Gingrich for being too general in his remarks. Surely Gingrich did not mean to tar all journalists with the same brush—to lump, say, *Time* in with the more sensationalist tabloid press? "I hope you don't mean *all* of us," Levin concluded.

"Yes, I do," Gingrich is reported to have replied. "*Time* is killing us." And, according to several accounts, he went on to say that he had been particularly incensed by *Time's* account of his mother's interview with Connie Chung, of CBS—the interview in which his mother confided that her son had called Hillary Clinton "a bitch."

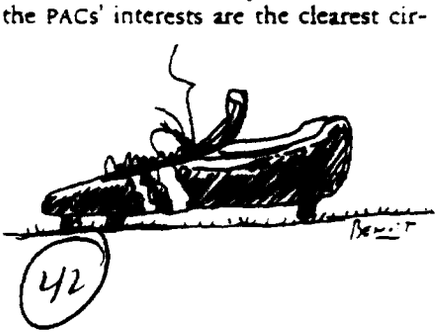
Although spokesmen for both Gingrich and Levin take pains to say that it was not "a hostile confrontation," and to note that the two men have recently had pleasant one-on-one chats, and to make the fair point that the Speaker has free-speech rights, too, others found it chilling that the Speaker would, in effect, press the C.E.O.s to have their journalistic troops hold their fire. "We're at greater risk now of that kind of pressure having an impact," Nicholas Allard says. "Traditionally, there has been a separation between news and corporate functions. Given the consolidation, you may have more instances where the top business executives, who have many corporate policy objectives, may find it tempting to impose control over their news divisions to advance corporate objectives." The new model may be that of Mark H. Willes, the new C.E.O. of the Times Mirror Company, who was hired away from General Mills. Although there's no way to know what Willes will do, according to those who recruited him he brings a fresh perspective, because he has no prior involvement with the main business of the company, which is news.

Also bringing a fresh perspective are Republican leaders like Gingrich and Armey, who have called on companies to be more ideological in their giving. An Armey spokesman concedes that in April Armey sent a letter and supporting materials to Fortune 500 C.E.O.s to complain of their philanthropic gifts to such "liberal" charities as the American Cancer Society. The new Republican majority, Tony Coelho observes, has "taken what I did and moved it to a higher level." He explains, "The committee chairmen are saying, in effect, 'We're going to look at who you contribute to. If you expect our help, we don't expect to see you on the Democratic list.' "

This view is nonsense, says Gingrich's spokesman, Tony Blankley. "Read 'Honest Graft,' " Blankley says—referring to Brooks Jackson's book about how Coelho muscled money from corporations—"and see how Coelho raised money. We never did anything like what they did, which was to virtually blackmail contributors. It was as ruthless a system of money extraction as one can conceive of. He was attempting to extract money from contributors who disagreed with the policies the Democrats were putting forward. We make the case that the free-market principles they support are our principles, and if they're going to support candidates they should support those who share their views. That's a fundamental difference."

But if Republicans threaten, or imply, retribution against those who differ with them—like *Time*, or pragmatic givers, or corporate philanthropists who donate to "liberal" charities—then they have in fact extended Plunkitt's definition of "honest graft." Like Coelho, they have promised access in return for donations, but by imposing an ideological test on givers they have introduced a new level of coercion. They don't just twist arms for contributions; they now ask givers to profess their unwavering loyalty—or else. Republicans say that such coercion is not their intent, but the best way to judge coercion is not by what is said but by what is heard. A major communications lobbyist who directs a corporate PAC says, "You're being extorted. People say, 'Contribute.' You feel that unless you contribute you won't have the ability to do what you need to do."

THE line between extorted funds and campaign contributions—between "dishonest" and "honest" graft—can be almost imperceptible. Josh Goldstein, the research director of the Center for Responsive Politics, says, "These contributions to incumbents sitting on the committees that have jurisdiction over the PACs' interests are the clearest circumstantial evidence we have that the money contributed is not, as the donors and the recipients claim, for good government. It's directed money, and it's directed for clear legislative reasons. It's not illegal. But the difference between what one calls a bribe, which is illegal, and a campaign contribution is unclear."



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The big loser in all this, of course, is the public. "By and large, the public is not represented by the lawyers and the lobbyists in Washington," Reed Hundt, the chairman of the Federal Communications Commission, says. "The few public advocates are overwhelmed financially. It's all very fine to say that you are in favor of competition. I am. The Administration is. Congress is. But competition won't give you everything the country needs from communications companies. We've got to be able to stand up to business on certain occasions and say, 'It's not just about competition, it's about the public interest.' "

One consequential issue that government must soon decide is how to allocate new broadcast-spectrum space that has been made available by advances in digital compression; Hundt says the extra space will be worth thirty to a hundred billion dollars. Suddenly, there will be room for as many as six new broadcast subchannels within each current channel. Should government allow the existing broadcast stations to use this space to provide movie-quality high-definition images, which require more spectrum space to transmit? Should government allow broadcasters to create, say, new all-sports or all-news or data channels? Will the F.C.C. reclaim and auction off the analog channels currently used by broadcasters after the transition to the new digital channels is complete? Or should it instead auction the extra spectrum? And if the space is auctioned who should be permitted to bid—just broadcasters? Everyone? Should government impose some public-interest requirements as a trade-off for access to what have traditionally been construed as the public airwaves?

"It's getting harder and harder to get people to make the argument for the public interest, because of this chant—'*Competition! Competition! Competition!*'—which is drowning it out," Hundt says. "That chant is well funded. The funds give you access to Congress and to government of all kinds." ♦

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May 23, 1995

CHAIRMAN HUNDT URGES MOVEMENT FROM OLD REGIME TO NEW PARADIGM FOR COMMUNICATIONS POLICY

FCC Chairman Reed E. Hundt, in a speech delivered today at the Museum of Television & Radio in New York, told his audience that it is time for a major change in communications policy, moving from the old regime to a new paradigm for policy.

