

8. This discussion and analysis is largely directed to commercial TV broadcasters. With respect to commercial broadcasters, I believe that a fee based upon gross revenues ought to be in the 10 percent range because of the profit potential of the right to use the spectrum, and to minimize the potential for "unjust reward." A 10 percent fee will insure the public is compensated for diversion of spectrum which would otherwise be used to advance the public interest more directly. As an economist, I see no need for some sort of a cap to set a maximum fee for ancillary or supplementary services. I also see no need for waivers to minimize fees. If any modification is necessary, it should be to assist avowedly non-commercial entities.

II. The Value of Broadcast TV Spectrum

9. The value of over-the-air TV's product is increasing. Commercial television broadcasting is no infant industry, but one of the more profitable industries in our modern economy -- all based on free licenses given to commercial broadcasters. Commercial broadcasters assert the primary use to which digital television channels will be put [verses the ancillary or secondary uses] will continue to be free, over-the-air television service. The broadcasters realistically recognize the importance of what the Congress gave them, and them alone -- the most valuable of all spectrum.

10. Commercial television stations sell viewers' eyeballs (their product) to advertisers (their customers). Digital television offers many opportunities to enhance the value of the product commercial broadcasters deliver to advertisers. The future looks bright, and the industry ought to

expect greater and greater revenues, and this growth must be factored into the valuation. The commercial television broadcasters will continue to make vast profits from their traditional business.¹ For a decade, commercial traditional broadcast TV has been “buried” in obituary after obituary, because of the innovation of a host of new technologies. Yet today the commercial TV broadcasting business is booming as advertisers line up to pay higher and higher fees. Consider that last May 14, 1998 NBC demanded (and got) between \$1.5 and \$2 million for 30-second advertisements aired during the concluding episode of the most popular show of the 1990s. Advertisers -- led by Mastercard and Budweiser -- rushed to ante up to hawk their products during “TV history.” That TV broadcasters could demand and get such record advertising fees attests to the healthy state of the broadcast television business. Simply put, in the age of the niche, an era of the fragmented audience, only a “Seinfeld” on broadcast TV can provide the “eye balls” that mass marketers so covet in a super charged economy. In 1997, the four networks scooped in more than \$21 billion in operating revenues, up a healthy 13 percent from 1996. More advertising revenues are generated from their owned and operated stations. Local advertising adds even more.

11. Commercial broadcasters are not correct to argue that they face a bleak future. The fact is that even in the analog era, exploitation and exclusive rights to use public spectrum is an extremely profitable business, and promises to remain that way. While their audience shares may be declining relative to cable and other multi-channel video providers, total viewership increases,

¹ See Douglas Gomery, “Hold the Obits: The Networks Are Fine,” American Journalism Review, May, 1998, page 70.

and over-the-air broadcasters are merely receiving a smaller share of an ever expanding pie. Indeed, the fractionalization of audiences has enabled commercial broadcasters to extract a premium for their broad-range demographics. Further, broadcasters' synergistic capability to use their program feeds for self-promotion also enhances profitability.

12. To the extent the four major TV networks, as well as their upstart competitors, discuss their declining profitability, it is essential to keep in mind that their emphasis and focus on the network side of their business is a diversionary tactic. At least as a matter of accounting practice, the networks make their program distribution business a marginally profitable subsidiary. The huge profits come from their individually-owned local stations, not their networks. Significantly, it is the profitability of the individual stations (which are licensed) and not the networks (which are not licensed) that the Commission must examine in establishing fees for the ancillary uses of the locally-licensed spectrum.

13. The 1996 Telecommunications Act doubled the spectrum allocated to current television broadcasters to facilitate a transition to digital television, and this will enable commercial broadcasters to extract more revenues from advertisers. Indeed, the examples most often used underlie more information about advertised products. Hence, for each channel 2 across the country, there may be a channel 2a, 2b, 2c, 2d, and 2e -- with five different types of fare. Here is an opportunity to become even more attractive to potential advertisers as the commercial TV broadcasters gain more flexibility in the digital age. This is most valuable. In April, 1997 the Congressional Budget Office estimated an up-front auction of the DTV spectrum

which would have yielded \$12.5 billion. This is the type of figure any consideration of fees for use of ancillary or supplementary services ought to deal with. Here is the type of figure Congress had in mind when it inserted the phrase "unjust rewards" in Section 336.²

14. Commercial over-the-air television will continue to offer superior product for local advertising. Cable is far from competitive in local advertising, and at this point surely does not look to ever be a reasonable substitute. For starters, cable begins with at best two-thirds of broadcast television's penetration. And cable has generated little local programming. If DBS ever offers local programming, it is simply to re-broadcast local over-the-air stations. In short, over-the-air broadcasters will continue this sizable advantage. There is no reason to believe that over-the-air advertising-based broadcasting business will not remain the most profitable of the mass media businesses. The addition of ancillary or supplementary services will make their franchises simply that much more lucrative.

