CTIA
Building The Wireless Future™
Cellular Telecommunications & Internet Association

ORIGINAL

RECEIVED
OCT - 5 2001
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

October 5, 2001

EX PARTE OR LATE FILED

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
12th Street Lobby, TW-A325
Washington, DC 20554

***Re*: *Ex Parte* Presentation**
CC Docket No. 01-14

Dear Ms. Salas:

On October 4, 2001, the Cellular Telecommunications & Internet Association ("CTIA") represented by Tom Wheeler, Steve Berry, Michael Altschul, and Diane Cornell, along with Marius Schwartz, Georgetown University and CTIA Consultant, met with Chairman Powell, Peter Tenhula, Senior Legal Advisor for the Chairman, and William Quirk, Intern in Chairman Powell's office. The parties discussed issues related to removal of the spectrum cap. In particular, the parties discussed the attached presentation.

Pursuant to Section 1.1206 of the Commission's Rules, an original and one copy of this letter is being filed with your office. If you have any questions concerning this submission, please contact the undersigned.

Sincerely,

Diane Cornell

Diane J. Cornell

Attachment(s)

No. of Copies rec'd 0+1
List ABCDE

Safety-Your most important call

1250 Connecticut Avenue, NW Suite 800 Washington, DC 20036 202.785.0081 phone 202.785.0721 fax www.wow-com.com

Right in '98
Essential Now

Spectrum Cap Presentation
for
Michael Powell,
FCC Chairman

October 4, 2001

The Wireless Industry
Reminds You To Use Your
Phone Safely When Driving

It Was True in 1998 . . .

"I cannot imagine any other industry segment that can better laud their state of economic competition as 'meaningful.' Prices are down and falling. Innovation, churn and penetration are up and still climbing."

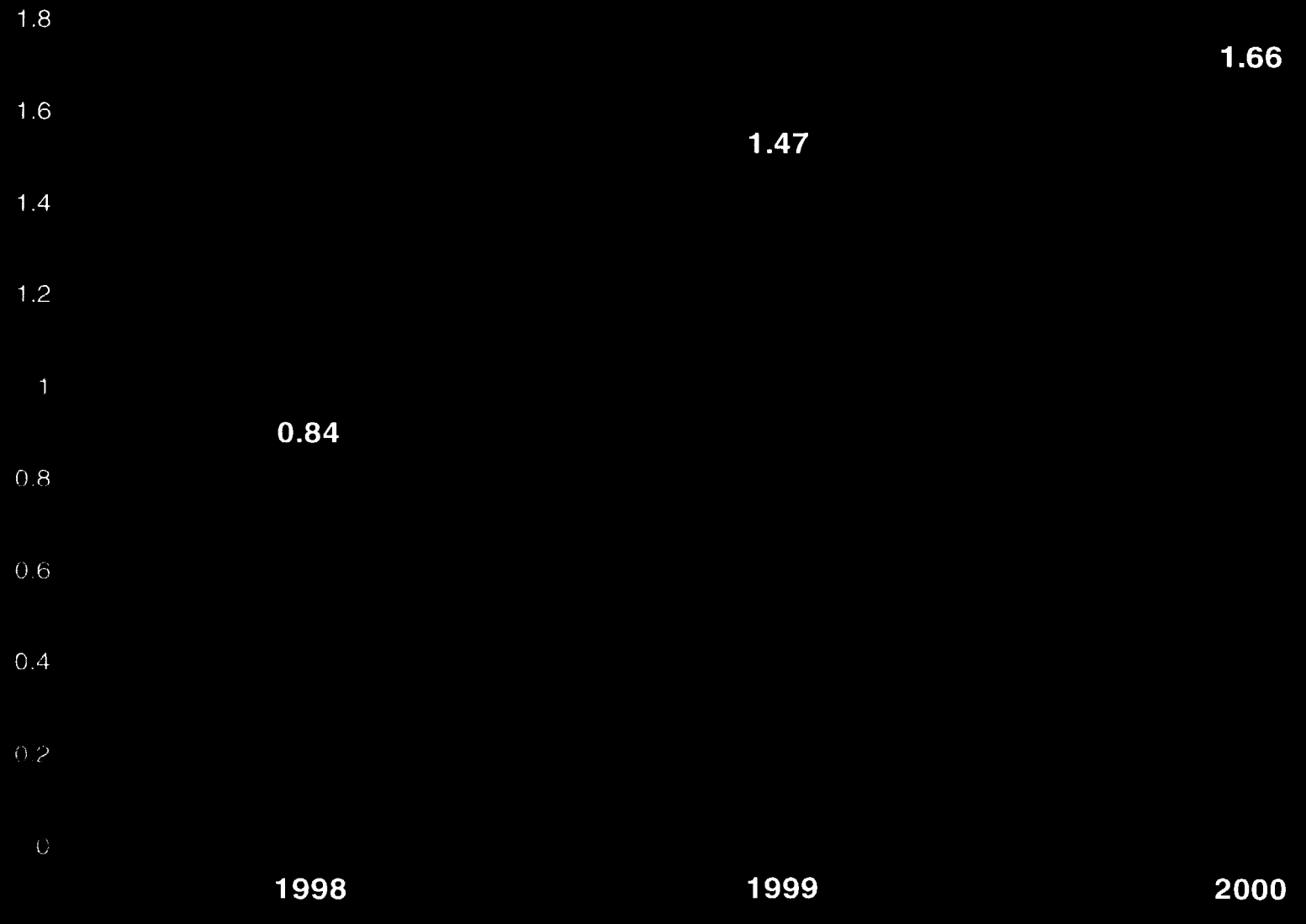
- Separate Statement of Commissioner Powell, 1998 Biennial Review in re: Spectrum Cap Rules

