
COMMUNICATION SITES ON FEDERAL LAND

JOINT OVERSIGHT HEARING
BEFORE THE
SUBCOMMITTEE ON
NATIONAL PARKS, FORESTS AND PUBLIC LANDS
COMMITTEE ON NATURAL RESOURCES
AND THE
SUBCOMMITTEE ON
ENVIRONMENT, ENERGY, AND NATURAL
RESOURCES
COMMITTEE ON GOVERNMENT
OPERATIONS
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRD CONGRESS
SECOND SESSION
ON
COMMUNICATION SITE FEES FOR USE OF FEDERAL LANDS

HEARING HELD IN WASHINGTON, DC
JULY 12, 1994

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COMMUNICATION SITES ON FEDERAL LAND

TUESDAY, JULY 12, 1994

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON NATIONAL PARKS, FORESTS AND PUBLIC LANDS, COMMITTEE ON NATURAL RESOURCES, AND SUBCOMMITTEE ON ENVIRONMENT, ENERGY, AND NATURAL RESOURCES, COMMITTEE ON GOVERNMENT OPERATIONS,

Washington, DC.

The subcommittees met, pursuant to call, at 9 a.m. in room 1324, Longworth House Office Building, Hon. Bruce F. Vento (chairman of the Subcommittee on National Parks, Forests and Public Lands) presiding.

STATEMENT OF HON. BRUCE F. VENTO

Mr. VENTO. The Subcommittee on National Parks, Forests and Public Lands and the Subcommittee on Environment, Energy, and Natural Resources of the Government Operations Committee—this joint subcommittee hearing—will be in session.

I want to thank my colleague, Congressman Synar, who chairs that panel and his staff in arranging for the joint oversight hearing of the two subcommittees.

The purpose, of course, of the oversight hearing is to review the status of the current and proposed fee program applicable to the communications industry use of Federal lands. Existing law, including the Federal Land Policy and Management Act of 1976, requires Federal land management agencies to obtain fair market value for the use of the land. Unfortunately, while that is the law, it has not been carried out in practice.

Since the 1950s, the Forest Service has been charging essentially the same rates for communication facilities using national forest lands with an antiquated formula. Likewise, the BLM for many years has not received fair market value for the use of public lands but is a slight improvement over the flawed policies and formula used by the Forest Service.

It is estimated that under the current fee system of the two agencies, between \$20 million to \$25 million are lost annually to the U.S. Treasury. Large communication entities are reaping millions of dollars annually in revenues and sublease rents made possible in large part by their use of Federal lands, while paying only hundreds of dollars to the landlord of those lands, the American public.

Since the 1980s, the Forest Service and the BLM have been trying to carry out the law and raise the fees to reflect the fair market value. While progress has been made on some points and some

fronts, the fact still remains that fair market value is still not being received for use of these Federal lands. Certain special interests with a vested economic stake in the outcome have moved to thwart the collection of the fair market value by whatever means possible.

The whole issue surrounding fees has been tinged with controversy, innuendo, finger pointing, and threats of blacking out portions of the West to radio and TV broadcasting.

I might say that the explanations and avoidance rivals the creativity of Orson Welles "War of The Worlds" in terms of the consequences of simply raising the fees to fair market value. I give them an "A" in creativity but an "F" in terms of economics as far as the opponents of this particular issue. And, of course, they have been aided and abetted by the single Senator veto policy of the other body, the Senate.

The list of witnesses here today, hopefully, will shed some light on the issue and at least identify where we have agreements and what roadblocks remain. It is unfortunate that one of the key players in this controversy declined our invitation to testify but has submitted a statement only.

The request for the hearings really came from the opponents of changing to fair market value. However, the absence this morning of key players who oppose change simply reaffirms the point that, in fact, there has not been fair market value charged. Their absence only tends to compound the issue. But the record will remain open for 10 days.

I am happy to welcome the witnesses, and I yield to my distinguished colleague and Chair of the Subcommittee on Environment, Energy, and Natural Resources, Chairman Synar.

STATEMENT OF HON. MIKE SYNAR

Mr. SYNAR. Thank you, Bruce. Let me thank you and your staff for helping us with this joint hearing today.

It is a sad commentary on the way the government usually works, but I don't think anybody in this room would be shocked to learn that the Federal Government is not collecting fair market rent from communication sites on Federal lands.

What many of you may be surprised about, however, is how far out of line the current Federal rents are with either Federal or industry estimates of the market rate.

We have asked the General Accounting Office, who will testify here this morning, to examine this issue. According to their report being released today, at one site, Mt. Wilson in Los Angeles, California, the Federal Government charges television broadcasters a paltry \$1,300 to \$9,600 a year for the use of a publicly-owned site. The Forest Service believes the rent at Mt. Wilson should be \$45,000 annually, and even the National Association of Broadcasters believes the rent should be \$43,000 annually.

The bottom line is that the current rents are too low. It is time for the Federal Government to get off the dime and start getting the taxpayers a fair deal.

Now, in fairness to the agencies, they have been trying to set these fees based upon fair market rent since the late 1980s. How-

ever, their efforts have been subject to much criticism, and we will hear about that today.

On the basis of this criticism, there have been congressional efforts through the appropriations process to prevent the agencies from moving forward on market-based fees. It was our hope, as Mr. Vento pointed out, that the National Association of Broadcasters, one of the most vocal critics of the agencies' proposed fee schedule, would provide us their views from the witness stand today. Regrettably, as he points out, they have declined to appear, which tells us volumes about their position.

With this hearing, I hope we will examine the criticisms of the Forest Service and BLM fee schedules and determine whether the fees accurately reflect fair market value. Ultimately, I hope the agencies can administratively implement a fee schedule based upon fair market value. It is time for the subsidy to certain private companies to end, and it is time for the taxpayers to get their fair return for the use of their land.

Thank you, Mr. Chairman.

Mr. VENTO. Thank you very much, Congressman Synar.

[Prepared statement of Mr. Synar follows:]

**OPENING STATEMENT OF CONGRESSMAN MIKE SYNAR
CHAIRMAN
SUBCOMMITTEE ON
ENVIRONMENT, ENERGY & NATURAL RESOURCES
JULY 12, 1994**

Today the Subcommittees have come together to examine the efforts of the Department of Agriculture's Forest Service and the Department of Interior's Bureau of Land Management to establish fair market value fees for the private use of public lands for communication sites.

It's a sad commentary on the way the government usually works, but I don't think anyone in this room would be shocked to learn that the federal government is **not** collecting fair market rent from communication sites on federal lands. What many of you may be surprised about, however, is how far out of line the current federal rents are with either federal or industry estimates of the market rate.

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Now in fairness to the agencies, they have been trying to set fees based on fair market rent since the late 1980's. However, their efforts have been the subject of much criticism and we will hear about that today. On the basis of this criticism, there have been Congressional efforts through the appropriations process to prevent the agencies from moving forward on market-based fees. It was our hope that the National Association of Broadcasters, one of the most vocal critics of the agencies' proposed fee schedule, would provide us their views from the witness stand today. Regrettably, they declined our kind offer to appear.

With this hearing, I hope we can examine the criticisms of the Forest Service and BLM fee schedules and determine whether the fees accurately reflect fair market value. Ultimately, I hope that the agencies can administratively implement a fee schedule based on fair market value. It's time for the subsidy to certain private companies to end, and time for the taxpayers to get a fair return on the use of their land.

Mr. VENTO. We have a statement from Mr. Hastert that, without objection, will be made a part of the record.

[Prepared statement of Mr. Hastert follows:]

OPENING STATEMENT OF HON. J. DENNIS HASTERT

Mr. Chairman: Thank you for holding this hearing today. Ensuring that the taxpayers are fairly compensated for the use of federally-owned property is indeed appropriate. I believe that I speak for everyone here today, members and stakeholders alike, in stating that the current fee structure for the use of Federal land for communications purposes needs to be revised. Exiting fees are simply too low.

However, in raising these fees we must avoid imposing unreasonable and financially burdensome increases. Excessive increases would not only discourage individuals that must use these sites from entering the communications business, but also even drive some existing businesses out of the market. Certainly, this is not the result that any of us desire.

Rather, we want the users of these sites to pay their fair share and for the taxpayers to be justly compensated for the use of these federal lands. However, how we achieve this goal is a contentious matter and one that I hope that we can satisfactorily resolve in the near future.

While I am not an expert on property law, I am nevertheless knowledgeable about the telecommunications industry. Indeed, it is an evolving industry and one which promises continued growth well into the 21st century. We must promote this industry, not discourage its advancement. Surely, we can all agree upon a fair and reasonable fee for the use of these Federal sites without forcing some out of business and depriving many small communities of the services that they depend upon these businesses to provide.

I look forward to our witnesses today as we address this important issue.

Mr. VENTO. Without objection, the complete statements of all witnesses and Members' opening statements will be made part of the record. Without objection, so ordered.

We have a letter from Weyerhaeuser, and that will be made part of the record at the appropriate point without objection.

[Editor's note.—See appendix.]

Mr. VENTO. Therefore, let me move to call the witnesses.

The General Accounting Office, at the request of Congressman Synar and myself and our respective committees, has done a significant job in terms of putting together a report, and we are pleased to call Mr. John Anderson, who is accompanied by Mr. Cliff Fowler and Mr. Ned Woodward.

John Anderson, Jr. is the Associate Director of the Resources, Community, and Economic Development Division of the U.S. GAO, accompanied by Mr. Cliff Fowler, the Assistant Director, and Mr. Ned Woodward, the senior evaluator, both with the Resources, Community, and Economic Development Division, U.S. GAO.

Gentlemen, please come forward. Your statement has been made part of the record. We appreciate receiving it in advance so that we could review it like we did, and, therefore, it is made part of the record.

I will yield to my colleague to swear in the witnesses.

Mr. SYNAR. GAO is familiar that our subcommittee, in order not to prejudice past or future witnesses, swears all their witnesses in. Do you have any objection to being sworn in? Rise and raise your right hand—anyone who may be asked to testify—to take the oath.

[Witnesses sworn.]

Mr. VENTO. Mr. Anderson, as I said, your statement has been made part of the record. Please proceed and yield to your colleagues as you choose.

TESTIMONY OF JOHN H. ANDERSON, JR., ASSOCIATE DIRECTOR, NATURAL RESOURCES MANAGEMENT ISSUES, RESOURCES, COMMUNITY, AND ECONOMIC DEVELOPMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY CLIFF FOWLER, ASSISTANT DIRECTOR, AND NED WOODWARD, SENIOR EVALUATOR, RESOURCES, COMMUNITY, AND ECONOMIC DEVELOPMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE

Mr. ANDERSON. Thank you very much. We are pleased to be here today to discuss our report being issued today on the fees that the government receives for the use of Federal lands for communication sites. With me, as you mentioned, are Cliff Fowler and Ned Woodward, and I will summarize my statement.

Communications sites are used, among other things, to broadcast and transmit television, radio, and other electronic signals. Commercial users lease the sites to construct antenna towers and buildings housing electronic equipment.

The Federal Land Policy and Management Act of 1976 states that the Federal Government is to receive fair market value for the use of its public lands. However, the fees that both the Forest Service and BLM charge for the use of their communications sites are, for the most part, significantly below fair market value.

For example, according to the Forest Service, the appraised market value fee for a television broadcasting site at Mt. Wilson, which is near Los Angeles, California, is \$75,000 annually. However, the Forest Service's current fees range from \$1,294 to \$9,600 annually.

Forest Service officials estimate that, on a national basis, if the agency's communication site fees reflected fair market value, revenues would increase more than tenfold from about \$1.9 million a year to about \$20 million.

In addition, Forest Service officials told us that, because the fees are now so low, it frequently costs more to issue a permit than the permit generates in current fees. This has resulted in a large number of unauthorized users on Forest Service lands. BLM officials estimate that if they charged fees that reflected fair market value, revenues would increase from about \$1.5 million or \$2 million to about \$3 million a year.

State and private landowners also lease land for communication sites. However, their fees are generally based on the fair market value and are often higher than those charged by the Federal Government.

The current Federal fees result not only in forgone revenues to the U.S. Treasury but can also have the unintended consequence of reduced revenues to States and counties. According to some State officials, low Federal fees depress the market value of State communication sites and also reduce the funds that States and counties receive from sharing in the revenues generated by the national forests. These revenues are used to support local schools and roads.

Both government and communications industry representatives agree that the current fees for Federal sites are too low and should be increased, but they disagree on how much the fee should be increased.

In each of the past 5 years, language has been inserted into appropriations-related legislation limiting the amount of annual fee increase for Forest Service and BLM communication sites. Unless additional legislation is enacted, current fee limits will expire at the end of fiscal year 1994. If these limits continue, the Federal Government will not obtain fair market value for many years, if ever.

To determine what the fees for Federal communications sites should be, congressional committees directed the Forest Service and BLM to create an advisory committee to report on site fees for two communications uses—television and FM radio.

The advisory committee was made up of 11 voting members, including 6 representatives of the communications industry. The committee used information provided by industry groups and appraisers and relied on the collective judgment of its members to arrive at what they called estimated market value fees. The committee then reduced these fees by 30 percent to account for such factors as public service provided by the industry to the communities it serves.

As illustrated by the first and last columns on the fee schedules before you, the fees proposed in the committee's December 1992 report, which are supported by the industry, are generally substantially higher than those currently charged by the Forest Service and BLM.

While the Forest Service and BLM agreed with some of the findings of the advisory committee, they disagreed with both the methodology used by the committee and their proposed fees because, as the committee acknowledged in its report, the fees do not reflect fair market value.

The Forest Service developed its own fee proposal which it published for public comment in the Federal Register in July 1993. In contrast to the advisory committee's system to develop fair market value fees, the Forest Service used systematic, commonly accepted techniques of formal appraisals done by an independent appraiser and market surveys. The Forest Service then grouped the fees into several broad categories of communities on the basis of population. As the last two columns of the schedule illustrate, the fees proposed by the Forest Service are generally higher than those proposed by the advisory committee.

Industry representatives express several concerns about the Forest Service fees. They are concerned about the impact the proposed fees might have on small broadcasters serving rural areas throughout the western United States. However, none of the eight small broadcasters in Idaho and Arizona we contacted said that they would cease operations if the Forest Service's proposed fees were implemented.

While we can't draw any overall conclusions from talking to just eight broadcasters, their views do provide some indication, however, of the effects of increased fees.

Industry representatives are also concerned that the communications sites used by the Forest Service to develop its proposed fees are not comparable to the sites on Forest Service lands. They could not, however, provide us with specific examples to support their concern. Further, Forest Service officials said they used only com-

parable sites to develop the proposed fees and their documentation supported their position.

A third concern of industry representatives is that in estimating fair market value the Forest Service based its analysis on the highest and best use of the lands rather than on the next best use. However, in its December 1992 report, the advisory committee even concluded that basing fees on the next best use of a site would not be consistent with the law since, by definition, such fees would not be based on fair market value. Forest Service officials also believe this approach would not be appropriate.

And, finally, television and FM radio representatives believe that broadcasters should receive a discount for the public service they provide.

While the law allows a fee discount or waiver for public service, the Department of Agriculture's general counsel believes that reducing fees for broadcasters is not appropriate unless there is some direct and tangible benefit to Federal lands. BLM's chief appraiser agrees.

In summary, Mr. Chairman, the current fees charged for Federal communication sites are significantly below fair market value. Charging fair market value fees would increase Federal revenues by over 500 percent and may also increase State revenues. Our report makes recommendations to address this issue and strengthen the management of the agencies' programs.

This concludes our statement, and we will be glad to answer any questions.

Mr. VENTO. Thank you, Mr. Anderson, for your statement.

[Prepared statement of Mr. Anderson follows:]

United States General Accounting Office

GAO

Testimony

Before the Environment, Energy, and Natural Resources
Subcommittee, Committee on Government Operations, and the
Subcommittee on National Parks, Forests, and Public Lands,
Committee on Natural Resources,
House of Representatives

For Release on Delivery
Expected at
9:00 a.m., EDT
Tuesday
July 12, 1994

FEDERAL LANDS

Fees for Communications
Sites Are Below Fair Market
Value

Statement of John H. Anderson, Jr., Associate Director,
Natural Resources Management Issues,
Resources, Community, and Economic Development Division



Messrs. Chairmen and Members of the Subcommittees:

We are pleased to be here to discuss our report to you, which you are releasing today, on the fees that the government receives for the use of federal lands for communications sites.¹ These sites are used to broadcast and transmit television, radio, and other electronic signals. For the most part, the sites are leased to commercial users who construct antenna towers and buildings housing electronics equipment on the sites.

In summary, we found that the fees being charged for the communications sites on federal lands are in most instances significantly below fair market value,² and that state and private landowners who lease similar sites often receive higher fees based on the fair market value of their lands. Forest Service and Bureau of Land Management (BLM)³ officials estimate that charging fees that reflect fair market value would increase federal revenues from about \$4 million a year to about \$23 million a year. In addition, the current low federal fees may depress the market value of state communication sites and reduce the funds that states and counties

¹Federal Lands: Fees for Communications Sites Are Below Fair Market Value (GAO/RCED-94-248, July 12, 1994).

²Fair market value refers to the price at which a willing seller would choose to sell and a willing buyer would choose to buy in a competitive marketplace.

³The Forest Service in the U.S. Department of Agriculture and the BLM in the Department of the Interior are the two primary agencies whose lands are used as communications sites. The Forest Service issues permits and the BLM uses rights-of-way leases to grant authority for the use of their lands.

receive from sharing in the revenues generated by the national forests.

The issue of fees for the communications sites differs in one key aspect from other GAO work in recent years dealing with receiving fair market value or a fair return for the sale or use of federal lands and natural resources. Both agency and communications industry representatives agree that the current fees for federal sites are too low and should be increased, but cannot reach agreement over how much the fees should be increased. While the administration has attempted to raise the fees to better reflect fair market value, restrictions included in appropriations-related legislation enacted over the past 5 years have limited the amount of the increases.

BACKGROUND

Neither the Forest Service nor BLM has reliable or complete information on the total number and types of users of the communications sites or on the total fees collected. However, Forest Service officials estimate that they have about 6,300 communications permits and collect about \$1.9 million in annual fees. BLM officials estimate that they have about 3,200 leases and collect between \$1.5 million to \$2 million in annual fees.

Lands on mountain peaks or other high elevations near population centers are the most desirable places to locate communications sites, and many of the best communications sites in the West are on Forest Service lands, thereby increasing their value. As a result, the Forest Service has taken the lead in addressing the issue of what fees should be charged for communications sites, and our review focused primarily on this agency.

CURRENT FEES FOR COMMUNICATIONS SITES
DO NOT REFLECT FAIR MARKET VALUE

Under the Federal Land Policy and Management Act of 1976, the federal government is to receive fair market value for the use of its public lands. However, the fees that both the Forest Service and BLM charge for the use of their communications sites are generally significantly below fair market value.

The Forest Service's fees are based on an outdated formula that has no relationship to fair market value. For example, according to the Forest Service, the appraised market value for a television broadcaster at Mt. Wilson--which is near Los Angeles, California--is \$75,000 annually, while the fees now being paid to the Forest Service range from \$1,294 to \$9,600 annually--or from about 2 percent to about 15 percent of the appraised value. Forest Service officials estimate that, on a national basis, if the agency's fees for the communications sites reflected fair market

value, revenues would increase more than 10-fold--from about \$1.9 million a year to about \$20 million a year. In addition, Forest Service officials told us that because the fees are now so low, it frequently costs more to issue a permit than the permit would generate in current fees. This has resulted in a large number of unauthorized users on Forest Service lands.

