

Telecommunications  
Act of 1996:  
The Morning After

Panel Transcription

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Columbia Institute for Tele-Information  
Graduate School of Business  
Columbia University  
809 Uris Hall  
New York, NY 10027  
(212)854-4222

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## **Telecommunications Act of 1996: The Morning After**

The future of the American telecommunications industry hinges upon new telecom legislation. This forum will address the impact on the future of media and telecommunications industries.

Panelists:

**Eli M. Noam - Columbia University -Moderator**  
**Richard Cotton - NBC**  
**Mario Gabelli - The Gabelli Fund**  
**Bernard Gallagher - Century Communications\***  
**Henry Geller - The Markle Foundation**  
**David Honig - Minority Media & Telecom Counsel**  
**Paddy Link - Senator Commerce Committee\***  
**Herbert Marks - Squire, Sanders & Dempsey**  
**David Moulton - Congressman Markey's Office\***  
**Michael Pelcovits - MCI**  
**Gail Garfield Schwartz -Teleport Comm. Group**  
**Barry Steinhardt - ACLU**  
**Tom Tauke- NYNEX**

**TUESDAY, FEBRUARY 6, 1996**  
**6:00PM - 7:30PM**  
**301 URIS HALL**  
**COLUMBIA UNIVERSITY**

Audience participation will be encouraged.

Please register by fax, phone, or email.  
phone: 212-854-4222  
fax:212-932-7816  
e-mail: [citi@research.gsb.columbia.edu](mailto:citi@research.gsb.columbia.edu)  
website: <http://www.ctr.columbia.edu/citi/index.html>

**Directions:** The main entrance of Columbia University and the local subway (#1/9) are located at 116th Street and Broadway. Uris Hall is located directly North of Low Library, the large domed building in the center of campus.

\* Invited.

Eli Noam:

We all know why we are here, the new Telecommunications Act of 1996 is likely to be signed into law this week; after ten or so years of legislative efforts it seems to be completed. And so now considering the importance of this step we are gathered to discuss it. I am pleased to be the moderator. I have never moderated a larger panel in my life and the reason of course is that so many of the different groups and interests are involved in this bill, which, of course, is the reason why it was also so complicated. Let me avoid the introductions because you do have the sheets with the individuals' bios, so we can save ten minutes or so from introducing those extremely distinguished gentlemen and ladies too. One or two people, Mario Gabelli is on his way, and so is Paddy Link, so we'll get started now.

I would like to, in a way, provoke this discussion by a bit of an early observation which is: Does it really make any difference? And I can kind of see how the different people on this panel feel about this. So, let me say the following: politics, of course, is the art of the possible and by that standard Congress deserves a pat on the back by passing last week the Telecommunications Act. The new law to me seems to be a step in the right direction but it is quite another matter to declare it as a victory bulletin emanating from Washington as a revolution, a breakthrough, a D-Day. And I just have kind of here on the "New York Times" front page for representative Bliley is quoted as saying: "Today we have broken up two of the biggest government monopolies left, the monopolies of local telephone service and in cable television." Now much of this viewer think is steeped in the belief that reality in the information sector is shaped by Washington legislation rather than the other way around and I think it is necessary to prick this balloon. Much of what

the law claims to accomplish is happening anyway. Take for example, competition in local telephone service, the keystone of this act because everything in a way emanates from it. The fact is that local telephone competition has already been instituted around the country by most of the more important states, in some instances, several years ago. In with many of the other states well in the way of doing so, the new act merely extends competition to the some of the slower moving states which is hardly a revolution. And with local competition happening anyway the end of the court administered restrictions on the baby bell companies is also in sight without the monopoly bottleneck. With safeguards in place similar to those now set by the act, the bell companies would have been left into long distance, video, and full service provision, act or no act. Even with a new law, the bell companies are not as home free as they imagine. Their rivals will try to tie them up for years in courts and regulatory commissions arguing that they have not met the elaborate checklist of pro-competitive steps. Now, similar stories can be told about other aspects of the act whether it is in broadcasting cable, telephony, and while of course there are instances which is necessary for Congress to speak. In most cases the Federal Communications Commission, the State Commissions, and the Anti-trust courts could have or should have or have accomplished much of the same job and often more expertly. For that is the strength of the American system of decentralized communications regulation, for its untidiness of process it got the job done of transforming monopoly into competition much faster than, for example, the centralized systems in other countries such as in Europe, where every change becomes an affair of state. In America, in contrast, telecommunications reform was a struggle with many small skirmishes rather than with one central or consuming battle, until this act. It's a small wonder that it took Congress years and years to draft a passable bill because it had to bring so many

interest groups under the tent. All of them including public interest advocates got something that they wanted together with something that they didn't like with lots and lots of safeguards in one grand but lengthy bargain. The result is a 180 double spaced or single spaced or 280 spaced pages of rules and conditions interlocking in a complexity that stumps the expert but that has been described, nevertheless, as deregulatory. And that is the problem with this act, that its legacy might come to haunt us in coming years even if most of its provisions make sense today, and I think that they do, and even as they accelerate from trends and bit as it does. As certain as the sun will be rising tomorrow, it is clear that in this dynamic field, these rules will soon become obsolete, and then become a drag to change. Just look at the dramatic change in internet Cybercommunications and its already inadequate treatment in the new law. But by then we will be stuck with hundreds of pages of legal provisions that will be extremely hard to change because each clause will be protected by the entrenched interest that have grown around it. Now, yes, the law will unleash some business frenzy, but that has less to do with the tangible difference this law makes, and much more with heard psychology.

A few good speeches by Al Gore, by Newt Gingrich and FCC chairman Reed Hundt could affect the atmospherics just as much and probably much more cheaply than the expenditure of congressional efforts that has been taking place. So therefore to conclude instead of micromanaging deregulation of the future, Congress should set reasonable concrete principles, principles for an increasingly competitive media environment, principles about competition, access, interconnection, concentration, economic development, international reciprocity, universal service, free flow of information, privacy, and so on. And this would give courts and

commissions a framework for adjustment in the future to the inevitably changing circumstances. In the present it would also permit some national debate over those principles and issues instead of the impenetrable discussion that took place in public view, yes, but certainly beyond public comprehension. So therefore, the new reform has been a useful step, but now let's start reforming the reform. Thank you, and I will now pass the microphone to our first speaker, Rick Cotton of NBC.

Richard Cotton:

Thank you Eli, I guess I find myself in complete agreement with everything that Eli said about the bill, and I guess I'd make the overall philosophical observation that I think that the enormous problem with regulation, and I do not count myself just an opponent of regulation but of government policy generally, is precisely the difficulty of keeping up. And particularly in the world of private enterprise where private interests do fight vigorously to protect existing provisions of law, it is an enormously difficult challenge. I guess what I, the observation I would make, and I'll play my role here since I work for NBC and represent a company that is heavily committed to broadcasting although it is -- we have tried to change with the world and now have deep interests in cable and overseas satellite delivered programming -- fundamentally this is a bill which creates huge competitive opportunities for the cable industry and the telephone companies. The broadcasting provisions that are in the bill were largely added as an afterthought. Interestingly they've generated enormous amount of controversy and, but I guess the main point I would make about the bill and the future after the bill is that the entry of the telephone companies into video broadcasting, the freeing up of cable rates from regulation will tilt

dramatically if you look out five or ten years, the general private enterprise delivery of video to Americans toward a pay system. And that broadcasting is going to be fighting, I mean in terms of the system that most people in this country grew up with, will be fighting rear guard action in the sense that the pay services will have enormous advantages and this bill granting telephone the right to get into video will tilt the field substantially in that direction. And I would say one of the issues that the country will face is whether we collectively care about that anymore. I mean telephone is a system where every time you pick up the telephone you pay for it. It may be that gradually people will get used to the idea that in terms of their news, entertainment, sports, everything from premium entertainment to the network nightly newscast to local broadcast to the Superbowl, to Olympics, that all those simply become pay programming. And I think that in terms of the debate of the next five to ten years it will have its most immediate impact over the next year in terms of the debate in Washington over whether broadcasters are going to be allowed to upgrade to digital signals, which has gotten cast as a discussion about whether to auction off spectrum to raise some additional money in terms of balancing the budget, but that one of the unanswered questions that the legislation leaves open is will we move totally to a pay television system in this country.