He noted that this was difficult because, on one hand, powerful vested interests support the status quo. The old regime is marked by reduced competition and relies on "getting one's way with the much-maligned FCC by a combination of political pressure, public controversy, and private pleasantries." On the other hand, "we are under attack from a new group of headline-seeking think tanks who make war on the very notion that there is a public interest aspect to communications. Their slogan is abolish the FCC - but their meaning is this: they want to quash all claims by the public on any aspect of the communications, information and entertainment sector of our economy."

Chairman Hundt named five working principles for the new policy paradigm applicable to broadcasting: (1) in order to compete in the video-in-the-home business and any ancillary business, broadcasters should use their digital spectrum for HDTV, multicasting, video, data delivery or anything else they want to do; (2) the switch from analog to digital must be swift, smooth and inexpensive; (3) consumers will be more comfortable with the switch to digital reception if the technologies they confront are transparent, manageable, competitive and accessible; (4) national and local broadcast ownership rules should be based on sound competition policy, not arbitrary limits; and (5) the FCC must set out the meaning of the public interest obligations of broadcasters in a way that's suitable for the hotly competitive digital world.

This last principle includes ensuring that all, not just some, broadcasters have fair and equal public interest duties; that these duties are clear and specific; and that the duties imposed are not so burdensome that broadcasters will be unreasonably hampered in their competition with others who do not have analogous obligations.

- FCC -

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CHAIRMAN REED E. HUNDT
FEDERAL COMMUNICATIONS COMMISSION
before the
MUSEUM OF TELEVISION & RADIO
New York, New York
May 23, 1995

Thank you Bob for that kind introduction.

It's great to be back at the Museum Roundtable. It's been a year. Things change.

Meanwhile this Congress, like its predecessor, is debating fundamental reform of the Communications Act. It is time for major change in communications policy. This is difficult because of two countervailing forces. On the one hand, powerful vested interests support the status quo of the old regime. The old regime relies on getting one's way with the much-maligned FCC by a combination of political pressure, public controversy, and private pleasantries. The old regime is marked by reduced competition.

On the other hand, we are under attack from a new group of headline seeking think tanks who make war on the very notion that there is a public interest aspect to communications.

Their slogan is abolish the FCC, but their meaning is this: they want to quash all claims by the public on any aspect of the communications, information and entertainment sector of our economy.

Their view is that purely private negotiations are sufficient to deal with issues of spectrum management, license allocation, rules of competition against monopolies, universal service, and the broadcasters' public interest obligations.

The public, presumably, should wait outside the backroom where the deals are being done.

I'm in profound disagreement with the precepts of these new groups.

But I'm not crazy about the old regime either. I believe markets generally work to the best interest of everyone, if they are competitive. I don't believe bureaucrats should pick the winners in competition for licenses.

I don't believe the FCC should exist in order to protect incumbents from what is euphemistically called 'too much competition.'

In all these respects I differ with the old regime as much as I differ from the Johnny-come-lately think tanks.

By advocating competition in all communications markets, we at the FCC are spelling out the end of the old regime of regulation.

The best current example is our auctions of airwaves.

In four auctions to date, we compressed the licensing process from three years to three months, earned over $9 billion for the U.S. Treasury, and jumpstarted competition that will drive $20 to $30 billion of investment in new wireless technologies.

That's the biggest single investment in new technology in history.

But these auctions were not the result of private negotiations in a backroom.

At the FCC we used an open public record to develop a plan that assured efficient use of the valuable public property of the airwaves.

And we arranged an auction that will make the wireless communications market in this country the most competitive communications market in the world.

We also are taking numerous steps to make sure that the new entrants in this business have a fair chance to compete with the incumbents.

Our approach to the wireless auctions epitomizes the new paradigm of communications policy. We didn't pick winners in lotteries or comparative hearings. But we also didn't stick our heads in the sand while letting current users divvy up the spectrum in private deals.

Instead we defined the public interest and used market based techniques to achieve it.

In broadcasting policy too we must begin to follow the new paradigm.

Under the old regime, the FCC struck a kind of gentlemen's agreement with the three networks that, in return for a certain amount of protection from competition, the networks would deliver an unspecified amount of public interest content.

This gentlemen's agreement could never have been written. Some say it was real; others say it was a charade. Some say it was honored in the breach. Others say it was a good bargain for the country.

But whatever were its merits, this gentlemen's agreement was the essence of the old regime of broadcasting policy. And it is doomed by competition.

There are simply too may competitors in the video-in-the-home market, as Bob Wright calls it, for an unstated compact between government and a handful of networks to be meaningful or sustainable.

As the old regime of broadcast regulation fades away, the rules that shored up the gentlemen's agreement are struck from the books.

So the Fairness Doctrine is gone and won't return.

Fin Syn will be gone by the end of this year, I predict.

And the next big rule to go may well be the Prime Time Access Rule.

Other rules will also face the guillotine as the old regime passes.

But in lieu of the old regime I'm not willing to abandon the concept that broadcasters owe the public something in return for using the public property of the airwaves.

I think it would be very good for broadcasters and the country if broadcasters were to trade in their current spectrum in return for new spectrum for the purpose of digital transmission.

This new spectrum and new technology will greatly bolster broadcasting's competitiveness.

But the conversion to digital transmission also is the right time to define the new paradigm for broadcasting policy.

Here are five working principles underlying the new paradigm.

First, in order to compete in the video-in-the-home business and any ancillary business, broadcasters should use their digital spectrum for HDTV or multicasting or audio or data delivery or anything else they want to do.

But broadcasters will deliver some product for free to everyone with a digital receiver.