The policy at BLM is to base the fees for its communications sites on site appraisals and to reappraise each site every 5 years and adjust its fees accordingly. However, because the program has a low priority relative to the agency's other programs and activities, many sites have not been reappraised every 5 years and, as a result, the appraisals are out of date. BLM officials estimate that if they charged fees that reflected fair market value, revenues would increase from about \$1.5-\$2 million to about \$3 million a year.

FEDERAL FEES ARE LESS THAN THOSE CHARGED
BY NONFEDERAL LANDOWNERS

Like the federal government, states and private landowners lease lands for communications sites, but their fees are generally based on fair market value and are often higher than those charged by the federal government.

Over two-thirds of all Forest Service communications sites are located in seven western states--Arizona, California, Colorado,

Idaho, New Mexico, Oregon, and Washington. Six of the seven states base their fees on the fair market value of their communications sites. The one state that does not--Oregon--has a policy limiting fees to the amount needed to recover administrative costs.

An example illustrates how the fees charged by states and private landowners compare with the federal fees: The state of Washington receives \$6,227 a year from an FM radio tower owner for a state-owned site in the Tri-Cities area of Richland-Pasco-Kennewick (with a population of about 120,000) in eastern Washington, while a private landowner receives over \$27,000 a year from a FM radio station to broadcast from a site that serves the Seattle, Washington, metropolitan area. Although there are no comparable federal sites serving these areas, owners of FM radio towers on Forest Service lands that serve much larger populations pay much lower fees. In Los Angeles, California, the second largest broadcast market in the country, owners of FM radio towers pay annual fees to the Forest Service ranging from \$431 to \$679.

The current federal fees result not only in forgone revenues to the U.S. Treasury but also can have the unintended consequence of causing reduced revenues to states and counties. Officials in three of the six states that base their fees on fair market value told us that the low fees charged by the Forest Service and BLM depress the market value of their communications sites. The lower federal fees also reduce the funds that states and counties receive

from sharing in the revenues generated by the national forests. These revenues are often used to support specific local activities, such as schools and roads.

EFFORTS TO OBTAIN FAIR
MARKET VALUE HAVE BEEN IMPEDED

For several years the Forest Service has attempted to increase the fees for its communications sites to reflect fair market value. While industry representatives agree that the current fees are too low, they believe that the fee increases proposed by the Forest Service are too high. Furthermore, for the past 5 years, appropriations-related legislation has limited the amount by which the Forest Service and BLM can increase the fees.

In an effort to determine what the fees for federal communications sites should be, the conference report for fiscal year 1992 appropriations directed the Forest Service and BLM to create an advisory committee to report on methods for establishing site fees that reflect the fair market value of two communications uses--television and FM radio. This committee, called the Radio and Television Broadcast Use Fee Advisory Committee, was made up of 11 voting members, including 6 representatives of the communications industry.

Rather than using the commonly accepted techniques for determining fair market value, such as appraisals performed by

independent appraisers and market surveys, the Advisory Committee used information provided by industry groups and appraisers, and relied on the collective judgment of its members to arrive at estimated "market-value" fees. The committee then reduced these fees by 30 percent to account for such factors as the public service provided by the industry to the communities it serves. The fees proposed in the committee's December 1992 report,⁴ which are supported by the industry, are generally substantially higher than those currently charged by the Forest Service and BLM. (See app. I.)

While the Forest Service and BLM agreed with some of the findings of the Advisory Committee's report, they disagreed with both the methodology used by the committee and the proposed fees because--as the committee acknowledged--the fees do not reflect fair market value. Consequently, the Forest Service developed its own fee proposal, which it published for public comment in the Federal Register in July 1993.

In contrast to the Advisory Committee, the Forest Service used a systematic method to estimate fair market value, involving the commonly accepted techniques of formal appraisals done by an independent appraiser and market surveys. The Forest Service then grouped the fees into several broad categories of communities on

⁴Report of the Radio and Television Broadcast Use Fee Advisory Committee, Dec. 1992.

the basis of population. The proposed fees assigned to each category were based on what the Forest Service believed was the fair market value of the sites in the smallest community in each category. As a result, the larger communities within each category pay less than the fair market values for their communications sites. (See app. I.)

Forest Service officials told us they took this approach because such a fee schedule is easier to administer than determining the fair market value for each site. The Advisory Committee's report also supports a fee schedule because, among other things, it is cost-efficient, is predictable, and can be consistently applied throughout the agency.

However, as appendix I shows, the fees proposed by the Forest Service are generally higher than those proposed by the Advisory Committee. Industry representatives with whom we spoke expressed several concerns about the Forest Service's proposed fees. They are concerned about the impact the proposed fees might have on small broadcasters serving rural areas throughout the western United States. However, none of the eight small broadcasters in Idaho and Arizona we contacted said that they would cease operations as a result of having their fees increased to the amounts proposed by the Forest Service.

Industry representatives are also concerned that the communications sites used by the Forest Service in developing its proposed fees are not comparable to the sites on Forest Service lands. They could not, however, provide us with specific examples to support their concern. Furthermore, Forest Service officials said the agency had used only comparable sites to develop the proposed fees.

A third concern of industry representatives is that in estimating fair market value, the Forest Service based its analysis on the "highest and best use" of the lands. They believe that in doing so, the agency was too narrow in its view of fair market value and should also have considered the value of the "next best use" of the lands--such as livestock grazing or ski area operations. However, in its December 1992 report, the Advisory Committee concluded that basing fees on the "next best use" of a site would not be consistent with legal requirements, since by definition such fees would not be based on the fair market value of the lands. Forest Service officials also believe this approach would not be appropriate.

Finally, television and FM radio representatives believe that the broadcasters should receive a discount for the public service they provide. While the law allows a fee discount or waiver for public service, the Department of Agriculture's General Counsel has taken the position that reducing fees for broadcasters is not

appropriate unless there is some direct and tangible benefit to federal lands. BLM's Chief Appraiser has taken a similar view.

In each of the past 5 years, language has been inserted into appropriations-related legislation limiting the annual fee increases for Forest Service and BLM communications sites. Unless additional legislation is enacted, the current fee limits will expire at the end of fiscal year 1994. If these limits continue, the federal government will not obtain fair market value for many years, if ever.

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In summary, Messrs. Chairmen, the current fees charged for federal communications sites are significantly below fair market value. Charging fees that reflect fair market value would increase federal revenue by over 500 percent. State and private landowners generally receive fair market value fees. Our report suggests that if fair market value is to be obtained, the Congress should consider not renewing limits on communications site fee increases. Our report also recommends that the Secretaries of Agriculture and the Interior continue to develop a fee system based on fair market value and implement it unless legislatively prohibited. We further recommend that they improve management oversight of their communications sites.

This concludes our statement. We will be glad to answer any questions that you or other members of the Subcommittees may have.

COMPARISON OF FOREST SERVICE'S AND ADVISORY COMMITTEE'S FEES

The following table compares the fees for three Forest Service communications sites. These sites--Mt. Wilson, Sandia Crest, and Deer Point--represent sites located near a large metropolitan area, a medium-sized city, and a relatively small city, respectively. Mt. Wilson is the predominant communications site in the Los Angeles, California, area--the second largest broadcast market in the country. Seven television stations, 12 FM radio stations, and numerous commercial mobile radio operators transmit from this site. Sandia Crest is the predominant communications site for the Albuquerque, New Mexico, area. Nine television stations, 12 FM radio stations, and 27 commercial mobile radio operators transmit from this site. Deer Point serves the area around Boise, Idaho, and is the predominant site for broadcasting in this area. Three television stations, six FM radio stations, and one commercial mobile radio operator transmit from this site.

APPENDIX I

APPENDIX I

Table 1: Comparison of Forest Service's and Advisory Committee's Annual Fees

Site and use	Forest Service's current range of fees	Forest Service's appraised market-value fees	Advisory Committee's estimated market-value fees	Forest Service's proposed fees	Advisory Committee's proposed fees
Mt. Wilson					
Television	\$1,294 - 9,600	\$75,000	\$60,000	\$45,000	\$42,000
FM radio	\$431 - 679	\$70,000	\$42,000	\$34,000	\$29,400
Commercial mobile radio	\$431 - 1,114	\$60,000	*	\$12,000 ^b	\$12,000 ^c
Sandia Crest					
Television	\$115 - 2,353	\$21,000	\$15,000	\$19,000	\$10,500
FM radio	\$148 - 6,929	\$19,500	\$10,500	\$14,000	\$7,350
Commercial mobile radio	\$119 - 1,411	\$16,000	*	\$7,500	\$3,500 ^c
Deer Point					
Television	\$671 - 712	\$13,000	\$3,250	\$6,000	\$2,625
FM radio	\$4,513	\$12,500	\$2,625	\$5,500	\$1,838
Commercial mobile radio	^d	\$10,000	*	\$5,000	\$2,000 ^e

Note: The fees in this table apply only to facility owners.

^aCommercial mobile radio was not addressed by the Advisory Committee.

^bThis fee is the higher of \$12,000 or 25 percent of the revenues generated by the permittee.

^cThese fees are taken from a fee system developed by the commercial mobile radio industry.

^dThe one commercial mobile radio operator at Deer Point is a subtenant.

(140794)

Mr. VENTO. Obviously, there has been a lot of contention between the Forest Service, the BLM, and the various licensed transmission site permittees as to what is fair market value for the use of these lands. Is there any basis that the appraisals or the system used by the agencies to arrive at fair market value was flawed; or that the Forest Service or the BLM didn't have the expertise or the data base necessary to establish the proposed fee schedule.

Of course, the fact is you have gone through most of this particular information and point out the data base being insufficient. What exactly do you mean by the data base being insufficient, Mr. Anderson?

Mr. ANDERSON. Well, I think the primary criticism is that the sites that the Forest Service used in generating its fees are not comparable. There are a limited number of these sites around the country and especially in any particular geographic area, but the Forest Service did 12 formal appraisals at 12 different sites, and that is a very extensive process in and of itself. But they supplemented that with over 1,500 market surveys, and they also spoke to numerous people.

They spoke to representatives in the industry and that sort of thing, and they used that to develop their data base. So we think they used a pretty rigorous, systematic process, and we couldn't find anything wrong with it.

Mr. VENTO. You could find nothing wrong with it.

Actually according to the testimony that I have, since 1993, the Forest Service has done work on 2,000 sites. Could you find, Mr. Anderson, any material difference in the terms of the quality of these sites? That is to say, the way they are maintained? Were you able to find any substantive differences?

Mr. ANDERSON. No, we couldn't. In fact, we asked industry representatives if they could give us any specific examples that we could go out and follow up on ourselves, and we couldn't find any.

The Forest Service adjusted for different amenities and that sort of thing, and they didn't compare apples and oranges as best as we can tell.

Mr. VENTO. What is the magnitude of the number of sites? The Forest Service—it seems like a lot of sites, 9,500 sites that we have identified here. Many of these, I assume, are not-for-profit groups that they collect no fee at all on, is that correct?

Mr. ANDERSON. That is correct. I think the Forest Service has 6,300 permits, and I believe the BLM has about 3,200 leases, and a lot of them are the small or not-for-profit groups.

Mr. VENTO. Do you have any breakdown on where the numbers are as to who pays and who doesn't? Is it about 50 percent or 60 percent that don't pay?

Mr. WOODWARD. It is about half, Mr. Chairman, but that is an estimate on their part.

Mr. VENTO. An estimate on their part because you have a lot of sites. Now does this 9,500 include the nonauthorized sites?

Mr. ANDERSON. No. Those are the ones that the Forest Service is aware of. I think there could be many more that are authorized.

Mr. VENTO. In the BLM?

Mr. ANDERSON. In the BLM. That is right.

Mr. VENTO. On a specific site you may have many more transmitters than just one—is that correct?

Mr. ANDERSON. That is correct.

Mr. VENTO. So we don't know how many transmitters are on a given site. Do you have any idea, an estimate of the number of transmitters on a site—in other words, the number of FM, television, other types of transmitters on the same site?

Mr. ANDERSON. I don't think we are aware of that.

Part of the problem, and we mentioned that in one of the points in our report, is that the Forest Service and BLM data is woefully inadequate. They don't really have good information on communication sites. But the primary tenants at a site are the ones that are supposed to have a permit and supposed to be paying a fee. The subtenants that can hang their antennas on a tower or something like that, there could be numerous ones of those.

Mr. VENTO. So you do not have any information, Mr. Anderson, on what the subtenants or those that hang their antennas on a site pay to the primary permittee?

Mr. ANDERSON. That is correct.

Mr. VENTO. For instance, when we talk about this, we are talking about a basic footprint of operation—that is, an application is put in by an individual who is given a permit and then they in turn can go out and sublease. What are the limitations on them in terms of subleasing or subtenants?

Mr. ANDERSON. Well, the way it is supposed to work right now is that all the tenants are supposed to get a lease. Now, the proposals that have been put forth are to use a footprint lease like you are talking about where just the primary tenant would actually get a permit or a lease.

Mr. VENTO. I think the BLM does it that way today, do they not?

Mr. ANDERSON. I think they do in some cases, yes, sir. I think the basic problem is that we don't have a good handle on how many of these there are out there. There is just no good information.

Mr. VENTO. This is what you were talking about when you were talking about data. You weren't talking about the appraisals. You were talking about the Forest Service or the BLM simply being aware of who is on their land and who is using it, is that correct?

Mr. ANDERSON. That is correct.

Mr. VENTO. I know in your report you point out in one instance that the Forest Service had not visited a site for 7 years?

Mr. ANDERSON. That is correct. By their own policies they are supposed to inspect the sites.

If you just take a look at the amount of revenues that are being generated by the program now you can see why this program is given a low priority. I mean, \$1.9 million is the estimate on the part of the Forest Service and \$1.5 million to \$2 million on the part of the BLM. According to the officials we spoke to, it is just not enough to give this a high priority.

Now, of course, if they got market value fees, that would make it a more important program.

Mr. VENTO. Some of that sort of thought process is probably pragmatic, but it doesn't necessarily speak to the responsibilities. There are probably a lot of things they don't make money doing

that they have responsibility to discharge in terms of what is going on, and, obviously, assembling the proper information is important. The issue is on the subleases, that they are supposed to receive 5 percent of the revenue from that.

Mr. ANDERSON. That is correct.

We have an example, if I can share with you for a minute, of one site at Mt. Wilson, where some of the subtenants pay fairly significant fees to the primary tenants. For example, at Mt. Wilson subtenants are paying \$465,000 to the primary tenants there. The primary tenants are paying annual fees of \$1,114. Plus, they pay 5 percent of the subtenants' fees, about \$23,000.

Mr. VENTO. You mean they are paying \$12,000, and we get 5 percent of the \$500,000 back so that collectively we get about \$35,000 to \$45,000?

Mr. ANDERSON. No, we get collectively \$24,000. They pay \$1,100 in fees, plus they get another \$23,000 they pay the Federal Government for their 5 percent share of the subtenants. So that is a total of about \$24,000, but they are getting \$465,000.

Mr. VENTO. So they are getting almost \$400,000 more because they have this.

Now what is the length of this lease? How does one get one?

Mr. ANDERSON. I think they are typically yearly. I think the proposals are to make them longer leases.

Mr. VENTO. So are there any assurance given that they could maintain this site there?

Mr. ANDERSON. I am not sure. Are you aware, Ned?

Mr. VENTO. Mr. Woodward.

Mr. WOODWARD. Typically, the communication site permits have been allowed to continue on year after year. There are some annual permits. I believe there are some that are longer than that, 5 years, even up to 10 years. Under the proposed system they are going to move to a longer length permit to allow them a greater security in the length of their permit.

But in practice the Forest Service and BLM have allowed these communications facilities to stay on the sites. As long as they have been there, there hasn't been anyone thrown off the land.

Mr. VENTO. You haven't been able to find any instances where someone has lost their position or lost their opportunity to continue transmitting?

Mr. WOODWARD. None were identified to us in our review.

Mr. VENTO. I am sure that others offer longer leases and so forth for the terms or conditions, but materially you could find substantively no difference between what is being received here in terms of maintenance, the road or other activities?

Of course, the Forest Service or the BLM doesn't sound like they know a hell of a lot about what is going on.

Mr. ANDERSON. That is part of the problem.

Mr. VENTO. Mt. Wilson is an exception. This is a big market. This is the L.A. market. So some of these are going to have significant differences in terms of sublease.

But it is just amazing to me that we can sit here—for the use of public land, for \$25,000, they get to go ahead after constructing a facility—they have to go out and solicit the customers, do a vari-

ety of other things, but they can walk away with \$400,000. Not bad, not bad.

Mr. SYNAR.

Mr. SYNAR. Thank you, Bruce.

Let's get to some of the problems that have been identified by some of the groups that are in opposition to you. The NAB, National Association of Broadcasters, representatives met with the subcommittee staff and informed us that small broadcasters, the ma and pa operations, would be devastated by these proposed fee increases. You found some startling information when you interviewed some of the small ma and pa operations that the broadcasters recommended to you. Would you like to share that with us?

Mr. ANDERSON. Sure. What we did is we went to NAB and we asked them if they could provide us any specific examples or names of small broadcasters that we could speak to, and they gave us the contacts in two States. They actually gave us the names of 11 small broadcasters.

We contacted eight of them. Due to time constraints we weren't able to contact three. All eight said that they would not go out of business if the Forest Service—

Mr. SYNAR. So that is in opposition to what the NAB said?

Mr. ANDERSON. That is correct.

Mr. SYNAR. So their own sources told you opposite of what they contended?

Mr. ANDERSON. That is correct.

Mr. SYNAR. Your report states that the advisory committee recommended a 30 percent discount be given to broadcasters partially in recognition for, quote, public service that they provide. Where did that 30 percent number come from? Did you inquire as to whether the broadcasters could quantify the amount of air time they considered public service?

Mr. ANDERSON. Yes, we did inquire into that, and they couldn't.

Mr. SYNAR. They didn't provide you any information?

Mr. ANDERSON. That is correct.

Mr. SYNAR. Well, the subcommittee staff met with the broadcasters representatives again in advance of this hearing and requested that they provide us with information with respect to the activities they believe were, quote, public service.

Let me state up front that I believe that broadcasters do provide some clear benefits of public good, whether it be in the news or emergency notices of earthquakes, hurricanes, or tornadoes, but I have got to note that these services have been traditionally required by the FCC, in return for the federally protected spectrum airways they have.

The list that the NAB provided this subcommittee was a kitchen sink of items which I found totally amazing. They included things like compliance with the equal employment opportunity laws. And under unanimous consent, Mr. Chairman, I would like to enter into the record the NAB summary of broadcasters public interest obligations.

Mr. VENTO. Without objection. Hearing no objection, so ordered.
[The information follows:]

SUMMARY OF BROADCASTERS' PUBLIC INTEREST OBLIGATIONS

The Communications Act establishes broadcasters' general obligation to operate consist with the "public convenience, interest, and necessity." Traditionally, the FCC has granted broadcasters wide discretion in meeting these obligations, in keeping with their First Amendment rights. The Act and FCC regulations, however, do set out some specific obligations that help to define elements of broadcasters' public interest responsibilities. While many unnecessary or outmoded regulations were eliminated by the FCC, beginning in the 1970s, the core public interest obligations remain largely unchanged. Below is a summary of the most important of these obligations.