Since 1998:

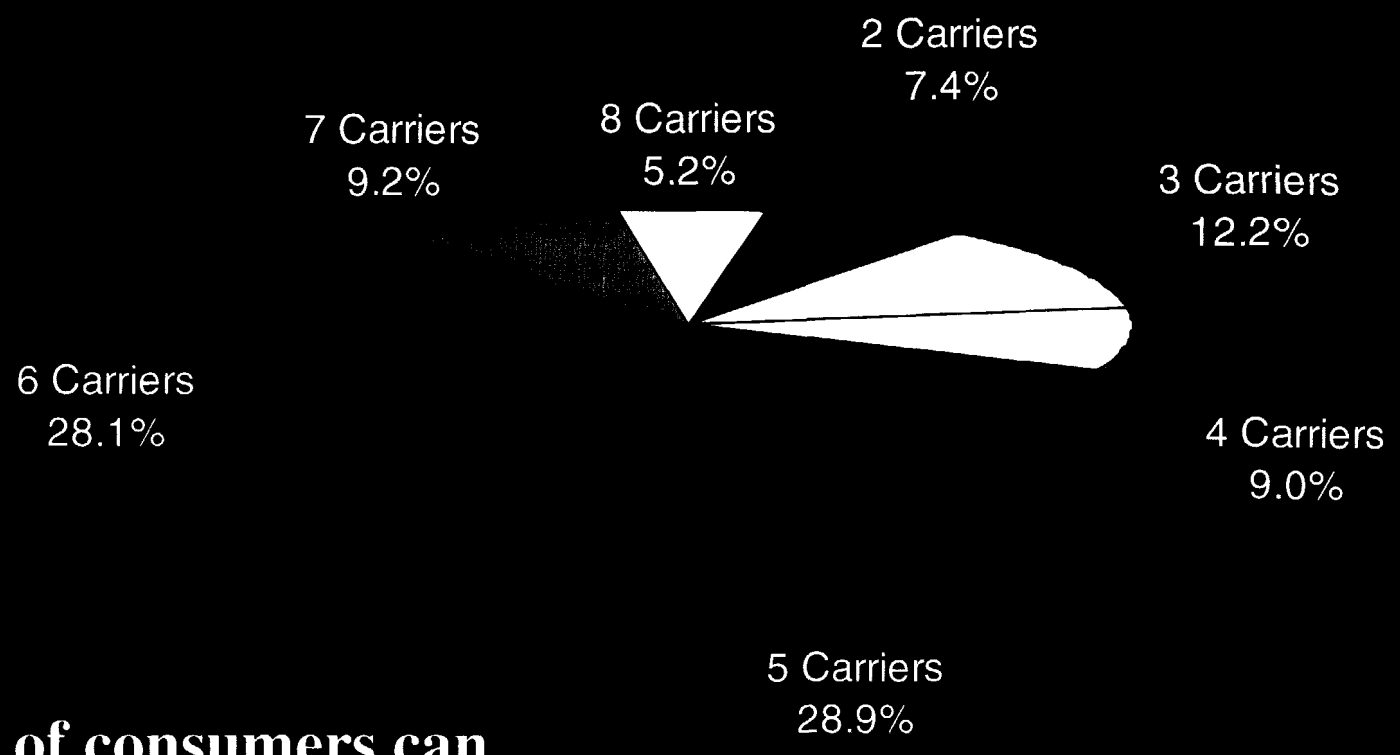
- Number of wireless subscribers increased 58 %
- Average MOUs per subscriber increased 86 %
- Total reported MOUs increased 408%
- Number of consumers with over five competitive choices increased 341 %
- BLS Price Index for wireless service fell 24 %
- Churn increased 31 %
- Number of cell sites increased 58.3 %
- 1994 spectrum cap unchanged in markets where more spectrum is needed.