Eli Noam:

Thank you. Henry Geller, the Markle foundation.

Henry Geller:

In the interest of robust wide open debate, I will differ from Eli. There isn't any question that

we were moving toward competition in the states, the telcos had already received the right to go into video programming in the courts, even aside from the bill, and I think over time there isn't any question that the modified final judgments restrictions on them would have fallen apart. But unlike Eli, it would have taken years, I would point out, many, many years. To get rid of the information service restriction took seven years. It's been twelve years on one of, for interexchange long distance and for manufacturing and if you look at the way Judge Green was going, it could have been an additional five to ten years because he wanted significant competition out there before letting the bells go. If you wait for significant competition, you can wait a long time because the opponents never find it, never. In the case of AT&T, it got down to sixty percent and the opponents were still saying don't deregulate, keep rate regulation. They've only got it now, eleven years later. So this would have festered for another five, ten years a decade and we can't really afford that. We want telecommunications to make a maximum contribution to quality of life, to efficiency; to get that we can't keep parking out half the telecommunications industry, the RBOCs and limiting them to something as artificial as called a lata. But it just, it makes no sense, it has no relation to the way people operate, we had to get rid of it. And if you didn't get rid of it, what you would have had is that the RBOCs, I shouldn't use acronyms, the Vested Bell Operating Companies would have resisted like mad. Every time Gail's company would come around and want something, they would say if we give it to you, you're going to pile in and compete with us, and we're going to be stuck in this latum, we can't offer one stop shopping, and we're losing out, we're losing our shirt, so they would never reach an agreement. They were very arbitrary on what they call reciprocal agreements, resale, all the things on, what is on this checklist in here. And what the bill does, it cuts through that. It gives them a carrot.



It says you're not going to get out until you let in. So they really for the first time, because they want to be let in, have a desire to go forward. And second, it doesn't even depend on that. The bill sets out very pragmatically a checklist of fourteen things they have to meet before they get out, and then it specifies deadlines. For example, the way it's going to go is that if there exists a competing residential business competitor, who's using its own facilities or primarily, predominantly, its own facility, and has entered into an agreement with MFS or with Teleport, some competitor, then it can get out. And it has to show, get the approval of the state that it has met all of those 14 conditions in the FCC. And be here in order not just to rely on the carrot, it says if there is a dispute, the state settles it in 9 months. So that you are going to get action; and throughout this bill you've got 60 days, 9 months, 6 months, 15 months, 10 months: there are 80 rule-makings in there, and there are dates on virtually all of them. Then now Eli is right: that's lousy legislation. Normally you write laws is to set out a general principle, give people accessibility, very dynamic field. It hasn't worked in this field. It just dragged on and on. And so it isn't a matter of trust verify with oversight: there is no trust here at all. They don't trust the parties to reach agreement, they don't trust the FCC, which has allowed the thing to drag on, they don't trust the states, and that's the reason for it. All I would say to Eli is it's true, it's a miserable legislation. It is so detailed. But it is to manage a transition. That transition is now being forced so it will be over in a few years. When its over, they give the FCC the power to forbear. And to make them act again on any petition to forbear, they say "in every even numbered years you've got to look at all your regulations to see whether they are needed." And to exercise oversight, I think we'll get rid of what's there over time, but I believe it was necessary for you to break this courier now. And some other points: Rick mentioned there is a section called Broadcast Reform.

In my opinion it's not reform at all, it's nothing but broadcast giveaway. But the real problem that I have with it that Rick can answer is that we are going into the 21st century. The we have for 70 years used something called Public Trustee Regulation. We are given voluntarily, you have to show the FCC you serve the public interest and you look at the content of program to do it. It's been a total failure, a charade, and why would we keep that going into the next century? We are going to reform it, we should have gotten rid of it, and made the regulation of the table and of over there television the same: have no asymmetric regulation, no public interest requirement on content; all you have to do is to take the money from them. In cable you take 5%, here you could have taken 2 to 3 percent giving it to public broadcasting, 1% in the case of radio, we have the structure work for you. It seems we will be a lot better off. Finally, I'd like to say that there are rate flaws in the bill. The universal service provision isn't consistent with the real reform. The idea of it was to hear, to, to have something that was targeted, explicit, justified. Instead of that, because of the Senate and the Constitution, and the emphasis on rural, we kept the same(?)mainly subsidies came: we are subsidizing high-cost carriers, no vouchers people really needed, we subsidize ski resorts. If you want to get in a rural area, you have to go and ask: "Mother, may I do that to the state?" So we ban it you have to show it is in the public interest. That's not what I call reform, and I could go on in a number of other ways where it just hasn't worked. There are also Constitutional blemishes here; I don't want to take too much of my time. I think the Exxon amendment is totally unconstitutional, and there are very difficult questions that Rick knows better than anybody on the V-chip which I assume we'll discuss later. I'll stop here, Eli.

Eli Noam:

Thank you very much. We'll have Dan Gold from Century Communications cable company. And I am sorry to be willing to disrupt his break.

Dan Gold:

I am sorry to have come late and I take it I've missed the opening remarks of several of the panelists and I've only heard those comments from my friend Henry Geller. I've known Henry for 35 years, I've rarely found myself as much in agreement with him as I did during the last 5 minutes. Much of what he said preempted the comments that I had hurriedly prepared this afternoon as I was thinking about what I would say. Obviously, my remarks should be, I think, directed primarily at the impact on the cable television industry in particular, and I will try to, I hope, really to do that. I think we feel generally that the approach taken was modest, but positive, and certainly one which we welcome, or a set of comments, a set of changes which we welcome. The deregulatory impact on the rate side for our industry, clearly, at least removes a great deal of uncertainty, which has hovered over the industry now since about 1992. And from the point of view of the ability of the industry to obtain the necessary financing for the necessary rebuild, which are increasingly foisted upon us by overly zealous local regulators. We, I think we'll find that the capital markets are somewhat more assured about the revenue streams of the cable industry. And I look over at my friend Mr. Gabelli, who is probably understanding quickly where I am going with this. And we believe that will be very positive and very helpful to all the cable industry. Certainly, as we look a little further down the road past the three-year transition of the deregulation on the rates, it's clear that there will be an increasing group of modest competitors, whether that be wireless or DBS, or ultimately possibly the telephone industry, should they really

decide that video is an area that they want to frontally assault as they worry somewhat more about those of us who may nibble away at their major businesses from the other side. But nevertheless, the competitive issues will continue to impinge upon us, and as they do so, I think the ability to raise capital and be in the market place for the additional services that we should provide and will provide, will be a little bit easier to come by as a result of this legislation. But I would emphasize again that its a very modest step. It's not a change of kind, it's a change of degree. Our businesses have been healthy and will continue to be healthy, we think. And that's not an arrogant statement, I think that's just a statement of fact, that we'd like to thank for providing the useful and necessary service and we think we can do an even better job under this legislation and I think that I'll stop there and perhaps comment on the other folks' comments as we go along.

(new speaker -- Mario Gabelli)

Mario Gabelli:

Again, I am privileged to be included on this panel and chat about the bill though I must admit the three columns I started reading it on Friday night, Saturday night, Sunday night, and again last night, so I haven't gone through it in its entirety. But to me it's very simple. It's consumerism, globalism, and how does the U.S. compete on a global basis and does this help us? How do we create jobs in a global environment? How do we have the highest standard of capability of giving video, data, voice, and so on? The standard I always like to give is Bill Gates. Bill Gates thought he had a juggernaut and he missed the boat. And so too here we are dealing with a new dynamic of legislation and I still see people talking about the marginal line of

competition, talking about PBS, for example. What we need to do is compete globally and in the last twenty years the US telephone industry has become a joke on a global standard in relationship to what the French or the Japanese are offering and the same thing in cable. I mean the people in Amsterdam are going to probably have a better system than we have in parts of the world, and so you need to create an environment in which capital flows to its highest use, and we haven't had that. And from my point of view I'll give you five numbers four, seven, eleven, thirteen, and fifteen. And I want you to play them 4,7,11, 13, and 15. What are those numbers? That's not what the Pittsburgh was able to do on defense against the opposition last week. It's basically the multiples of [] earnings before interest taxing, depreciation, that these various franchises sell for. Four times for the LECs; seven times for the local telephone companies in rural America; eleven times for cable; thirteen times for newspaper; and fifteen times for broadcasting. And what does that look like on a global basis? And from my point of view, I think these numbers will start coming closer together and creating enormous opportunities. Again, I am very parochial. I speak for my church. I suffer from a great deal of narrow tunnel visions, so that's what I am looking as the impact it has on the capital markets? What does it mean for the communications industry? What does it mean for the consumer? And what does the year 2010 look like and so far the winner is Bill Gates. (pause) I have nothing else, sorry. And it goes to show you what you do when you don't read the homework. I didn't read the bill in its entirety, I mean I read a lot of it three months ago and a month ago really, so....