1. PROGRAMMING

A. General obligation to provide issue-responsive programming

* Quarterly issues/programs lists -- licensees must prepare quarterly lists of community issues station addressed during last 3 months; and programming that gave "significant treatment" of those issues. Must be kept in station's public file. Broadcasters "run" on this list at renewal time.

B. Children's television

* Obligation to provide educational and informational programming; restrictions on amounts of advertising.

C. Obscenity/Indecency

* Communications Act and Criminal Code prohibit "obscene, indecent or profane" broadcasts.

D. Lotteries

* Criminal Code restricts broadcasts of certain lottery information.

E. Station IDs

* Licensees must broadcast station identification announcements at beginning and close of broadcast day, plus hourly.

F. Sponsorship Identification

* Licensees must identify sponsors of broadcasts.

G. Payola/Plugola

* Licensees and employees may not accept direct or indirect consideration for broadcasting songs or other material without disclosing sponsorship.

2. POLITICAL

A. Reasonable Access

* Licensees must provide "reasonable access" to federal candidates for political messages.

B. Equal Opportunity

* Licensees must provide all legally-qualified candidates with equal opportunities for their political messages.

C. Lowest Unit Charges

* Licensees must provide all legally-qualified candidates with lowest unit charges during campaign "windows"; must provide "comparable rates" at all other times.

D. Political, editorial, personal attack rules

* Stations that editorialize in favor of or in opposition to candidates must provide other candidates with notice and reasonable opportunity to respond; similar rules apply to identifiable person or persons "attacked" during discussion of controversial issues of public importance.

3. OWNERSHIP

A. National Limits

TV -- No persons may have licenses for more than 12 TV stations. (25% nationwide reach limit; opportunity for up to 14 stations where minority control is involved.)

Radio -- No person may own more than 18 AM and 18 FM stations. Additional three stations per service allowed if controlled by minorities or small business entities. The 18-18 base limit will expand to 20-20 in September, 1994.

B. Foreign ownership prohibited

* Licensees may not be granted to aliens; alien corporate ownership limited to 20-25%.

C. One-to-a-market

* General prohibition on ownership of TV and radio stations in the same markets.

D. Duopoly

TV -- General prohibition against ownership of more than one TV station in a market.

Radio -- New FCC rules allow up to three stations (no more than two in the same service -- AM or FM) in smaller markets (markets with 14 or fewer stations), provided that ownership combination comprises less than half the stations in the market. Common ownership of 2 AM and 2 FM stations allowed in larger markets, provided that ownership combination's combined audience does not exceed 25% of market listening.

E. Cross-ownership

* Ownership of broadcast station and newspaper in same market, or TV station and cable system in same market is prohibited.

F. Anti-trafficking

* One year restriction on transfers of licenses obtained in comparative proceeding or through minority ownership policies.

4. ENGINEERING

A. Minimum hours of operation

* All broadcast licensees must operate a minimum number of hours per week.

B. EBS

* Emergency Broadcasting System regulations vary for participating and non-participating stations. TV stations must provide captioning of EBS messages for the deaf.

C. Transmitter/Tower

* Stations must operate within specified power and frequency parameters, and keep logs. The FCC also regulates tower lighting and painting.

D. RF Radiation Safety

* New station, modification and renewal applicants must certify compliance with FCC RF rules protecting public and station employees from excessive exposure.

E. FAA

* Stations must meet FCC/FAA requirements for non-interference/obstruction to air navigation.

5. MANAGEMENT**A. EEO**

* Broadcast licensees are covered by statutory and FCC EEO policies, as well as general provisions of civil rights laws. All licensees must have EEO policy that prohibits discrimination, and must take positive steps to recruit, hire, and promote women and minorities. FCC reviews licensees' EEO record on periodic basis; all stations' records reviewed at renewal.

B. Renewal

* Stations undergo renewal proceedings every 5 years for TV, every 7 years for radio. Renewal applications must include certifications regarding compliance with rules.

C. Ascertainment

* Licensees must identify community needs and problems by any reasonable means in order to prepare and maintain issues/programs lists.

D. Network affiliation

* FCC imposes restrictions on TV network affiliation agreements --agreements may not bar licensee from affiliating with 2 or more networks, may not prohibit licensee from rejecting network programming. TV licensees must file copies of network affiliation agreements with FCC.

E. Public File

* Licensee must maintain files available for public inspection. Files to include any applications filed with FCC, ownership material, affiliation agreements, citizens agreements, EEO reports, political information, issues/programs lists, time brokerage agreements, and letters from public.

Mr. SYNAR. In addition, the NAB cited broadcasters' dedication to providing children's programming.

And at this time, Mr. Chairman, I would like to ask unanimous consent to enter into the record a report by the Center for Media Education which found that children's TV market programming is heavily skewed toward programs which license product possibilities, attract deep-pocket toy companies.

Mr. VENTO. Is this suitable for adult consumption?

Mr. SYNAR. I don't know.

Mr. VENTO. Without objection, so ordered.

[Prepared statement of Ms. Montgomery and the report follow:]

Testimony of
Dr. Kathryn C. Montgomery
President
Center for Media Education

Before the
Federal Communications Commission

En Banc Hearing
on Children's Television (MM Docket No. 93-48)

June 28, 1994

My name is Kathryn Montgomery. I am President and Co-founder of the Center for Media Education. The Center's Campaign for Kids' TV, which was launched in 1991, is carrying on the work of Action for Children's Television. Before coming to Washington, I was a university professor. I have spent more than fifteen years researching, analyzing, and writing about the television industry.

Passage of the Children's Television Act in 1990 followed almost a decade of efforts by Action for Children's Television and a broad coalition of education, child advocacy, and parent organizations. For the last two years, the Center for Media Education has been working closely with many of these same organizations to see that the Children's Television Act has its intended effect of increasing the amount of children's educational and informational programming on broadcast television.

In 1992, we released a report analyzing license renewal applications and found that many stations were simply relabeling cartoons such as *The Jetsons* and *G.I. Joe* as educational -- hardly what the Act intended.

We have just completed a new study that reveals major barriers within the television industry -- institutional, economic, and attitudinal -- to successful implementation of the Children's Television Act. We interviewed producers and distributors of the programs as well as network executives and other experts within the industry -- a total of 50 people, a number of whom requested anonymity. I would like to summarize the findings of our study this morning.

First, we found that most of the programs created in response to the Children's Television Act have been assigned a second-class status in commercial television, reflecting a prevailing attitude that because these shows are required by the FCC, they must be dry and boring, and children won't watch them.

Our investigation revealed clear patterns in the production, scheduling, and promotion of so-called "FCC-friendly" shows.

The most disturbing pattern was that these programs are routinely scheduled in marginal time slots when it is often impossible for children to see them. All producers and distributors that we interviewed reported serious problems with the scheduling of their shows. It is common practice for a station to put its "compliance show" on at 6:00 AM or even 5:00 AM just so it can tell the FCC "it has a show." Network series often find themselves on at 11:00 AM or Noon on Saturdays, when the network or the affiliate stations are more likely to pre-empt them with sports. As a consequence, children are deprived of the opportunity to see the educational programs, and the programs have difficulty building a regular audience.

The ABC series *Citykids* -- created by Henson Productions -- was a casualty of such scheduling. Debuting on the network in fall 1993, the show was shifted around in the schedule and repeatedly pre-empted by college football games. In February, it disappeared from the schedule altogether, officially in "hiatus." Most viewers never knew it existed.

Our study also revealed some very troubling business practices which are making it almost impossible for educational and informational programming to gain entry and survive. As a consequence of the FCC's deregulation of children's television in 1984, most series in today's market are now part of a highly-lucrative merchandising and licensing package, with heavy financial and creative participation by major toy companies that manufacture and market "licensed characters" and other products related to the show. The series are, in effect, advertising vehicles for the licensed products, as many of those we interviewed frankly admitted.

Because toy companies depend on television to market their products, competition for access to the child viewer has become particularly fierce in recent years. As a result, in the syndication market it has become commonplace for these companies to use their substantial resources to strike elaborate deals with stations, especially those in the largest markets. Not only are these programs given free to the stations, but we were told that stations often demand additional payments of a million dollars or more to get a program into the best time slot.

These practices put educational and informational programs at a great disadvantage. They also raise disturbing questions about who is really setting the agenda for what America's children will see over the public airwaves. Predawn scheduling was a death knell for a number of series in our study, which are now off the air.

The children's television marketplace today is not a level playing field for educational and informational entrants. It is because the powerful marketplace forces work against such programming that we need effective public policies to counter them.

Our study confirmed that regulation did have an impact on the market, when broadcasters believed it might be enforced. Many people acknowledged that, though the Children's Television Act took effect in October, 1991, it wasn't until early 1993 in the wake of a national debate and threats of government action that the industry began to respond to the law. And many shows are now on the air that otherwise would not be there. But we were also warned that if the pressure subsided, business would return to normal and the market for education and informational programs would likely dry up.

The current rules for implementing the Children's Television Act, which were issued in 1991, are clearly inadequate. If the Act is going to have a lasting and meaningful impact, the rules will need to be clarified and strengthened. We hope the Federal Communications Commission will adopt the recommendations made by the Center for Media Education and more than a dozen major education and child advocacy groups.

Stations should not be getting credit for token "FCC-friendly" programs that air before 7:00 AM; the definition for what is educational or informational must be clarified; and a processing guideline of an hour a day of educational and informational programming must be instituted to ensure that all children will have access to a diversity of programming designed to meet their needs.

Just as deregulation in the early 80s significantly affected the children's marketplace, the Children's Television Act -- if given more force and clarity -- could alter the current dynamics of that marketplace in a way that will benefit children.

THE IMPACT OF THE CHILDREN'S TELEVISION
ACT ON THE BROADCAST MARKET

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EXECUTIVE SUMMARY

The study examined the response of the broadcast children's television market to the Children's Television Act. Its purpose was to identify the institutional, economic, and attitudinal barriers to successful implementation of the law's mandate for programming designed to educate and inform children. The research was based primarily on interviews with producers, distributors and network executives involved in the production and distribution of programming deemed by the television industry to qualify under the Act.

The study found discernible patterns in the production, scheduling and promotion of network and syndicated educational and informational programs. Marked by the TV industry as obligatory "FCC-friendly" or "compliance" shows, the programs are generally given budgets substantially lower than other children's programs, inadequately promoted, and shunted into pre-dawn hours when most children cannot see them, or into time slots where they would be routinely pre-empted by sports coverage. The treatment of such programs is particularly harsh in the syndication market. Because of current business practices where entertainment program distributors agree to pay extra money to get their programs into desirable time slots, stations are frequently scheduling so-called "FCC-friendly" programs as early as 5:00 or 5:30 AM. As a consequence, much of the programming created in response to the Children's Television Act has found it almost impossible to gain entry and survive in the marketplace.

The study also found that threats of renewed enforcement of the law had a positive effect on the market, and thus regulation can be a countervailing force to the powerful economic and institutional forces that govern the business. The research suggests that the impact of recent regulatory pressure may be short-lived. To ensure the long-term viability of educational and informational children's programming, the report urges the Federal Communications Commission to adopt clearer and stronger rules implementing the Children's Television Act.

THE CHILDREN'S TELEVISION ACT OF 1990: BACKGROUND

Studies have repeatedly documented a persistent failure in the commercial children's television market. A system designed to serve the needs of advertisers will not on its own generate adequate programming to serve the cognitive and emotional needs of children, especially those of discrete developmental age groups (Watkins, 1987; Aufderheide, 1989; Berry & Asamen, 1993).

Over the years, citizen activism and government oversight have helped to temper the forces of the marketplace (Cole & Oettinger, 1978; Liebert and Sprafkin, 1988). In the 70s, responding to Federal Communications Commission (FCC) petitions by Action for Children's Television and other citizen groups, the networks launched a number of television programs designed to educate and inform children — ranging from weekly news series such as *30 Minutes* on CBS to magazine shows like NBC's *Hot Hero Sandwich*. After the FCC deregulated the TV industry in the early 80s, these programs disappeared from the schedules. In fact, as the children's television business boomed, the amount of educational and informational programming plummeted (Watkins, 365-7; Rushnell, 1990).

Child advocates, parents, and educators fought hard for a legislative remedy. In passing the Children's Television Act of 1990 (P.L. 101-437, Oct. 18, 1990), lawmakers expected to "increase the amount of educational and informational broadcast television programming available to children."¹ The mechanism for enforcement is the requirement that all TV stations must air such programming as a condition of license renewal.² However, initial surveys showed that the law — which took effect in October

¹U.S. Rep. No. 227, 101st Cong., 1st Sess. 1 (1989).

²P.L. 101-437, Oct. 18, 1990.

1991 – was having very little impact on the television marketplace. A September 1992 analysis of license renewal applications by the Center for Media Education (CME) and Georgetown University Law Center revealed that television stations had made virtually no changes in their programming practices in response to the new law. Most were claiming educational value for entertainment fare such as *Bucky O'Hare* and *Leave It to Beaver* and routinely scheduling shows they considered educational and informational during pre-dawn hours (Center for Media Education, 1992).³

The CME report garnered national publicity and triggered policy debate. The Federal Communications Commission subsequently conducted its own examination of license renewal applications, which confirmed many of the findings of the report. There appeared to be "little change in available programming that addresses the needs of the child audience," the Commission concluded. "The number of hours and time slots devoted to children's programming do not appear to have substantially changed" (FCC, 1993). In February 1993 the commission announced to the press that it was holding up the license renewals of seven TV stations, requesting additional information to document that the stations were complying with the Children's Television Act (Halonon, 1993). On March 2, the FCC issued a Notice of Inquiry, asking whether it should revise implementation rules on the Children's Television Act (FCC, 1993).

At a Congressional oversight hearing on the Children's Television Act the following week, representatives from the broadcasting industry complained of a rush to judgment. "New innovative programming is costly and cannot be created overnight," explained Brooke Spector, Vice President and General Manager of WUAB-TV in Cleveland. Syndicated programming was just becoming available, he noted, and

³ A separate analysis of license renewals, conducted by Professor Dale Kunkel at the University of California, Santa Barbara, showed that a fifth of the 48 stations analyzed failed even to claim they were providing any programming specifically designed to meet the educational needs of children, as the law demanded. Of the rest, stations were claiming programs like *The Jetsons* as meeting the mandate. Only 4 produced any local children's programs, and more than half of those claiming to meet the mandate had Saturday programs only. (Kunkel, 1993b)

stations were finally assuming the large risk of producing local programming, but the results were not in yet (Spectorsky, 1993, p.1 and passim).

STUDY METHOD

More than a year has passed since the hearing. The FCC's Notice of Inquiry is still pending. This study set out to examine what has happened in the period since CME's report was released. Rather than base our findings on the license renewal applications, we chose to take a more direct look this time at the children's television market. This is not an economic analysis, but an investigation based on a series of interviews primarily with people who have attempted to produce and/or distribute programming designed to comply with the new law. The study's purpose was to examine major trends in the market with particular emphasis on the barriers -- economic, institutional, attitudinal -- to successful implementation of the Children's Television Act.

The focus of the examination was on nationally-available series (not specials, interstitials, or local programs) that commercial broadcasters were using in 1993 and early 1994 to meet the requirements of the Act, both in broadcast syndication and on the networks, as self-described by producers and listed in special issues of *Broadcasting & Cable* (July 26, 1993) and *Electronic Media* (June 21, 1993). Producers and distributors of the programs were interviewed, as were executives at all networks, as well as several other experts within the industry. We spoke with some 50 people, mostly by telephone, between December, 1993 and May, 1994. The majority of individuals we approached willingly agreed to be interviewed, though a number of them would do so only if their comments were kept off the record.⁴ We supplemented the interviews with data from trade publications and other available public information.

⁴ Since a substantial minority of interviewees spoke off the record, a complete list is not provided here, but each on-the-record interviewee is cited, with date of telephone interview, in the text.

Many of the people to whom we spoke expressed deep frustration with their experiences in trying to respond to the mandate of the new law. They collectively described a situation where hopes for creativity and quality were first raised by passage of the Act and then quelled by prevailing attitudes and market conditions. Each had particular complaints, but combined they offer a picture of the problems plaguing the field.

In order to place the findings from our interviews into context, it is important to look briefly at several recent key developments in the children's television marketplace during the past decade.

CHILDREN AS MARKET

Deregulation of children's television in the early 80s fundamentally changed the dynamics of the children's television broadcast market. When the FCC dropped its ban on program-length commercials for children in 1984, toy manufacturers immediately flooded the marketplace with TV series designed as merchandising vehicles for their toys. Programs based on "licensed characters" boomed, including *G.I. Joe* (Hasbro), *He Man* (Mattel), and *Care Bears* (Kenner) (Kunkel, 1988; Schneider, 1989). Sales of licensed products more than doubled, to \$64.6 billion, between 1983-1989, with the motor being television (Cohen, 1991, 38; McNeal, 1992, 70). Toy industry profits as a whole soared from \$5.3 billion in 1983, when the FCC first announced its intent to deregulate, to \$8.3 billion in 1984, then maintaining that level (Kirk-Karos, 1992, 19). Four-fifths of toy sales now are of licensed products, mostly known from television (Schneider, 1989, p. 115). By 1987, toy manufacturers financed 80 percent of children's programming, most of it animation (Kirk-Karos, 1992, p. 3). Licensing continues to drive children's programming today, with product-related shows accounting for 90 percent of new production (Kline, 139).

The 80s also witnessed a sharp rise in children's programs produced for syndication. Unlike network series, which are distributed as part of a schedule of programs to affiliated stations, syndicated series are sold directly to individual stations or groups of stations. A tiny part of the children's TV market in the 70s, syndication grew phenomenally in the early 80s, fueled by the proliferation of independent stations, the growth in children's ad dollars, and the increasing role of toy companies in the production business. By 1986, the children's broadcast syndication market had become "a thriving, competitive phenomenon with scores of first-run animated shows" (Schneider, p. 186). Because syndicators distribute their programs to network affiliates as well as independent stations, they supply a substantial portion of the children's programming on broadcast television.

The direct spending power of children, almost all of it discretionary, also rose rapidly in the 1980s, increasing by nearly half between 1984 and 1989 (McNeal, 1992, p. 24). Children to age 12 now spend about \$8.6 billion of their own money every year; teenagers spend \$57 billion. The two age groups combined influence how their parents spend another \$132 billion. Kids are one of the "hottest marketing trends of the 90s," a trend expected to continue well into the next decade (Oldenburg, 1993).

These trends have helped trigger a proliferation of media outlets and services aimed at capturing a segment of the "hot" children's market-- from the controversial classroom Channel One to the highly profitable Nickelodeon cable channel to the successful Fox Children's Network, launched in 1990 (Schmuckler, 1994).

Even during recessionary periods, when other parts of the schedule were not doing well, the children's "daypart" remained profitable, increasing by double digits throughout the 80s. Perhaps as much as \$800 million is now spent on TV ads, mostly broadcast rather than cable, targeting kids alone (not families or parents) (Davis, 1994; Elliott, D5; Guber & Berry, p. 131; McClellan, 1993b; McNeal, p. 133).

The high-stakes nature of the children's television market has made it very intense and highly competitive. Most children's programs expecting to make it on television must come in with a pre-sold merchandising deal. As Andy Spitzer, Sales Vice President and Director of US Distribution for Zodiac Entertainment, summed it up: "Children's programming is deal-driven rather than program-driven" (personal communication, March 14, 1994).

The following pages will document that the powerful forces of today's children's television marketplace have created significant obstacles to the production and distribution of educational and informational programming.