Second, the switch from analog to digital obviously threatens to divide the audience between analog and digital reception - increasing costs for broadcasters while not necessarily increasing the size of the audience.

It will be best for broadcasters and consumers if the switch to digital reception is swift, smooth and inexpensive.

Our policies have to focus on achieving this goal.

Third, consumers will be more comfortable with the switch to digital reception if the technologies they confront are transparent, manageable, competitive and accessible.

We all share the goal of consumer satisfaction.

That's why I think broadcasters should be talking now with the FCC, cable, VDT and the other parties about the application of the principle of interoperability to the digital tv receiver.

Fourth, national and local broadcast ownership rules should be based on sound competition policy, not arbitrary limits. The country needs rules to protect against anticompetitive concentration and to assure diversity of voice in national and local markets. Today's rules need changing, but some rules are necessary.

Last, in the hotly competitive digital world, broadcasters should have public interest duties but only under these conditions:

(a) all broadcasters should have equal and reasonable public interest duties; it's not fair for some broadcasters to undertake a duty to serve the public while others act differently;

(b) such public interest duties should be clear and specific so that the costs of compliance can be minimized and fairness can be assured;

(c) the public interest duties on broadcasters cannot be so burdensome that broadcasters will be unreasonably hampered in their competition with others who do not have analogous obligations.

The new think tanks ruminating recently about communications claim that there is no need for the public interest obligation.

But when we lease property, as government does with the spectrum, it make sense to put conditions in the lease that serve the interest of the leaseholder.

For spectrum, the leaseholder is the public. And the conditions are the public interest obligations of broadcasters.

Here are two examples:

-- The delivery of children's informational and educational TV should be a condition in the broadcasters' lease.

At the FCC, our current proposal for implementing the Children's TV Act admits that children's informational TV may well be unattractive as a commercial business.

If it is a noncommercial duty, it should be minimal, efficiently allocated, specific, and applicable to all broadcasters.

Any other approach reduces to occasional admonishments from FCC chairmen.

Any other approach is a relic of the era of the gentlemen's agreement, unsustainable in the competitive world of the new paradigm.

Furthermore, since carrying these shows is a burden, broadcasters should be able to trade the obligations among each other.

In that way broadcasters with the greatest incentive to air the shows will take on the duty

-- The second example is the pressing need for candidate access to the airwaves. At the NAB convention last month Rupert Murdoch proposed free advertising time for political campaigns on today's analog channels. More than we like to recognize, our system of participatory democracy is in jeopardy. In the 21st century, democracy will thrive only if our communications revolution makes policy and government a matter of widespread civil discourse.

Democracy absolutely depends on a consensus of goodwill and a willingness to compromise among all citizens.

We need the media to create that consensus.

One technique for building that is consistent with what Rupert Murdoch suggested at the NAB -- a time bank contributed by broadcasters for political broadcasting.

Candidates and parties could draw from the bank vouchers for ad time, and cash in those vouchers with broadcasters.

This proposal will have even more power and more financial viability with the capacity and bandwidth explosion of the digital era.

These are two concrete and limited ways that the time-honored, much-disparaged, infinitely valuable public interest obligation could be applied to broadcasters in the digital age.

There's not much question that billions of dollars will be earned in the digital world.

There's not much question that the digital revolution will improve many aspects of our country.

But whether it brings us together so that our democracy can count on adding another century to its current world record for longevity -- that's what is at the core of the redefinition of the public interest. And that's what's most important about the new paradigm for broadcasting policy.

- FCC -

3279 this very question.

3280 Mr. WHITE. Sure, okay. Thank you very much.

3281 Mr. FIELDS. I thank the gentleman for his time back.

3282 The chair now recognizes the gentleman from Virginia.

ATV

3283 Mr. BOUCHER. Thank you very much, Mr. Chairman and Mr.

3284 Hundt, welcome again to this subcommittee. We're always

3285 pleased to have you before us. We learn a great deal from

3286 the information that you provide. Today is certainly no

3287 exception.

3288 I'd like to ask you about an issue that is not squarely

3289 addressed in our legislation, but which will be coming

3290 before the FCC in the not-too-distant future, concerning the

3291 desire of broadcasters to make a transition from their

3292 analogue system of delivery today to a digital system of

3293 delivery.

3294 In order to do that, it is necessary that there be a means

3295 of transition. That means of transition, in all likelihood,

3296 will be the award of a second, six-megahertz of frequency by

3297 the FCC to broadcasters for the purpose of making that

3298 transition.

3299 They would then begin broadcasting in digital format on

3300 that second six-megahertz, and for a period of years--it's

3301 been suggested about 15 years--there would then be a gradual

3302 transition of the consumer premise's equipment from analogue

3303 television sets to digital television sets. At the end of

3304 that 15 years, when the transition is complete, the first
3305 six megahertz on which analogue transmission is occurring
3306 today and would continue to occur during that 15-year
3307 period, would then revert to the public domain and would be
3308 available for other uses.

3309 Now, the question is this, what we have anticipated is
3310 that broadcasters would use the second six megahertz for
3311 digital transmission, but there's a great deal of doubt
3312 about what that digital transmission will be. A great deal
3313 of time and effort has been invested by what is known as the
3314 grand alliance of companies in developing a standard for
3315 high-definition television.

3316 But there is no real assurance that broadcasters, if they
3317 have total freedom of choice, will elect to make the
3318 investment in equipment necessary to deliver HDTV quality
3319 signals. In fact, a number of broadcasters have suggested
3320 that they in fact would prefer to deliver a multiplex of
3321 signals over the additional six megahertz that could be
3322 lower quality--or lower standard than HDTV, which itself is
3323 about 1,100 lines of resolution. A lower quality digital
3324 signal be 5 or 600 lines of resolution.

