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**FCC CHAIRMAN REED E. HUNDT FEDERAL COMMUNICATIONS BAR
ASSOCIATION**

**WASHINGTON, DC
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It is a pleasure to join all the members of the Federal Communications Bar Association at this monthly luncheon today.

At the outset, I would like to recognize my Legal Counsel, Julius Genachowski, who will shortly be leaving my office for the private sector. He has been a gifted and marvelous counsel - and a good friend - and I want to publicly express my great appreciation for his wisdom and hard work for me, and for the American public. I would also like to introduce Gretchen Rubin, -- she is brilliant, indefatigable, and you will find her to be the impossible dream come true: she is a worthy successor to Julius.

This evening, more than 1,000 of us will gather at the Omni Shoreham Hotel for a dinner to honor Commissioner and former Chairman Jim Quello and his 23 years of service to the public and the FCC. I wanted to move the site to the USAir Arena to handle the overflow demand, but Michael Jordan had it booked. (That's The Michael Jordan.)

That Jim's dinner is the hottest ticket in town (other than a Bullets-Bulls ticket) is a richly deserved tribute to Jim and to his public service. I and my colleagues on the Commission are delighted to host this event, and we are very pleased so many of you will attend.

As is customary with Jim and his friends, there will be humor aplenty tonight. But today I would like to honor Jim's public service with more serious remarks.

Jim Quello has been a forceful, effective, and always gregarious advocate for many different ideas and policies of vast importance to our country.

I met and contested with some of the best litigators in our country in my 20 years of private practice before coming to the Commission. Few, if any, have Jim's ability to hone an argument down to its essentials and to express pungently and persuasively a clear opinion. On more than a few occasions I have felt the sting and admired the force and wit of Jim's advocacy.

As you must know, the bulk of our debates has been about the public interest standard. What does it signify? Does it apply to all users of the airwaves? Is it quantifiable and definable? Fundamentally, is it an imprecation to the private sector or is it a means of setting aside public property for a mixture of public, noncommercial and private, commercial use?

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Jim has also been a fervent advocate of the First Amendment. There might not be anything more important at the FCC than holding tightly to a clear vision of the First Amendment. I honor Jim's quarter-century of clarity and firm grasp of this topic. He's been a better lawyer, even absent a degree, than many who talk about the Great Amendment.

Is it a violation of the First Amendment to inform a trustee of the public's airwaves that he or she must use some of the licensed time for transmitting programming that meets a certain definition, such as children's TV? As Jim has famously asked, if the answer to this is no, then where are the limits to this sort of requirement? Could a licensee be asked to provide programming for people over 49, since advertisers won't, it's said, support programming for such an audience? In about nine months this is a crucial issue for me.

What about PSAs, hard liquor ads, free time for political candidates? Is there a grand unified theory of the public interest that applies to all these issues? If not, is it because one cannot exist or because we just haven't debated enough about the topic?

This is what Jim and I have been talking about, together, in private and in public.

Private friendship and public debate has characterized much of our interchange, and I honor Jim for having taught me a great deal about substance and style.

I also want to note that in the last 3 1/2 years, we have voted on -- as of today-- exactly 1500 items. On 99% percent we voted the same way.

Some of the difficult issues that we have faced (and voted the same way over the last 3 1/2 years): The reconsideration of the cable rate regulations and the going forward rules; all international issues, including those concerning the ECO tax, accounting rate settlements; the votes on all auctions we have conducted; and the complicated and interrelated trilogy of decisions to bring competition to the local telephone market, including the key interconnection item last summer. Even on the television issues, where we have had our well-publicized disagreements, at the end of the day we voted the same way on kids television and digital television.

I naturally focus on Jim's interaction with me because I never had the pleasure of meeting Jim before I was appointed to my job.

But the fact is that Jim has had at least three careers of distinction: war hero, founding father of broadcast, and public servant. That's three more than a lot of people. And his next -- as lecturer and writer -- will undoubtedly bring him still more recognition.

But Jim's 23 previous years at the Commission demonstrate many of the characteristics that define honorable service in government and that have won him the commendations he will receive tonight.