FINDINGS

1. **After the passage of the Children's Television Act, broadcasters did little until citizen activism sparked media coverage and official expressions of concern.**

Though the Children's Television Act took effect in October, 1991, it initially had little impact on practices in the broadcasting industry. Only a handful of new programs – mostly for the syndication market – were created in direct response to the new law during its first year of implementation. The broadcast networks made no significant changes in their children's schedules (CME, 1992; FCC, 1993). A major reason for such a weak response was that the Federal Communications Commission implemented the Act in a way that minimized its effectiveness and encouraged broadcasters to consider it lightly. The FCC loosely defined educational and informational programming and made no stipulations on when programming must run or how much programming was necessary to meet the mandate (FCC 1991; FCC 1991b; Kunkel, 1993, 279-286).

Many producers, distributors, and network executives interviewed for this study frankly acknowledged that it was not until early 1993, in the wake of a national debate

and threats of government action that the industry began to respond to the law. As Robby London, Senior Vice President of Creative Affairs at DIC Enterprises, explained: "For the first two years of the Act, buying habits and patterns [at stations and networks] were not really affected. Then when the FCC suddenly decided to crack down, there was suddenly a response from local stations." London noted that his series, *Where on Earth is Carmen Sandiego?* -- based on a computer game and the successful PBS show -- had been in development for years, but "the show did not get on the air until after the Act started to get enforced" (personal communication, Jan. 14, 1994). Other producers who were working with the networks at the time believe that their projects were greenlighted because of renewed attention to the Children's Television Act.

Shortly after the 1993 Congressional hearings, the broadcast networks began announcing new series scheduled for the upcoming Fall which were designed to comply with the law. CBS picked up *Beakman's World*, a live action science program featuring performance artist Paul Zaloom as a zany scientist. The program had been introduced in the syndication market in response to the Children's Television Act and survived the ratings wars in its first season. ABC announced two new educational series: *Citykids*, a live action urban teen drama, which had been in development independently with Henson Productions in conjunction with the Citykids Foundation; and *Cro*, an animated show produced by Children's Television Workshop (CTW) (producers of *Sesame Street* and other PBS programs), about a Cro-Magnon man who works out his problems using scientific principles (McClellan, 1993).

The public debate in early 1993 over the Act also stimulated response from the syndication market. In late January, immediately following the inauguration of President Clinton, public officials both from the legislative and the executive side sent strong warnings of more diligent enforcement to broadcasters at trade conventions such as the Association of Independent Television Stations and at the National Association of Television Producers and Executives (NATPE) meetings (Wharton, 1993; Coe, 1993).

Syndication producers such as *Energy Express*' Creator and Co-Executive Producer Marilyn Preston recalled the "sea change" in broadcasters' attitudes toward informational programming after the NATPE speeches (personal communication, Jan. 6, 1994). Reruns of cable and public television programs such as *Nick News* and *3-2-1-Contact* were snapped up by stations around the country in a hasty effort to protect themselves from possible license renewal challenges (Richard Loomis, personal communication, Jan. 18, 1994; Richard Mann, personal communication, Jan. 11, 1994).

The impact of the regulatory pressure on the market has been well documented in the trade press. *Electronic Media* reported in April 1993 that "Distributors have been quick to get involved with first-run kids educational series since the Federal Communications Commission made it clear it would strictly enforce the Children's Television Act." In announcing its new syndicated series, *Bill Nye the Science Guy*, Rich Frank, President of the Walt Disney Studios, explained to reporters that "With Congress and the FCC putting such incredible pressure on the stations, it forced them to be on the lookout for something (educational) which now makes it possible for the economics to work out" (*Electronic Media*, April 26, 1993). "I doubt, frankly," CTW's Senior Vice President of Programming and Production, Frank Getchell, told *Variety*, "that *3-2-1-Contact* would be going into syndication if there was not this push from the FCC" (*Variety*, November 29, 1993).

A headline in *Broadcasting & Cable* for May 3, 1993 announced: "Stock rises for FCC-friendly kids fare; demand up for suitable children's programming to meet new Federal Communications Commission regulations." The following month *Electronic Media* listed some 77 "FCC-friendly" syndicated programs on the market.

But much of this seeming abundance was illusory. For instance, 15 of the syndicated entries listed in *Electronic Media* were BBC Lionheart offerings, mostly generic family programming, which the company never made an effort to promote (and, incidentally, never received any inquiries about as a result of listing them with *EM*

[personal communication, Beth Clearfield, Jan. 13, 1994]). In several cases, such as action animation series *Exosquad* and *Biker Mice from Mars*, distributors later backed off from FCC-friendly claims. Eight programs were not actually in production or distribution, while eight were only in distribution in cable.

The terms "FCC friendly," "Compliance Show," and "Qualifier" were used repeatedly by those interviewed for this study and could be found in numerous trade publication stories as well as in ads promoting the programs touted as satisfying the requirements of the Children's Television Act. Such terminology appears to suggest that these programs have been reviewed by the Federal Communications Commission and given a kind of Good Housekeeping Seal of Approval, which of course is not the case. A number of people, particularly the producers of such programming, expressed frustration and discouragement at what they viewed as a cynical attitude reflected in the use of such labels. As one producer put it: "When the FCC got tough, suddenly, everybody began looking around for 'qualifiers.' All the stations and networks really want to do is satisfy the legal requirement. Meeting the spirit of the Act is of no concern to them." Echoed another: "They [the stations] were just quickly buying a show so they could say they had a show."

These suspicions seem to us to be well-founded. Indeed, clear patterns in the production, scheduling, and promotion of such programs began to emerge in our investigation.

2. **There is a prevailing attitude in commercial television that entertainment and education are mutually exclusive and that children will not watch programming which has been designed to educate.**

ABC Children's Entertainment President Jennie Trias recounted a story also told, in slightly different versions, by several other sources. During a focus group with children, she said, a young boy told her, "I go to school Monday through Friday."

Saturday morning is my time" (personal communication, Jan. 21, 1994). Indeed, the story appears to have gained folklore status within the industry. "Let's face it," explained Judy Price, Vice President of Children's Programs and Daytime Specials for CBS, "kids go to school Monday through Friday. On Saturday morning they won't go to school again" (personal communication, March 30, 1994). Syndicator Howard France put it more bluntly: "The FCC is telling you you have to put boring TV on," he complained. "The primary focus has to be educational not entertaining. You know kids, they don't want to go to school all week. If they don't want to watch it, who's gonna make 'em? The government can't pass a law to make people watch shows" (personal communication, Jan. 6, 1994).

Allen Bohbot, President and CEO of Bohbot Communications, Inc. and one of the most powerful distributors of syndicated children's programming, believes that educational and entertaining are flatly incompatible. "Entertaining to me is what is successful with kids, what they like. And I can't find an example of an entertaining, educational show that's been successful, except for the preschool market." His company searched, he said, for an educational/informational program to include in a successful two-hour (four program) Sunday morning block, but could not find one that would succeed. "To put it in to make someone feel good isn't what it's about. You've got to deliver for the long run, so we went for action-oriented."

He believes that programmers are prisoners of an ever-more-uncivil marketplace, responding to an ever-more-brutal society:

People on my side of the desk say, kids go to school 9 to 3, they don't want to be educated when they come home. We keep pushing further and further, with MTV or action—what I call action, what some people call violence—and those are the shows kids watch.

It scares the daylights out of me, not just what gets to the air but what succeeds. I think TV is mirroring what they see in their daily lives, and I think we kid ourselves if we ignore that.
(Personal communication, March 14, 1994)

Some producers argue that "prosocial" moments or behaviors make a show as educational as entertainment can get. For instance, Elie Dekel, Vice President of Marketing for Saban Entertainment, said, "*Mighty Morphin Power Rangers* is an action-intensive show. But these five teenagers who are superheroes are great role models, and they're doing great things. We're delivering programs that have positive messages" (personal communication, Jan. 7, 1994). At production house Ruby-Spears, President Joe Ruby says he has "put a lot of educational bites" into the popular *Wild West C.O.W.-Boys of Moo Mesa*. "We're basically in the business of doing entertainment," he pointed out. "We're not schoolteachers" (personal communication, Jan. 24, 1994).

Comments such as these reflect a mindset prevalent among many working in commercial television that is itself a barrier to effective implementation of the Children's Television Act. Explained Donna Mitroff, Vice President of Pittsburgh PBS station's QED West in Los Angeles: "We have overentertained children for so long that we have conditioned them to accept painless, mindless entertainment. Those of us who believe that you can entertain and educate have to accept the time it's going to take to move the suppliers, the audience, the funders, and the advertisers" (personal communication Jan. 4, 1994).

There is a notable difference in the attitudes of those who have had considerable experience working in public television. They do not perceive education and entertainment in such dichotomous terms. These people also tended to more clearly specify their learning objectives. According to Marjorie Kalins, Group Vice President, Productions, for CTW, *Cro* is designed to attract children who would not choose to watch science, especially girls. "We're trying to stimulate them," she explained (personal communication, Jan. 10, 1994). *Bill Nye the Science Guy*, first developed by PBS station KCTS in Seattle, is specifically designed to educate fourth graders (9-11 years old), although Disney aims to make it appealing (but probably not educational) to a

broader audience (John Van Camp, Buena Vista, personal communication, Jan. 6, 1994). Similarly, *Where on Earth Is Carmen Sandiego?*, which was adapted from a PBS series, aims to entertain 6-11 year olds, but focuses tightly on 8-10 year olds for its geography lessons (Robby London, personal communication, Jan. 14, 1994).

3. **Production and promotion budgets for so-called "FCC-friendly" programs are often substantially lower than those of most other children's television programming.**

Educational and informational programs are typically low-budget. In the syndication market, many "FCC friendly" series are produced on a shoestring. In 1993, shows such as *Mental Soup*, *What's Up Network*, and *Scratch* were being produced on \$15,000-\$50,000-per-episode budgets (Joe Benty, personal communication, Jan. 10, 1994; Kristi Boyer, personal communication, Jan. 5, 1994; Kent Takano, personal communication, Jan. 4, 1994). *Not Just News*, produced at broadcast station WTTG and carried by the Fox Station Group, had a \$10,000-\$15,000-per-episode budget (Glenn Dyer, personal communication, Jan. 14, 1994).

This is an astonishingly low figure. Action and animation shows, by contrast, typically have budgets that begin in the \$200,000 range. Animated programs range between \$200,000-\$400,000; *Mighty Morphin Power Rangers* is estimated to cost \$350,000-\$400,000 (*Broadcasting*, Mar. 15, 1994). Even *Name Your Adventure*, a reality-based, educational program, has a budget of over \$100,000. (At that, the program has a lower budget than its educationally "softer" companion program, *Saved by the Bell*.) But unlike syndicated programming, *Name Your Adventure* has network backing -- that is, a broadcaster's investment in its success (personal communication, Kerri Friedland, Jan. 10, 1994). Very low budget programs work under a crippling handicap, something the industry acknowledges when networks invest in programs they want to succeed.

Many producers also believe that their series do not have sufficient promotional budgets. Asked about his show's promotion budget, *Peppermint Place's* Host and Co-Producer, Jerry Haynes, cynically replied, "You're kidding" (personal communication, Jan. 4, 1994). Kerri Friedland, Executive Producer of the NBC series *Name Your Adventure*, expressed frustration with both the level of network support and the indifference of journalists who became crucial to success in the absence of adequate publicity and promotion budgets: "I think the network could have promoted it more, and the media could have paid more attention. Children's TV is almost a poor stepchild" (personal communication, Jan. 10, 1994). Turner Broadcasting's Jerry Krieg, Executive Producer of *Real News for Kids*, reported that many stations simply were not willing to promote the series on the air. "Even when we send them a fully made promo, they're not willing to air it," he complained. "But it's a catch 22 because they say it's on at 7:00 AM and it's not worth promoting" (personal communication, March 22, 1994).

Producers of two educational and informational series received public funding to supplement the limited budgets available to them for development, production, and promotion in commercial television. To cover research costs for the first season, *Cro*, the animated Children's Television Workshop series, whose budget is higher than most children's programming, according to producers, was awarded a \$2.5 million grant from the National Science Foundation (Schatz, 1994). The NSF also awarded *Bill Nye the Science Guy* \$1.379 million in 1993, to support production of the science program developed through public television and now part of a Disney program package (KCTS Television). Disney has committed \$3.5 million for 26 episodes of the series, or \$135,000 per half-hour show (*Electronic Media*, April 26, 1993).

4. There is a consistent pattern of scheduling which routinely places educational and informational programs in marginal time slots.

All producers and distributors of "FCC-friendly" series reported serious problems with the scheduling of their shows. In fact, this was one of the most frequently mentioned barriers to success cited by interviewees. Several patterns were evident: scheduling the programs during early morning hours -- sometimes as early as 5:00 AM; placing the shows in "pre-emptible" time slots, when stations frequently substituted sports or other programming; and moving the programs around in the schedule, thus making it difficult for viewers to find them.

Stations typically put their educational and informational material into early morning hours on the Saturday schedule when many children--especially the tweens and teens to whom much new programming is addressed--are still sleeping. This pattern was particularly pronounced with syndicated programs, whose distributors found it almost impossible to get a decent time period. For example, with Grove TV's *Edison Twins*, "stations are running the show before the kids are even up," according to Steve Hodder, National Sales Manager for Grove TV (personal communication, Jan. 11, 1994). Richard Loomis, who distributes the Nickelodeon-produced series *Nick News* for broadcast television, told us that in a number of markets, the series is "buried in early morning Saturday and Sunday, 6:00-7:30 AM" (personal communication, Jan. 18, 1994).

An informal analysis of *TV Guide* magazines from the top five television markets last November illustrates how pervasive the scheduling problem is. For example, among the educational and informational series airing between 5:00 and 6:30 AM were: *Energy Express*, *Not Just News*, *Real News for Kids*, *Scratch*, and *Nick News*. A separate analysis of the top 20 TV markets revealed that on weekdays, 44% of all "compliance shows" aired at 6:30 A.M. or earlier; of those 25% were on at either 5:00 or 5:30 A.M. Many producers and distributors were very disheartened by this practice. "We're up

against broadcasters knowing they need [the show] versus giving it the time period it needs to get visibility and ratings."

Though less extreme, similar scheduling patterns are evident with network series. These series are often shuffled around in the schedule by either the network or the affiliates. They are also more likely than other shows in the Saturday lineup to be pre-empted by sports programming. NBC's *Name Your Adventure* airs at 8:00 AM in the crucial Los Angeles market. Though generally satisfied with the network's handling of the show's content, producer Kerri Friedland said: "I'm not happy with the scheduling, because we're a teen show. As a teen I didn't get up till 11" (personal communication, Jan. 10, 1994). Though 92 percent of the affiliates air the show, explains Robin Schwartz, Manager of Saturday Morning and Family Programs for NBC, "everyone airs it at different times" (personal communication, Jan. 7, 1994). ABC's *Cro* has a similar scheduling problem. On most ABC stations it is shown at 7:00 AM, according to CTW's Marjorie Kalins. "The fact that anybody is watching it is amazing" (personal communication, Jan. 10, 1994).

As several sources explained to us, any program on the Saturday schedule after 11:00 AM runs a very high risk of being pre-empted by network or regional sports programming. This is especially a problem for the West Coast. If the network carries a football game that begins at 2:00 PM in the afternoon on the East Coast, it will knock out all the regular children's shows after 11:00 AM on the West Coast. Typically, "FCC friendly" shows found themselves in this "pre-emptible time slot". The ABC series *Citykids* was a casualty of such scheduling. Debuting on the network in fall, 1993, the series was scheduled first at 11:30 on Saturdays. A few weeks later it was shifted to noon. Off the air for several months, it was put back on the schedule at 11:30 AM in early 1994. During its checkerboard run on the network, the show was repeatedly pre-empted by college football games. It finally disappeared from the schedule altogether in February, officially in "hiatus" according to networks executives (Schatz, 1994).

In its first season on CBS, *Beakman's World* has also suffered the vicissitudes of unfortunate scheduling. Stations reschedule *Beakman's World*, but most carry it at 12 noon (11:00 AM West Coast), where the potential audience is good but pre-emption is always a threat (personal communication, Linda Kazynski, CBS, Jan. 14, 1994). Between the beginning of December 1993 and the end of March 1994, the show was pre-empted on the West Coast 14 out of 17 weeks, due to sports programming, including CBS coverage of the Winter Olympics.

5. **Current business practices -- especially in the syndication market -- have made it almost impossible for educational and informational programming to gain entry and survive in the marketplace.**

Though many of the practices described to us by the respondents in this study have apparently gone on for years, we were told that they have intensified recently, creating significant barriers for new programming that does not conform to the highly successful formulas currently dominating the children's TV marketplace.

Most series in today's children's television market are part of a merchandising and licensing package, with heavy financial and creative participation by major toy companies that manufacture and market "licensed characters" and other products related to the show. The series are, in effect, advertising vehicles for the licensed products, as many of those we interviewed frankly admitted.

These elaborate merchandising packages can reap enormous profits. The most recent illustration is the highly popular *Mighty Morphin Power Rangers*, produced by Saban Entertainment for the Fox Children's Network. Toy licensee, Bandai Company (one of 40 companies with licensed products based on the show), grossed \$25 million to \$30 million in wholesale revenues last year, according to industry trades. Typically the series producers receive between 6 and 8% of the gross earnings. Stations carrying the

show will also receive a percentage of merchandising revenues (Freeman, Dec. 20, 1993).

None of these successful product sales would occur without the exposure to the child audience provided by television.

In the syndication market, with toy companies underwriting much of the production and promotion costs, television series are generally offered to stations on a "barter" basis. This means that the station gets the show free, along with half of the advertising time (usually between 2 1/2 to 3 1/2 minutes for a half-hour show) which it sells to local or national advertisers. The remainder of the time is sold by the distributor to national advertisers who generally need to reach between 75 and 80% of the country in order to participate. For the station, no outlay of cash is required, and the sale of its portion of ad time can generate considerable income. One of the interviewees informed us that many stations have no programming budgets at all for children's programs, since they can fill their schedules with free programming.

Because there is so much money to be made in merchandising and because toy companies depend on television to market their products, competition for access to the child viewer has become particularly fierce in recent years. As a result, it has become commonplace for toy companies to use their substantial resources to strike elaborate deals in order to guarantee a good time slot. In big cities such as New York, Chicago, and Los Angeles, which are crucial for a national market, television stations often demand that in addition to the program, the toy manufacturer associated with a series spend a million or more dollars for advertising time on that station's overall schedule. "You need to have a program that's paid for, first, but then you also need further support, to get stations to clear [or carry] it," explained SQuire Rushnell, former Vice President of Children's Programming at ABC and now President of his own distribution company. "*Sonic the Hedgehog* doesn't make it because it's a good program. It makes it because Sega is willing to put in extra dollars for advertising and promotion. So if

you're going, say, to a station in Chicago, the company has to be ready to put more advertising dollars into that market because otherwise, the station might go with a Hasbro-related program." Rushnell says that his company decided to leave the field because of the complexity of the dealmaking (Personal communication, March 10, 1994).

In addition to demands for ad dollars, stations may insist on cash payments from the distributor to get a program scheduled during an advantageous time period. "It has become so competitive that people are doing everything to get their programs in a good time slot," explained Allen Bohbot. "If that means pledging advertising, if it means doing incentives, cash payments, whatever it takes, that's what you do. It's not a good practice, but it's reality" (personal communication, March 14, 1994).

