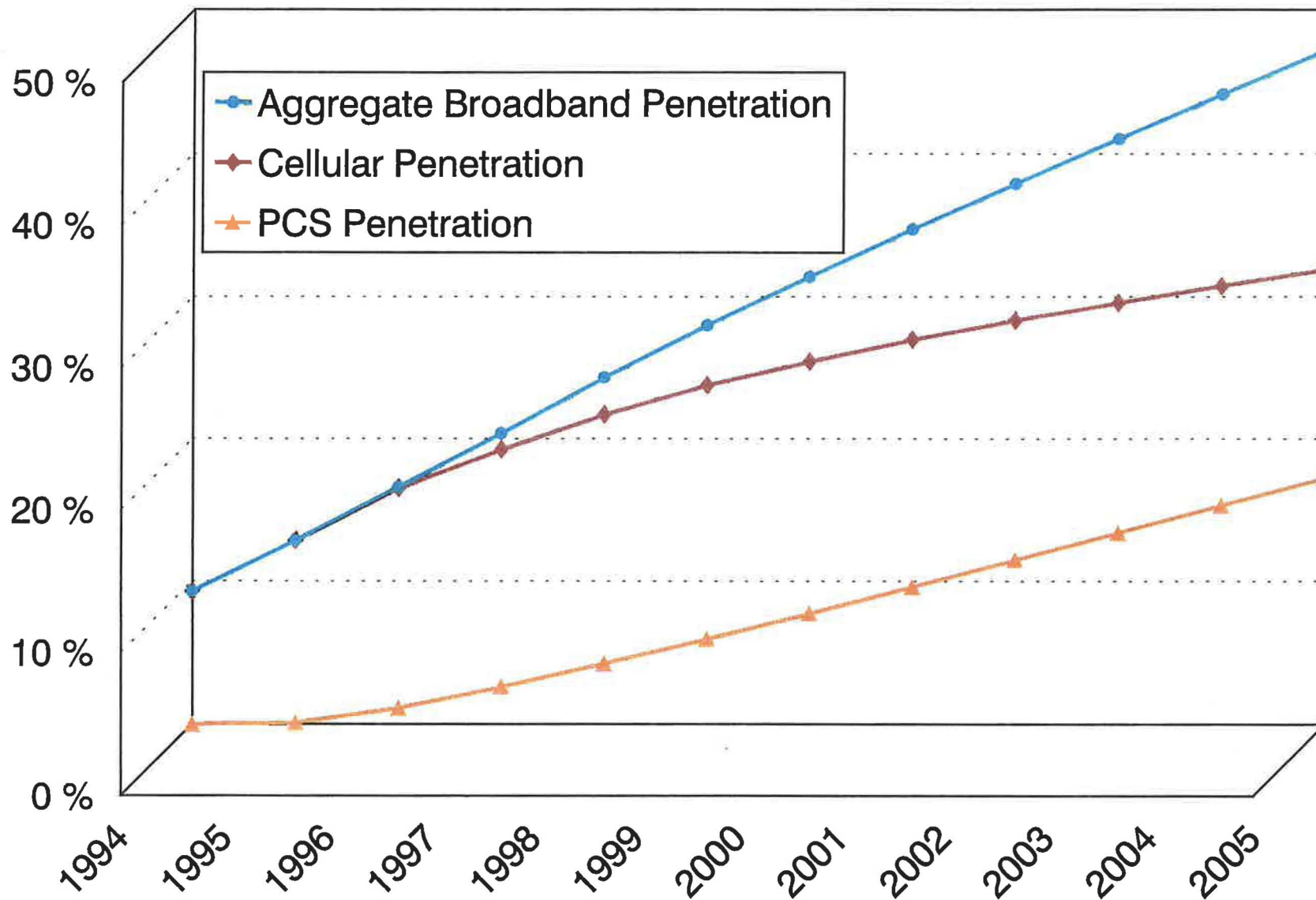
Source: Northern Business Information estimates

Wireless Industry Yearly Revenues



Source CTIA

Penetration Rates for All Broadband Wireless, Cellular & PCS



Source DLJ

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10/20/97

**FCC COMMISSIONER JAMES QUELLO
TO DELIVER ANNUAL SIEBERT LECTURE**

EAST LANSING, Mich. – James Quello, commissioner of the Federal Communications Commission (FCC), will present the Michigan State University College of Communication Arts and Sciences 1997 Siebert Lecture.