15. Over-the-air TV is a local oligopoly. The economic power of ownership of commercial TV broadcasting stations as federally-allocated local oligopolies has long been recognized. Spectrum licensing has long protected broadcasters; they have long appreciated this fact, and fought hard to keep and maintain this exclusivity. Economists Bruce Owen and Steven Wildman aptly summed the situation up this way: "VHF-TV licensees have been relatively scarce. This scarcity has led to economic rents -- profits in excess of those required to keep the stations in

² See Congressional Budget Office, Where Do We go From Here? The FCC Auctions and the Future of Radio Spectrum Management, April 1997.

business -- that accrue to the holders of the licenses.”³

16. Consequently, a television station license is a valuable asset that commands a considerable price, often well into the hundreds of millions of dollars. Broadcast TV spectrum space is unique and prized because it alone is able simultaneously to reach millions and millions of households. Because electronic mass media continue to exert monopoly control of spectrum through exclusive licenses, many more people want to own a license than are able to -- given the FCC allocation plan -- and so the prices to obtain a license are high and climbing. Wall Street economist Harold Vogel has written: “Although there are no absolute formulas for valuing broadcast properties, stations change hands often enough so as that any given time, the going rate in the market can be fairly easily determined.”⁴ He notes these add up to millions of dollars, particularly in larger markets. The value of the expected profits from a broadcast TV license was going up, not down, as one can easily see from Broadcasting & Cable, when comparing selling prices with previous years’ reports.⁵

17. Such findings are consistent with what media economists Owen and Wildman found: access to the broadcast TV spectrum demands ever increasing prices, often well into the millions

³ Bruce M. Owen and Steven S. Wildman, Video Economics (Cambridge: Harvard University press, 1992), at 15-16.

⁴ See Harold L. Vogel, Entertainment Economics: A Guide for Financial Analysis (Cambridge: Cambridge University Press, 1994), at 171.

⁵ See generally, the reported figures in Donna Petrozello, “Trading Market Explodes,” Broadcasting & Cable, 3 February 1997, at 18-19 with Sara Brown, “Living large in 1997,” Broadcasting & Cable, 2 February 1998, at 32-34.

of dollars. Investors are willing ante up more and more for what they -- in the real world -- calculate as the discounted value of expected future profits. (These bids function as proxies for a quasi-auction.) The value of these licenses, I argue, reflects the profits created by the spectrum monopoly; the additional profits from uses of the ancillary or supplementary services will simply push these values even higher since they are linked to the broadcast spectrum. Thus, it simply makes no sense to compare the falling prices of other spectrum space with broadcast TV spectrum prices. This is a false and misleading comparison.⁶

18. To be sure, the primary benefit of the 1996 Telecommunications Act was that broadcasters held onto their exclusive over-the-air broadcasting licenses. But the commercial broadcasters also asked for and were granted a double-barrelled insurance policy. First, they also received the flexibility to use the digital spectrum for other profit-making purposes by providing ancillary or supplementary services. Even with the limitation that at least a portion of the new spectrum must be was used for free, over-the-air broadcasting, the right to provide revenue enhancing ancillary or supplementary services is of great value. Congress and the FCC denied access to land mobile services, other low power TV broadcasters, and others who might wish to have used the same frequencies for non-broadcast services. Second, based upon the provisions of the 1996 Act, as later implemented in the 1997 Budget Bill, it will be well into the next century before broadcasters will have to give back one of their two blocks of spectrum which will then be

⁶ B. Peter Pashigian, Price Theory and Its Applications (New York: McGraw Hill, 1995) at 586-588.

auctioned for other uses.⁷ This offers a second form of insurance for broadcasters, just in case digital broadcasting does not prove profitable in the long run. Thus the 1996 Telecommunications Act ensured the future of commercial broadcasters -- with a double barreled insurance policy.⁸