Eli Noam:

All right let's continue now and we'll have our next speaker, David Honig.

David Honig:

Mario has acknowledged that he hasn't read the bill in its entirety and I suspect none of us has because this is the bill in its entirety. No human being could have read it since yesterday. It is a hundred eleven pages long. There are sixty five pages of committee report, explaining what Congress thinks it did. There will be six technical corrections; there will be eighty rule making proceedings. And the eyes will glaze over. Often when you see this sort of massive battle royal among large important interests, it is essential to remember this African proverb: "When the elephants fight it is the grass that suffers." My perspective is one of what does this do for and to the small entrepreneurs, poor people and minorities. I run the minority media and the telecom council. Certainly there's little disagreement that it's healthy that there be more competition among the large companies. The flaw of the bill, if there is one, can be summed up: it achieves the competition in such a way as to do it at the expense, in many cases of the smaller companies which lack the access to capital and which often lack the access to the personnel and the ability to pay them enough to make the usual rule of creativity flows from the bottom up not the top down to apply. For minorities it's going to be devastating and in the broadcast field, most minority entrepreneurs who are in radio own one or two small stations for number of reasons of historical significance which we'd know if we studied civil rights. It's important from that stand point to look not at what the bill does but at what it fails to do. And there are at least four things that the bill failed to do from the stand point of the little man or woman. First, it did not require the FCC to replace the tax certificate program which was abolished in April and which is responsible for about two-thirds of the minority owned broadcasters and cablecasters in the country, even of that two-thirds only represented 3% of the industry, half of one percent of asset

value. It did not require the FCC once and for all to put an end to employment discrimination in this most essential collection of industries. It did not make the significance progress it should have made ensuring universal service particularly for the poor. You have to keep in mind that only 75% of households making less than \$5,000 a year even have a telephone. If there are enhanced services how are those households going to pay for them? Most fundamentally what the bill fails to do is to make an essential legislative finding which is the communications today, the ability to participate in the stream of communications both as a producer and as a consumer, essentially attained the status of a fundamental right, just as much the ability to go to school was a fundamental right in 1954 when Brown vs. the Board was decided. I am fearful that until that finding is made, and legislation flows from that finding instead of around it, we face a specter in ten or fifteen years of two systems of communications - separate and unequal - the Plessy vs. Fergusonization of the airwaves. That's all I have to say.

Eli Noam:

Thank you. Herbert Marks.

Herbert Marks:

Ok, I'm one of the friendly lawyers and I'm here to help you. I probably have read this. Actually, much of this text has been around for a month and a half, so we've had time to ponder some of it. Let me sort of go through what I think some of the things are that are here. Some of the things that are not here and suggest to you who are interested in the nuts and bolts of these issues is worth going through because there are some good laughs as you go through to see who

got what, when, where. First, in terms of a major issue, and I would agree with the prior sentiment, or at least most of it. The bill is significant in that it provides time limits and the establishment of a schedule to do things. With relatively short deadlines, this is significant. If you take that into connection with the fact that the agencies who are going to pass in this are almost all short of budget. It tells you something about the process. Now, how short, is another question, that I will, we'll find out as to how good the principle of contestants were with respect to bell companies' entry into long distance when weighed against the people and say that either guidelines. It's how that plays out through administrative process and any if judicial review. But the imposition of time limits is significant. Secondly, the FCC picked up an authority in this bill that it did not have and that is the ability to adjust the level of regulation, the so called forbearance clauses. They lost in Supreme Court when they thought they had this power to generally depart from the act upon an appropriate finding. They now have the authority to do it, brings it more or less in line with powers that were in the old Interstate Commerce Act. There is a lot of another area in which there is a lot of material, and it remains to be seen exactly how it sorts out but there are certainly a number of adjustments of the state, federal, relationships. This is spun in an immense amount of litigation. The 34 act [] Spring Court calls for dual regulation. Notwithstanding that you have an interconnected, interoperable electronic phone system. It is subject to both state and federal regulation and that's the act. There are any number of provisions which allocate the authority and that to the extent that does that and saves litigation, that is good. Probably, the states did better, they certainly did better in later drafts than they did in earlier drafts so in a sense, you can say philosophically in certain aspects and I don't want to overstate this, this bill represents a bit of the ideological drift towards more power to the states. And I



don't want to overstate it. But there is that in probably the singular most significance in that area and that is the bill gets rid of barriers to entry into local service, it preempts state barriers, so that they are gone. You don't have to argue, you don't have to go in and make a case of public convenience necessity or the equivalence in the states; those are gone. Some of the things the bill doesn't do are some interesting questions. One is: there are a lot of universal services, so called universal services provisions--call them subsidy provisions et cetera. For those of you who have tracked the NII of the administration, the National Information Infrastructure, which after Buenos Aires is now the global information infrastructure and maybe we have a galactic one coming. There is a whiff of that through there, there are provisions calling for preferences, for health care institutions, for educational institutions calling for a broad look at universal service. Most of that then is lateral to the agency. So where that goes and how that plays out is a real question mark. And I just don't know the answer but I wouldn't say there isn't something there. Probably what the bill does add to the old system and I think that this is very significant, it says in effect that subsidies are to be transparent. In the old system, they were not transparent. And there is a big difference between having hidden subsidies and obvious subsidies, political dynamics that are radically different. The other aspect that, that the subsidy system is to be competitively neutral so that the combination of competitive neutrality and transparency is significant new law. Now how this plays out in terms of, as one cynic once said, "Are we really talking about a broad band to the outhouse." I don't know. But I don't think that we have even seen the beginning of the debate and this is going to play out over time. Another issue that is not addressed is essentially the bill ducked on international issues. So this is a domestic bill, it is important in terms of global economy for positioning U.S. companies and for a description of the U.S. internal market. But

international telecommunications is not in this bill; that's the next one. The next issue that I think Congress really ducked on, which probably would be the most difficult and the most fun, is they really ducked on convergence. We still got for federal law, we have a title two of a communications act. That's a common carrier, which delivers bit streams certain way. And then you have title six, that's for cable companies which in digitized form will deliver bits streams in another way. And then you got title three that for broadcasters when they go to digitalized format will digit bit streams in a different way and with everyone just edging into everyone's business you still have the pigeon hole. So you get a company who will, if they do one thing they come into one group of regulations, if they do another thing they come under another and there is sort of a rationalization or harmonization as it were a regulatory schemes that got ducked except in one area in the video dialtone, where in effect the telephone industry was able to convince the Congress that in effect, video dialtone becomes cable with a lesser level of regulation rather than common carriage so the area of so called convergence when viewed at the regulatory side maybe that's the next act. Finally and I just lay this on the table for those of you who have an in the user community, is that there is an interesting thing here, the focus of this bill is really on competition between providers or in common carriers on the telephone side. This is good for the users in the sense that there are more providers. To the extent the user becomes a competitor as we see in terms of large users with large systems, who try and get some of the same things that carriers do and they may indeed have, a big user may have economies of scale the same as a carrier. There are a lot of preferences built in here for carriers but they usually don't add the word user. Anyway, those are a few observations but it's a fascinating bill.

Eli Noam:

Thank you very much. We'll now have Michael Pelcovits of MCI.