Quello will deliver the annual lecture Thursday, Oct. 23, at 3 p.m. on the Festival Stage of the Wharton Center. His lecture, "First Amendment Reflections on an FCC Career," will reflect upon his 23-year career with the FCC.

"Jim Quello is a legendary figure in the history of the Federal Communications Commission," said James Spaniolo, dean of the College of Communication Arts and Sciences. "He has participated in making decisions and developing policies that have directly affected all citizens over the past quarter century."

The lecture will be followed by a reception at 4 p.m. on the Festival Stage at the Wharton Center.

Quello, who will be retiring from the FCC this year, has an unparalleled record of accomplishments with more than 40 distinguished or lifetime service awards. He has received the Ellis Island Medal of Honor as well as awards from the Industrial Telecommunications Association, International Radio and Television Society Foundation, and National Cable Television Award. He also has been inducted into the Radio Hall of Fame and the Broadcasting Cable Hall of Fame.

The first MSU graduate to serve as FCC commissioner, he received a bachelor of arts degree from the MSU College of Arts and Letters in 1935. In 1977, MSU awarded him an honorary doctor of humanities degree.

The Siebert Lecture series was established in 1988 in honor of Fredrick S. Siebert. Siebert was dean of the College of Communication Arts and Sciences from 1960 until 1967 and director of the School of Journalism from 1957 until 1960.

The 1997 Siebert Lecture is sponsored by the Michigan Association of Broadcasters Foundation.

The lecture is free of charge and open to the public.

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[EDITORS NOTE: Quello will be available for media interviews Thursday, Oct. 23, from 2 p.m. until 2:30 p.m. at the Wharton Center. Contact Karen Twigg, Media Communications, (517) 355-2281 for more information.]

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Michigan State University
Lecture by Commissioner James H. Quello
University Club - October 23, 1997

"Broadcasting and the First Amendment"

It is a special treat for me to experience a semi-triumphant return to my and my wife, Mary's, beloved alma mater.

I'm really glad to be here. Of course, as a fugitive from the actuarial law of averages, I should be glad to be anywhere.

I have lived ten years beyond the average life expectancy -- a source of annoyance to some in Washington.

But, I'm particularly glad to have lived long enough to benefit from the exciting progressive transition at Michigan State. It is great to come back as a graduate of a thriving, big university instead of a college, to a Big Ten university rather than a non-conference college.

And to come back as a former winner of an honorary MSU doctor's degree and a distinguished alumni award.

Incidentally, at my first distinguished alumni award years ago, the Communications Dean told me, "We were thinking of displaying a transcript of your college grades as an encouragement to mediocre students."

Fortunately for me, Dr. John Hannah, then the legendary President Emeritus of MSU, came to my rescue with, "We remember Jim. He spent more time on the college newspaper and radio station than in class."

It is true that I gained more practical experience on the newspapers and radio station. But in seeking a job upon graduation, my overall academic record required explanation and did not help. The lone saving grace was that I needed a straight A average in the last term to have enough credits to graduate. I promptly gave grades a primary priority. I asked the professors to inform me any day my performance fell below A. I finally made it. Professor Linton, a great teacher, a humane educator, was one of the professors who gave me an "A" in a prime 5 hour course. So, every time I pass the Linton building, you will see me with a respectful bow and thumbs up in memory of Professor Linton.

Anyway, with more mature afterthought, I should have prioritized good grades much earlier in my academic years. Grades really count, particularly in landing that all-important first job and in creating the initial good impression.