19. The value added by the ancillary or supplementary services from the insurance "fall-back" protection that ancillary or supplementary businesses can and will supply is considerable.⁹ Insurance offers a means to deal with unknown risk. If all events, such as the future of free, over-the-air digital broadcasting as an industry were known and predictable, there would be no risks to insure, and as a result, I doubt broadcasters would have lobbied for the insurance value of ancillary or supplementary services. However, uncertainty exists, and the commercial TV broadcasters would not like to look to a future with going out of business as the primary solution. Going out of business is the risk facing most entrepreneurs, but in the case of digital TV, Congress granted commercial broadcasters the above-described insurance policy. To the extent that free over-the-air digital television does not prove profitable, they can and will divert much of this spectrum to ancillary or supplementary services.

⁷ Under the Balanced Budget Act of 1997, broadcasters need not return the spectrum until at least 85 percent of the viewers in their community of license are able to receive digital signals.

⁸ The present allocation scheme at the FCC will take away spectrum licenses from a class of small broadcasters called Low Power Television. These stations serve small geographic areas across the country, and nearly 90 percent of the minority-owned broadcast television stations are Low Power ones.

⁹ See B. Peter Pashigian, Price Theory and Its Applications (New York: McGraw Hill, 1995) at 127-129.

20. Building upon free, over-the-air advertising based broadcasting, the major companies owning television stations -- and converting from analog to digital -- can exploit and leverage other media production, and distribution units that make up their vast enterprises. They then can use this cross ownership to leverage the ancillary or supplementary services, built on their broadcast licenses. Sports broadcasts can offer up-to-the-minute scores; news shows can offer supplemental and individualized information; many other examples exist. Cross ownership gives commercial broadcaster a unique place to build and exploit through the ancillary or supplementary channels.

III. Flawed Assumptions Underlying Broadcasting Industry's Assessment of Fees

21. The digital spectrum given free to incumbent analog broadcast television license holders is quite valuable, and its value is rising. The value of the broadcast spectrum can not be determined by comparison to receipts from auctions of non-broadcast spectrum. The National Association of Broadcasters [hereafter NAB], Disney's ABC division, the Association of Local Television Stations and their economists argue that fees for ancillary and supplementary services should be low because the value of non-broadcast spectrum appears to be declining. The Statement of Jerry A. Hausman, attached to the Comments of the National Association of Broadcasters and the Association for Maximum Service Television, Inc. [hereafter Hausman] and "Fees for Ancillary and Supplementary Use of Digital Television Spectrum" by John Haring, prepared for Association of Local Television Stations [hereafter Haring] both argue that all

spectrum is the same and can best be understood as per MHZ per population [Hausman at 4].

Haring echoes this argument at 14-15.¹⁰

22. Hausman and Haring's argument is based on the erroneous assumption that all spectrum is equal in value. As I have argued above, in reality broadcast television licenses are far more valuable. Indeed the broadcast spectrum is the most valuable of spectrum space. To compare DTV spectrum space to other spectrum is to compare apples and oranges. Broadcast television licenses are so valuable precisely because of the monopoly power embedded in their allocation. Section 336 of the Telecommunications Act of 1996 confirms that monopoly power. That section limits the eligibility for DTV licenses to incumbent broadcasters and permits only broadcasters to provide ancillary or supplementary services. The law recognizes that all spectrum is not the same, that broadcast TV spectrum is unique and prized because it alone is able to simultaneously reach millions and millions of households. Because electronic mass media continue to exert monopoly control of spectrum through exclusive licenses, many more people want to own a broadcast license than are able to do so. Therefore prices to obtain a license are high and climbing. This is particularly the case for the top markets in the United States. As noted above, this often adds to millions of dollars, particularly in larger markets. Indeed, Broadcasting & Cable magazine reported this past February (using Commission data) that 1997 was the busiest year for selling and buying broadcasting properties in history.¹¹ For example, WVTM-TV of

¹⁰ This is echoed in "The Need for a Cap on Fees for Ancillary or Supplementary Use of Digital Television Spectrum" a report by Strategic Policy Research, attached to Comments of Fox Television Stations, Inc., at 8.

¹¹ Sara Brown, "Living Large in 1997," Broadcasting & Cable, 3 February 1998 at 34-36.

Birmingham, Alabama sold for \$199 million; KOFY-TV of San Francisco sold for \$173 million; WBIS-TV in New York sold for \$257 million. And so on.