Consumer Impact Index

$$\frac{(\text{\% More Consumers} + \text{\% More Usage}) - \text{\% More Cells}}{\text{Capped Spectrum}} = \text{Consumer Impact Index}$$



Customers With Access to Multiple Carriers

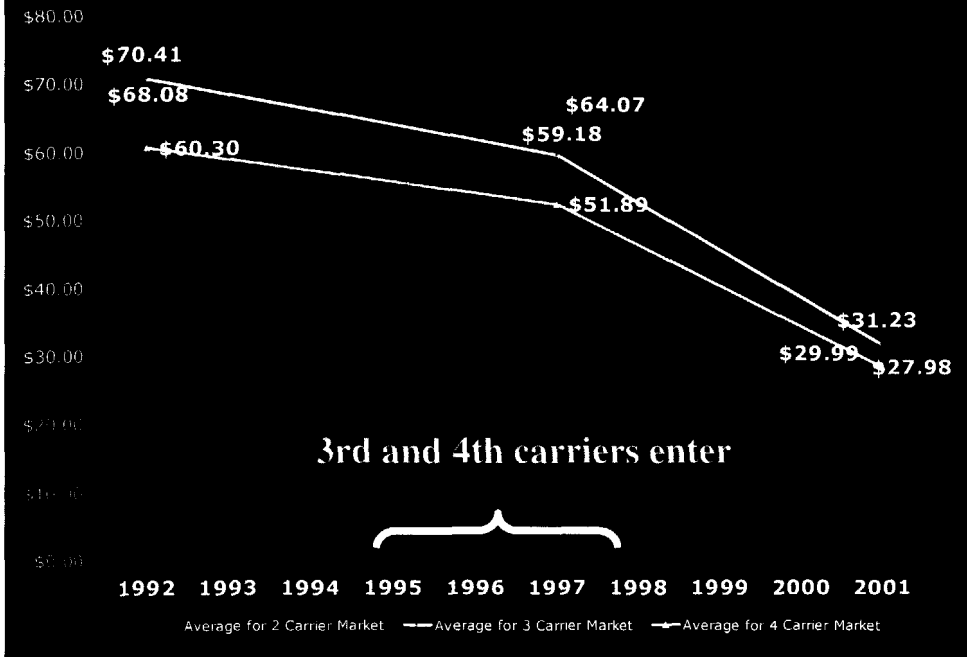


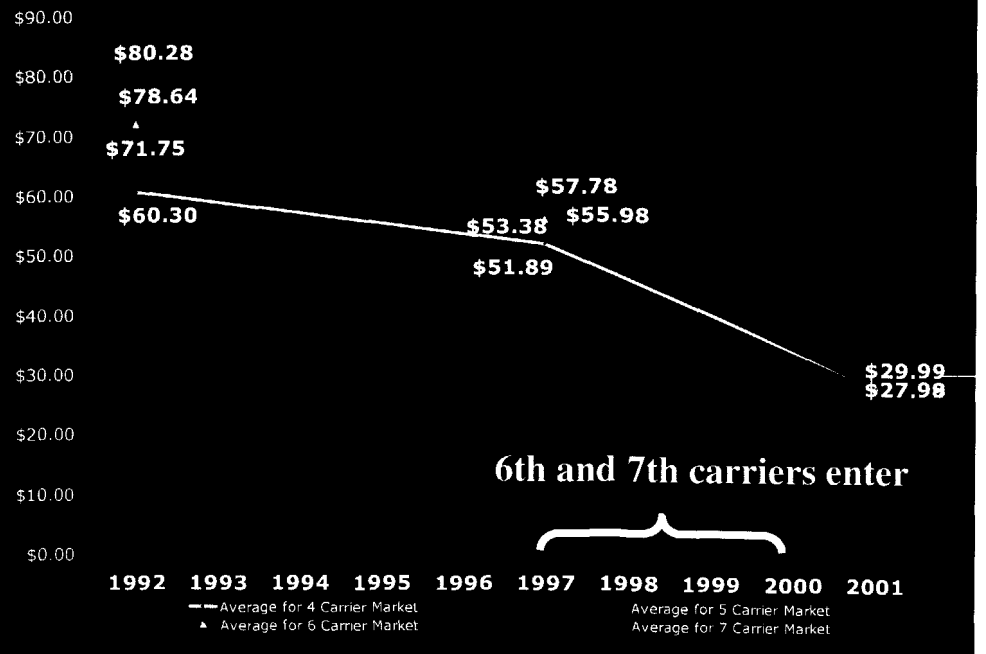
80% of consumers can choose from four <u>or</u> <u>more</u> wireless carriers.

"But What About Competition?"

Third and forth carriers drive prices down.

Fifth, sixth and seventh carriers have little impact on price competition.





Reflects market basket of 150 MOUs a month.

"But What About Competition (again)?"

Why do the rules continue?

- Competition rampant (and will remain so)
- Consumers hurt (and getting worse)

Government review unaffected

- FCC license transfer authority
- Department of Justice review

Downpayment on Spectrum Shortage

- ITU says U.S. will need an additional 200 MHz of spectrum.
- Working through harmonized spectrum allocation: a challenge that will take time.
- Interim downpayment: allow spectrum to find its own level as all other major countries have done.

Raising the Cap is Not a Solution

The spectrum cap is an historical artifact of 1994 PCS auction.

- It worked to assure multiple bidders in initial market
- Today its original purpose has expired
- Today its effect is:
  - Inefficient allocation of spectrum
  - Negative impact on consumers
  - Negative impact on innovation and new services
  - Constraint on use of scarce resources

Raising the Cap is Not a Solution

The cap has fulfilled its original auction purpose.

Maintenance of cap <u>at any level</u> is not necessary to assure competition:

- Wireless: the most competitive segment of telecom.
- Government: fully armed with license transfer and antitrust authority.

Raising the cap perpetuates inefficiencies.

- Mergers should not be pre-judged by an arbitrary cap – they may be pro-competitive, anticompetitive, or competitively neutral.

Raising the Cap is Not a Solution

The policy issue is not "let's tinker."

- The policy issue is why the rationale for such a rule continues.

"I start with the proposition that the rules are no longer necessary and demand that the Commission justify their continued validity."

- Separate Statement of Commissioner Powell, 2000 in re Broadcast Caps