Incidentally, you may see me crossing myself or blowing a kiss when I pass the impressive Olin medical center on campus:

Fortunate for me, Dr. Olin was a great humanitarian as well as an expert doctor.

I don't know what the rules are now, but back then if you exceeded the number of permissible class cuts, you were automatically and summarily discharged from college.

I miscalculated the number of allowable cuts and found myself automatically thrown out of college -- right during my flourishing college newspaper and radio career.

I made an emergency call on Dr. Olin -- He said, "James, what can I do for you my boy?"

I said, "You can keep me from being kicked right out of college by giving me a retroactive excuse for the flu." I did try to convince him I actually had the flu.

After a well-deserved stern lecture, I received the very essential bona fide medical excuse. So, Dr. Olin up there somewhere -- heartfelt thanks again and you richly deserve the Lord's blessings that are being bestowed upon you now.

Dr. Olin also volunteered a frank critique of my scandal-mongering, widely-read column titled, "The Spartan Oracle" -- In short; "gossipy, humorous and entertaining, but not exactly a fount of wisdom." He was right again.

So, now as an alumnus, I do contribute what I can afford to the MSU fund drives -- not so much for what the university did for me, but kinda in reparation for what I did to it.

However, you are not in attendance today to hear recollections of my college communications adventures and misadventures, as fascinating as they are to me.

Today, we have a more relevant communications mission. I believe you are interested in learning more about the FCC functions and its more contentious issues.

Your esteemed Dean of Communications, Jim Spaniolo, suggested that you might be interested in my viewpoint on that contentious and pervasive subject, "Broadcasting and the First Amendment."

My principal views were articulated in a speech titled, "The Reeding of the First Amendment," which received considerable press coverage.

The speech presented opposition arguments to Chairman Reed Hundt's pro-regulatory viewpoints, artfully expounded in several of his well-structured speeches.

Areas of contention that need clarification include: Should broadcast spectrum be auctioned? Is allocating digital spectrum to broadcasting really "the biggest give-away in history?" Should the allocation of digital spectrum to broadcasters be accompanied by additional quantifiable public interest obligations?

And particularly, are additional regulations a subterfuge for more government control of media? Are additional regulations which serve public interest "values" justified or supported by the First Amendment? Is the government justified in protecting broadcast journalists from suits, charges in exchange for government instruction on journalistic ethics to ensure more fair and objective news reporting? Is the scarcity argument once used to justify broadcast regulation still valid or reasonable in the multi-channel, multi-faceted communications advancements of today?

The new Commission may have to face the overall unanswered question of "What is the proper role of government in regulating broadcasting in the multi-channel explosion of today and tomorrow?"

Chairman Hundt and I have forcefully expressed opposing views on these issues.

We like to say we disagree without being disagreeable, but it could hardly be characterized as the bland leading the bland.

I again laud the outgoing chairman as a dedicated worker, brilliant in understanding the complexities of the computer industry, a formidable litigator, an effective public speaker and an impressive FCC spokesman."

However, I must emphasize that there is a marked fundamental philosophical difference in the way the Chairman and I view the First Amendment and the regulatory role of government. This is what I was impelled to discuss in my previous speech -- and to repeat and update today for the benefit of this audience and for any of the new Commissioners that may be interested.

First, I am afraid I have failed in convincing the former FCC Chairman and his followers to change what many criticize as his over-regulatory fixation. For example, I can't understand their longstanding aggressive PR campaign for additional quantifiable public interest requirements for digital broadcasting.

After all, broadcasters initiated and developed HDTV and digital broadcasting over an eight year period with huge investment in funds and executive and engineering talent. They developed HDTV and digital to provide advanced improved video and audio for the public -- their customers. This new improved service in itself really serves the public.

I cannot understand the equity in rewarding the introduction of improved video and audio quality which serves the public interest with additional quantifiable public interest requirements.

We must remember that all broadcasters already have longstanding existing statutory public interest requirements that are conscientiously implemented by a great majority. Any imposition of burdensome additional quantifiable public interest obligations for new costly undeveloped services will impede growth, smack of "big government," and could easily run afoul of our most cherished constitutional rights -- the First Amendment.