First, Jim gave up substantial prospects, financial gain and a comfortable life in order to become an FCC commissioner. When Jim sat waiting all day long in Senator Vance Hartke's office to have it out with his chief interrogator, man-to-man, during his first and only confirmation battle, I'm sure that he wondered why he was doing such a fool thing.

When we remind him tonight what his Cap Cities stock would now be worth if he had held it instead of going to the FCC, Jim will think again about his decision.

Second, as a commissioner and chairman, Jim has often showed forthright thinking, independence of decision-making, and considerable courage. For example, in the indecency cases, he took on Howard Stern, and brought down on himself calumny of the foulest kind from that ubiquitous talk show figure and also very direct attacks from the junior Senator of New York. Jim did not back down a bit and won the contests with each going away, both in the court of law and in the court of public opinion. Jim's seven-page, single spaced letter to Senator D'Amato is a brilliant defense of his legal position.

And, as Billboard Magazine reported, no one could "remember an instance of an FCC Commissioner taking the gloves off on the record with a member of Congress." They might have added the fact that he won by a knock-out.

Jim's legal talents were also displayed in the Supreme Court's recent must carry decision. His congressional testimony is cited prominently in the majority opinion.

Similarly, Jim took the lead in deciding in the late 1980s that cable TV and other sources of entertainment had ended the dominance of the three big networks. In a memorable phrase, he called the networks' struggle with the Hollywood studios a contest between "the rich and the very wealthy." His dissenting opinion on the topic, through the Seventh Circuit, reversed the Commission's decision and led to the Disney acquisition of ABC -- a big reminder of the lost opportunity of that Cap Cities stock!

Another example of his leadership was television violence. I have often quoted his brilliant and prophetic 1993 speech in which he said: "America's epidemic of violence must be brought under control. And responsible TV and cable executives and program producers must take the lead or congress might. More and more citizens are demanding government restrictions on violence -- and [these] might still be averted by responsible broadcast and production executives." Broadcasters should still heed his words.

Jim also spearheaded the Temporary Commission on Alternative Financing for Public Telecommunications (TCAF), an advisory committee charged with developing recommendations to improve funding for public broadcasters. TCAF's recommendations led to the modern day enhanced underwriting rules. These allow noncommercial licensees to identify corporate sponsors together with their logos, product lines and services, without running afoul of the rule against advertising by public stations. The enhanced underwriting rules have allowed noncommercial TV stations to improve their financial status while preserving their essentially noncommercial nature.

Jim was in major part responsible for the fact that there is a digital television spectrum allocation. In the late 1980s, the Fowler Commission was considering whether to reallocate UHF spectrum to the land mobile community to meet their asserted needs for spectrum in large markets. Jim identified a study that showed that something like 40% of land mobile spectrum then allocated for that purpose was not being used to full capacity. This discovery, coupled with the rulemaking petition filed by broadcasters seeking to use UHF for HDTV, effectively stopped the land mobile-UHF sharing proposal and ushered in what ultimately became the DTV allocation. ✓

As interim Chairman, he led the Commission's first round implementation of the Cable Television Act of 1992. Many on the staff remember his tireless leadership of an overworked staff under difficult deadlines. In his continuing effort to "lead the troops," he spent many late nights working shoulder to shoulder with staff to implement the many provisions of the new law. At the same time, he got the first major increase in Commission funding in recent memory, in order to accomplish more effectively the various Congressional mandates. ✓

For all these reasons and more, I've been proud to serve with Jim and I'm delighted to honor him tonight.

Now, as Paul Harvey would say, Page Two. Spectrum Auctions.

Four years ago this summer, Congress authorized spectrum auctions after more than 10 years of debate. The provision has clearly been one of the wisest actions Congress has taken in the area of spectrum since the stuff was invented, or more accurately, found.

George Gershwin wrote, "They all laughed at Marconi/and said that wireless was a phoney."

But wireless isn't phoney. It is one of the crucial keys to economic development in the information age.