23. Hausman [at 4] goes on to argue that “auction values are significant lower for uncertain and unproven technologies.” Later Hausman [at 8] argues the same point again by stating that there should be a discount in auction results for services “that face significant business and technological uncertainty.” But Hausman ignores the reality that commercial broadcasters will use the spectrum given to them first and foremost for what they well know -- broadcasting. Hausman assumes that spectrum use is homogeneous, but in the DTV deal the Congress expected over-the-air broadcasting to be the primary use. And commercial broadcasters will not protest, because they rightly expect that the value as used for commercial broadcasting will yield higher profits than ancillary or supplementary uses. Hausman [at 8] argues that the value of the spectrum used for ancillary or supplementary services can be separated from its value as a broadcast medium. In this, he ignores the reality that the primary use of the spectrum will be for advertising-supported over-the-air broadcast television.

24. Pure micro-economic policy analysis treats and validates economic efficiency as a single policy goal. Efficiency represents but one of many criteria for the desirable workings of a communications system. Hausman [at 9-11] and Haring [at 6-7] both argue from the narrow, efficiency-only perspective, and assert that ancillary or supplementary services are of greater benefit to the public as they promote consumer welfare more than free, over-the-air television. This is not the case. Nor are ancillary or supplementary services of greater benefit to the public

than adequate reimbursement for subscription use of the spectrum, as both Hausman [at 9-11] and Haring [at 6-7] assert.

25. The FCC should move beyond the simple considerations of economic efficiency alone. The goals of public policy toward broadcast television ought to transcend economic efficiency, and recognize that micro-economic analysis does not address all public policy objectives. Even broadcasters seem to agree on this. The Comments of the NAB, et al. [at 8, note 8] argue for the unworkability in practice of micro-economic theory.¹² Here I agree with the NAB: "Given that the types, amounts, and prices of DTV ancillary or supplementary services will vary in time, market and station, it is hard to imagine how this approach [micro-economics] could be use to generate any useful information for the Commission to determine a fee schedule." Here the NAB wants the Commission to consider variables beyond efficiency. It is correct that broadcast television plays a far too complex role in our society to ignore its complex externalities, and important social effects.

26. Sometimes the economists trip over their own assumptions and value systems. Haring, for example, at 6, correctly notes that a redistribution would take place if the fee for use of the ancillary or supplementary services was set too low. He characterizes this as "a simple transfer of rents .." He tries to balance this off against the loss of efficiency and sides -- as a narrow applied economist might be expected to -- with never losing efficiency at any cost. But

¹² While the NAB argues here that micro-economic analysis is limiting when it serves their purposes they cite pure micro-economist Jerry A. Hausman to buttress its arguments.

the “simple of transfer of rents” is precisely the issue of “unjust rewards” that the Congress specifically asked the Commission to avoid. This counts for a great deal as it makes one party wealthier -- commercial broadcasters -- at the expense of the general public.

27. Finding such an alternative to the pure applied micro-economic analysis has been the thrust of my work; I posit what might be called an institutional model.¹³ Instead of beginning with a pure micro-economic model, we must begin with the problem, and seek analysis to help us solve it. In particular, we ought to recognize that commercial broadcasters are not the simple homogeneous creatures driven by economics, and reducible to equations. In reality, they are large complex social, cultural, and economic institutions, with vast and growing power in the national and international marketplace. Policy analyses are simply applied by economists, but must deal with the discontinuities of the frustrating and complex real world in which we live. We need empirical studies, but we also need studies of value-laden trade-offs. We need to analyze the interconnectiveness of society and the economy and not reduce the criterion of what is desirable to efficiency standards alone. We need to accept that economic behavior and cultural action are intertwined. Tastes should not be a given variable; people are conditioned by their culture, change, and respond. Finally, we need to acknowledge that the unique history of any vast corporate institution cannot be ignored, and indeed plays a vital and defining role in how that institution behaves in the real world. In a world where corporate institutions vary by ownership, market conditions, and technological change, we come to the policy problem at hand: what is the

¹³ See, for example, Douglas Gomery, “Media Ownership: Concepts and Principles,” in Alison Alexander et al, Media Economics: Theory and Practice, second edition (Mahwah, N.J.: Lawrence Erlbaum Associates, 1998) at 45-52.

best plan to implement the Congressional mandated fee for the use of spectrum for ancillary or supplementary digital services?¹⁴