These conditions are further compounded by the fact that there is very little room in the syndicated children's schedule anyway, with a few large distributors controlling most of the market. "Fox Kids' Network dominates the market," explained Robert Jennings, Vice President of Research and New Media Development for Warner Brothers. "Disney is the only other player with a significant hold on the five-day-a-week market." He also pointed out that with Paramount and Warner Brothers launching new networks of their own, there would be even less room on independent stations for other programmers (Personal communication, Jan. 6, 1994).

These practices have placed almost insurmountable obstacles before the producers and distributors of educational and informational programs. One producer, who was only willing to speak off the record, bitterly related his experience with the children's syndication market. After agreeing to a million dollar ad time buying arrangement to get a good time slot on a TV station in a major market, he was approached halfway through the season by the same broadcaster, who demanded another half million to keep the show on the air. Unable to pay such a price, and deeply disturbed by the request, the producer decided to pull the show entirely. "It's ultimately blackmail and extortion," he charged, "and it's unconscionable."

Scheduling is a life and death matter, because national advertiser dollars depend on ratings, which are powerfully affected by time slots. The teen show *Scratch*, which had received a "Service to Children" award in 1992 from the National Association of Broadcasters, was a typical casualty of scheduling that reflected low priorities for educational and informational programming. It managed to clear 85 percent of the country, but went out of syndication in January 1994 because stations put the program on either very early or, less commonly, in the noontime pre-emption zone. The show couldn't make its teen rating guarantees.

"The stations all love the show, but they don't want to make the commitments," said Bob Muller, *Scratch* syndicator and President of Muller Media (personal communication, Jan. 5, 1994). "If 25 decent sized stations out of our 134 gave us a later time period, we and they would be very successful. There's nothing you can do. You're at their disposal." Producer Kent Takano, a survivor of two seasons and profoundly discouraged, said, "We can't make it work because the stations don't comply with their whole heart. I work out of a station, so I understand the dollars and cents, but as a producer, sometimes you want to say, if you're going to treat the show like this why take it at all?" (personal communication, Jan. 4, 1994).

Other programmers of syndicated programs find cavalier station treatment of the programming both discouraging and financially devastating. *Peppermint Place's* Jerry Haynes noted that although 108 markets eventually took the live-action show for young children, stations usually placed it in early morning hours. "It was a gimme," he said. "They put it on in order to say, This is our children's show." *Peppermint Place* now reaches 10 markets, mostly through the station group where it is produced (personal communication, Jan. 4, 1994). Even on rock-bottom budgeting, *What's Up Network*, a Kansas City-produced tween reality show, is not financially viable, because placement discourages national advertisers. They are uninterested both because station clearances have not reached 80 percent and also because the show is placed at very early hours

(Kristi Boyer, personal communication, Jan. 5, 1994). Another producer, describing why he refused to put his series on the market on a barter basis, said: "They stick it on in the 5:00 AM time slot to meet the FCC requirements, and then they don't deliver the ratings. They get something for nothing and we get screwed."

The fate of Turner Broadcasting's *Real News for Kids* dramatically illustrates how the brutal mechanisms of the syndicated marketplace, combined with half-hearted station compliance with FCC regulations, can doom a show to fail. A half-hour weekly news program developed in response to the Children's Television Act, *Real News for Kids* features children reporting on current news stories each week. The show is targeted to 8-13 year olds. To guarantee stations would carry the show, it was offered during its first year on a barter basis. Because stations were getting it for free, it cleared 100% of the markets, enabling Turner to sell its portion of the commercial time to national advertisers.

However, because the other shows with lucrative merchandising deals were able to buy their way into the best time slots, *Real News for Kids* found itself relegated on many stations to the pre-dawn periods that were becoming the ghetto of so-called "FCC-friendly" shows. John Walden, Senior Vice President of Marketing and Sales at Turner Program Services, explained, "We're never going to be able to compete with money, so they are not our competitor. It would be like a fencer going up against a football player. They play a different game" (personal communication, April 1, 1994). Many stations didn't even try to sell the ad time they got with the free show, instead just running public service announcements. It was clear that they were treating it only as a regulatory obligation. Not surprisingly these marginal time slots failed to generate a sizable national audience and the advertisers who had bought time in the series for the first year were not interested in doing so for the second season (personal communication, Jerry Krieg, April 21, 1994).

Without enough national advertisers to underwrite the show, distributors were forced to offer it on a "cash" basis the following year. This meant that stations would have to pay for the rights to air the show, but would then be able to sell all the ad time. Only half of the stations in the line-up would agree to pay money for the series and it was canceled effective September 1994 (personal communication, Jerry Krieg, April 21, 1994).

6. **The impact of government and public pressure on compliance with the Children's Television Act appears to have been short-lived.**

By the late January 1994 NATPE convention, at least six of the syndicated shows among the 20 viable ones on *Electronic Media's* July listing had been withdrawn from the market; NATPE business in the remaining shows was wan (Anonymous, 1994; Charles Sherman, National Association of Broadcasters, personal communication February 3, 1994) (Freeman, 1994c, p. 28). Only two "FCC-friendly" shows -- *3-2-1 Contact*, -- and the NBC-station-group *News for Kids* -- were featured in *Electronic Media's* reporting of the convention (*Electronic Media*, Jan. 31, 1994). "Major syndicators are only introducing five new educational series for Fall 1994," reported *Broadcasting & Cable*, "compared with nine such shows this time last year" (Freeman, 1994b).

The explanation offered by many in the industry is that these shows simply couldn't garner sufficient ratings to survive in the marketplace. The performance of many of the weekly syndicated programs, and some of the network shows, was poor. But as this report has documented, it should hardly be surprising that educational and informational fare, after a bold start at the beginning of 1993, made such a weak finish. It entered the market under a brutal financial and scheduling handicap, supported at the outset by the promise of regulatory vigor. The failure of most educational and informational programming demonstrates the weak commitment of broadcasters to such programming. The prevailing belief that "kids won't watch educational programs"

has become a self-fulfilling prophecy. Broadcasters by and large made room in their schedules only at hours when most children were not yet awake or when sports programs regularly pre-empted them. They mostly invested little in programs, often accepting barter syndication deals by deal-hungry syndicators, and did virtually nothing to promote them. Networks, where a small handful of new, well-researched shows were developed, demonstrate the outer limits of broadcaster efforts.

7. However, regulation did have an effect on the market, when broadcasters believed it might be enforced.

It is clear that when regulatory commitment to the spirit of the Act was demonstrated, the market responded. The controversy generated in early 1993 by children's and public interest organizations, followed by a flurry of government gestures, resulted in a dramatic network appetite for new production, a clutch of station-produced syndicated programming, and a dozen or so successful first-run syndication ventures.

Producers with a commitment to educational and informational children's television repeatedly emphasized the importance of regulation to their aspirations. For instance, Robby London at DIC hopes that further enforcement might make possible preschool programming that DIC has long wanted to do, but which broadcasters have always regarded as unprofitable because the age group has so little spending power. Joe Benty, producer of ill-fated teen live action show *Mental Soup*, believes that the Act helped the show get into the 65 percent of U.S. markets that it cleared before disappearing in July 1993. He was hoping for an early decision on the FCC Notice of Inquiry, and when no action was taken over the summer he said, "I think that really slowed things down. People felt they had a little while longer, and didn't really have to comply" (personal communication, Jan. 10, 1994).

The network announcements for the 1994 television season suggest that many of the patterns identified in this study are continuing. While NBC's *Name Your Adventure* is scheduled for 10:00 AM, the other networks have placed their Saturday morning "FCC friendly" programs in pre-emptible time slots and have also put several of them at the same time. ABC's *Cro* will be on at noon, followed by the *ABC Weekend Special* at 12:30 PM; *Beakman's World* retains its noon slot, followed by *CBS Storybreak*. And Fox's *Where on Earth is Carmen Sandiego?* will be on at 11:30 AM (McClellan, April 11, 1994).

There is also some indication, however, that pending FCC action on the current Notice of Inquiry may be influencing programming decisions. One of the hopeful signs of the new season is Fox's recent announcement of a 5 day a week "stripped" series of half-hour children's programs. Entitled *Fox Cubhouse*, the series will air at 8:00 AM weekdays, and will feature three different programs: a twice-weekly nature program, co-produced by Henson Productions and a British company; *Johnson and Friends*, a co-production of WQED and Film Australia; and a pre-school program from DIC, called *Rimba's Island*, focusing on music and movement (McClellan, April 11, 1994).

Fox is the first network to launch a daily children's program since passage of the Children's Television Act in 1990. The decision may well be related to Fox's recent move to expand its ownership stake into a number of stations now affiliated with the CBS network. Requests by Fox affiliates had influenced the network's earlier decision to launch *Where on Earth is Carmen Sandiego?*, according to Ann Knapp, Director of Programming for the Fox Children's Network. In deciding on the weekday children's educational series, Fox seemed to be anticipating a decision by the Federal Communications Commission to specify a daily or weekly programming minimum. "Six days a week -- at least a half hour a day -- of educational programming," Knapp noted. "We think that's what the FCC may very well require" (personal communication, Jan. 13, 1994).

8. **The FCC's implementation rules for the Children's Television Act must be strengthened and clarified in order to counter the powerful forces of the commercial television marketplace.**

The children's television marketplace today is not a level playing field for educational and informational entrants. It is heavily skewed toward programs with licensed product possibilities, which can attract deep-pocket, usually toy-company investors. The million dollar deals that toy companies make to get their shows on at desirable time periods raise disturbing questions about who is really setting the agenda for what America's children will see over the public airwaves. It is because the powerful marketplace forces work against children, that we need effective public policies to counter them.

The current rules for implementing the Children's Television Act, which were issued in 1991, are clearly inadequate. If the Act is going to have a lasting and meaningful impact, the rules will need to be clarified and strengthened: stations should not be getting credit for token "FCC-friendly" programs that air before 7:00 AM; the definition for what is educational or informational must be clarified; and a processing guideline of an hour a day of educational and informational programming must be instituted to ensure that all children will have access to a diversity of programming designed to meet their needs.

Just as deregulation in the early 80s significantly affected the children's marketplace, the Children's Television Act -- if given more force and clarity -- could alter the current dynamics of that marketplace in a way that will benefit children.

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Mr. SYNAR. Clearly, the claims that the broadcasters are making that every thing they do is for public service, not for profit is debatable. In fact, there has just recently been hearings in the Energy and Commerce Committee's Subcommittee on Telecommunications and Finance, a subcommittee where I serve, debating that issue.

Mr. Fowler, the law does enable the Secretaries of Agriculture and Interior to offer discounts in recognition of, quote, public service benefits. Does GAO think that NAB had demonstrated an iota of reason for those kinds of discounts?

Mr. FOWLER. In our opinion, Mr. Synar, they didn't.

As John said earlier, both the general counsel at the Department of Agriculture and the chief appraiser at BLM have taken a position on this issue. And the issue has been unless the service provided is of direct benefit to the Federal land that they are on that no such waiver is warranted. While they do provide waivers, it is typically to other government organizations, nonprofit organizations, but not to for-profit activities like we are talking about here.

Mr. SYNAR. I want to talk about the information you gathered. Obviously, you included communications sites managed by Agriculture, Forest Service, and BLM when you conducted your review. Did you survey every State?

Mr. ANDERSON. No, we didn't. We concentrated in the seven Western States where over two-thirds of the Forest Service permits are located. And most of these sites are located in the West, and the proposed fees really have to do with sites located in the West. That is where we concentrated our work.

Mr. SYNAR. All right. Did you determine whether the methods that were used by the Forest Service were consistent with the accepted techniques of fair market value?

Mr. ANDERSON. Yes, we did.

Mr. SYNAR. What techniques were generally accepted?

Mr. ANDERSON. Basically, they conducted formal appraisals and market surveys. They also obtained information from many other sources and discussed it with industry representatives.

Mr. SYNAR. Now you said the Forest Service based its proposed fee on the 1,500 lease transactions that they surveyed?

Mr. ANDERSON. Yes.

Mr. SYNAR. Now, what were the advisory committee fees based on?

Mr. ANDERSON. The advisory committee fees seemed to be based on more informal information. They got briefings from appraisers and industry representatives and did informal surveys and that sort of thing.

Mr. SYNAR. So, of the two approaches, which one do you believe is more reflective of the generally accepted methods of determining fair market value?

Mr. ANDERSON. The Forest Service.

Mr. SYNAR. The Forest Service. Do you believe the Forest Service took a conservative approach in developing its fee schedule?

Mr. ANDERSON. Oh, clearly. If you look at the charts and you see their proposed fees in the next to the last column and compared to their appraised market value fees, it is low. For example, Mt. Wilson television, the appraised market value fee was \$75,000.

Mr. VENTO. We can't read that chart, but I think it is in the back of the GAO testimony.

Mr. ANDERSON. Yes, it is in the testimony and in the report as well, but the appraised market value fee for television at Mt. Wilson is \$75,000 and the Forest Service proposed fee is \$45,000, so they are taking a conservative approach.

Mr. SYNAR. Now, the broadcasters have accused the Forest Service of cherry picking the data used to develop its fee schedule. How do you respond to that, based upon the information you have?

Mr. ANDERSON. Again, we asked them for very specific examples so that we could go out and follow up. They didn't provide us any.

Now I am aware of one instance, I believe it was in Phoenix, and I can let either Mr. Woodward or Mr. Fowler talk about that, where there is some criticism they didn't include a fee being paid in Phoenix. Whichever one of you is comfortable.

Mr. WOODWARD. At South Mountain in the city of Phoenix, which is the premier location for broadcasting into the Phoenix area, there was a TV operator that was going to broadcast from that site. The final fee agreed to was \$12,000. This site was not used as a comparable by the Forest Service.

The Forest Service officials indicated to us that this did not appear to be a true arm's-length transaction. Apparently, there were some pressures put on the city in the terms of a potential lawsuit or some other things along that line, and the city agreed to a fee of \$12,000.

The industry has raised this as being a comparable for the Phoenix area. However, we would note that the estimated market value for Phoenix TV in the advisory committee report was \$30,000, and, obviously, this is a figure which the industry has previously supported, so we don't entirely understand their objection to this.

Mr. SYNAR. Well, neither do we. In fact, it is our understanding that the other categories of communication users, including the translators and cellular operators, are in agreement with the Forest Service, is that correct?

Mr. ANDERSON. Yes.

Mr. SYNAR. Do you know of any other communication users other than the television and FM broadcasters and commercial radio users who are opposed to this?

Mr. ANDERSON. No, we don't.

Mr. SYNAR. Now, let's talk about the GAO's policy of conducting exit conferences and the criticism leveled at you by the broadcasters.

First, it should be noted that it is a longstanding policy of the subcommittee I chair that GAO not give out drafts of reports or obtain official agency comments on reports for our subcommittee prior to the reports being submitted to us. However, in accordance with GAO policy, I am told you do seek comments from agencies and others on the focus and findings of your work—in other words, on the facts of the report.

Now we believe this process works. We have used it consistently over the years. It ensures that your work will produce a quality report, one that considers the views of the affected party while not giving the agencies and the others the opportunity to unduly influence the conclusions and recommendations.

Now, let's go through the history. We received copies of a letter dated July 1, 1994, from the broadcasters to Mr. Ned Woodward of GAO that was critical of GAO's efforts to obtain the NAB comments. GAO sent an official response to the NAB on July 8, 1994.

With unanimous consent, Mr. Chairman, I would like to enter the NAB's letter and GAO's response into the record, exhibits 1 and 2.

Mr. VENTO. Without objection. These two letters are in my possession, and they will be made a part of the record.

[The letters follows:]



July 1, 1994

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Mr. Ned H. Woodward
Senior Evaluator
Resource, Community and Economic Development Division
U.S. General Accounting Office
4441 G Street NW
Room 1812
Washington, D.C. 20548

Dear Mr. Woodward:

This past Wednesday, we met with you and other GAO staff at your request for what we were told would be a presentation of the major results of your study on the fair market value of federal communications sites. When this meeting was set up two weeks ago, we also were told that there would be an opportunity for NAB to comment on your results.

Upon our arrival at GAO offices, however, it became clear that the actual purpose of this meeting was for us to conduct an immediate and "on-the-spot" review of a 30-plus page draft and verify the "factual" elements of your report. You and your colleagues apparently expected us to conduct a meaningful analysis of this extensive draft without the benefit of our complete files, the review of NAB counsel and senior management, or an adequate period of time. We were taken aback, to say the least, by the nature of your request and the fact that you considered it to be nothing more than business as usual.

It is our understanding from this Wednesday's discussions with John Anderson, GAO Associate Director for Natural Resources, that GAO report policy allows affected outside agencies and parties 30 days notice to review and file comments on a draft. We were also told that GAO makes an exception to this policy if a member of Congress specifically requests that outside parties not see the report prior to its official release. GAO staff indicated that a member or members had in fact requested not to release this report for comment. Therefore, we are very puzzled as to why GAO so desperately wanted to obtain NAB's stamp of approval for factual accuracy.

NAB has worked with Congress, the Forest Service and BLM for nearly 10 years to resolve the communications site fee issue. We provided extensive and valuable information to GAO during the research process for this report. We are, however, disappointed that GAO staff chose to put us in an extremely difficult position during the meeting, which obviously appears to have been structured so as to force us to agree with your interpretation of the communications site fee issue without the courtesy of a thorough examination and review. The end result of this tactic was that no information was exchanged and nothing was accomplished to help us resolve the issue itself.

Mr. Ned H. Woodward

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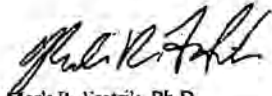
July 1, 1994

NAB remains committed to resolving the problems of our members with towers and transmitters located on federal lands. We will continue to work with Congress, the Forest Service and the BLM until a resolution is reached.

Sincerely,



Tristan Carter Warren
Director
Government Relations



Mark R. Fratrik, Ph.D.
Vice President/
Economist

cc: James C. May, Executive Vice President, NAB Government Relations
Barry Umansky, NAB Deputy General Counsel
John Anderson, Jr., Associate Director, Natural Resources, GAO
Stanley Feinstein, Senior Attorney, GAO
Joseph Kile, Economist, GAO
Senator John Glenn
Senator William Roth
Senator Larry Craig
Senator Dennis DeConcini
Senator Pete Domenici
Representative John Conyers
Representative William Kling
Representative Mike Synar
Representative Dennis Hastert
Representative George Miller
Representative Don Young
Representative Bruce Vento
Representative James Hansen
Representative Larry LaRocco
Representative Norm Dicks



United States
General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division

July 8, 1994

Tristan Carter Warren
Director
Government Relations
National Association of Broadcasters

Mark R. Fratrick, Ph.D.
Vice President/Economist
National Association of Broadcasters

In your July 1, 1994, letter, you raised concerns about not being given sufficient time to comment on the results of our review of the fees for communications sites located on federal lands.

GAO makes every effort to ensure that our work is performed with due professional care consistent with generally accepted government auditing standards and that our findings are well supported, our conclusions flow logically from the facts, and our recommendations offer reasonable suggestions for addressing the problems we identify. As part of this process we will, to the extent practicable, give agencies and other affected parties an opportunity to provide comments on our products. However, a congressional requester of our work may ask us to issue a report without comments.

GAO policy does, however, require that we always hold exit conferences with agencies and other affected parties to provide them an opportunity to comment on the facts disclosed by our work. At these conferences, we seek to (1) obtain a clear understanding of any disagreement on the facts presented, (2) obtain views on identified problems and the implications that flow from them, (3) explore options to resolve concerns disclosed by our reviews, and (4) give officials an opportunity to provide any additional information, factual material, or explanations that they believe are pertinent to the issues being reported. To help ensure that we meet these objectives, we normally show agency officials a statement of facts, a work summary, or other similar material describing the results of our work at the exit conference.