3325 In the legislation that we have considered today, we have
3326 referred to this new ~~error~~ era in television as advanced
3327 television services. But we're basically leaving it to the
3328 FCC, in these early drafts, to make a decision as to what

3329 advance television services will mean. Will that be the
3330 higher quality resolution of high definition television? Or,
3331 will it be something less, along the lines of preference
3332 many broadcasters have expressed?

3333 I wonder if you're prepared today to give us some
3334 indication of the direction that the FCC intends to go in
3335 determining what advanced television services will mean?
3336 Will the public get the benefit of HDTV, or will the public
3337 simply get the benefit of a lower quality digital service?

3338 Mr. HUNDT. This is a huge topic, as you know, congressman.
3339 It's about the end of TV as we know it and the beginning of
3340 a potentially different product, including everything that
3341 we know from TV today and a heck of a lot more.

3342 I, of course, can't speak for the Commission, and I want
3343 to qualify my remarks by saying that I don't want to
3344 prejudge any of the rulemakings that will be involved in
3345 this process. I would like to respond, if I could, by just
3346 sharing with you such precepts that I currently have
3347 rattling around in my head on this subject.

3348 Mr. BOUCHER. That's fine.

3349 Mr. HUNDT. And, with a lot of caveats, go from there.

3350 First of all, I think it's crucial that broadcasters have
3351 an opportunity to acquire a new spectrum so they can
3352 broadcast digitally. That is going to be essential, in my
3353 judgment, for them to be able to compete with the rest of

51

3354 the digital world, and that's everybody--digital DBS, and
3355 digital cable, and digital IMTS and digital dial tone.
3356 Everyone's going digital. Receivers are going to be made
3357 digitally. Digital TVs will be spreading across this
3358 country starting in the beginning of 1997. That's what
3359 everyone tells me and they're probably right. Broadcasters
3360 need to be able to transmit to the digital receivers of the
3361 future, and they'll need spectrum to do that.
3362 Secondly, we should take them up on their oft-stated
3363 willingness to turn off the transmitters of the analogue era
3364 that they currently have, and to abandon that analogue
3365 spectrum. It's of enormous benefit to this country to get
3366 back that spectrum, to repack it to run clear channels
3367 across the country, and to auction it for fair value to
3368 incentivize new industries.
3369 But, if you're going to ask them to give up the old
3370 spectrum, you need to find some way to compensate them, if
3371 you want to be fair, because they paid--not in an auction,
3372 but in the private market for that old spectrum. You can
3373 either compensate them by giving them money, or by giving
3374 them, in essence, as a substitute for cash, something in
3375 kind--namely, new spectrum.
3376 So, those are the key principles as I know them, vis-a-vis
3377 broadcasters. Next, broadcasters ought to be able to enjoy
3378 the benefits of everybody else working to convert consumers

3379 to digital. In other words, if cable and satellite
3380 companies are going to be encouraging their consumers to
3381 convert to digital, let's make sure that all the equipment
3382 is compatible so that broadcasters can have the same
3383 customers as part of their target audience.

3384 Next, let's focus on the fact that when broadcasters have
3385 digital spectrum, if you adhere to free-market principles,
3386 they will have the opportunity to deliver many, many
3387 different kinds of products, voice, video, data, 75 radio
3388 stations for each six megahertz of spectrum; or five or six
3389 different TV signals.

3390 Just as a starting point, congressman, it seems to me that
3391 it would be a very difficult burden to demonstrate why the
3392 government should constrain the flexible use of that
3393 spectrum. It would be a very difficult burden to show
3394 why the government should interfere with the
3395 market forces that would otherwise dictate how that spectrum
3396 should be exploited.

3397 Last, but not least, we shouldn't forget about the
3398 consumers who are going to have to spend serious, additional
3399 money for this digital conversion. It may be wise to give
3400 attention to schemes in which those who wish to engage in
3401 the conversion on the sell side have some burden to bring
3402 the consumers along on the buy side.

3403 The United Kingdom has done this, by the way, and I can

3404 tell you a little more about it, if you like, later.

3405 Mr. BOUCHER. I thank you for that answer. Let me just ask

3406 one brief follow-up question.

3407 If, as you suggest, government does not impose any

3408 restraint on the way in which broadcasters utilize the

3409 second six megahertz. Given what I discern as a propensity

3410 on the part of broadcasters to offer multiple, lower quality

3411 digital signals as compared to a single, higher quality,

3412 high-definition television signal.

3413 What assurance will there be that all of the time and

3414 effort that went into developing the HDTV standard to begin

3415 with will produce anything of use?

3416 Mr. HUNDT. Well, the standard is a wonderful standard,

3417 because it is flexible. It is a four-layer standard that

3418 gives the ability to deliver a string of digital bits that

3419 can be used as the individual operator wishes to primarily

3420 be devoted to conveying a high-definition picture with

3421 eye-popping quality, but also alternatively, to deliver a

3422 number of other low-quality, but still--lower-quality, but

3423 still beautiful pictures. It can be used to deliver the

3424 Washington Post, if anyone would want that, right into the

3425 lap-top computer of everybody in this area.

3426 Tremendous flexibility comes from the standard that is

3427 being promised us by the end of the year.

3428 Mr. BOUCHER. Well, thank you for the information. It's a

J4

NEW YORK TIMES ____
WASHINGTON POST ____
THE WALL STREET JOURNAL ✓
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DATE 5/24/95 PAGE B8

GOP Mulls Early Auction of TV Spectrum

By DANIEL PEARL
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON – House Republicans are weighing a plan to auction the spectrum currently being used by broadcasters, before it is freed up for other uses, as part of an effort to balance the budget by the year 2002.

The plan, being analyzed by the Congressional Budget Office at the request of Republicans on the House Budget Committee, would give television stations 10 years to move over to new digital-broadcasting channels, people familiar with the plan said.