28. As important as refuting what Hausman and Haring assert directly is to consider what they and their patrons ignore. While the NAB, for example, relies on Hausman's micro-economic analysis when it serves its purposes, it is disingenuous for the NAB to paint its members -- with their millions of dollars in amortized monopoly profits built into their licenses -- as some sort of "infant industry" in need of special protection, unable to withstand the risk or uncertainty of innovating ancillary or supplementary media services. The NAB [at 3] asserts "the embryonic nature of digital television." Later it pleads that the technology for offering ancillary or supplementary services is largely untested or undeveloped, and there is no basis for any definitive analysis of the economics of these services. The NAB [at 17] concludes Wall Street will find investments in them as highly speculative. Without stating it, the NAB is pleading the classic "infant industry" argument.¹⁵ After a period of protection, they -- as a developing new industry -- will mature (that is become profitable), and thus be able to fend for themselves.

29. Yet if any industry is mature, it is broadcast television, with its long experience at assimilating technological and marketplace innovations, such as color TV, cable television

¹⁴ See Randy Alberda, Christopher Gunn, and William Waller's Alternatives to Economic Orthodoxy (London: M. E. Sharpe, Inc., 1987) at 263-265.

¹⁵ A basic textbook, such as N. Gregory Mankiw, Principles of Micro-economics (New York: The Dryden Press, 1998) at 187-188, makes the concept explicit, and Mankiw's words echo the NAB's special pleading.

redistribution, cable-originated programming and replacement of coaxial distribution by satellite. Policy makers ought to be skeptical not only of the politics of picking which industry to allocate special help, but also ought to ask why -- if the investment is so good -- the owners of the broadcast TV corporations -- often parts of even larger billion dollar media conglomerates -- are not willing to incur temporary losses in order to obtain eventual profits? Today there exist many corporations -- from Microsoft to numerous biotechnology companies -- which incurred temporary losses in the hope of growing and becoming profitable in the future. This is precisely the test the free market uses to have industries and customers interact and select what values should succeed and which should not. The FCC ought not subsidize ancillary or supplementary services. The licensees already have a government monopoly; they can try ancillary or supplementary services, and if profits do not match other corporate ventures, they will simply shift back to primary TV over-the-air broadcasting as the Congress seemed to always have in mind. This argument and analysis ought to focus on the value of this spectrum today, and not make the discussion about some future world that may not come to pass.

30. Hausman and Haring's analyses are altogether too narrow. Specifically, both ignore the important role of externalities basic in television broadcasting. Broadcasters' public interest obligation was developed because of externalities. Indeed, the monopoly licensing system hardly fulfills the assumptions of an efficient marketplace requiring homogeneous commodities, identical customers, numerous firms, numerous small transactions relative to the market, perfect

information, and free entry and exit.¹⁶ Thus, defining the requirements for properly dealing with the externalities and thus serving the public interest lie at the center of any analysis of setting a proper fee for use of the spectrum for ancillary or supplementary services. The 1996 Telecommunications Act not only did not revoke broadcaster's public trusteeship, it reaffirmed that obligation thrice in Section 336.

31. A key consideration of the public interest is to recognize that there exist negative externalities within the economics of the broadcast TV system.¹⁷ A traditional microeconomic model assumes, for example, that a decision by a firm selling to a customer has no external effects on other firms or customers. But within the broadcast TV market there are many situations where external or third party effects are important. The importance of externalities is carefully laid out in James T. Hamilton's book Channeling Violence: The Economic Market for Violent Television Programming.¹⁸ Looking at the market for television violence, Hamilton judges broadcast television as a classic example of market failure. "Television violence generates negative externalities." [at 3] Hamilton compares this particular negative externality with environmental pollution, both in the manner of how it works as well as in possible solutions. The theory of externalities underscores how the damage to society as a whole that arises from

¹⁶ See James M. Henderson and Richard E. Quandt, Microeconomic theory, Second edition (New York: McGraw Hill, 1971), at 105-106 for the most concise discussion of the assumptions, and B. Peter Pashigian, Price Theory and Its Applications (New York: McGraw Hill, 1995), chapters 7-16 for a more elaborate examination.

¹⁷B. Peter Pashigian, Price Theory and Its Applications (New York: McGraw Hill, 1995) at 698-703.

¹⁸ Princeton University Press, 1998.

television violence remains outside the calculations of most programmers, producers, and viewers in a typical micro-economic analysis. The recognition of television violence, as but one example of a negative externality, suggests that while the goal for the optimal amount of violence is not zero, the existence of negative externalities needs be considered in any policy analysis.