On two prior occasions, and at the June 29, 1994, exit conference, we informed you (1) of GAO's policy and process for obtaining comments, (2) that the congressional

requesters had asked us to issue the report without written comments, (3) that you would not be given a copy of the draft report, and (4) that at the exit conference you would be shown a statement of facts but not allowed to retain a copy. At the exit conference we offered to accommodate your concerns by providing all the time you required to review the statement of facts or by rescheduling the meeting so that you could bring any needed files or additional participants.

We followed the same process at exit conferences with representatives from the Forest Service, the Bureau of Land Management, and the National Association of Business and Educational Radio. They provided us with their comments on the results of our review.

It is unfortunate that you chose not take the opportunity to review the information we shared with the organizations named above. We thank you for the assistance your association provided us during our review.

John H. Anderson, Jr.

John H. Anderson, Jr.
Associate Director for Natural
Resources Management Issues

Mr. SYNAR. Now the NAB claims that GAO did not inform them before the date of the exit conference, which was June 29, 1994, that they would have to review and comment on the report in your presence, that they could not have a copy of that draft. Mr. Anderson, what exactly did GAO explain to NAB about the GAO process of exit conferences and when did you tell them?

Mr. ANDERSON. On two occasions prior to that June 29 exit conference we informed the NAB officials what our process would be for obtaining comments and exiting with them. And, basically, what we told them was that we had been asked not to obtain formal comments on the report but that we would be having an exit conference and at the exit conference we would be sharing with them a statement of facts and we would want them to read through the statement of facts. They wouldn't be able to take it with them, but they could offer any comments that they wanted to clarify or add to the facts that were there and that we would consider them in preparing our final report.

Mr. SYNAR. That is standard GAO policy, correct?

Mr. ANDERSON. Yes, it is.

Mr. SYNAR. Now the NAB claims that they were expected to provide on-the-spot review of factual elements of your report without help from their files or their review of the NAB counsel and senior management or adequate time. How do you respond to that criticism?

Mr. ANDERSON. I was a little bit surprised by it because, we had told them in advance that this was going to be the process. Also, we gave them several different options at the meeting when they expressed this reservation.

We, for example, said that we would extend the meeting and make it as long as they wanted it, that we would reschedule the meeting so that they could go back and get whatever files and whatever other officials that they wanted to bring to the meeting. We offered to even go through and just look at the four pages in the statement of facts that dealt with the information that we had obtained from them. We offered several things which they chose not to do.

Mr. SYNAR. I want to make the record clear. The NAB did not choose any of those reasonable alternatives you just outlined, correct?

Mr. ANDERSON. That is correct.

Mr. SYNAR. Now were the NAB representatives that attended that aborted exit conference the same representatives who provided GAO with the information in the official NAB positions during the review?

Mr. ANDERSON. Yes, sir.

I think we also dealt with one other official who wasn't able to come to the exit meeting, an attorney, I believe.

Mr. SYNAR. With respect to those four pages in the draft that dealt with the NAB-specific issues, did they contain any technical information or lease data that the NAB had supplied during the course of the review?

Mr. ANDERSON. No, sir, it did not because they didn't provide any.

Mr. SYNAR. All right. Now, NAB commented that they were puzzled about why GAO wanted them to approve the factual accuracy of the draft report. Does GAO use the exit conference process to have others check your homework?

Mr. ANDERSON. No, sir, we do not. We use it to just have them comment on the facts. And if they have got any additional information they can provide or they think is relevant, they want to clarify it, that is the purpose.

Mr. SYNAR. Now, finally, yesterday NAB indicated in its letter that the GAO put them in an extremely difficult position during the exit conference because they did not give them an opportunity for thorough examination of the report. How do you respond to that?

Mr. ANDERSON. Well, I find it somewhat unfortunate that they had that opinion, and it is sort of interesting because we used the exact same process with the three other parties that we obtained most of our information from for our review. BLM, Forest Service, and NABER used and understood the process and met with us and gave us comments.

Mr. SYNAR. Now NABER also opposes the fee proposal, right?

Mr. ANDERSON. That is correct.

Mr. SYNAR. But they did take the time to review and comment for the report, did they not?

Mr. ANDERSON. Yes, they did.

Mr. SYNAR. A little bit more genuine effort, wouldn't you say?

Mr. ANDERSON. Yes.

Mr. SYNAR. Thank you.

Mr. VENTO. Mr. Thomas.

I note Mr. Hansen wants his statement in the record as well.

[Prepared statement of Mr. Hansen follows:]

OPENING STATEMENT OF HON. JAMES V. HANSEN

Mr. Chairman, I appreciate the opportunity to address this issue once again. I have several concerns relating to how these proposed fees will affect the rural areas of this country. The rural communities in Utah as well as other Western States rely heavily on the Federal lands for communication sites. It is important to remember that the issue before us affects more than the Los Angeles television and radio markets. These communication sites are used by small businesses, for emergency purposes and to bring the world to isolated areas. I hope that the Forest Service and the BLM have taken these people into account in their proposed regulations. Lastly, we need to make sure that there is sufficient access to all users. It is imperative that we avoid setting up a system where small users can no longer compete for access to the "footprint" lease.

I welcome our witnesses and look forward to the testimony.

Mr. VENTO. So, Mr. Thomas.

Mr. THOMAS. Thank you, Mr. Chairman.

Obviously, this issue has gone on; and, people would—all of us I think would search for a fair payment. It is interesting you talk a lot about Mt. Wilson. That is quite different than Cody, Wyoming, isn't it?

Mr. ANDERSON. Yes, sir.

Mr. THOMAS. I think that is what concerns me when we talk about this matter of paying, and you come up with horrible examples such as Mt. Wilson, if they are that, but you don't talk much about the things that are done by most people in a community for nothing in order to have communication, do you?

Mr. ANDERSON. No.

Mr. THOMAS. Why not?

Mr. ANDERSON. I don't think it is appropriate if you have a process where you are going to be determining fees if a community decides for whatever reason that it is going to allow a broadcaster to use its lands for free or a nominal value. I think what we are really looking for and what the law calls for is for the Federal Government to receive fair market value for the use of its lands.

Mr. THOMAS. So, Mr. Fowler, you have said you did not detect anywhere where there was any public service activity here at all, is that correct?

Mr. FOWLER. No, sir. What I said was, Mr. Synar asked me about the position of the National Association of Broadcasters on that issue, and the position they were taking was that, essentially, everything they do is public service and that they wanted a discount of about 30 percent for doing that. And what I was commenting on was that particular position and the notion of do for-profit broadcasters merit a public service discount under the waiver provisions of FLPMA.

Mr. THOMAS. Do you think there are times when there is a public service being performed?

Mr. FOWLER. By local stations?

Mr. THOMAS. By anybody.

Mr. FOWLER. Of course, there are.

Mr. THOMAS. But you didn't talk about those much.

I happen to have had a little experience with some of those kinds of things. And people who live in a particular community would not have any television, would not have any radio if it weren't for some kind of a transponder.

It seems to me that ought to make some difference. If you are looking at it in a balanced way, it would seem to me you and Mr. Synar seem to be obsessed with the broadcasters. That isn't the only thing you looked at, is it?

Mr. ANDERSON. Broadcasters, FM and TV broadcasters, and commercial mobile radio.

Mr. THOMAS. You said they didn't respond. Is that the way you do your analysis? If they don't respond then you don't have any information? Or do you go get your own?

Mr. ANDERSON. We do go get our own, but we also ask if people have specific allegations or problems we want to know the specifics.

Mr. THOMAS. That certainly doesn't stop your investigation if they don't provide the information, does it?

Mr. ANDERSON. No.

Mr. THOMAS. You have appraisers on your staff?

Mr. ANDERSON. No, we do not.

Mr. THOMAS. You do not have appraisers?

Mr. ANDERSON. No.

Mr. THOMAS. How did you come up with all the appraisal information?

Mr. ANDERSON. We obtained it from the Forest Service and BLM, and we talked and interviewed extensively with their appraisers.

Mr. THOMAS. But you have none?

Mr. ANDERSON. That is correct.

Mr. THOMAS. Somewhere in your report it mentioned that the States were saying because these fees were not market fees that that reduced the ability of States to charge. What States did you talk to?

Mr. ANDERSON. The seven States that we went to. I will have to refer to my notes. We talked to officials in Arizona, California, Colorado, Idaho, New Mexico, Oregon, and Washington. And we spoke to those because those were the seven States that contain over two-thirds of the Forest Service permits.

Mr. THOMAS. Which of them said this was impeding their ability to charge?

Mr. WOODWARD. Washington, New Mexico, and Colorado.

Mr. THOMAS. So they can't charge—I find that interesting because I don't think you have a choice of places to put a tower generally, do you? It has a little to do with what you want to do with your message and who has the monopoly of the land around. It isn't as if you are buying a car.

Mr. ANDERSON. That is right. I think it is in those cases where you actually have some private sites or State sites along with Federal sites. And the Federal sites' low fees tend to depress the market value, if you will, of the others.

Mr. THOMAS. I guess I am a little confused as to what you suggest as a remedy.

Mr. ANDERSON. I believe the remedy is to obtain fair market value for the use of these sites. In this particular case—

Mr. THOMAS. There must be a problem with that. This has been going on for—what is the obstacle to doing that? I mean, that is a pretty glib statement. Anyone would agree with that.

Mr. ANDERSON. I think there has been some resistance on the part of those that would have to pay those fees.

Mr. THOMAS. So that is the only problem?

Mr. ANDERSON. And I think—

Mr. THOMAS. Why don't the agencies do this if they—

Mr. ANDERSON. Well, I think part of the situation is that the Congress itself has imposed limits on these fees.

Mr. THOMAS. That is the problem then? That is the obstacle? What do you suggest be done besides just saying it has to be appraised value? What are the obstacles to doing it?

I have a little problem with GAO in that you come in always with a solution but never how do we get there and what needs to be done to accomplish that.

Mr. ANDERSON. I believe in this particular case the solution is you have been working on this for a number of years. They have used a public comment process and going out in the Federal Register with proposed fees and trying to get the fees raised up to fair market value. I think you should let that process work, and Congress in its oversight then can decide whether they have gone too far.

Mr. THOMAS. Do they have the authority to do that?

Mr. ANDERSON. Yes.

Mr. THOMAS. But they haven't?

Mr. ANDERSON. That is right. Because legislative limits have been imposed.

Mr. THOMAS. Then they don't have the authority? Which is it?

Mr. ANDERSON. They have the authority, and they had the authority in fiscal year 1994 to raise fees about 10 percent, but that is far, far below what it would take to get the fees to fair market value.

Mr. THOMAS. When did the limitation come aboard?

Mr. ANDERSON. I believe that first limit was started in fiscal year 1990, and it has continued through fiscal year 1994. In 1990 and 1991, I believe, there was a limit that no fee increases were allowed. I believe the next 2 years they could go 15 percent above whatever the fees were in 1989.

Mr. THOMAS. I am sorry to interrupt you. Allowed by the appropriations process?

Mr. ANDERSON. Right. And then a 15 percent limit on the amount that the fees could be increased was imposed the next 2 years. And in 1994 there was direction that the fees be increased by 10 percent.

Mr. THOMAS. Just one final question. Your observation that some of the smaller ones said that they wouldn't go out of business if you raised the fee. Is that the measure of a fair fee, that you wouldn't go out of business?

Mr. ANDERSON. Oh, no, I don't think so.

Mr. THOMAS. Why do you use that remark? I am sort of offended by that. That has nothing to do with the fairness or the equity, just the fact that you wouldn't go out of business.

Mr. ANDERSON. That was the argument that was offered by the industry as to why the fee shouldn't be raised is because you will put these small broadcasters out of business. So it seemed like a very pertinent question to ask.

Mr. THOMAS. So you are satisfied if it wouldn't go out of business it is okay?

Mr. ANDERSON. No, but I mean you have a Federal Register process.

Mr. THOMAS. You said it two or three times.

Mr. ANDERSON. We have a Federal Register process, a public comment process that allows people to provide comments to fine tune the fee process.

Mr. THOMAS. So that wouldn't necessarily be your limit, that you wouldn't—anything that would keep you from going out of business would be—

Mr. ANDERSON. No.

Mr. THOMAS. I hope not. Thank you.

Mr. VENTO. The gentleman from Idaho.

Mr. LAROCO. In that statement, Mr. Chairman, I just observe that this problem has been going on since before I came to the Congress.

Obviously, Deer Point is in my district, and I am concerned as Mr. Thomas is about the effect that market value fees or any ratcheting up in a high percentage would have on the local communities and so forth. That is why I got involved in this.

Actually, I introduced the legislation that included the advisory committee's proposal so that we could get some dialogue on that and move it forward. It seemed like it was a solution. It still seems like it is a solution in many ways.

Is an advisory committee—from your knowledge and understanding, Mr. Anderson, is that customary? Do you see that a lot as you look at other agencies and other issues?

Mr. ANDERSON. I think that this is an approach that is used quite a bit when there is a controversial area and you get a committee to come in and make some recommendations or proposals, yes.

Mr. LAROCO. It seemed to me that it was a way out of this. From your knowledge and experience in the field with GAO, was the composition of this advisory committee out of tilt? Was it tilted? Was it out of balance? Was it illogically composed?

Mr. ANDERSON. I wouldn't say it was illogically composed. Clearly, you need representation of all those that are going to be affected, and I think it had some balance, but the majority, 6 of the 11 members, I believe, were industry representatives. But it did also have representatives from Forest Service and BLM, a private person representing a private company, that sort of thing.

Mr. LAROCO. Did the BLM and the U.S. Forest Service sign this agreement?

Mr. ANDERSON. I believe they did.

Mr. LAROCO. They did? It sounds like we are making progress so far here.

The Congress was in gridlock, which happens occasionally around here. Then we looked for a way out. We put together an advisory committee. I can't take credit for that. It was done before I was here.

Then it was composed reasonably, adequately, logically, and then the parties signed it. Now here we are trying to tear it apart.

I have problems just like my colleague from Wyoming. When you mention the fact to this committee that my constituents said they wouldn't go out of business as a hard and fast declaration that this was okay, I just sort of shook my head over here on this side and—saying what kind of a statement is that that says that they are not going to go out of business? What else do we have from your standpoint with your interviews that determines whether this is reasonable or not?

Mr. ANDERSON. I think I can add one telling point. Five of the eight that we talked to also indicated they thought the fees were too low and should be raised.

Mr. LAROCO. But they would agree with the advisory committee. I mean that is where we are headed. I don't think anybody is trying to necessarily decrease the fees.

From your experience and from your day-to-day activities is this the only example in our country of where users are not paying fair market value?

Mr. ANDERSON. No.

Mr. LAROCO. I think I heard grazing.

Mr. SYNAR. Timber, minerals, water.

Mr. LAROCO. But I mean we are working on these issues right now. There is a conference committee right now to revise a 122-year-old statute. The Secretary of the Interior is trying to resolve this issue. We have an advisory committee.

And, actually, I think there is a majority of members of this committee that wanted to accept the advisory committee's position. I backed away from pushing that point in committee.

And here we are, and I thank the chairman for having this hearing. I think it is incredibly important.

Maybe we could take Deer Point just as an example here, that there is a discrepancy between the Forest Service appraised market value fees up there of \$12,500—and I am talking about FM radio here—to the advisory committee's estimated market value fees of \$2,625. In your analysis of what went on there, why is there the discrepancy and what is the problem here?

Mr. ANDERSON. Well, from everything that we could tell, the Forest Service actually went out and did market surveys. They did appraisals and that sort of thing.

The advisory committee process is less documented, less formal. You can't really tell exactly what they did do. And it looked like maybe it was just people's opinions of what the fee should be. And when you have some documented support for a particular position that tends to give you a little bit more confidence in what results from that.

Mr. LAROCO. If we go from the current range of fees—for example, in Deer Point for television, of \$671 to \$712 up to \$13,000, what is the math on that? What kind of a ratcheting is that, what is the percentage?

Mr. ANDERSON. I can't do it off the top of my head, but I think we are talking significant—you know, many, many times. We can do that computation and provide it for the record, but it is a significant increase.

[The information follows:]

An increase of fees from \$671 to \$13,000 is an increase of 1,837 percent. An increase of fees from \$712 to \$13,000 is an increase of 1,726 percent.

Mr. LAROCO. But in response to Mr. Thomas's question you said that is what we ought to be doing. That is where we ought to go here, just overnight.

Mr. ANDERSON. I think if you look at our report, one of the things that we point out is that you need to take into consideration the impact on the people that are going to pay the fees, and, as a result, you might want to phase these fees in.

But the dilemma that you have is that you do have some legislation out there that says you should get fair market value for the use of these lands, and you can't necessarily go from night into day and accomplish this overnight, but you could phase it in. And I think both the advisory committee and the Forest Service have proposed that as well.

Mr. LAROCO. But if you took the advisory committee's proposed fees as a starting point, you would have a tripling of those fees which generally the advisory committee thought was reasonable.

We have debated this many times in the quadrupling of fees, getting to the grazing point that my colleague just raised which has been rejected many times, and this is a compromise that is being accepted. Even my colleague from Oklahoma has said that we should have a quadrupling of fees—of the grazing fees.

Mr. SYNAR. We will take a tripling.

Mr. LAROCO. I am not for tripling. I am saying in this particular instance that they are tripling them, and you have a consensus. But that is not good enough, and that is where I have the problem.

What other factors are taken into consideration with regard to the sites? Who maintains those sites, for example, the roads up to the sites and clears the snow and all of that? Is that a partnership between the site users and the site fee, the leasees?

Mr. ANDERSON. It is typically the facility owners that do that.

Mr. LAROCO. The facility owners meaning what?

Mr. ANDERSON. The tower owners. Usually, the Federal Government is not involved in that.

I would like to make a—

Mr. LAROCO. Who puts up the security fence up there to protect their equipment, for example?

Mr. ANDERSON. That is, again, the facility owners.

Now these are the types of amenities or extras or whatever that the Forest Service took into account when it did its comparability market surveys and that sort of thing to try to even these things out.

Mr. LAROCO. Is that included in the Forest Service appraised market value fees? Those type of capital improvements to protect their equipment and to get to their sites to monitor their equipment to get the repair?

Mr. ANDERSON. They got their fees by netting all that out so that you had apples and apples—so that you weren't comparing apples and oranges. That is how they got their fees.

Mr. LAROCO. I still think it is a worthwhile point to recognize, that Deer Point is right next to the ski area where people enjoy the skiing 16 miles outside of Boise. It is windswept up there. You have to keep it cleared. You have to get up there and maintain the equipment.

I don't know what it could be used for except to transmit signals, you know. I don't know if somebody thought this was a good site for a condo or what, but I can tell you it has a great view of Boise. But there are better views and landscapes than that.

I just think around here that we ought to end gridlock, and we ought to move forward where we can, where there are opportunities.

I am a little disappointed in the Forest Service and the BLM that have signed off and signed this agreement, and now they come around in the back door and make proposals and don't let this germinate a little bit around here so we can pass something that is reasonable.

Maybe it is just the core document. Maybe it is not the final solution. But I believe that in our wisdom around here we are trying to end this gridlock. We had a document that could do it. That is why I introduced this legislation. I thought it was the key that unlocked this gridlock.