Three years before the transition is complete, and just in time to help meet Republican budget-balancing pledges, the government would auction the broadcasters' existing analog channels for a wide variety of uses, including mobile communications. The CBO hasn't yet estimated how much such an auction would raise.

TV stations, which have been expecting more time to make the transition to digital TV, are likely to oppose the idea. The National Association of Broadcasters, trying to head off the plan, has argued that consumers, too, won't want to be forced to buy new high-definition TV sets or converters within 10 years, at which point existing analog sets wouldn't work.

Digital TV is expected to allow sharper pictures and transmission of several programs simultaneously. Under the Federal Communications Commission's current plans, broadcasters would get the new digital channels free, use both channels for 15 years, and then return the analog channel to the government. The time period could be lengthened if too few consumers had bought digital TVs, and some critics have predicted broadcasters will find a way to avoid returning the analog channel at all.

But, an early auction would still be less drastic than an option some lawmakers have been studying: forcing broadcasters to bid in an auction to get the new digital channels in the first place. In response to queries from four Democratic senators, the FCC estimated earlier this month that auctioning the digital channels could raise $11 billion to $70 billion.

The CBO's estimates for a digital auction are closer to $4 billion.

A telecommunications bill that the House Commerce Committee is expected to pass this week would require broadcasters to pay fees if they use some of their new spectrum for nonbroadcasting purposes. And it would require them eventually to return the analog channels to be auctioned.

But prospects for similar legislation in the Senate are less certain. Yesterday, Senate Majority Leader Robert Dole of Kansas said he intends to bring a bill to the Senate floor June 5, but he warned that "possible unrelated amendments" could force delays. Some Democrats are seeking a controversial amendment that would ban lawmakers from accepting gifts from lobbyists.

The House, in a budget resolution passed last week, assumed the government would raise nearly $15 billion over seven years from any spectrum auctions not yet authorized by law. Congress could get some of that money simply by extending the 1993 budget act, which allowed auctions of spectrum for subscription services, beyond 1998. But it will also have to widen the types of spectrum uses the law allows for auction.

That won't be easy. The Clinton administration included a proposal for spectrum fees in its budget proposal, but then backed away, promising both broadcasters and operators of private radio systems that they wouldn't be hit.

That would leave only a few options, such as auctioning spectrum for the internal links in global satellite-communications projects.

House Republicans are also trying to develop proposals to offer financial incentives and penalties to government agencies, such as the Defense Department, to free up for auction spectrum that they're not using. Already, the FCC is getting more than 200 megahertz of spectrum to convert to private from government use, or the equivalent of more than 35 TV channels. The FCC hasn't determined what that spectrum will be used for.

Congressional interest in auctions increased this spring when the FCC raised $7 billion by auctioning spectrum rights for new "personal communications services." Some analysts believe new technologies will quickly gobble up spectrum and keep prices high, but the CBO is skeptical. "We think as more spectrum is made available, its price will fall," said David Moore, a CBO analyst.

[redacted]

THE GREAT SPECTRUM GIVEAWAY OF 1995:

ISSUES AND OPTIONS

Prepared by Gigi B. Sohn and Andrew Jay Schwartzman

Media Access Project

May 17, 1995

Congress and the Federal Communications Commission are engaged in a policy debate that will change the face of broadcast television as we have known it. Television station owners are asking the FCC and the Congress to give them vast quantities of additional space on the valuable public airwaves without having to make any significant corresponding financial or public interest contributions in exchange. This "spectrum grab" would limit diversity in the marketplace of ideas and permit broadcasters to use publicly-owned spectrum for their own exclusive political and pecuniary gain.

SUMMARY

The broadcasting industry is asking Congress for a huge gift - enormous amounts of additional, valuable, publicly-owned spectrum.
However, unlike spectrum allocated to broadcasters under the Communications Act of 1934, the public is to receive nothing in return. This "spectrum giveaway" must be stopped, and broadcasters made to compensate the public for use of its airwaves.

In the early 1990's, the FCC reserved an extra chunk of public spectrum for the exclusive use of each existing television station owner to convert from "analog" to "digital" television technology.
The express purpose of this action was to enable broadcasters to provide High Definition Television (HDTV), which doubles the clarity of today's television picture. The understanding was that once this conversion was made, the broadcasters would return their original channel to the FCC.

As technology changed, however, so did broadcasters' business plans. They determined that it would be far more lucrative to provide non-HDTV pay-TV, paging and data services over the new spectrum. Thus, they are demanding what they euphemistically call
"spectrum flexibility," a scheme which permit TV stations to provide one "advanced" television channel to the public, while leaving broadcasters latitude to use the remainder of their transmissions for other program and non-program services as they wish. This version of "spectrum flexibility" contemplates that no significant financial or public interest contribution would be expected in exchange. Pending legislation would essentially require the FCC to award the spectrum to existing television licensees, and would deny it the discretion to allow any other applicants to compete or bid for these rights. The Senate version, S.652, would permit the licensees to keep both the old and the new spectrum, and would impose public interest obligations (e.g., equal time, lowest unit rate, children's educational and informational programming) on only one channel. The House bill, H.R. 1555, requires that broadcasters give back the old spectrum at an undefined point in the future, and requires that any fees paid by broadcasters for the right to deliver non-program services be designated for the U.S. Treasury, and not for any public interest purpose. With or without legislation, the
FCC will take up the issue this summer. FCC Chairman Hundt has wavered a bit in formulating his position. He has alternated between advocating enhanced public interest obligations (e.g., free time for candidates, increased children's programming) as a quid pro quo for the new spectrum and being receptive to broadcasters' wishes to avoid incurring such new responsibilities.

The public interest community intends to participate in the FCC proceedings. There are several options for action that could be proposed to the Commission, and they depend largely on whether legislation is passed and the degree of discretion left to the FCC.