32. The possible effects of these negative externalities are vast. Broadcast TV maps the nation's access to information and entertainment. It offers a unique linkage to all citizens, connecting nearly 100 million households of nearly 250 million people. Broadcast television, most visibly and controversially, pervades and shapes our social relations and cultural experiences -- both consciously and unconsciously. Licensing broadcast television is not merely a matter of finding the right technology, and then letting the marketplace work its magic. These negative externalities run to the heart of our on-going democracy. When broadcast television works well - - breaking down space and positively tying all of us together -- the benefits can be considerable. But the negative effects -- from disconnections to paranoia, from social volatility to alienation -- are considerable and telling. For instance, Robert Kuttner in his Everything for Sale [New York: Knopf, 1996] persuasively links the erosion of civic life through the 20th Century with the agenda setting power of the mass media in general, broadcast television in particular. Broadcasters have long only recognized positive externalities in seeking special protections for promoting the public interest, but good economic analysis should not permit them to ignore the negative externalities. Analysis of negative externalities is essential to any consideration of public policy, and discussions such as Hausman and Haring -- that ignore them -- must be taken as flawed.

IV. Evaluation of FCC Proposals & Setting the Percentage Fee Rate

33. The fee ought to be based on a percentage of the gross ancillary or supplementary revenues because the other alternatives considered by the FCC have economic, administrative, and institutional disadvantages. Yet it is always appropriate to keep in mind that the best way to minimize "unjust rewards" is to have the fee equal to the last dollar of excess profits earned because of the value of license given. I favor not making the calculation of the fee a burden on either the Commission or broadcasters. The Commission would need little in additional allocated resources to tally and collect such fees based upon gross revenues. Simplicity and ease of administration, in short, favor a fee as a percentage of gross revenues as the best of the possible solutions.

34. The fee ought to minimize unjust rewards. Micro-economics and its reliance on simple models of consumer welfare can not and should not be used to calculate the fee. The concept of consumer welfare -- employed by Hausman and Haring -- is a narrow criterion, and is impractical because of the externalities from communication, long recognized in law through the key phrase "public interest, convenience, and necessity." Simply settling for efficiency -- the sole criterion of welfare economics -- ignores what the Congress demanded. There is no reason to set the fee low because -- under certain assumptions -- such a fee might yield the greatest efficiency. Fees, even in the double-digit range, will not to inhibit broadcasters earning greater than normal profits. The source of the "unjust rewards" is the monopoly profit by the license allocation.

35. While broadcasters downplay potential profit, ancillary or supplementary services will invariably be offered only when profit rates they expect are deemed high enough. That profit rate would have to be high in order to match the expected profits from over-the-air broadcasting. Otherwise they would expand their efforts further in more profitable directions. An appropriate fee ought to anticipate high profits that will result from exclusive use of the spectrum. Looking at real world comparisons, if the fee is based on gross revenues, the initial level ought to be at least 10 percent of feeable revenues because of the high profit potential, and to prevent "unjust reward."

36. Consideration of an appropriate fee suggests a first pass at 5 percent simply because this figure has long been the "franchise fee" for cable television as a common monopoly business.¹⁹ The fee of 5 percent has hardly inhibited the growth of this comparable industry.²⁰ Broadcasters pleaded for a far lower figure, but ignore the reality that recently cable TV rates have increased as have profits. Two heralded substitutes -- direct broadcast satellites, and delivery through local telephone wires -- have not dampened cable's profitability. We can best see this in the rising prices to buy systems. Consider that in 1998 Cox Cable Communications paid \$780 million for only 60 percent of Prime Cable's Las Vegas system -- more than \$4,000 per subscriber. A year ago the average cost per subscriber was but \$2000 -- an indication of cable's

¹⁹ I note even broadcaster commissioned economists agree. For Comments of Fox Television Stations, Inc., Fox commissioned a study of caps by Strategic Policy Research which are part of its examples assumed a 5 percent fee.