DTV or digital broadcasting will initially be an expensive challenging exploratory process. It should be encouraged in its development by limiting government intrusion.

A special commission formed by Vice President Gore is studying the extent and nature of additional public interest obligations for digital broadcasting. In fact, it is possible that the new FCC confirmed by the Congress as an independent agency could revise, reject or accept the Gore Commission recommendations.

Also, I cannot understand the logic in claiming it is a "give-away" to grant existing licensees digital spectrum that they themselves develop. I don't see the equity in proposing that existing licensees compete in auctions against subscriber supported businesses just to be able to remain in business. Furthermore, broadcasters are merely being loaned the digital spectrum with the requirements that the analog channels be returned for auction after digital is established.

Most TV licenses were granted in 1949 and 1950 and broadcasters lost money for years in initiating TV services. Nothing happened to the initial TV spectrum grant until broadcasters invested in acquiring property and buildings, buying equipment, hiring personnel and creating and buying programs. Since that initial spectrum grant and TV pioneering, broadcasters have paid the full marketplace price. Very few, if any, broadcasters today got their spectrum for free and no one was initially granted a free solvent business.

We must also remember that it was the broadcasting industry that developed technological and program production advances, not government financing, and certainly not government regulation.

Broadcasters serve the public interest every day in ways in which no other medium or business does. They provide news, information, emergency bulletins, documentaries and public service announcements, entertainment, and education -- all free of charge. This year more than ever broadcasters provided immediate life saving information on floods, tornados and other natural disasters. No other medium can make that claim, and this tradition of free service is, in itself, an important, underestimated contribution to the public interest.

Broadcasters contribute millions of dollars worth of public service programs and announcements every single month. In fact, they could do a better job of informing the public and government officials of their many public interest contributions.

From my experience in broadcasting, I can tell you that the great majority of broadcasters make a commitment to community service over and above what the Communications Act requires because it is good citizenship and because it is good business -- not because of FCC regulations. And certainly not because broadcasting, the prime information and news medium, has a government mandate to make a "social contract" with their communities, outlining how many hours and what types of public interest programming they must air to mollify government regulators.

The simple fact is that broadcasters enter into a "social contract" with their communities every day when they transmit their programs and the public votes its approval or disapproval every day through audience ratings. Broadcasters depend on overall public acceptance for economic survival.

In the multichannel world of today with cable, movies, DBS, the Internet, VCRs, along with newspapers, sophisticated computer billboards, and magazines, it is disingenuous to center blame for all society's ills on broadcasting. There are always other more immediate influences to consider besides media -- like parents, relatives, friends, home environment, teachers and schools.

But now back to my principal concern of this treatise -- the First Amendment and my philosophic and regulatory differences or disagreements with the recent Chairman.

Last summer, Chairman Hundt made some positive sounds expounding First Amendment rights. In an article published in **BROADCASTING & CABLE**, the Chairman wrote that "No values in our society are more important than those advanced and protected by the First Amendment." Then, the Chairman called for "a stronger and more well articulated set of First Amendment principles for broadcast news."

This is good.

Or is It?

Pardon my negative reaction, but what can we make of these kudos to the concept of free expression when they are made by a public official who conditioned network mergers upon programming commitments; who campaigned vociferously not only for quantitative requirements for children's TV, but for time and scheduling mandates, (eventually his children's programming proposal was corrected to provide reasonable flexibility); who proposes to quantify all public interest mandates; who plans to make broadcasters the universal donors for political campaigns; who is proposing to restrict broadcasters' rights with respect to advertising; who favors mandatory counter advertising; and who would compel

licensees to program more PSAs with the government having the role of casting director and script writer? Did the Chairman have a sudden change of heart?

Let's face it. The record on First Amendment issues before this last Commission is well documented and cannot be prettied up or explained away by a press release and a couple of speeches. When it comes to controlling broadcasters' speech, the past three years have been the most intensely regulatory of all the twenty-three years that I have been at the FCC. Fortunately, many of the initial regulatory proposals by the Chairman were rejected by three Commission votes (DARs, LMDS, DTV and the Chairman's first of the year "Spectrum Management White Paper").