Michael Pelcovits:

Thank you very much Eli, I've been asked to speak about this from the long distance company perspective. So I'm very happy to once again work for AT&T without pay. Actually what I'm going to try to do is, considering that we are in a academic setting try to stay away from the rhetoric and hyperbole that has surrounded this issue for so long. And give a little bit of a sense of a prediction of positive analysis rather than a normative analysis. And what I want you to keep in mind as I give my brief remarks, for those of you who, probably it's all too recent, is your structure conduct performance framework of industrial organization theory. Before I go on, my dog is smaller than your dog, this is my copy. What's amazing is that everyone has got a different copy of the bill. And mine really is, as you can see, not much bigger than a typical John Grisham novel. So its an easy bedtime read and by the time you're done, you'll understand it as well as you understand some of the believability of John Grisham novels. Let me go back in time a bit. If you think back to the divestiture of AT&T and think back to the anti-trust suit. What the suit was really about more than anything else was the failure of regulation to police anti-competitive conduct. What you had was the bell system monopoly which was facing competition along certain fronts and was engaging in anti-competitive actions because it was maintaining a monopoly in certain parts of the market. And there was ample evidence in that case about the inability of regulators to really control this process and as a result what the court process led to was structure. Go back to structure conduct performance, performance wasn't doing very well so the court

imposed, rather the court didn't impose but the judicial process imposed through a settlement a structural separation between supposedly the monopoly and competitive parts of the bell system. Again as a solution to the fact, regulation couldn't do the job of policing anti-competitive conduct. Well from the telephone side of things, what this legislation is about, is the elimination of the structural solution and the reemergence of conduct regulation. This is not deregulation, this is substitution of regulation, conduct regulation for structural separation. What are my proofs of that? Well there is a heck of a lot of conduct regulation in here. Both with respect to the RBOC activities in long-distance as well as with respect to the development of competition in the local market, there are conditions on separate subsidiaries, on interconnections, page after page of regulatory requirements and process. So this is indeed a very regulatory bill, it is not at all like the MFJ. I agree with Henry, I think the, the wowing the RBOCs into the long distance through the MFJ would have taken a lot longer than it will or is likely to take under the bill. There is not a decree in MFJ decree-type test in the bill to let them into long-distance. So they will get in sooner, and quite frankly, its very clear, they will get in before they have relinquished, or before, they have no longer have market power in the local market. So indeed you will be back to a situation of having to regulate conduct of a firm with significant market power. Another important piece of the puzzle, is that in order really for the whole thing to work the way it's supposed to according to the press releases and so forth and so on would be that you would get local competition developing real quick, just like that. And if that were to be the case then what I've said about regulation wouldn't apply. Well that's not going to be the case its going to take some time, quite a lot of time for you to have significant competition in the local market. So once again we're back to conduct regulation. But what does this mean? Well, a lot of the rhetoric I had heard

while watching the debate on the bill was about jobs. The creation of jobs. If I turn back to thinking about this as a macroeconomist, I'm not sure where the creation of jobs comes from except in one area. And that's for the people engaged in unproductive activities like myself who are employed in the regulatory litigation type of process. And I think there will be thousands of new jobs created in that area. What this will lead to since the bill puts a lot of strain on the FCC and is putting the FCC into a role which it is really not very good at in my opinion, which is conflict resolution. It's a regulatory agency, it likes to write rules, set access charges, rules, look at rates, things like that- there's going to be a lot of conflict. The process of resolving those conflicts is not going to be very smooth. It's going to shift and will inevitably shift a lot of burden to the states and eventually to the courts. And ergo lots of jobs. What does this mean for the industry? Well the MFJ really enforced the structural separation so in some sense artificially prevented the integration of long distance and local. For better or for worse, the era of the stand alone long distance carrier is going to be ending. Why is that true? It's not forced, it's not imposed by the bill but the question is why will that happen? And I think first and foremost regulation will not be effective at preventing a local dominant firm from favoring itself. So in that case the only defense for a long distance company is an offense. And I would say this is particularly true. If you want to keep your eye on the ball, the ball to keep your eye on is access charges. As a long distance company with revenues, I don't remember but ours are now above 12 billion. When we had 12 billion dollars of revenue, (MCI, not AT&T), we spent about 5 billion dollars a year as access charges. Now if we're paying that much money to our future competitors, we're going to have an impossible job of competing in the market. And the only way to remedy that would be to have a dramatic reduction in access charges. Which I don't think will happen or

we're going to have to get around that or erode that by having more local competition. And that again is going to take some time. Now is this bad or is this good? Well it's not terrible, if vertical integration is not inefficient- enough knots in there. In other words, the bill, by forcing companies to integrate and not stand alone, is not terrible from an economic standpoint if its not forcing inefficiencies in the system. Another big issue is performance. Will we get adequate competition among the vertically integrated firms? I think that's the big IF, it's the one which the regulators are going to have to keep their eye on as they see what the effects of the bill are. Thank you.

Eli Noam:

Thank you very much Mike. Now it's my particular pleasure to welcome Gail Garfield Schwartz, my former colleague on the New York Public Service Commission, who will discuss the views from the perspective of the local competitors, but I also hope from the perspective of the state commissioners, regulators, if you can throw that in too.

Gail Garfield Schwartz:

Well, thank you Eli. I'm really happy to be here and to have this opportunity to be with my former colleague again. I guess Teleport Communications Group, which wants very badly to be the other local telephone company, in every major market in this company in a short period of years, basically considers this legislation a whim. And I'm still pinching myself to see how much good there is in for a competitive local exchange carrier. I really didn't expect being basically an ant in this political process in which a large number of very sizable elephants, such as MCI and NYNEX. The local exchange carriers had a voice, but we certainly were not the most powerful

players. And therefore when I read through this bill and see all the must-haves that we got, I am amazed. And I can prove it to you if you would like me to, because this is the fourth edition of Teleport Communications Group annual calendar and nine points. Which has the nine essential elements which must be in place for local exchange competition to exist- and every one of these is in the legislation. Essentially in order to do what my company wants to do, the bottleneck has to be broken. And in order for the bottleneck to be broken through the provision for access to the essential elements of the existing monopolies, on an economically viable basis that is fair to the monopoly by competitive local exchange carriers. There has to be interconnection, there has to be access to the database and signaling systems, there has to be an economically viable method for reciprocal compensation for the exchange for local traffic originating on one network and terminating on another. All of those provisions are in this legislation. The carrots for the monopolies which obviously have no existing self-interest to provide such interconnection and interofferability, is the ability to bypass the consent decree and to get into the forbidden interexchange marketplace, intra-lata marketplace. Clearly for a competitor like us, who as Mike Pelcovits just said, is obviously true. If that carrot is enforced too liberally by the agent that is charged with it now, that is the FCC substituting for George Greene, we will not be able to take advantage of this opportunity to establish ourselves in the marketplace. So we had a very keen interest in the terms and conditions under which the FCC would approve the application of a local exchange monopoly to be in the long distance business. And we also felt that the Department of Justice should also have a strong role in determining on the basis of the MFJ standard, that is the 8C test, when that should occur. That did not occur in this legislation and while the Department of Justice must be consulted by the FCC before it allows an RBOC into the inter-lata business.

In one of the most adorable arts in legislative language, it says the Department of Justice must be given special deference, but their opinion cannot have a preclusive effect. I'm glad you laughed-thank you. Someone has to explain to me how that's going to work. In any event, I think that what this has done is you get a few thousand feet above the surface- and Eli asked me to talk about the state/federal dichotomy here, I believe that for this segment of the act, what it has done is affirmed what was already happening anyway in the states. During the last year and a half I think sixteen states have passed pro-competitive legislation themselves. So all except three or four of the states had the authority to essentially engage in all of these objectives on their own initiative in their own state. This federal legislation merely means that that will come a lot quicker. The federal legislation also removes barriers to entry as I think Herb mentioned. Which is very significant for a competitor like us. For example, municipalities can no longer discriminate in favor of the incumbent local exchange carrier with respect to access to the public rights of way. Something which may seem boring to you all, if you are engaged in high level organization theory, I can tell you when you are trying to run a business, it's terrible when we have to pay more for our franchise than NYNEX or Ameritech or any of the other incumbent monopolies. So that is the crucial factor, and the net result is going to hasten the day when all of the barriers of entry are removed. It has also some very interesting characteristics with respect to the state/federal war that has been going on since 1934 over who has jurisdiction over what. Because the initial responsibility to affirm agreements made between competitors like us and incumbents as to interconnection and interofferability and reciprocal compensation is given to the states. And in fact if negotiations fail to satisfy either party, negotiations being required, being a duty of the incumbent monopoly, then either party can appeal to the state. And it's only in the event that the



state fails to act that the preemption by the FCC will take place. So I think that the states have come out of this legislative mill with more authority than they expected when this began three years ago, that is as long as I have been involved in it. But they will still feel their jurisdiction has been usurped. And I think they have a legitimate claim to say that. And they certainly will oppose in whatever ways they can and certainly will litigate a number of such preemptions in this legislation. I'm going to be very diplomatic and not say whether I am glad about the preemption or not. Because it is a practical reason that leads me to do that, because there are some states that are extremely progressive, like Washington for example, and they have set an extremely good example for the whole country. I hope and pray that when the FCC comes to establish the rulemakings that are required by this legislation to put the teeth into the general guidelines which in respect to local exchange carriers I guess I can't quite agree with Eli and others that I find to be too detailed and too onerous and too restrictive. I think they're the proper standards and they leave plenty of room as good legislation should do for every party to get another bite of the apple to live to fight again through the rule makings, through the negotiations, and ultimately, if they still feel aggrieved, by going to federal court. So, for competitive, local exchange carriers this is good news, notwithstanding the fact that the incumbent monopoly still has many, many opportunities to gain the process just as it did before February first. Thank you.