In markets where the cellular duopoly is supplemented by even a single PCS carrier, statistics show a 25% drop in price. Thus grows the wireless business; thus grows the economy; and thus we move closer to the long-desired Holy Grail of telecom policy: the substitution of cost-effective wireless communication for wireline telephony.

But some are arguing that we should limit the number of licenses to compete in order to maintain uncompetitive prices for service and to maintain artificially high prices for spectrum. Indeed, someone recently made the analogy between spectrum scarcity and diamond prices noting that DeBeers is able to keep the price of diamonds high by restricting production and, therefore, maintaining control of the diamond cartel. So, should the FCC manage a spectrum cartel by rationing licenses? I guess the suggestion is that "FCC" should stand for "For Cartels and Cooperation" instead of for "Fostering Competition in Communication."

A cartel is appealing for DeBeers or OPEC or uranium manufacturers or those who would try to corner the silver market. But all cartels hurt consumers, innovation, job creation, and economic growth.

Every article you read about trouble for C block licensees in raising money can also be read fairly as a testament to increasing price competition in wireless. The greater the pace of competition, the lower the predicted prices, and the tougher the job of making a business case to be an additional entrant in the market.

But don't we all agree that the market itself should set the number of competitors in a market? Government should never do that. No one thinks the FCC should limit the number of companies in the software business, or the microprocessor industry, or the pizza delivery business, or even telephone equipment manufacturing. So why should we limit the number of companies in wireless?

Yet that is what it would mean to stop or slow spectrum auctions.

Yes, to have more auctions is to lower spectrum prices over time. But the auctions are not -- and this is absolutely true -- about the money. At least they are not about the money raised in the auctions.

Instead they are about the money obtained from economic growth. The tax revenues from such growth, after all, would dwarf auction revenues.

Indeed, if people valued beads and shells we would be glad to distribute the licenses based on the greatest number of beads bid for licenses. We auction licenses in order to give them to the firms most desirous of having them. And the best way to measure the desire of a firm to make money with a license is to let them set a price on it in an open auction.

We also auction licenses in public at the FCC because if we didn't, they would be auctioned privately, less efficiently, with none of the sales proceeds going to the Treasury. So why not have a public, fair, efficient, taxpayer-friendly auction if there's going to be an auction anyhow?

And why will there inevitably be some kind of an auction for any license? Because you can't make someone own something forever. My wife and I gave a rabbit to one of our kids as a present, but after a week he didn't really want it, wouldn't take care of it, and insisted that we pass it on to someone else. And so it is with all property. The rabbit is in better hands now, and licenses should constantly transfer to someone who will pay money to get better hands on the business opportunities that every license represents.

Indeed, more than 85% of all television licenses and a huge percentage of wireless licenses have already been sold in private auction -- even though the former were given out in comparative hearings and the latter in lotteries. By 1993, more than 75% of all cellular

licenses had been transferred for money at least once in the previous 10 years (85 percent of non-wireline and 58 percent of wireline). If there are no public auctions, there still will be private auctions.

Comparative hearing and lotteries are just preludes to private auctions, in which the public property of the airwaves is the subject of private speculation, side deals, inefficiently run markets, and substantial delay driven by complicated and pointless regulatory processing requirements.

So it was a blessed event when in 1993 Congress let us dispense in large part with these two horrible methods of distributing licenses. And it will be a cursed day for communications policy if our auction authority lapses on September 30, 1998, and Congress has not re-upped us.

Some say auctions shouldn't be related to budget policy.

So let's talk about the money. The Commission has conducted 14 auctions resulting in \$23.1 billion in commitments. To date the FCC has collected approximately \$10.5 billion. (Installment payment plans account for the difference.) If felt good to collect that money.

As Sheryl Crowe sings, "If it feels so good, how can it be bad." Where is the bad part to this story?

Some say that the C block licensees will not pay the total of their commitments to installment payments. If that is true, they will not hold the licenses any longer. But still the taxpayers will have received all the installment payments to that date, and we will reauction the licenses. That's a tough trip for C block defaulters, but not bad for the economy or consumers.