So I will ask the question. What is one to think of the Chairman's statements praising the First Amendment? Or of his personal creative interpretation of First Amendment "values." The answer is to be found, I believe, by reading his statements carefully, and by reading them in the context of his actions.

The difference in the way that the Chairman and I viewed the First Amendment can be summed up in two sentences: First, I see the Bill of Rights as a limitation upon government action; the Chairman apparently sees it as a regulatory mission statement. Second, I consider freedom of expression to be the result of the government's abstention from editorial decisionmaking; the Chairman evidently viewed it as a gift to be bestowed by politically appointed bureaucrats on politically correct licensees for good regulatory behavior.

The first of these statements is borne out both by the Chairman's promotion of government federal power to force broadcasters to carry programs on the subjects he considers worthy, and by his many speeches and articles on the subject. In a **BROADCASTING & CABLE** article, for example, after writing that First Amendment values are most important, Chairman Hundt promoted using government power to compel free time for candidates, additional and quantified public interest commitments for digital broadcasting and, of course, quantified specific children's programming requirements. Such requirements, it was explained, are consistent with First Amendment "values" because they promote an informed and educated citizenry. Chairman Hundt said he saw no difference between the experiment in free time this past election in which the networks and major broadcasters donated specified blocks of time for the major presidential candidates, with a quantifiable obligation" for every licensee "to deliver media access to all participants in federal elections."

But there is a vast difference under the First Amendment between being permitted to speak and being forced by government to do so. Under this view of the Constitution, First Amendment rights -- to be free from government intrusion -- can be limited or canceled, so long as the intervention can be justified by pointing to First Amendment "values." The misguided theory seems to be that so long as the government provides specific quantifiable program requirements, and does not seek to impose its opinions on licensees, then even the most intrusive rules can be described as pro-First Amendment.

Such theories are alien to our Constitutional system. If First Amendment imperatives, designed to restrict government involvement with the press can be brushed roughly aside in the pursuit of First Amendment "values," then it is time to rethink those values. There is no limit to this justification for government action, and it really does permit activist bureaucrats to promote their personal wish lists as if they were constitutional mandates. The novel "values" theory seemed to be Chairman Reed Hundt's "reeding" of the First Amendment that was rejected and I believe the courts will reject. After all, how much is enough? One day it is specific children's programming accompanied by specific time and scheduling mandate requirements, then comes free time for politicians, followed by mandatory public service announcements, quantified additional public interest obligations -- and whatever else someone might describe as a First Amendment value.

A basic flaw in the Chairman's theories was they add up to the notion that for free speech to exist, the government must regulate. This understanding of the First Amendment is exactly backwards. As I said, the First Amendment is not a charter or a mission statement for more regulation of the media.

The second major problem with the Chairman's approach was that he appears to believe that free speech is something to be doled out to worthy recipients. In this case, much of what he said sounds First Amendment friendly. In one of his speeches at the Museum of Television and Radio, the Chairman praised broadcast journalism, noting that "this is the most well informed nation in history because of TV." And he said that we need "a clear and absolute commitment that government should never reward or punish a broadcaster for the content, point of view or opinions that the broadcaster expresses."

So far, so good. But as if the desire to regulate is an impulse the Chairman just could not resist, he then called upon "Congress or the FCC . . . to hold hearings on the topic of how through regulation we could buttress the protection of TV journalists, to ensure that they go about their business without being chilled by the threat of litigation."

Would all journalists be protected? When government is empowered to decide these questions, it is doubtful. My respected adversary, Chairman Hundt said that as we offer such protection "we should continue to expect the highest standards of integrity from them." He also spoke of the need for journalists to be "fair," and after reminiscing about the Fairness Doctrine, asked, "wouldn't we all benefit if there were some way to assure the public that news on TV will be impartial and that opinions on TV will be balanced?" In the eyes of what beholder? Will the politically appointed FCC be the judge?