Eli Noam:

Thank you very much, Gail. We have now a speaker who is not on your list because we had to confirm the confirmation fairly late. Barry Steinhardt, associate director of the American Civil Liberties Union.

Barry Steinhardt:

Thank you very much, Eli. One of the advantages or disadvantages of being towards the end of a long, distinguished panel like this is that you get to push an analogy even further. So, let me tell you that as civil libertarians we very much felt like ants as the elephants were wrestling and we were very very hopeful that those elephants would stay off to the sides and wrestle each other and withdraw and we would never see this bill. But, I can tell you that instead we got squished. From a civil liberties perspective, particularly from a free speech perspective, this is a disastrous bill. Let me take off a few things. Some of them have already been alluded to. The first and foremost problem is the so called Exxon amendment or communications decency act, which is really the Congress declaring war on indecency, or what it views as indecency in cyberspace, on the internet and other online mediums. It's a war that can't be won. We have a global network of networks with literally tens of thousands of sites. Global in nature meaning that not only can all those sites and all that content, hundreds of millions of words, not be monitored. But, you have sites that are based in foreign nations. It is easy to access smut, it's housed in a computer in Belize as it is in Brooklyn. It's just as cheap. So, in the end it's a war that can't be won, and it's a war that should not have been fought because it's being fought in the name of American children, the notion being that we're gonna protect children from all of this terrible smut and indecency that exists in cyberspace which to begin with is vastly exaggerated. And secondly, within the technologies itself lies the solutions. We have now filtering mechanisms, parental controls that are available to parents who want to be responsible. Everything from net-nannie to internet in a box for children, to an emerging standard that is being adopted by the large internet providers and computer companies that will allow groups, ranging from the ACLU to the

Christian Coalition to provide ratings for internet offerings. But instead the Congress decided it would wage this war and I can tell you that to a certain extent I think that the disagreements that exist on this panel, and even the difficulties in knowing exactly what legislation was passed pre-staged this, but, we're gonna be in court on Thursday at 11:01, after the president signs the bill at 11 o'clock. And, I heard last year--I was on the panel last year in Washington with the Telecommunication section of the D.C. bar, which you can imagine is very, very interested in this matter--and, the moderator suggested that he thought that this bill really ought to be named "The Telecommunications' Lawyer's Full Employment Act," then in 1995. And, I suspect that's right, only in this case, we who are among the lesser paid of those lawyers get to go first. So, the first problem with this bill is the communications decency. The second, which Rick Cotton alluded to is the so called V-chip proposal. To begin with, the V-chip proposal is somewhat misnamed. The V-chip stands for "Violence chip." In fact, the proposal, as it passed the Congress, covers not only violent programming but also programming with sexual content and indecency. There's nothing wrong with the V-chip concept. In concept with the V-chip is the chip that will be in television sets or it could be in the set-top boxes, cable boxes, etc., which would allow parents to program out, essentially shut off programming which doesn't have a proper rating. There's nothing wrong with the V-chip in principle, particularly as we reach the age of the information super highway, if it comes. And, we have what amounts to almost an unlimited choice of programming and content. There inevitably are gonna be filtering mechanisms and there is going to be a need for filtering mechanisms. The problem with the V-chip proposal as it passed the Congress is that the industry, in this case the cable industry and the broadcasters--who have very, very little in common, even though to some extent you've got NBC and others who are in both

industries--but, on this subject have little in common. Or, given a year to together come up with a standard, a rating system. That rating system then goes to the FCC for approval. FCC doesn't have to approve it. And, it's also extremely unlikely that these two industries will ever agree since, if you think about it, the cable industry, which does not for the most part--the HBOs of the world--, which do not have to rely on advertising revenue, in which really kind of narrow cast go for niche markets, have much less to be fearful about in terms of a rating system which might be used to block out a segment of the market. On the other hand, the broadcasters, who have to, that broadcasting--underlining the word "broad" there--who have to reach a larger market, have to satisfy advertisers, have to be much more concerned about the severity, or strictness, of these rating systems. So, I think we can predict, with pretty good reliance, that these two industries will not in fact be able to come up with a common rating system. But, either way, at the end of the year, the FCC will get into the act. If they can't come up with a common rating system it will get kicked over to an advisory committee to be created by the FCC. So, in the end, we will wind up with either a government created or a government coerced rating system for all television programming. Stop and think what that means for a minute.

What we're going to have is the homogenization just as we will have on Internet if the bill is allowed to go into effect (the communications decency law). We're going to have a homogenization of content on television whether it's broadcast or cable. Things will be reduced to the lowest common denominator, in this case what's suitable for children. The third biggest problem from our perspective with this bill is the media concentration provisions. This bill allows a single company to own the network affiliate, the cable company, the Internet provider, the local

telephone company in a single market. And we are going to see increasing economic concentration in the communications industries. That has real consequences for speech. During the course of the discussion of this bill, some of the opponents at that time among the large economic interests that are represented here today wanted to run advertisements on CNN in opposition of the bill. CNN wouldn't let them do it. Why wouldn't CNN let them do it? Because CNN was allied with the proponents of the bill. That's the kind of threat we have from increasing media concentration. From a final civil liberties perspective let me talk a little bit about equality and equality of opportunity in this country. I agree with David Honig and others who have made this point. I think that the universal service provisions in this bill are at best tepid, in that we face the likely possibility that we will have information "haves" and information "have-nots". The rural subsidies may well mean that the broadband will get to the outhouse, but it's not very likely to get to a tenement in Harlem. And I think that we have to face the consequence that we are going to further divide our society on economic lines and on racial lines as a result of this legislation unless the faint hope for universal service which is in the bill becomes a reality. So we have a lot of problems with the bill. We, sort of whistling in the dark, have asked the President to veto it, but he assured us he's going to sign it, and that the Justice Department is already prepared for our suit, so I guess that we'll see them in court on Thursday.

Eli Noam:

Thank you very much, Barry. And now our next-to-last speaker is Tom Tauke, the Vice

President of Government Affairs at NYNEX, who has also been, when he served in Congress, a member of that subcommittee that wrote the bill.