Moreover, 99.9 percent of PCS payments have been made on time.

The auctions have also driven huge investment. In the case of PCS, systems are being built and investment in the wireless infrastructure will exceed more than \$30 billion over the next several years.

By contrast when you give licenses away sometimes you have to beg or order the recipients even to use them. Witness our recent experience with DTV buildout. Because existing broadcasters were being given the additional 6 MHz of spectrum to make the transition to DTV, they weren't in a rush to build out their DTV facilities and get DTV on the air. In order to compensate for the lack of an auction to identify those who were eager to get started, we had to impose construction requirements on licensees.

Moreover, spectrum auctions have done more in the last two years to distribute licenses to small businesses, especially minority and women-owned businesses, than the sum total of all previous FCC policies. Small businesses account for 76% of the total licenses and have

won nearly 50% of the licenses awarded by competitive bidding at the FCC.

In terms of speed of licensing, the spectrum auctions have been much quicker than either comparative hearings or lotteries. With hearings and lotteries, it took the FCC an average of one to two years to award one "non-wireline" license in each of the top 30 markets by comparative hearings. With auctions we get licenses out in a couple months.

And the auctions have proven to be an extraordinarily cost effective means of distributing licenses. The total cost (including salaries of FCC staff) of all FCC auctions to date has been approximately \$50 million. Auction costs run about one quarter of one percent of auction revenue, and are far less than the administrative costs of other licensing techniques historically used.

The WCS auction closed last Friday raising \$13.6 million for the U.S. Treasury. 128 WCS licenses will be issued. The prices were much lower than in previous auctions. This auction is being used to criticize auctions in general.

What about the low prices paid for WCS licenses? The explanation is that Congress required an auction of the WCS spectrum before normal market and business processes could take place. And it did not give the FCC the flexibility to set the date. We said this in advance of the auction.

The law is the reason we could not set reserve prices, as we have done before. If we set a reserve price and it isn't met, the auction doesn't happen. But Congress said the auction had to begin and end on dates selected by Congress.

Therefore potential bidders did not have sufficient time to analyze market characteristics, including demand. They did not have time to develop new technologies for new services, such as wireless Internet access. They did not have time to build alliances and consortia to develop and deploy such new technologies. They did not have time to raise the capital either to build new wireless systems or to bid on the spectrum. And they did not have time to cope with the allegations of interference from adjacent DARS spectrum users.

Congress should give us new auction authority coupled with the decision to set dates of auction according to our discretion, but never more than two years from the allocation.

A recent study by Bernstein Research bemoans the dramatic increase in mobile license spectrum the Commission has licensed, noting that with all the competition "wireless industry supply growth will outstrip demand over the next few years. This...will drive increased price discounting and promotions as carriers aggressively seek market share to maximize the contribution towards their fixed-cost base." The report goes on to note that new "capacity-intensive new applications such as wireless local loop and a variety of data applications" might actually soak up some of the excess capacity.

This is all great news for government policy, yet some are arguing that there is no need

to reclaim analog licenses in order to make spectrum available for new services, because auctions allegedly don't work! The truth is that an auction of those reclaimed licenses at a future date is certain to be very pro-competitive.

What the Bernstein Report is right about is that with all of the wireless capacity coming on line, wireless prices will be driven towards wireline prices, and at that point, we might actually see truly vigorous wireless vs. local loop competition.

In short, our spectrum policies are having precisely the effects Congress intended when it gave us auction authority in 1993 --- increased efficiencies and increased competition, plus returns to tax payers at auctions and from economic growth.

We are continuing to obey the good congressional mandate to bring competition to the telecommunications marketplace in our access reform and universal service rulemakings.

In these two proceedings together we received more than 50 feet of comments, more than 124, 000 pages from over 1,000 parties.

We will distill all this down to analysis that will reflect all comments in 1% of their length, and we will distill that further to the rules that are truly essential and total less than 100 pages. The distillation is hard, exhausting and important!

On these proceedings, I and my colleagues have greatly enjoyed working with Jim Quello and we look forward to continuing to work with him on all the issues ahead of us.

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