has been no evidence that the affiliation portion of the rules has ever been a problem. ValueVision demonstrates not the slightest reason for the Commission to adopt its new test here.

VI. THE COMMISSION SHOULD NOT ADOPT THE PROCEDURES PROPOSED BY LESSEES

Finally, several lessees propose unwarranted and unreasonable procedures for resolution of disputes concerning leased access rates. For example, ValueVision suggests operators should make contracts underlying their leased access rates publicly available to lessees.[67] Such public disclosure of highly sensitive confidential business information is entirely inappropriate here.

In addition, some lessees propose that the burden should be on an operator to justify its rates, and they suggest penalties and forfeitures if an operator ultimately is determined to have incorrectly calculated its rates.[68] This proposal ignores the statutory presumption in favor of an operator's rate determinations. This presumption can be defeated only by clear and convincing evidence to the contrary.[69] The Commission's complaint process remains in place for disputes that cannot be negotiated.

VII. THE PROPOSED LEASED ACCESS RULES VIOLATE THE FIFTH AMENDMENT

Finally, a cable operator is entitled under the Fifth Amendment to just compensation for taking their property. See Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982). Any formula that the Commission adopts that forces operators to carry lessees at less

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[67] ValueVision Comments at 13.

[68] See e.g., CBA at 12.

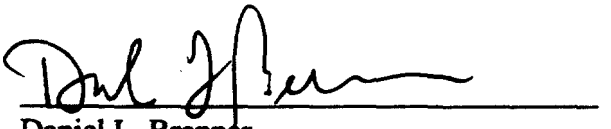
[69] Section 612 (f).

than compensatory rates violates the Fifth Amendment.[70] The cost model outlined in the Notice would do just that.

CONCLUSION

For the reasons stated herein and in our initial comments, the Commission should abandon its proposed cost formula.

Respectfully submitted,



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[70] See Time Warner Comments at 24 n.46; TCI Comments at 39-40.