²⁰ Douglas Gomery, "Cable TV Rates: Not A Pretty Picture," American Journalism Review, July/August, 1998, page 66.

long term profitability. Investors are voting for the continued rise in the profit potential of this industry by bidding up the price to acquire cable franchises and their precious subscriber bases.²¹

37. But I think 5 percent is far too low. The broadcast TV business is booming as I noted above, and the profits from the ancillary or supplementary services will likely be well in excess of 10 percent as broadcasters seek to match the profits from their required business. Indeed, the advertising business would seem to offer glowing broadcasting profit rates well into the future. United States advertising budgets are expected to grow 6.8 percent in 1998, to in excess of \$200 billion.²² With its valuable monopoly hold on licenses plus the added insurance values I have discussed above, profit rates from ancillary or supplementary services will match the well-in-excess of rate-of-returns over normal profits found in over-the-air broadcasting. A 10 percent fee would seem most appropriate. Furthermore, the TV broadcasters have the ability to cross own the most influential mass media, and important linkages between over-the-air TV broadcasting (the primary service), and ancillary or supplementary services can and will be made -- at double digit profit rates.

38. Similar situations exist for in other government-granted monopolies. For example, mining and oil companies pay 12.5 to nearly 17 per cent of gross revenues fees for the

²¹ See "Prime Cable Seeks Bidders to Buy Las Vegas System," The Wall Street Journal, 1 April 1998, page B8; "Cox To Buy Cable System in Las Vegas," The New York Times, 6 May 1998, page D9.

²² Sally Beatty, "Forecast Is Boosted for '98 U.S. Ad Budgets," The Wall Street Journal, 24 June 1998, page B8.

government for onshore and offshore mineral leases on public lands. This particularly appropriate comparison with a public resource -- mineral and oil wealth on public lands -- and the wealth of the spectrum. It will take skill to "mine" the resource of the ancillary or supplementary uses, but the pay off -- like oil and mining -- can and will be extraordinary. A similar allocation of an exclusive license by the government to concessionaires on federal lands requires a 9 percent fee. These examples suggest that a fee in the 10 percent range would be appropriate.

39. Kent P. Anderson's "Fee Alternatives for Ancillary or Supplementary Services Offered by Digital Television Broadcasters," attached to the NAB 's Comments misleadingly focus upon comparisons about licensed technology in "the private sector." [at 1] But the point here is that this spectrum licensing is a public property given to a private entity, and so these comparisons are invalid. Here again is a comparison of apples and oranges, of two very different types of services. Yet Anderson does stumble across the correct point when he argues that "only those technologies with unusually favorable economies receive rates of more than 10 percent." This is precisely the point. The broadcast TV industry has long been highly profitable, at the high end of the various charts Anderson reproduces. This is precisely why TV licenses sell for so much on the open market. The economies are unusually favorable, and investors know this, and are willing to pay millions to gain the advantage of an exclusive licence. Adding ancillary or supplementary services to the value of a broadcast TV license simply makes the unusually favorable economics even that more advantageous and profitable.

40. As an economist, I would see no need for some sort of a cap or upper bound to set a

maximum fee for ancillary or supplementary services. Nor is there a need for waivers to minimize fees. The fee as a percentage of gross revenues is an approximation of the proper fee on excess profits, and thus needs to operate at all ranges of revenue. Very high revenues would likely signal extensive monopoly control and hence excess profits. If any modification is necessary, it should be to assist avowedly non-commercial entities that are solely working in the public interest.

 28 JULY 1998

Douglas Gomery, 28 July 1998

ATTACHMENT B

July 1998

Douglas Gomery
College of Journalism
University of Maryland
College Park, Maryland 20742
(301) 405-2426
dgomery@jmail.umd.edu

EDUCATION:

Ph.D., University of Wisconsin, Madison, WI, 1975
Major: Communications; Minor: Economics

M.A., University of Wisconsin, Madison, WI, 1970 Major: Economics

B.S., Lehigh University, Bethlehem, PA, 1967 Major: Economics

FELLOWSHIPS, HONORS, AND AWARDS:

1998 - Who's Who in America, Fifty Second edition, page 1607.

1998 - Who's Who in the Media and Communications, 1st edition, page 222.

1992 - Performance Award, Woodrow Wilson International Center for Scholars.

1992 - Winner, Theatre Library Association best book award.

1989 & 1990 - Fellowships, Institute for the Humanities, University of Michigan.

1988 - Winner of Jeffrey Weiss Literary Prize from the Theatre Historical Society.

1977 - Fellowship, the Center for 20th Century Studies, University of Wisconsin.

1974 - Phi Kappa Phi.

1967 - Beta Gamma Sigma.

1967 - Phi Beta Kappa.