Tom Tauke:

Well thank you, Eli. I thought you would like to spare me that last comment, so I could speak without any opinions being formed ahead of my comments. But let me make a few observations. First, I may be at a disadvantage, but I've read the bill. I've gone through it several times. I've looked at how it fits into the 1934 Communications Act. I've read the committee reports of House and Senate, I've read the conference committee report. And so I know the details, I think, fairly well. And I might just make an observation. This does not reflect on any of the panelists here, but on my way up here, on the plane, I read analyses from 11 Wall Street players, who have widely different analyses of what the bill does. And it's clear that they didn't read the bill. They didn't read the committee reports. And they have great misconceptions of what's in the package. I have three primary points to make. The first is that this bill represents enormous change. The way I look at it, and this may be simplistic, technology has changed tremendously over the past decade, the marketplace has changed remarkably over the past decade, and public policy has stood as a dam against this flood of change. Congress blew up the dam with the passage of this legislation. And that is going to unleash tremendous change, some of which has been alluded to during the course of the discussion so far. Just three points I'd make relating to that. The first is that when it relates to a company like NYNEX, as it deals with a company like Teleport, it used to be that when Teleport would come and say "We'd like you to provide these things to us, open

your network, let us hook in to your switches," and so on, our people sit there any say, "We're giving our competitor access to our market, access to our customers- this does not seem like a good deal." The regulators would beat us on the head and say, "Yes, you ought to do this." And we'd kind of think, well, maybe this was the future, but it was all stick- there was no carrot. There was no reward for doing it. This legislation gives us a carrot for doing what they want us to do in the way of opening the network for competition. That's big change. Second is, there's going to be major investment as a result of this legislation. What business people want is a sense of certainty. For the last several years, there has been virtually no certainty in the public policy arena, and so as a result there has been a real unwillingness to invest in some of the risky potential new businesses. That will change, to a certain extent, with this. The third big change which has been talked about relates to the pricing structure. There is the potential- not the promise- but the potential in this legislation, and certainly the directive that subsidies, as was alluded to earlier, should be eliminated, which means that the pricing structure of the industry is thrown up for grabs. That will change the market of this industry dramatically, meaning that you can have real competition, and it means that services will get priced on the basis of cost and what the market will bear. And that's going to mean that there's going to be a lot more services, a lot more choice for consumers, and lower prices as well for customers. And parenthetically, the huge drop in the cost of telecommunications services is what will generate the economic activity that creates those jobs. This is much better than any tax cut Congress could pass in terms of unleashing new money into the economy. The second point that I want to make is essentially a political point. And admittedly, you know my background is in Congress, and so I may be biased, but this is an enormous accomplishment for the Congress. Now you can look at the bill and you can pull out

sections and say that this section doesn't make sense or that section doesn't make sense. Let me tell you, if you look at the great civil rights of the 60's and 70's, if you look at the Clean Air Act and other major environmental legislation, if you look at the labor laws that were passed in this country, they all look pretty bad. You know, this notion that the legislative process is like making sausage is an accurate one. And the one crowd is saying "They weren't specific enough. They're very vague in their pronouncements in the legislation." And the other crowd is crying, "Oh, they were too specific! Why didn't they give us general principles and allow the experts to fill in the blanks?" But you can't have it both ways. This is a political process. You have to figure out how to put together a comprehensive policy and meet a lot of differing interests among the 535 members of Congress. And, oh yes, the differing interests among the general public. I think that this is an enormous accomplishment and it sets a new foundation for public policy in the telecommunications arena. What did Congress say? In big terms Congress said, "We aren't going to have government dividing up markets any more. What we are going to do is have competition, have the government back away from the business of dividing up and assigning markets, and instead unleash competition in the marketplace -- what Ed Markey, the Congressman from Massachusetts, called "a digital free-for-all." I think that at the same time Congress recognized in this important area we're nervous, as I suspect the public is, about having an unfettered marketplace. So as a result they set rules, rules to ensure fair competition, which seems reasonable, rules to ensure that there wouldn't be a society of haves and have-nots, and we can talk about that later on in the discussion if we have time... rules to ensure that rural areas and others would be served. So there are going to be problems with this bill -- the technical corrections bill is already in the works; the FCC and the state commissions will interpret this five



years from now, some of the policies that are embraced here we won't recognize. But it creates a new foundation which is fundamentally important to the development of this huge sector of the economy. The last point that I want to make is that this new foundation that is being created is going to, I think, be a tremendous benefit to consumers. And I will acknowledge that I think, for example, the indecency provisions... thank goodness we have three branches of government. By the way, this is a commentary on the political system, that Congress responds to concerns that people have about what's coming over the Internet in a legitimate way, and that will do some good, probably, and then the courts will throw it out, and that does some good too, and you know, that's the way the process works. And that's not all bad. But the new foundation that has been created is going to have tremendous benefits for consumers, because consumers are going to get choice, that they haven't had before. They're going to see the advantages of the investment that will come in the new technologies. They're going to have creativity in the marketplace that hasn't been there before. They're going to have packaging of services, so that instead of taking the service that the cable company or the telephone company or the broadcaster wants to give you, the customer will be in charge of determining what that package of services will be and the competitors will have to respond. So I think that this bill is, despite shortcomings that we could all list, this bill overall is a huge step forward to the development of this segment of the economy, for the strengthening of those companies in the U.S. that will be worldwide players in the communications marketplace, for the opportunities for new companies to begin, and also for consumers who will get more choice, better services, and lower prices.

Eli Noam:

Thank you very much, Tom, and now we'll conclude this first round by getting to Paddy Link here. Paddy is the Chief of Staff of the Senate Commerce Committee, she has been working with Senator Pressler since 1975. Some people didn't read the Act, some people did read the Act. Paddy didn't just read the Act; she actually wrote it.

Paddy Link:

What you hear at this table is a microcosm of what my last year and a half has been about. I work for the Chairman of the Commerce Committee, Senator Larry Pressler, and my job was to get a bill passed, keep everybody on board, and get it through the House and Senate, and get the President to sign it, which he is going to do on Thursday morning at 11:00 in the Library of Congress Reading Room. And had I known that when he offered me the job, I probably would have gone screaming out of the room and said, "You've got to be kidding." It's been a wonderful experience; it's been a very frustrating experience. It has been like riding on a roller coaster from day one. It seems like we've been at this for a long time. Obviously, there have been efforts over the years, to try to do this bill. Senator Hollings, of course, in the last Congress, tried. So we once again started off at the beginning of this Congress to try to get the coalition in just the right combination so that we could get it through the Congress. I guess that I'm lucky that I didn't hear everybody speaking because I get a little defensive about my baby. I really would recommend that you read it; we're going to try to put it on our website at the Commerce Committee so that you will be able to download it. It is really very well written. You may not like all of the policy in it, but as a legal document it is extremely well done. One of the most senior members in the Senate, Senator Stevens, got so excited about how well written this was, and he's seen lots of

bills, that he ordered up extra copies. So that if you can't get it from our website, write in- we've got lots of copies of this. I think, as Senator Pressler is very fond of saying, the main purpose of this bill is to get everybody into everybody else's business and, very importantly, I believe, to increase our competitiveness in the global market. There is one provision that was dropped from this bill, on relaxing the U.S. foreign ownership restrictions. I regret that that was out of the bill; I think that we're going to make another stab at it at a later time. Quite frankly, the Senate Commerce Committee is not filled with free traders, either on the Republican side or on the Democratic side. And so I think maybe another venue, perhaps the Finance Committee, as a little amendment on a trade bill, might be the place for this. And in fact, the trade negotiator for our government thought maybe the telecom bill may not be the most appropriate place to put it. So that's my justification, I think a change in our foreign ownership restrictions in the United States is desperately needed as the European Union is moving towards liberalization in 1998 and I do believe that more or less most of them are really working toward that. I will say that there are some things that people don't like in the bill. I think, for my friend from the ACLU who will be delighted to know that we ensured that expedited review was put in there just for your benefit- we were thinking of you- I guess on some of the red-lining provisions that we thought we were doing the right thing by putting it in front of the bill so that it applied to the entire Act. Some in the civil rights community have now decided that that really was not the right way to go but I can assure you it was the best of intentions. We wanted it not to just apply to telephone service, we wanted it to apply to the Act overall. And so there are things that we've been hearing about, and that we'll probably continue to hear about, there is not in the Senate going to be a technical corrections bill. As much as you might want one, we have no intention of doing one. It's these

people that were in the House of Representatives are always talking about these technical corrections bills. I still have Gail Schwartz's calendar on my desk, she came in and we did have an interesting situation, and I think this is just as a matter of public policy is somewhat interesting, as Gail was mentioning the rights of way and municipalities and the cities. Well, the cities decided they didn't like the language we had in the conference report, and they got upset. So what did they do? They went to the Congressional Budget Office. I do not wish the Congressional Budget Office on any of you. So they say, aha! There is a new law called the Unfunded Mandates Law which Congress -- I hope someday, to their regret, will say maybe we shouldn't have done it quite the way we did it -- passed last year. So the disgruntled cities went to CBO and said "We think it's an unfunded mandate that we can't gouge people for the rights of way." So they tried hitting up CBO and I think this bill could have died if hadn't have passed last Thursday because of the Congressional Budget Office sending the Chairman a letter last Thursday saying "We just got this conference report (which I made sure they didn't get for a very, very long time) and we're looking at it and we think you've got serious unfunded mandate problems." Seeing that, we'd better move this along very quickly. We did settle the cities' problem with a truly technical amendment, but I think as a public policy matter, it's sort of interesting to know that the disgruntled will now go to the Congressional Budget Office, where they always tell me they don't do policy; they only do numbers. And the last DBS slot that was auctioned for a total of \$683 million last week, they had scored amounts probably under \$100 million, probably more like \$50 million that you'd get for that spectrum. So this has been quite an experience. I think it is a fairly balanced bill; as you have heard, there are some things folks don't like about it, but I really believe that it is going to have a good effect for our country, both

here and abroad.