However, consideration of these options should begin without further delay. The options are:

o Permit broadcasters to program one or two channels on the new spectrum, and require them to lease the remaining channels to unaffiliated programmers and services.

o Allocate the spectrum to broadcasters in exchange for increased public interest obligations, including, but not limited to, free time for candidates, children's programming or community interest programming. A one or two channel reservation for public, educational and governmental could be included in this option.

o Require that any fees paid by broadcasters to provide non-program services be put in a trust fund for public broadcasting and/or the production of children's informational and educational programming.

o Adopt the FCC's prior decisions in this area, and allocate the spectrum to broadcasters only to provide HDTV. This option gives little back to the public.

o Allocate the new spectrum in the same manner that the FCC has allocated all available broadcast spectrum in the past, by comparative hearing. This option is perhaps the most unlikely to be adopted.

INTRODUCTION

Between 1987 and 1992, the FCC held a series of proceedings to determine whether and how broadcasters might convert from "analog" to "digital" television technology. The original expectation was that broadcasters would use new digital systems to provide High
Definition Television (HDTV). HDTV provides a television picture that is twice as clear as ordinary analog systems. HDTV picture quality approaches that of 35mm film and its audio quality is equal to that of compact disks. To implement the proposed conversion, the FCC set aside a huge chunk of extra broadcast spectrum (six megahertz or more for each licensee, enough to carry literally thousands of voice conversations. [Endnote 1] The spectrum was set aside with the understanding that it would be used for the sole purpose of converting to HDTV. The FCC also concluded that broadcasters would have to return their existing channels 15 years after the FCC adopted a standard for HDTV. This time period was chosen to ensure that broadcasters had fully completed their conversion to digital and that members of the public were not left without televisions that could receive the new HDTV service. Since then, video technologies have progressed far more quickly, and beyond the expectations of the FCC, industry ...

Federal Communications Commission
Washington, D.C. 20554

May 5. 1995

The Honorable Joseph I. Lieberman
United States Senate
316 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Lieberman,

Chairman Hundt has asked me to respond to your letter regarding Advanced Television. We have attempted to answer your questions in a detailed and thoughtful manner, as we share your concern that the resolution of these issues does indeed affect a valuable public resource.

The attached document addresses each of the questions posed in your letter. Should you have any further questions, please do not hesitate to contact me.

Sincerely,

Robert M. Pepper,
Chief, Office of Plans and Policy

JB

Question 1

Please provide an estimate of the range of value of licenses to be issued for the spectrum if it were to be auctioned. Please take into consideration the prices paid in the recently completed spectrum auction, the market value of the existing spectrum used to provide today's analog television signals, the potential value of the expanded additional new television programming that could be provided digitally, the value of services other than broadcast television services that could be provided on the spectrum, and other appropriate factors, explaining how they were considered in developing the estimated range.

Throughout the recently concluded broadband PCS auctions, the FCC declined to estimate the amount of money that could be raised through the auctions for two reasons: (1) the FCC's mission is to manage the spectrum efficiently, not raise revenues and (2) the true value of spectrum can be determined only in the market. The Commission does not have access to the business plans that companies and entrepreneurs use to value spectrum; nor does the Commission have access to information about the capital constraints that limit these actors' ability to pay. Thus, the FCC does not have a good way of accurately estimating the value of spectrum. With these caveats in mind, we will, however, do our best to respond to your difficult question.

As in the case of any other commodity, spectrum's market value depends on its scarcity which in turn is determined by the following factors:

- A major value driver is the market appeal of the services that could make use of the spectrum.

- Generally, as the supply of spectrum increases, its market price is likely to decrease. However, this relationship depends on the amount of spectrum needed by the applications that can make use of the spectrum.

- The bandwidth location of the spectrum could greatly affect its value. For example, current broadcast spectrum, located in the VHF and UHF bands, has propagation characteristics making it attractive for both broadcasting and mobile communication service providers. This should increase its potential market value.

Because these three factors are difficult to assess correctly ex ante, one must use market proxies to develop a range of market value estimates. Two factors, quantity and price, drive the spectrum value. In determining the amount of spectrum that will become available as a result of advanced television, we must

consider two separate applications. *First*, there are the ATV channels that are currently designated for existing broadcasters. Assuming broadcasters will receive an additional 6 MHz broadcast channel for ATV, and that the average American home receives 13.3 television channels, we estimate that approximately 80 MHz of spectrum will be used for transmitting Advanced Television on average in each market.[1] *Second*, there are the NTSC channels that will be recovered after existing broadcasters transition to the ATV channels and NTSC television is turned-off. The amount of relatively contiguous NTSC spectrum available for recapture after the transition to ATV is unknown at this time. We believe that if digital licenses are repacked, over 150 MHz of contiguous spectrum could be recaptured.

As previously stated, it is difficult for us to accurately determine the market price of spectrum. One can, however, attempt to estimate a range of values for it by using market proxies that are readily available. These proxies are: (a) the results of the Commission's auction of PCS and other wireless services spectrum; and (b) the results of private market transactions involving transfers of television broadcasting licenses (e.g., station acquisitions). Please note, however, that our estimates are not precise and only indicate an order of magnitude about market value. One must also remember that, as in any other type of asset valuation, the ultimate value of an asset will depend on the tradeoff between the amount that is available, the number of potential uses for it, and the value of those uses.

The first method at developing a range of estimates for spectrum value looks at prices that investors paid for wireless licenses in the Commission's spectrum auctions starting last summer.

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[1]The response to question 3 discusses the current broadcast spectrum allocation in some detail. To provide 13.3 ATV channels per market without harmful interference from stations in neighboring markets will require using more than 80 MHz for ATV.

Table 1 presents the values that have been paid for spectrum in the Commission's auctions to date.