I didn't come here to propose—I am not saying, hell, no, and I don't have my elbow on the no button here. I want to move this forward.

But I think my colleagues from the West have made the points—and I am sure Mr. Hansen will as well—that many of these stations and the broadcasters are integral parts of our communities

out there in the rural West, and I think some of that ought to be taken into consideration, so thank you.

Mr. FOWLER. Mr. LaRocco, could I make a comment on something you said? We are not here to blast the advisory committee study. That is not our intention, and I hope that is not the way it is being construed.

Mr. LAROCOCO. Well, I hope you understand the concerns that I have when the testimony is given that the broadcasters just said that this would not put them out of business. I mean, you know, you could put that to your own operation. If we cut your budget 50 percent, could you still operate? Yes, you would still operate.

If the American people get their will and they cut our salaries and cut our staffs, would we continue to operate? Yes, we have an obligation, and I think that these stations may cut their budgets and their contributions to Little League and to multiple sclerosis or whatever they do. They are always there.

I wear a T-shirt that has broadcasters on the back of it for Alzheimer's memory walk. That is what they are doing. They are promoting this. You might say that it is good business, but in my mind, that is going to be one of the first things to go so that they can still send their signal.

Yes, they will be able to operate, but you have to understand that when we get testimony like that that it seems like it is just a punch in the jaw to broadcasters, and by God it makes your point that we could ratchet these things up to 12 percent or whatever the heck it is, and that is okay. Most people think that tripling is okay, quadrupling maybe on this.

So I mean you just have to understand what we are hearing. If you are sitting on my side of this desk and you say, well, they won't go out of business, that is fine. But what are they going to cut. We could all be leaner perhaps and not meaner, but I just don't think it gets you where you want to go and what the true accounting is here.

Mr. ANDERSON. I would just add one thing, and that is if the argument that had been proposed by the opponents of raising the fees had been that you are going to cut back on the, you know, the types of examples like you just mentioned, we would have pursued that, but the argument was you are going to put these people out of business, and that is why we pursued that line of questioning.

Mr. VENTO. In other words, the report states the response of the entities that they were sent to talk to concerning that particular statement. So it wasn't the GAO's—they were just exploring—in other words, saying why can't we do this since they explored the ramifications of that, and the report states the answers, which I won't repeat.

Mr. Hansen.

Mr. HANSEN. Thank you, Mr. Chairman. I appreciate you and Chairman Synar holding this hearing. I think it is an extremely important hearing that we are having at this particular time. My friend from Wyoming pointed out there is a difference between Wilson Peak and Casper, Wyoming, and there is also—I don't know if you have ever heard of Crouse Creek, Utah or Ibapah or Alimony or any of those little infinitesimal areas that have got people that are good Americans working hard trying to eke out a living and

they somehow feel that they have the right that they also can pick up some of these things.

I think the thing that intrigues me the most in this area is the definition of fair market value. It is the issue we always get in.

I normally vote with Mike Synar on a lot of things. We disagree on cattle occasionally, but Mike is one of the better heads around here and I have a great appreciation for his ability in these things and I appreciate him bringing it up. The part that would bother me is this market value thing.

Just like on cattle, they are now trucking them into Canada and paying them to keep the grasses down and things such as that. It flies in the face of some of the fair market values. We have an honest disagreement.

I guess the disagreement I would have is I have been looking at this and possibly I haven't looked at this anywhere near the extent that the two chairmen have or you folks, but it comes down to this thing of appraiser. I think you told the gentleman from Wyoming that you don't have on staff professional appraisers; is that correct?

Mr. ANDERSON. That is correct.

Mr. HANSEN. And I also feel that you followed that up by saying that you use Forest Service appraisers in this situation and rely rather heavily on their determination of fair market value?

Mr. ANDERSON. We looked at what the Forest Service did, we talked to their appraisers. We also talked to BLM appraisers, as well.

Mr. HANSEN. There are so many things to write into this equation, it becomes rather difficult. It is one of those things that becomes rather subjective rather than objective. It is kind of like how bad did you hurt because of that injury you were in. One orthopedic says they are a malingerer and the other said you have a 50 percent permanent disability. Well, the jury sits up here and we are trying to figure out who is right. The question comes down to this fair market value thing. It kind of disturbs me a wee bit that you folks didn't use independent folks.

In arbitration, which is allowed in most States in the United States, arbitration is one side and the other. In other words, the Federal Government would take one side and I guess I would categorize the Forest Service—and I know they are very professional—but I would say there the Forest Service would be on the GAO side.

Now, who is the other side? Where is the independent that came in and did this? Who did we hire as an independent appraiser who has all of the credentials? As you know, every State has loads of them, and they cost an arm and a leg, I admit that, and I am sure your budget is as tight as anybody's. Who did you get on the independent side is what bothers me.

Mr. ANDERSON. The Forest Service, Mr. Hansen, did hire an independent appraiser from the outside to come in and he did these 12—

Mr. HANSEN. Who were they and what were their credentials?

Mr. ANDERSON. They were very credentialed.

Mr. WOODWARD. Paul Miling was the independent appraiser.

Mr. ANDERSON. I think he is respected throughout the industry.

Mr. HANSEN. And the criteria that you used. For example, did you use the criteria of the effect it would have on a rural area, the Ibapah, Utah with 27 people in it who pick up a beam on a little piece of acreage there? What effect would that have on a rural area that they could not have—was that part of the criteria that was put in this equation?

Mr. ANDERSON. I don't believe that when you go in to do appraisals, I don't think it gets into the impact on the community, it gets into having comparable information on what comparable sites are getting for the use of their land.

Mr. HANSEN. If you look at these little areas that are stuck around the West—and as you know, the West is pretty well owned by the Federal Government—and if you fly over those areas, I do on occasion, with an old private pilot and you see a little teeny piece of ground that they own on a peak somewhere, what would be the average size of those areas where relay stations or transmitting stations or whatever the technical term is, what would be the size of those—

Mr. VENTO. They are called translators.

Mr. HANSEN. Translators. Thank you, Mr. Chairman. Translator sites, what would be the size of those little areas?

Mr. ANDERSON. I don't know, but that is one of the things I would like to clarify, while you are bringing that point up, is translators shouldn't even be part of this debate because the fees for translators have already been agreed to by the translator industry and the Forest Service. So many of these small communities that you are talking about are served by translator sites, there is no disagreement. The fees are already agreed to.

Mr. FOWLER. The fees for those kind of sites right now are about \$75 a year.

Mr. ANDERSON. They are going to go up to about \$82 under the new agreed-to fees.

Mr. VENTO. If the gentleman would yield, I sort of led that question and I appreciate the gentleman yielding, but I think it is important to clarify this because we have heard so much about rural and remote areas. These translator sites apparently rebroadcast television signals and they are the principal means by which most remote areas receive the broadcast, both television and radio signals that are so important to your communities.

Mr. ANDERSON. That is correct.

Mr. VENTO. Thank you, Mr. Hansen.

Mr. HANSEN. Thank you. The gentleman was commenting on something just a moment ago.

Mr. FOWLER. Translators, the rebroadcasters that serve very small areas. I am talking now areas 15,000 people or less, in that range.

Mr. HANSEN. You say that is already agreed on, those fees?

Mr. FOWLER. That is already agreed on.

Mr. HANSEN. And is that fair market value, that agreed-on area. Two groups sat down and said this is the figure we will come up with or did you use fair market value as the criteria?

Mr. ANDERSON. We didn't look at that as part of our review. That would be a good question for the Forest Service, I suppose. It could be a negotiated fee since that is an accepted way to do it, too.

Mr. HANSEN. It kind of disturbs me in a way that the advisory committee, and if I heard you correctly, you said that 6 of the 11 were industry people; is that right?

Mr. ANDERSON. That is correct.

Mr. HANSEN. What is it that they did that you didn't like? I mean obviously there was something in there, because you jacked the fees up a wee bit. What did they do that you folks didn't like?

Mr. ANDERSON. Let me make clear, Mr. Hansen, we didn't do anything. We didn't jack any fees up. We are talking about—

Mr. HANSEN. Excuse me. What is it that the Forest Service, as you analyze their work, what is it that they didn't like, the reason they jacked those up?

Mr. ANDERSON. I think the biggest problem was, and it was readily acknowledged in the advisory committee's report, and that is that their fees were not based on fair market value. Their fees were based upon judgments and more informal information.

For example, they came up with what they called an estimated market value fee, and I know you can't see this chart very well, but in the report and in the testimony, as an example of the estimated market value fee that the advisory committee came up with was \$60,000 for Mt. Wilson for TV compared to \$75,000 for the Forest Service. But then the advisory committee went ahead and reduced that by what seemed like almost an arbitrary 30 percent to adjust it for what they considered to be the public service that they provide. Now, they didn't have any basis for this 30 percent reduction, so that tends to reduce your confidence when you just sort of come up with a number out of the air to reduce their own estimated market value fees.

Mr. HANSEN. We haven't had—I haven't had the opportunity to hear from the advisory committee, whether or not it was something out of the air or whether it was a pretty objective analysis of it. But do you feel that—obviously there is different criteria that they use. You mentioned it was out of the air. Maybe they feel it was something very objective that they came up with that they felt that they could do. Is there any different criteria? Do we all use the same type of criteria in this thing?

Mr. ANDERSON. I think that the criteria that was used, the Forest Service was more formal, systematic, whereas the advisory committee was looser than that. I think if you take a look at the advisory committee report, there are two minority opinions at the end of that report, and one of the members of the advisory committee pointed out how uncomfortable they were with the approach and the process that the advisory committee used in coming up with their fees.

Mr. VENTO. If the gentleman would yield to me, I think it is a legitimate issue here if you think that, for instance, in terms of the television, radio, or others using communication sites, they, as a public service entity, are saying that they should receive a 30 percent reduction from whatever the value is that they came out with in the advisory report, a 30 percent reduction. So that was simply their interpretation of what their value of public service is in this particular instance.

So I think that besides of course some arguments over which Mr. Anderson has pointed out over the appraisals, but if you discount

that, I think the issue here is whether or not public service is a legitimate issue. If Congress wants to deal with that, then it needs to deal with it through changing the law.

Because right now, of course, you give them the frequency, you give them other types of benefits in terms of their public service and the question is should they also get another public service discount in the rents they pay for using public land? Of course, conversely, they don't receive that from private or State land or other instances where it is simply not available on public land to use such a resource.

Mr. HANSEN. I think the chairman has come up with an interesting idea. I guess we could argue criteria for an awful long time around here. But years ago the U.S. Government determined that to help out our rural people that we get into rural electric and we get into rural telephones, and maybe it has outlived itself, maybe it hasn't. It is an issue I don't think I want to bring up at this time, it is so sticky.

On the other side of the coin here we find ourselves in a situation that maybe the idea of using rural electric is one of the things that made us an agricultural and industrial guy to some extent. So maybe they were subsidized for a short time, but out of that there came such a tremendous benefit that it paid off in the long haul.

I just wonder if maybe to a certain extent we are now going into the communication thing and the highway and the things that Vice President Gore talks about, that if there isn't some of that criteria that would be looked at as well as the factual criteria, value of the land and all of these things, in fact—I am groping because I am having a very hard time to come up with the criteria that was used between the advisory committee and the other committee.

I feel much like the juror who is trying to look at this lady on the stand who claims a whiplash injury and she is never going to be the same, and someone that they spend, it seems like 4 hours, saying how credible an orthopedist he is, coming in and saying that she is nothing but a malingerer and she doesn't deserve a dime. So let me just say that I look forward to getting up to speed with the two chairmen here who I am sure are way ahead of me on this criteria, and I will devour some of this information.

And thank you, gentlemen, for appearing before us.

Mr. VENTO. The gentleman is doing just fine. The gentleman from Utah is doing well I think in terms of these remote areas, rural areas. The concern is, as Congressman Thomas was pointing out in his exchange with Mr. Anderson, is that the Appropriations Committee for the last 4 or 5 years has put limitations—when the Forest Service and BLM decide to adjust the fees, our colleagues in the Appropriations Committee put a moratorium on it. And so that is what we are faced with.

The issue here is while these percentages sound dramatic, even when the Appropriations Committee allowed a 10 or 15 percent increase, in 20 years how far behind would we be in terms of reaching the fair market value, Mr. Anderson?

Mr. ANDERSON. Depending upon how much the sites increase in value, you might not make much progress at all, because if you just limit the increases to that amount, because you have a large valued site, for example, and if it is going up 3 to 5 percent a year appre-

ciating in value, you are never going to catch up with a 10 or 15 percent fee.

Mr. VENTO. You know, one of the things that strikes me here is I really feel some empathy and concern. I understand my colleagues have come from the range and in rural areas and nobody wants to deny the signal for television and radio communication. I mean I am strongly motivated by some sort of standards of service that everyone should have in terms of trying to provide the opportunity for communication. I think it is absolutely essential in a Nation as diverse and broad-based as we are.

But the concern is, when we began to look at some of the high value sites, I don't think there should be any argument about that. So I would be happy and try to provide whatever comfort to the remote areas. But I think to a large extent those issues have been addressed.

In fact, we could deal with the hardship waiver. There are waivers for nonprofits. I think the concern that I really have at this point, and I would think that this would be one that my colleagues would share with me, is whether or not for instance, even for the nonprofits, are they paying their way? I mean is this costing the Forest Service and the BLM something to provide those sites?

Mr. HANSEN. Would you yield on that point? I think the chairman has come up with an interesting thought there. Why don't you just sell it to them? I mean we are only talking a minuscule piece of property. Why don't you just sell it to them? What is wrong with selling certain pieces to them and give them access to it? Is that something that was not in your study, or did that come up at all?

Mr. ANDERSON. That didn't come up at all.

Mr. VENTO. I think it is something to explore. Of course, this would result in a significant cost, I am sure to many of these entities. I note that, in fact, in one of the statements in reading ahead in some of the testimony of the Forest Service and BLM, at least the Forest Service reserves some of the sites, like a footprint site, for their own use or for some future use of the government; is that correct?

Mr. ANDERSON. I am not aware.

Mr. WOODWARD. Historically, they have. There have been some sites where the Forest Service has asked for a certain percentage of a tower. It is our understanding as they move forward with their new fee proposal that they are going to eliminate that. Their view is they are going to fair market value.

Mr. VENTO. What is the purpose for that, Mr. Woodward? Were you able to ascertain whether it was for public safety or health or fire fighting?

Mr. WOODWARD. I think it would be for internal Forest Service uses.

Mr. VENTO. I think the point is that we obviously have a broader obligation in terms of what the Federal needs might be that we can't anticipate that don't necessarily harm the use of the site by the tenants. The fact that the primary tenant can take and sublease these areas that are enormously valuable, such as the Mt. Wilson site where they are taking in nearly a half-a-million dollars in revenue, paying a use fee to the Federal Government, and they

end up walking away with a cool \$400,000 is a concern that needs to be addressed.

I mean the primary tenant is actually making money on this site. But this is an atypical site, is that correct, Mr. Anderson?

Mr. ANDERSON. I think that is correct.

Mr. VENTO. We picked up probably the worst example.

I want to put into the record a letter from the Department of Agriculture to then-Chairman Bill Natcher of the Appropriations Committee. I want to call my colleagues' attention to the letter, because there has been a lot of confusion about the role of the BLM and the Forest Service on the advisory committee regarding the 30 percent discount proposal, appraisal methods, and the fee and using a unique or a different method for the schedule proposed by the advisory committee.

But the fact is that the Department of Agriculture did not support the advisory committee findings. I would just read one paragraph, or one sentence from page 2 of the letter.

It says, "Unfortunately, the committee exceeded its charter when it tried to develop specific fee schedules. Congress did not direct the committee to take on this assignment. We cannot accept the result."

They then go on and point out the hard work and progress that has been made—and there was some progress made with the advisory committee. So that ends the quote. I will put the letter in the record. Without objection, and hearing none, so ordered.

But the point is that the BLM and Forest Service did not agree with the advisory committee report. First of all of course, the law mandates that they collect fair market value for the use of Federal land. Now, Mr. Anderson, one of the themes that I think kind of comes back to me here that is not being stated by my colleagues, but I think it is something that concerns them, is that so often there isn't a comparable appraisal. That is to say in essence the Forest Service or the BLM has a site that is all by itself somewhere, you are trying to relate to it a site in California, it might be in Utah, it might be close to Idaho. Are there sites where there isn't an exact, an absolute parity in terms of comparison with the Forest Service, even though they use these appraisers and they try to equalize them?

Mr. ANDERSON. I am not aware of any. I think that the Forest Service was able to develop some comparables from information throughout the country and that the process that they used, I think, was also one that even the advisory committee in its report said that this was a reasonable process to use. These sites are unique, but if you can go around in different areas of the country and eliminate things that make them different, amenities and that sort of thing, that you can come down and get some comparable information that you can use to set proposed fees.

Mr. VENTO. The concern I think that is being stated is that basically this ends up being an educated guess, which is so far extrapolated out, that it simply comes back as an unfair fee. Do they have a provision in the law now for a hardship fee?

Mr. ANDERSON. Not that I am aware of. I don't know.

Mr. VENTO. When we talk about these substantial increases in fees to fair market value—and I note the Forest Service is not

going to fair market value. For instance, in Mt. Wilson, fair market value is something like \$75,000. The Forest Service said they wouldn't do that. They would go to something less than that. Obviously, I think there is a key here for a greater share of the revenue.

I think it is appalling, frankly, to the Forest Service and BLM that they don't keep a better record of all of this. Whether or not it pays or not I think it is our responsibility, the land managers responsibility to know what the hell is going on on the public land in terms of who has subleases, that they don't have an adequate recordkeeping system in terms of subleases, is that correct?

Mr. ANDERSON. That is correct.

Mr. VENTO. We don't know who is subleasing from whom, what the agreements are, what the payments are. I mean I think a lot of this, if it were made public, we would find out that we really didn't know in a sense what the decisions are that we have to make.

I think we can be safe in terms of giving some direction, but I think we really need to get some information here in terms of what is happening on these Federal lands. But in comparing some of these sites, not taking Mt. Wilson, but taking some of the other middle range sites—the 9,500 permits between the BLM and the Forest Service, about half of which are for-profit sites—the magnitudes of the fee increases here, are they really significant compared to the revenues of these radio or television stations, Mr. Anderson? I mean a station in Albuquerque or stations in Sandy Heights or other areas, aren't these pretty profitable stations?

Mr. ANDERSON. You know, I don't have any information—I don't know whether my colleagues gathered any information on the profitability of these—

Mr. VENTO. Well, in terms of gross revenues, I guess, Mr. Fowler. We are talking about a \$50,000 fee for a communication site for stations or a \$12,000 fee. What are the revenues?

Mr. FOWLER. Mr. Chairman, I can't give you hard data. I mean intuitively what you are saying seems to make sense to me, but we don't have any hard data on that.

Mr. VENTO. I mean my impression is, that these are pretty large entities; they are big businesses.

It seems to me a case here where the Forest Service, even on the nonprofit sites would say that we at least ought to have them paying their own way in terms of these particular issues—at least the cost to administer the program. If the Forest Service and the BLM are going to indirectly subsidize nonprofits, we don't expect them to absorb the cost to administer the program.

The fact of the matter is, as my colleagues know, that the BLM and Forest Service professionals are stretched to the point that they are not able, to properly administer the program and that is what the GAO is reporting to us—the agencies can't do their job, and they don't know what is going on on these lands.