Eli Noam:

Thank you very much, Paddy, I'm sure we'll get back to you. Let me just ask, before I open this to questions from the floor just two quick questions, one to Mario Gabelli, who represents the investor community and also manages some of my money, from your perspective, who looks good after this bill, what kind of industry?

Mario Gabelli:

You know, I'm going to follow on some of the analogies here, and using the elephant, have you ever watched elephants in heat? You just don't get in their way. And that's my point. I think what you had was a lot of the RBOCs just staying in the woodwork- their strategies will unwind with a mating game that's been unprecedented, and I think it's going to be a lot of fun from Wall Street's point of view. Let's break the issues down, and Paddy I commend you and your colleagues for contributing to a wonderful final product. You have to finish it somewhere, and yes, there are a lot of blemishes on it, and I would have gone with Markey one step further; I would have not only had a V-Chip for the domestic business, I would have put a V-Chip on the Internet. And Markey is working on a V-Chip for the Internet, so the ACLU can work on that next. I'm joking, by the way- you guys are taking me seriously, but he is working on a V-Chip for the Internet and we're all in favor of it. Looking at the business broken down by newspapers, cable television, and taking telephone into its various forms, whether it's a LEC, long-distance, CAP, or otherwise looking at it from the point of view of a TV and breaking that down into a

radio or a network and looking at it from the point of view of wired and unwired and looking at it from the point of view of the equipment manufacturers, who are the winners? One comment that you should understand on a global basis- NTT is bigger than all the RBOCs together, so when we're talking about competition, and worrying about NYNEX and worrying about Bell Atlantic, we've got the wrong picture. It is very, very narrow. You've got the wrong picture. And when we're talking about job creation, whether it's in the South Bronx, or south of Belfast, or in Wyoming, or in South Dakota, I can locate a facility anywhere all around the world and you've got to understand the linkage between the capital markets and job creation and it's clear from these conversations that venture capital and how it creates jobs needs a lot of education. Now from my narrow point of view, it's easy to determine television. The broadcasters will merge. If you have 35% footprint as opposed to 25%, there is going to be a lot more. Last year you saw some of that with Cap Cities, you saw it with CBS, you saw it with a merger pending, and others. So you're going to see the companies go to a 35% footprint- it's there. With regards to 8 radio stations, an operator will do what you do. How many of you have gone to a movie theater lately where you have one theater and 400 seats? You go to a multiplex. It's the same thing with radio. The radio business is going to achieve some significant economics. I think they were very creative in the bill with regards to the LMAs and grandfathering that in, I think that's very creative, very beneficial for everyone around, and it's not something anyone's going to worry about from a consumer's point of view. So the broadcasters are big winners, particularly the small ones that are going to be merging upstream, and you'll see a lot of deals in that way. From the point of view of cable television, they have living on their immerseless and unjustified uncertainty for an extended period of time; I think this bill helps them, dramatically from Wall Street's point of

view. When you get an RBOC out of region, I think you'll see a lot of that- I think US West is probably making love to Chuck Dolan in a more heated fashion very quickly- Chuck's tough! But that's Cablevision of Long Island and you're just going to see it in a dramatic fashion. So I think that's important. On the newspapers, they've got a problem- they've got to come off, and stop thinking of print and ink. Gutenberg was around in 1458, don't hold me to the year, and basically that's going to change. They've got to get that software capability and migrate it. So I'm not clear -- I don't think they win. Incrementally they've done extremely well.

So for my point of view on the telephones: I think you have to have universal service. As much as I dislike the notion of subsidy, the answer is that if you go to places like Hungary or Mexico or somewhere else, how do you allow.... yes- I worry about 116th and 3rd. Sure we're on 116th and Broadway, but a person on 116th and 3rd has to be able to compete the same way somebody in Scarsdale can compete, the same way someone in Moose, Wyoming can compete. And if that requires a subsidy so be it, and you can't allow somebody to skim the cream the way Fed Ex does- you have to have universal service. And Congress will figure it out and so will the free market. And I have to believe that the way I have to put some bets down is to buy the Cincinnati Bells and the Southern New England, there is no *raison d'etre* for them. They shouldn't be there. The second area is obviously is the companies that supply- the local telephone company, they are basically selling at four times. Why should they sell there? If they can grow their revenues at an accelerating rate, why should they be worth less than the cable company that is selling at eleven times? So I think when the dust settles, they're going to pay- they're going to get into long distance. So that's the way I see it- coming down- in a very quick and concise way.

Eli Noam:

Thank you very much, Mario. Now let me just ask my second quick question- following up something Mike Pelcovits discussed- his interpretation is that this bill is in fact changing structural regulations. Not in favor of deregulation, but in favor of behavioral regulation. And I would like to kind of ask some members of the panel- Tom or anybody else- if they agree with that perspective. Henry- I'm sorry, Herb?

Herbert Marks:

Well, clearly by permitting entry you remove a structural barrier for the Bell operating companies and substitute a series of behavioral safeguards in the area of the checklist for interconnection. And you have a provision for separate subsidiary for a number of years for selected activities. Of course with the sunset, but then with the FCC power to extend. So, the answer is certainly conceptually it substitutes in general a behavioral regulation for the structural barrier of no-entry.

Eli Noam:

Henry?

Henry Geller:

I thought in his excellent presentation- I thought Mike said something that indicates why we have moved. And that is that the Department of Justice in the big bang breakup had a legal theory- a very elegant, a really economic theory. That is, Mike said they were separating the workably competitive- that's long distance manufacturing and the lab- from what was the naturally



monopolistic. Well it turns out they were wrong. Baxter was wrong and the economists were wrong there. They were wrong it turned out in information services. The bells had to get into that because all they are computer and so they had to use a data processing- so they were allowed in through the courts. You now come to interexchange and as Gail said there are mobs of people trying to get in. It is not naturally monopolistic, certainly now they have a monopoly at 95% but people are pounding at the door. Just as they pounded at interexchange led by MCI and pounded on equipment which was once a monopoly. And I think that's why we are now in the soup on conduct. Mike's right- it is now a checklist and the state is going after it and insuring that it comes out on the fourteen issues. But it's inevitable once you realize the big bang- the modified one- was flawed. All you needed was to get the equal access and we should have moved on.

I don't have much to add. I think the characterization that we have moved from structural to behavioral regulation is correct. From the perspective of an incumbent local exchange carrier- in essence what you have to do is treat your customers, or treat your competitors as customers. And to give your competitors the same access to your network that you give yourselves- on the same terms and conditions. That's not going to be easy to implement, it's a challenge. But the policy is very clear and I think -- from a larger public policy perspective -- the right one.

Gail Garfield Schwartz:

I'd like to suggest a distinction. I don't know if Tom, you would agree with this characterization- but we like to interpret this legislation as meaning that the incumbent has to treat other carriers as co-carriers, or as peer-carriers, rather than as customers. And to us, that may, to you that may

be a distinction without a difference, to us it's a distinction with a very big difference. We have been treated as customers and we have been given the same terms and conditions that a big bank would get, for example. Now we're going to get the same terms and conditions that an adjacent local telephone company would get- or, that's more the guideline. On the structural issue I think the bill shows again all the careful thought that went into it. Because when the RBOCs provide, Paddy you correct me if I'm wrong, the way I read it, and I too have read this many times. They have to- when they go into long distance business, they have to do it with a separate subsidiary. But the act provides that the separate subsidiary requirement would extinguish after three years- except that it also gives the FCC the authority to continue it. So there's a presumption that it won't be necessary, but there is an opportunity to continue that structural separation.