Table 1: Value of Auctioned Spectrum

Spectrum Use Category	*Number of Licenses*	*Available Spectrum (Mhz)*	*Auction Revenue (in millions)*	Unit Price (in $/Mhz-Pop)
IVDS	594	0.5	*$249*	$1.99
Regional Narrowband PCS	30	0.45	*$395*	$3.51
National Narrowband PCS	10	0.7875	*$617*	$3.13
Broadband PCS*	102	60	$7,736	$0.52

*Based on FCC Auction of Broadband PCS Spectrum ("A & B" bands only). Results as of March 13, 1995.

As you can see, the price per MHz-POP varies significantly between services, indicating a shortcoming of extrapolating from current auction prices. Table 2 places a value on the ATV and recaptured NTSC spectrum using the auction prices from Table 1 as proxies for spectrum price.

Table 2: Spectrum Value using Auction Prices as Proxies

	Available Spectrum (in Mhz)		
Proxy Prices for ATV Spectrum Valuation	*Price Per MHz-PoP*	*80 MHz of ATV*	*150 MHz of Digital Spectrum (Giveback Spectrum)*
Valuation based on IVDS Spectrum Auction	$1.99	$40 bil.	$75 bil.
Value based on Regional Narrowband Spectrum Auction	$3.51	$70 bil	$132 bil.
Valuation based on National Narrowband Spectrum Auction	$3.13	$67 bil.	$117 bil.
Valuation based on Broadband PCS Spectrum ("A&B" Band only)	$0.52	$11 bil.	$20 bil.
Valuation based on Spectrum Weighted Average of Auction Prices	$0.587	$12 bil	$22 bil.

A second approach to determine a range of market values for spectrum uses private market transactions to estimate the current value of spectrum rights in the television industry. Before going on to a broader analysis, it is helpful to look at one unique private market transaction that is currently taking place.

New York City recently announced its intentions to sell WNYC, which is its public broadcasting station operating in the UHF band on Channel 31. WNYC is expected to be converted into a commercial station after its sale. This station's sale provides a unique opportunity to estimate the "pure" value of broadcasting spectrum because its operating history as a public station eliminates most of the usual considerations, except those involving spectrum rights, that are substantive factors in determining a station's market value. For instance, it is highly unlikely that a potential acquirer will place much value on intangibles such as WNYC's current management and brand equity since neither of these factors will be relevant after the station is converted into a commercial operation. In addition, it is unlikely that most potential acquirers will place much value on the station's hard assets, including its property, plant, and equipment, since they are likely to replace these assets as soon as possible for competitive and technological reasons.

Rothchilds, Inc., the investment bank handling the station's sale, made initial estimates that WNYC could command at least $65 million in a contested sale. Due to the overwhelming positive response of potential buyers to its offering document (over 26 bidders have expressed serious interest), analysts now believe that WNYC may command a price higher than its initial projections had indicated.

According to New York City officials, the book value of WNYC's tangible assets is about $8-$10 million. Assuming conservatively that WNYC eventually sells for only $65 million and that the station's hard assets match their book values, we estimate that WNYC's spectrum rights are worth $55 to $60 million or approximately $0.50 to $0.55 per MHz-POP. Coincidentally, these values correspond to the prices investors paid during the most recent auctions for Broadband PCS (see Table 1). If this were extrapolated on a nationwide basis, it would lead to a value of $11 billion for the ATV spectrum and $20 billion for the recaptured NTSC spectrum. In making such an extrapolation, one must remember that New York City is the most valuable broadcast market in the country and that it is a UHF analog station.

The sale of WNYC is unusual because it allows one to make reasonable estimates about spectrum value based on a marketplace transaction. Ordinarily, it is difficult to extrapolate spectrum value from these private market

transactions (e.g., the acquisition of stations) because spectrum rights cannot be separated from the other variables that determine total market value.

Based on our discussions with investment bankers, station brokers, and other industry experts, however, a reasonable method for estimating spectrum value of today's television industry is to use the value of the industry's intangible assets as a proxy.

First, we derived a range of estimates for the value of the TV broadcast stations' intangible assets by netting out the value of the tangible assets from the current total market value of the industry. In order to calculate the total market value for all stations, we applied the most current market multiple to the industry's most recent operating cashflow (OCF) to estimate the industry's total market value. According to industry experts, the current multiple used in broadcast acquisitions ranges from 8 - 10 times current year OCF.

In developing our estimate of total station market value, we assumed that the average industry OCF is 30% of total revenues and multiplied that figure by the appropriate market multiple (e.g., $16.6 billion in local station net revenue x 30% OCF x 10 multiple = $50 billion for all commercial television stations).

We then estimated the value of the stations' tangible assets. For our purposes, tangible assets include all station assets that have discrete and identifiable economic lives. These include all of a stations' physical assets (e.g., property, plant, and equipment) as well as certain less tangible assets (e.g., program rights, acquisition premiums, management contracts).[2] We have learned from our discussions with industry appraisers and other experts that most ordinary tangible assets have a 7 to 10 year life. Assuming a straight-line depreciation of these assets, an estimated replacement value for the tangible assets of the industry can be calculated by multiplying the annual depreciation and amortization expense by the estimated life of the assets (e.g., using $1.5 million depreciation and amortization x 7 year life x 1145 commercial stations = $12 billion in tangible assets for the industry).

As shown in Table 3, our estimate for the value of the intangible assets of today's television broadcasting stations ranges from $23 billion to $38 billion

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[2] 1993 Broadcasting Industry Report, Veronis, Suhler and Associates. To estimate the replacement value of the industry, we used the 1993 annual depreciation and amortization expense of publicly traded pure-play television station owners as reported by Veronis Suhler. This amount was divided by the number of stations owned by these operators to derive a station average of $1.5 million for annual depreciation and amortization.

after accounting for possible variations in market multiples and economic life. Because most of a station's intangibles are depreciable and, therefore, reflected in the $12 billion tangible asset calculation above, spectrum value accounts for a significant portion of the remaining tangible assets.