EMPLOYMENT:

- 1986 - date Professor, College of Journalism, University of Maryland.
 1990 & 1992 Visiting Professor, Department of Media Science, University of Utrecht,
 Utrecht, The Netherlands.
 1988 - 1992 Senior Researcher, Institute for Media Studies, Woodrow Wilson Center for
 International Scholars, Washington, D.C.
 1981 - 1986 Associate & Full Professor, Department of RTVF, University of Maryland.
 1982 Visiting Professor, Department of Communication Studies,
 University of Iowa.
 1981 Visiting Professor, School of Speech, Northwestern University.
 1977 Visiting Professor, Department of Communication Arts,
 University of Wisconsin-Madison.
 1974 - 1981 Assistant Professor and Associate Professor, Department of Mass
 Communication, University of Wisconsin - Milwaukee.

PROFESSIONAL ACTIVITIES:

- Columnist, "The Economics of Television," American Journalism Review, 1995-date.
 Editorial Board, Journal of Communication, 1997-date.
 Editorial Board, Journal of Media Economics, 1988- date.
 Corresponding Editor, Communication Booknotes, 1979-1992; 1997-date.
 Consultant, General Accounting Office, 1998 - date.
 Editor, Marquee, 1991.
 Guest Editor for Cinema Journal 1979
 Guest Editor for Journal of Film and Video 1985.
 Guest Co-editor for Journalism & Mass Communication Quarterly 1997.
 Member, editorial board, Journal of Film and Video, 1985- date.
 Guest Cluster Editor, Wilson Quarterly 1986.
 Editorial Board, Screen, 1982-1988.
 Editorial Board, IRIS, 1982-1988.
 Editorial Advisory Board, American Film Institute Catalog of Feature Films 1988-date.
 Chair, Advisory Committee, Broadcast Pioneers Library of Broadcasting, 1995-date.
 Chief Judge, National Awards for Educational Reporting 1992.
 Board of Advisors for "Cinema History" PBS series, 1991-1993.
 Member, Board of Trustees, American Film Institute, 1986-1988.
 Reviewer, Journal of American History, 1990-date.
 Expert Witness, Los Angeles News Service v. KCAL, 1994-date.
 Reviewer, The Communication Review
 Reviewer, Communication Yearbook.

PROFESSIONAL ACTIVITIES (con't)

Reviewer, Critical Studies in Mass Communication
 Board of Advisors, Center for Media Education, Washington, D.C.
 Board of Editors, Secuencias, Madrid, Spain.
 Consultant to the Library of Congress, WOR collection, 1996-1998.
 Reviewer for Human Subjects Proposals for the Smithsonian Institution .
 Reviewer of National Telecommunications and Information Agency.
 Advisory Board, International Dictionary of Films and Filmmakers.
 Advisor, Historia General Del Cinema Madrid, Spain.
 Referee, Technology and Culture.
 Referee, Business History Review
 Referee, Journal of Broadcasting and Electronic Media.
 Member, Jury, Jay Leyda Prize, 1989.

SELECTED PUBLICATIONS (Books and Articles):*I. Media Economics*

Co-author, Who Owns the Media? (Mahwah, New Jersey: Lawrence Erlbaum Associates, 1999), (with Benjamin Compaine).

"Media Ownership: Concepts and Principles," in Alison Alexander, James Owers, and Rodney Carveth (editors), Media Economics: Theory and Practice, 2nd edition (Mahwah, New Jersey: Lawrence Erlbaum Associates, 1998), pages 45-52.

"The Economics of Hollywood: Money and Media," in Alison Alexander, James Owers, and Rodney Carveth (editors), Media Economics: Theory and Practice, 2nd edition (Mahwah, New Jersey: Lawrence Erlbaum Associates, 1998), pages 175-183.

"The Hollywood Industry," in John Hill and Pamela Church Gibson (editors), Oxford Guide to Film Studies. (Oxford: Oxford University Press, 1998) (forthcoming).

Four essays in Wolfgang Krank, Joachim Felix Leonhard, Hans-Werner Ludwig and Erich Strasser (editors), Media: Technology, History, Communication, Aesthetics: A Handbook of International Research, three volumes, (Berlin: deGruyer, 1998).

"Media Economics: Terms of Analysis," Critical Studies in Mass Communication, Volume 6, 1989, pages 43-60, reprinted in Peter Golding and Graham Murdock (editors), The International Library of Studies in Media and Culture: the Political Economy of the Media (London: Edward Elgar Publishing, 1997).