Eli Noam:

Alright, Mike and then we'll take questions from the floor.

Michael Pelcovits:

One sound bite: I think the issue of whether having the carrot changes things very much really depends on how quickly that carrot's gobbled up. I'm trying to think of analogies to the way I have failed to train my dog at home, but I think we will see these issues of conduct regulation continuing far beyond the time when the cupboard is bare.

Eli Noam:

Let me now take some questions from the floor- Professor Monroe Price.

Monroe Price:

It seemed to me in your comments that you were suggesting the kind of relatively radical changes in which ratings has a new form of voluntary. You designated ratings acceptable in the Internet in a sort of voluntary way. It seems to me this bill poses- perhaps the same structural performance distinctions by looking at blue-chip vs. Exxon. The question is the V-chip... if you look down the line it suggests advisory, advisory, advisory. Is it a prudent policy to challenge the V-chip part? And for Rick, I guess the questions are there different strategies? And finally, is there any indication [that this] is not inhospitable?

Paddy Link:

Well let me first say with respect to the ratings, on the Internet I don't know whether the ratings are desirable or not, but I think that they are inevitable. Because what you are talking about essentially is infinite content. I know there are a lot of students in this room so there is probably a much more collective experience in Cyberspace than I have. But most people who travel in Cyberspace know that you don't need traffic cops you need a roadmap. And there are intelligent agents and things being developed to help people maneuver around amidst all that content. So I think that the ratings are inevitable- there's probably from a civil liberties free speech perspective, nothing wrong with them as long as there are a multitude of ratings and you get to pick which rating system you want to use. The problem with the V-chip, I think, is first of all we're going to get a government, and even in the first instance, we will get a government coerced -- if not government imposed -- ratings system. And the second instance I think what's going to happen is- I was recently on a television talk show with Congressman Markey, and posed this question

to him actually. I think what's going to happen if, if and when the system comes into effect, we're going to have a lot of pressure on Congressman Markey and other members of the Congress to make the so-called voluntary ratings system involuntary. To make it mandatory. I think it is inevitable if this system goes into effect the first time Jesse Helms or the Christian Coalition or someone along those lines doesn't like a rating that was given to a particular program- the FCC is going to be asked, what are you going to do about it? The FCC is going to say, well, we don't have any authority to do anything about it. And the answer to that is going to be, well, we'll give you the authority. So I think in that case we are on the slippery slope. I think we are moving towards government imposition and government coercion of ratings systems. I'll leave to Rick Cotton the question of whether the broadcasters are unified- it's my understanding the broadcasters do intend, at least some of them, to challenge this in the courts. I think we are hopeful that certainly on the Internet provisions that the Supreme Court will be hospitable to our claim. The Supreme Court has never allowed indecency regulation except in the context of broadcast and even there only on a limited basis requiring the least restrictive alternative. We have in Cyberspace something that is the antithesis of broadcasting. This is really ultimate and narrow casting. I don't think they are going to buy this indecency standard.

Richard Cotton:

Alright, I'd just like to say that I think the V-chip points out how well-drafted the rest of the bill is. And that's a reference to the fact that the V-chip drafting comes from the House side not from the Senate side. I think the problems with the V-chips as drafted is really the question of who decides. And I think that the heavy hand of the government is clearly there- and second, what is

to be rated. And we spend a lot of time thinking about that. Let me start with what's to be rated. The bill does not exempt news and sports as an example, it just says all television programming. In terms of what is to be rated, it's easy to say the word violence, but in terms of what the networks- which I have to say for those of you who watch television and most of these discussions involve people who don't watch television. But for those of you who do watch television, the fact is that the broadcast networks currently have the least violent programming probably ever. Certainly in the last few years and certainly in terms of my experience growing up than when the shoot-em-up cowboys were on. And the violence is in the movies which are rated, incidentally, and on cable, which primarily runs uncut theatricals, which are also rated. So the question is- do you want to label violence or sexual material, or do you want to just get it off the screen. And I would just suggest that the whole ratings rubric really has given permission to keep this material on. The point is its very hard to understand and to think about what it is: how do you decide what you label? Is ER, which is the most popular drama on television currently, there's a lot of blood, is a doctor performing an operation violent in a way that it should be rated. I was in a discussion on a radio program with Congressman Markey and his focus in terms of what he wanted rated, was the afternoon talk shows. Well, that's just talk, so now we're talking about violence and sexual material in terms of talk. The networks were particularly criticized in a study that came out a year ago, which studied a particular day of television. Because during that day national news programming focused on developments in Bosnia and Rwanda. Now to that particular individual studying it, that was what made, on that particular day, network programming exceedingly violent. The point is it is very difficult in terms of what is to be rated, who is to do it, and the way the bill is set up now comes back to who does it. The rating system, or systems, it's not clear

from the bill, must be acceptable, must be approved by the Federal Communications Commission. So at the end of the day what is inherent in the bill is some sort of ratings system which applies to an unspecified amount of programming where ultimately the hand of government is driving the system. And I think in terms of the thousands of hours of television programming developed both by broadcast television and cable television, that the last thing that we should want in this country is to have the government in that role. I guess in terms of actually answering Monroe's question, in terms of what will the industry- for better or for worse it's not a monolithic industry- there are broadcast networks which are now 6, 3 of which are studios. One of which is about to be owned by a studio. Two of which are still, at least somewhat, free-standing. You have independent television stations and then you have the cable business, you have syndicated programmers so the question of who's going to do what, I think they are going to be- in fact, I don't believe that there is going to be a single unified decision in terms of how to respond to this.

Eli Noam:

Thank you very much. Let me just say we're going to go to quarter to eight, our Washington guests will have to leave here at eight o'clock. So we're going to go on for another ten or so minutes- to those of you on the other hand who have to catch trains, planes, and automobiles- and have to leave now- please do so.

Audience:

On another subject, would you address the focus on interconnection...with the perspective of networks where the bill leaves a lot to be desired and will the FCC have any kind of resources to

focus their energy and moving toward with Computer III, if that's one way to achieve results?

Eli Noam:

Paddy Link had a response to the previous question and maybe she wants to take this one too.

Paddy Link:

Well, just briefly, I am at the previous on the V-chip, we also have review in there and I am told -- I certainly did not have the direct conversation but I am told by others that some First Amendment attorneys believed that the how flight which was far preferable for their purposes than the Senate had it. (Laughter).

Interoperability: we had a very interesting kind within interoperability and I am not quite sure. We are very frankly we are a little concerned about the FCC getting into computer interoperability: we also had a very energetic member of the House who wished to make sure that the FCC did not in any way regulate the Internet or the computer industry any more than the savings clause this effect. Well, this was all very interesting, but the way we looked at it, there are some interesting things going on in the long-distance industry view of the Internet, where you are having a voice-track of long-distance just right over your Internet. And that would be unregulated if that savings clause had been put in the bill. So last week we were having a great debate about the computer industry and the Internet and services that are now provided by wireline carriers who continue to be regulated under this bill and what the net result would be. Having this conversation with many members of Congress who have never operated a computer in their lives is always challenging. (Laughter). So I think this is something that we are going to have to work

on with the FCC very carefully because there are a lot of unintended consequences that we found in dealing with this bill, that could have been disastrous and I (maybe somebody else can count and talk about Computer III, but I can't), but I'd say caution.

Eli Noam:

Herb?

Herbert Marks:

So as I argued parts of computer one in the court of appeals I'll venture for comment. When you gain in interoperability it is a very difficult question because you almost have to go application by application. Clearly, from a computer industry standpoint, if you're talking about some government prescription of interoperability between customer premises equipment or computers on the premises that's one thing. If you're talking about interoperability in terms of ability to effectively use a common carrier facility, I think the bill pretty well will require disclosures or protocols, and provision of timely technical information so that you could manufacture equipment to transit. There you get, when you get into the cable area, you get also questions of interoperability which then gets into some of the very interesting questions of whether you're talking about interactive services or you're talking about cable then as a access point to the Internet, and so when I see interoperability, basically the first question is 'what are we talking about?' Let's be specific, and then lets decide the policy within the context of the specifics of market power in that area and ultimate goals, and the general rule of course is that no part of American industry really likes standardization mandated by the government that does like



standardization evolved through private standards organizations.

Eli Noam:

Thank you very much.