Table 3: Value of Intangible Assets for the Current TV Broadcasting Industry

TV Broadcasting	Est. Asset Replacement (in Years)	
	7 years	10 years
Market Multiple	Value of Intangibles (in billions)	Value of Intangibles (in billions)
10x OCF	$38	$33
8x OCF	$28	$23

In conclusion, the proxies we have used result in a range of estimates for the total value of post-ATV transition spectrum at between $11 billion and $70 billion for the ATV licenses and $20 billion and $132 billion for the recaptured NTSC licenses. Other interested parties have gone on record with valuations of the current NTSC and ATV broadcast spectrum. NTIA has estimated the marketplace value of television and radio broadcast spectrum at $11.5 billion, not including spectrum yet to be assigned for HDTV.[3] Other published reports indicate that NCTA estimates that the broadcast spectrum is worth between $40 and $60 billion.[4]

This wide range of values is understandable given the number of possible outcomes that could result from adopting advanced television standards. Advanced television will free up a large amount of spectrum in a frequency range that is attractive for developing a wide variety of wireless applications. These might include mobile services, new subscription services, or even traditional over-the-air broadcasting, narrowcast to attract particular viewing segments and their corresponding advertiser bases. On the other hand, the substantial increase in the supply of spectrum also could outstrip its demand. This could result from the lack of attractively priced consumer digital receivers

[3]See NTIA, U.S. Spectrum Management Policy: Agenda for the Future 91 (Feb. 1991).

[4]See Broadcasting and Cable , March 27, 1995, p. 9.

leading to a dampening of the demand for advanced television. It could also result from the market's inability to develop new applications that make effective use of the newly available spectrum. In the final analysis, however, these wide variations in possible values are significant not because of what they tell us about the future market potential of a particular band of spectrum, rather they are significant because they indicate how essential and important it is that our policies for managing this valuable resource encourage its most efficient and most flexible use.

Question Two

S. 652, the Telecommunications Competition and Deregulation Act of 1995, reported by the Senate Commerce Committee notes that there are "ancillary and supplementary services" that could be provided on the spectrum. Based on your understanding of the technical capabilities of digital television, what are some examples of services other than free over the air television that technically could be provided?

With rapid technological advancements, digital television providers will have the opportunity to offer a myriad of new and enhanced services. In addition to 6 NTSC quality signals, Sarnoff Labs recently reported that a single 6-MHz channel of spectrum has the flexibility to allow 75 CD-quality stereo radio pairs to be broadcast, and enough capacity to deliver a page of newspaper in 17 milliseconds, or an entire 100 page newspaper in 1.6 seconds.

Broadcasters could also expand their services to include subscription video (like today's HBO). A further expansion of video services could include the implementation of 'forward and store' technologies that would allow movies or data to be delivered during the night or off-peak hours and stored in an 'information appliance', to allow for viewing at a later time, thereby creating a virtual video rental store. A vast array of data services such as local traffic and weather, targeted up to the minute business information, computer software, sports information and targeted advertising will also be possible. The subscriber will also have the option of customizing the data to fit specific tastes and needs, allowing only certain items to be filtered in and stored for viewing. For example, a customer could choose news stories in a specific topic area such as business news, or advertisements for specific types of services like auto repair shops, if his/her car is due for a tune-up. While the capabilities of the technology are clear, the demand for these services is unclear. Whether demand is large or small, we believe consumers should be given the opportunity to make that decision.

The broadcasting industry itself has begun to show interest in the new services

that could be offered. In an April 10, 1995 article in Broadcasting and Cable, NAB Executive Vice President of Operations, John Abel, was reported as stating that the new technology will allow broadcasters to transmit video games to computers and insert advertising into them as an additional revenue source. Rupert Murdoch, Chairman of Fox, also publicly has supported the idea of flexibility by airing high definition programs on special occasions, but using the spectrum to provide multiple standard definition programs for the bulk of its broadcasting hours. In a March, 1994 letter to the Honorable Congressman Edward J. Markey, the NAB said that, "Some of the types of services that we currently envision being offered are 'program enhancement' services which would offer viewers information supplementing a broadcast program (such as player statistics during a sporting event, background information on people in the news, etc.); multiple video services; broadcasts of school-closing and other emergency information on a 'real time' basis so that consumers could obtain this information at their convenience; electronic 'newspapers' which could be provided to wireless fax machines or to other types of receivers or medical information services broadcast in encrypted form only to doctors and hospitals."

How could the flexibility to offer these different services increase the value of the advanced television licenses?

Given that these are new services, we cannot calculate precise values, but it is clear that broadcasters who use their new spectrum for ancillary and supplementary services could either charge fees to subscribers for subscription revenue or charge advertisers for the broadcast of their advertisements. By implementing the customizing options discussed in the previous section, advertising could be targeted to consumers, thereby increasing its value and the fees collected for it. These revenue streams would be in addition to those obtain as a result of their basic broadcast service. Effectively, the new technology lets the broadcasters enter all aspects of the video-to-the-home market, a market which Robert Wright, head of NBC, recently estimated generates $100 billion in annual revenues. The technology allows television broadcasters to compete more directly with the cable, radio and paging industries. The value of these services, however, will be limited at first, until the equipment necessary to receive them becomes common in homes. The ultimate value will be driven by the market shares of the above markets that the broadcasters capture. It is important to note that now, at its inception, the Advanced Television standard will be the most limited it will ever be - - meaning that it will only improve with time, both in terms of technological advances and innovation of use. As the technology becomes more advanced and as market demands increase, so will the value of the advanced television