According to this theory, the price of journalistic protection will be the obligation to be "fair" and to have the highest ethics, as those terms are defined by the government represented by the FCC. With friends like this, the First Amendment needs no enemies.

Even as the Chairman was praising broadcast journalism for creating the most informed citizenry in history, he denigrated broadcasters for lacking the "richly developed sense of ethics" of print journalists. In particular, he singled out the Washington Post and the New York Times as having a strong sense of responsibility to the country. I agree with these two examples, but I would add that many broadcasters also embody these ideals. Also, these two newspapers like dozens of others are broadcast licensees in good standing.

A particularly good example is the donation of time by the networks for campaign coverage in the last election. The Chairman thought it was such a good idea it must be compelled -- I simply think it is a good example of corporate citizenship and responsible programming, and a reason why the government should not interfere. It is worth remembering that it was the existence of broadcast regulation that forced the networks to ask the FCC for permission to provide extra campaign coverage in the first place. This is a powerful reason to regulate less, not more, as the Chairman believes.

It simply is too dangerous to permit the government to define First Amendment protection as applying to those with the proper government approved journalistic ethics.

As I said earlier, the First Amendment is a Constitutional guarantee not a gift to be bestowed by politically appointed bureaucrats, and that includes me, for regulatory good behavior.

Not so incidentally, I have been asked how do I reconcile First Amendment values with my obvious leadership in fining Howard Stern 1 million, 750 thousand dollars for indecency. As I have mentioned before, Howard Stern had a right to be wrong, a right to ridicule government officials and a right to be an insufferable smart-ass. (Now, I'm exercising my own First Amendment privilege.) However, he did not have a right to violate established and court-approved rules supporting time constraints to provide a safe harbor for children.

Nevertheless, appeal of the FCC Stern decision would have provided a provocative court challenge.

Personally, I believe Howard is a raunchy, entertaining talent who could attract radio audiences without pushing the indecency envelope.

Much has been said over the past three and a half years about broadcasters' obligations as public trustees, but what about the obligations of public officials? We, too, are public trustees. As government officials we are sworn to uphold the Constitution, and in that way we are called upon to be guardians of the First Amendment. This calls for an extremely delicate balance and common sense, because as regulators we are also authorized to exercise the power to regulate some speech. How can we do both?

In the past, the Commission walked what reviewing courts have described as a "tightrope" by first being aware when we were treading on dangerous constitutional turf. We also sought to be sensitive to the First Amendment issues in the balance.

This meant regulating speech only when it was clearly authorized by Congress that we do so, and even then regulating only to the extent necessary. It meant acknowledging that emerging multi-channel, multi-faceted technology reduced the need to regulate, and that spectrum scarcity, which was used to justify almost all of our content controls, is now a thing of the past. As a result, the FCC could fulfill the public trust and its commitment to the First Amendment by eliminating the government's detailed review of broadcast programming. And the courts have discarded regulatory relics like the Fairness Doctrine and the Financial Interest and Syndication Rules.

We have entered a new multi-channel, multi-faceted media age in which abundance and diversity -- not scarcity -- are the rule. Now in this intensely competitive communications marketplace, is the time for the FCC to consider imposing fewer regulations on speech content, not more as Chairman Hundt has advocated.

The Administration and Congress must have had the massive communications explosion of the past three years in mind when they repeatedly proclaimed that the era of big government is over. Is it over for everyone but the FCC? -- I have repeatedly asked that question.

I respect Chairman Hundt's drive, litigation expertise, and P.R. spins, but I strongly and respectfully disagree with his subtle over-regulatory approach to First Amendment "values."

I ended my previous speech with, "I'm sorry I failed to convince you. With this exposition, I present the case for what I believe is a valid, time honored, court accepted, interpretation of the real value of the First Amendment."

Nevertheless, honest debates on this important contentious issues will continue. Many in this audience will probably become involved. So, here today, I have expounded my viewpoint and rest my case.

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