So I just think that some sort of nominal fee—the staff is handing me something here. It says the proposed rule, that is, the BLM proposed rule, would establish a rental payment schedule for various communication uses for which fair market rental is required. However, with the concurrence of the BLM State director, the authorized officer may reduce or waive the rental when it is deter-

mined that the rental would cause undue hardship on the holder applicant and that it is in the public interest to waive the rental payment. Current right-of-way rental waiver policy is not affected by this proposed schedule. What does this constitute? My judgment is what staff has been pointing out is some sort of a hardship waiver so that we can avoid the fear of a community losing its communication services.

One of the phenomena, of course, that occurs with the current system is that if you happen to have the permit for the site, you are in a fee increase moratorium, but if you are *de novo*, you are a new permittee setting up the site, then the fee increase moratorium doesn't effect you; is that correct, Mr. Anderson?

Mr. ANDERSON. That is my understanding, yes.

Mr. VENTO. So, in other words, it is only the new businesses that come in for a permit that would then be expected to pay whatever fair market value is or whatever the fee is. So the moratoria has its limits. So I think it is really going to start working some inequities if we don't deal with this.

I don't have a good comfort level on this issue. However, after hearing the agencies testimony today, we may be able to get more direction. It seems to me that this sort of response from BLM and if applicable from the Forest Service, would go a long way toward satisfying some of the concerns.

But if we have these high-priced sites on top of some of the areas, and I think we can pick them and count them on our one hand, obviously I know it is not the intent solely to protect or to deal with that particular issue in that manner. So let's proceed. I know that Congressman Synar had a few additional questions, and I will yield so that he can ask them.

Mr. SYNAR. Thank you, Mr. Chairman. Now, Mr. Anderson, you all have done work for our subcommittee before and you found that in the area of concessions that the Interior Department didn't even have a comprehensive list of all of the concessionaires, much less the data on how much we were paying in fees, et cetera. This is the same problem, isn't it? Particularly the Forest Service and BLM don't even know how many unpermitted communication users they have, do they?

Mr. ANDERSON. That is correct.

Mr. SYNAR. So when they estimate that they are currently undercollecting about \$20 million to \$25 million a year in fair market rent from communications users, they don't know if they are or not, because they don't have any reliable data, do they?

Mr. ANDERSON. That is correct.

Mr. SYNAR. It is not a reliable estimate, is it?

Mr. ANDERSON. No. It could be higher or lower.

Mr. SYNAR. So now, if the Forest Service doesn't have much information, they don't have information on fair market value on primary permittees, because they don't know how many there are, they also don't have any information about the rental revenues from subleases, do they?

Mr. ANDERSON. They don't have complete information.

Mr. SYNAR. So what we have here is basically they don't have—they are throwing the baby out with the bath water. They don't know what they have and how much they are losing, do they?

Mr. ANDERSON. I think that is correct.

Mr. SYNAR. All right. Now, if the Forest Service and BLM propose these fee schedules, it would make the administration of the program easier in order to collect the fees due; is that correct?

Mr. ANDERSON. Yes. The footprint lease, for example, would reduce the amount of paperwork because you wouldn't have to have all of these separate permits for the different users. You could have one lease, and that would make it easier to administer, yes.

Mr. SYNAR. All right. Now, the report that you present to the committee today notes that these fees that are currently being charged by the Forest Service and BLM are depressing the market values of State-owned communication sites and distorting the market; is that correct?

Mr. ANDERSON. Yes.

Mr. SYNAR. Does that mean that if Forest Service and BLM raise their fees, that State fees would likely go up, too?

Mr. ANDERSON. I think so in areas where they are comparable in State sites, yes.

Mr. VENTO. If the gentleman will yield to me, the other aspect of this is that insofar as the fees of the Forest Service or BLM are increased, they would also share a portion of that fee increase with the States; is that correct?

Mr. ANDERSON. That is correct; yes, sir.

Mr. VENTO. So that a State like California, as well as others, may be losing hundreds of thousands of dollars on this basis; is that correct?

Mr. ANDERSON. That is correct, and that money can be used for local schools and roads.

Mr. VENTO. Is that important? Thank you, Mr. Synar.

Mr. SYNAR. Winners to everyone. Mr. Anderson, the Federal Government owns about 50 percent of all of the lands in the West, and much of it is mountain tops and thus ideal for these communication sites. Now, are all of these federally-owned mountain tops easily accessible and equipped with power lines?

Mr. ANDERSON. No, I don't believe so.

Mr. SYNAR. Now, the State of Arizona indicates that they do not provide any amenities such as roads or power lines to facilitate communication use in their State-owned lands. Do other States or private landowners that you all surveyed provide those amenities?

Mr. FOWLER. Generally speaking, the States told us they do not.

Mr. SYNAR. So that argument by the broadcasters that the Federal fees should be kept low because the site users have to provide these things is just bogus, isn't it?

Mr. FOWLER. I question it.

Mr. SYNAR. Yes. Mr. Chairman, that is all the questions I have. I would like to leave the record open obviously for additional questions.

Mr. VENTO. Yes. Mr. Hansen, did you have further questions at this time?

Mr. HANSEN. No, I don't. Not at this time.

Mr. VENTO. Mr. LaRocco.

Mr. LAROCOCO. I just wanted to pursue your closing comments, Mr. Chairman, about where these broadcasters are, for example,

new broadcasters coming into the market with regard to the moratorium and so forth. It seems like there are a couple of things here.

First of all, we have under FLPMA the requirement that there be market value, and then the Congress comes in and they say, hold it, there is a moratorium. So there is a law and then Congress acts and then they acted instead of the advisory committee, although the moratorium still continues.

But the uncertainty is driving a lot of us crazy, whether it is grazing or anything else, quite frankly. Everybody has got to go to the bank and everybody has to go and have a business plan. And if you are new in the market and you are coming in and saying I want to operate this market, whether it is Idaho or Utah and out West and you say well, you have, and you own collateral and certain things, you own the equipment, you paid for your license and then you say, well, what is uncertain? Well, the mountain top. And you could look at any range of fees there and the bank is going to say well, where are you? And that is why we need to resolve this issue.

Did you interview any new broadcasters out West who were not subject to the moratorium, but were subject to the market value portions of the law?

Mr. ANDERSON. I will have to defer.

Mr. WOODWARD. No, we did not. There aren't that many new facility owners. And what we generally found is that there are a few examples where one tower owner is next to another tower owner and the new tower owner is getting charged significantly higher fees because they were there since 1989. But in general we found that the Forest Service kept in line with the fees that they were charging the rest of the facility owners at the site. From a fairness issue, somebody might be paying \$25,000 while everybody else is paying \$2,000. So the Forest Service, it seemed like they were waiting for some guidance from Congress as far as proceeding on this issue.

Mr. LAROCO. That is why I introduced my bill. I thought we would give them a little guidance. I heard what they were saying, and now I am a little concerned that they are a little bit all over the map here.

But Mr. Fowler, do you want to reconsider your answer about that being a bogus argument by the NAB? Is that your formal statement, that this is a bogus argument about amenities and maintenance and so forth? Is it absolutely drop dead bogus?

Mr. FOWLER. When we talked to State land managers, what they told us in those conversations were that generally they do not provide amenities with their sites either.

Mr. LAROCO. States?

Mr. FOWLER. States.

Mr. LAROCO. Okay. Now, on Federal lands, in terms of the dialogue I had with Mr. Anderson, we talked about the fact that the fee user, or the site user has to clear the road, provide for security, have access and so forth. These are—this isn't just run up, you know, a half mile to the hill routine here.

Mr. FOWLER. I understand.

Mr. LAROCO. But is it totally bogus? I mean do they not have a case to be made?

Mr. FOWLER. No, I don't want to talk in absolutes. I would stand by my statement that generally what we are hearing from the people that manage these programs in the field, State people and Federal people, is that they don't provide amenities.

Mr. LAROCO. But the real question is that the concerns that site users have is that there are expenditures, capital outlays that they have to provide for clearing the roads and maintaining the sites and providing for security and other aspects of reaching their equipment and so forth that is allowed to them under the law. And I thought I heard you say that that is a bogus argument.

Mr. FOWLER. No, no, no, no. What I am saying is an argument has been made that the Forest Service, in using its comparable data that it collected from around the country, in using that data to come up with their suggested fees, that some critics in the industry have said that in doing that, they are mixing apples and oranges because they are comparing some of the sites to where amenities are provided to sites where amenities are not provided.

Mr. LAROCO. I see.

Mr. FOWLER. What I am saying is they eliminate the Forest Service in going through the process it went through; compared apples to apples in that they did not compare sites that were not giving amenities to sites that were giving amenities. That criticism of the process that was followed is not warranted, based on what we found.

Mr. LAROCO. Okay. Thank you, Mr. Chairman.

Mr. VENTO. Mr. Anderson, during the course of your review did you run into any instance where there was any discrimination against the use or access to the site by competitors? I mean once somebody puts up one of these \$1 million, \$2 million towers, they have been there for a long time, they actually control who goes on and who does not. What are the rules—does the Forest Service or the FCC or others have certain rules that permit access as well as the publication of a fee schedule for subleases?

Mr. ANDERSON. Mr. Chairman, I don't know the answer to that question.

Mr. WOODWARD. I think the tower owners on a large site where you might have a number of towers, as far as getting on a tower if you are a subtenant you are operating in the market at that point. You have a number of towers and different tower owners may be charging different rates. So I don't think there is a guarantee of access.

But clearly the tower owner, as demonstrated by our Mt. Wilson example of what he can generate in subtenants, has an interest in most cases of having people hang on his tower. So there is a competitive market where other tower owners will compete and subtenants will pay the going rate.

Mr. VENTO. Is there a limit in terms of the capacity of what these towers and these sites can hold? They are just small areas of land, but they can hold virtually innumerable—

Mr. WOODWARD. We found towers that I think housed as many as 35, 37 subtenants, something like that.

Mr. VENTO. On public lands?

Mr. WOODWARD. On Federal lands.

Mr. VENTO. Is it typical on private lands and on State lands?

Mr. WOODWARD. It depends on how big a market that you are serving. If you are serving a small market, it may just have a couple of small subtenants. If you are in an active market in a large urban population, then there is going to be a greater demand.

Mr. VENTO. One of the problems, of course, is the tower may cost the same whether it is serving L.A. or serving Pocatello, Idaho, I guess. And that is the concern in terms of the appraisals and the costs and so forth, is that correct?

Mr. ANDERSON. That is correct.

PANEL CONSISTING OF MATTHEW MILLENBACH, ACTING CHIEF OF STAFF, OFFICE OF THE ASSISTANT SECRETARY FOR LAND AND MINERAL MANAGEMENT, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY DAVID CAVANAUGH, SENIOR APPRAISER, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR; AND, GORDON SMALL, ACTING ASSOCIATE DEPUTY CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. VENTO. Well, our time has past in terms of this panel. I just wanted to establish that. I want to thank the GAO for a good job and ask the first panel of Matthew Millenbach, the acting chief of staff, Office of the Assistant Secretary for Land and Mineral Management, Department of the Interior, who carries this responsibility, is accompanied by David Cavanaugh, the senior appraiser, Bureau of Land Management, Department of the Interior; and for the Department of Agriculture, Mr. Gordon Small, the acting associate deputy chief.

We thank the witnesses for their patience and welcome them. Your statements have been made a part of the record, gentlemen, and I would yield to my colleague Mr. Synar to officiate over the swearing in process this morning.

Mr. SYNAR. Gentlemen, do you have an objection to being sworn? Please raise your right hand.

[Witnesses sworn.]

Mr. VENTO. Thank you, gentlemen, and thank you, Congressman Synar.

Mr. Millenbach, please proceed with your statement. We received your statement; you can summarize it if you prefer, and yield to Mr. Cavanaugh at your pleasure.

PREPARED STATEMENT OF MATTHEW MILLENBACH

Mr. MILLENBACH. Thank you, Mr. Chairman. I appreciate the opportunity to appear here today to present the Department of the Interior's views on rental fees for communication sites on public lands.

The Federal Land Policy and Management Act of 1976 established as Federal policy that the United States shall receive fair market value for the use of public lands. It also authorized the Secretary of the Interior to grant rights-of-way on such lands. Section 504(g) of FLPMA requires holders of rights-of-way authorized under FLPMA to pay in advance the fair market value of the right-of-way as determined by the Secretary.

Despite FLPMA's mandate to charge fair market values, the efforts of the BLM to establish rental payments at fair market levels

have generated strong opposition from industry groups and individual users. The Forest Service has experienced similar problems. In recent years, Congress has prohibited or limited increases in rental payments charged by the BLM and the Forest Service for communication sites on lands it administers. For fiscal year 1994, section 10003 of the Omnibus Budget Reconciliation Act of 1993 provided for a 10 percent higher fee assessment than during fiscal year 1993.

The administration has recognized this problem. The National Performance Review, under the leadership of Vice President Gore, has identified communication site fees as an issue for action by the Department of the Interior. The Department of the Interior recommendation 5, entitled "Obtain a Fair Return for Federal Resources," states that the administration should develop regulations to be implemented by fiscal year 1995 which would provide for establishing new rental fee schedules for use of the public lands, including communication sites. Our regulations which would implement this recommendation will address all communication site uses. We will then invite public input in the process of setting new rental fee schedules.

We understand that the report of the General Accounting Office on communication site facilities will contain findings that rental fees collected on communication sites are below fair market value.

The BLM has a variety of right-of-way communication site users, ranging from television stations to microwave transmitters to cellular telephones. Over 90 percent of BLM's users are nonbroadcast users; they provide the bulk of the rental fees we receive. Rental fees for many users are waived because they are governmental or nonprofit organizations. This will continue under the new regulations.

The Department of the Interior supports the concept of a rental fee schedule and will use it as the framework for setting rental payments. We believe a rental fee schedule will reduce the costs associated with setting and updating rental payments.

The proposed regulation contains separate schedules for broadcast users, cable television, nonbroadcast users, and other users. These elements are incorporated into our rental schedules:

- The use of an index to update rental payments on an annual basis for inflation;

- Application of a 5-year phase-in period to alleviate sharp increases in rental payments;

- Payment to the government of part of the rent collected by right-of-way holders from other tenants; and,

- Linking the rental payment to the size of the market served, with the rental payment being higher for larger markets.

The proposed communication site regulation with a rental schedule requiring communication site users to pay fair market rental is being published in the Federal Register today. These rules will apply to communication uses on land administered by the BLM.

Cooperation and coordination between the Forest Service and the BLM on the issue of communication site rental fees will continue. We learned from the comments the Forest Service received on its

notice of proposed policy. We expect they will learn from our proposal and the comments it elicits.

This concludes my prepared statement. I will be pleased to answer questions.

[BLM news release and proposal rule follow:]

BLM**NEWS**

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BUREAU OF LAND MANAGEMENT
For release: July 12, 1994

Contact: Tom Gorey
(202) 208-5717

BLM PUBLISHES DRAFT RULES ON COMMUNICATION SITE RENTAL PAYMENTS

The Bureau of Land Management (BLM) today announced proposed regulations that would set new rental payments for radio, television, mobile radio, cellular telephone and other communication uses of BLM-managed public lands.

The draft regulations, which appear in today's Federal Register, would establish rental payment schedules for 11 categories of communication service for which fair market value is required for the use of public lands.

Although the proposed schedules have been developed in cooperation with the U.S. Forest Service, the draft regulations published today would affect only BLM-managed lands.

BLM Director Mike Dombeck said, "These proposed regulations are intended to end a longstanding debate over how much the Federal Government should charge commercial broadcasters for using Federal lands. This is an important step in resolving that issue."

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Dombeck also said the proposed new rules would advance the Clinton Administration's "Reinventing Government" initiative, which calls on Federal agencies to develop more effective and efficient ways of doing business. Toward that end, the draft regulations, among other things, would reduce the BLM's rental-collection administrative costs.

Dombeck urged all interested parties to submit written comments on the draft regulations during the 60-day public comment period. He said the BLM intends to publish final regulations before the end of the year.

The BLM administers about 3,300 communication sites and collects \$1.5 million to \$2 million annually in rental payments. Currently the BLM authorizes communication uses and assesses rent on a site-specific basis that uses real estate appraisals, a time-consuming process that has resulted in lost revenues.

Written comments on the BLM's proposed communication site rental payment regulations should be postmarked no later than September 12, 1994. Comments should be sent to: Director (140), Bureau of Land Management, Room 5555 MIB, 1849 C Street, N.W., Washington, D.C., 20240.

FACT SHEET: *Communication Site Use Rental Payments*

Introduction

On July 12, 1994 the Bureau of Land Management (BLM) published a proposed rule in the Federal Register, Rights-of-Way, Rental Schedule for Communication Uses. The proposed rule establishes a rental schedule and procedures for 11 categories of communication service for which fair market value is required for the use of public lands. The proposed schedule has been developed in cooperation with the Forest Service (FS).

The proposed rule is a BLM initiative to set rental payments for communication uses on public lands. This initiative is taken in an effort to end a longstanding debate over what should be charged for the use of public lands for commercial or private communication use.

The proposed changes will substantially improve the assessment and collection of communication rental payments. The proposed rule will reduce administrative costs, set a consistent basis for assessing rental payments, and increase revenues in the out-years. The proposed schedule represents BLM's estimate of fair market rent for communication uses on public land.

Publication is a first step towards meeting the National Performance Review (NPR) goals of obtaining fair market value for the use of public lands and resources. Comments on the proposed rule are due on September 12, 1994. The BLM would like to finalize a rental schedule in FY 1994.

Proposed Rule

The proposed rental schedule is applicable to commercial and private communication uses authorized by a BLM right-of-way authorization. The uses include television broadcast, FM radio broadcast, rebroadcast devices, cable television, commercial mobile radio service, private mobile communication, cellular telephone, common carrier microwave, private microwave, facility manager, and miscellaneous uses. The proposed rule also would require payment of a percentage of the sublease rent collected by the holder from tenants renting space in the facility. Rental payments are waived for applicants or holders who provide public telecommunication services and are licensed by the Federal Communications Commission (FCC) as a noncommercial, educational radio station.

The proposed rule is an attempt to improve the processing of right-of-way authorizations for communications use of public lands and to reduce agency appraisal costs associated with setting and updating rental payments on approximately 1500 authorized communication uses for which rent is currently required. It is estimated the cost of updating appraisals for the approximately 1500 existing communication users would be \$3-4 million over a 5 year period.

The proposed procedures provide a consistent approach for assessing rental payments by applying uniform criteria for various categories of use. The schedule also provides incentives for co-locating single users within existing facilities under a multiple use right-of-way authorization. In addition, the rule outlines a process for setting and updating rental payments and phasing in substantial increases in rental payments.

To develop the schedule, consideration was given to information provided by appraisers, various industry groups, users, recommendations of the Television and Radio Use Fee Advisory Committee, and comments received by the Forest Service on an earlier proposed communication use rental schedule. In addition, consideration was given to rents currently paid by right-of-way holders.

For individual users, changes in the amount of rent will vary depending on a number factors such as the length of time since approval of the last appraisal, the leveling effect of schedules, and the number of additional users covered by the current authorization. In some cases, individual rents will decline.

Background Information

The BLM currently administers approximately 3300 communication site authorizations and collects approximately \$1.5 to \$2.0 million dollars in rental payments.

Since 1990 Congress has limited the Secretary's authority for setting rent for communication uses.

Advisory Committee Recommendations

In 1992 both the Secretaries of Agriculture and Interior established the Radio and Television Use Fee Advisory Committee (advisory committee). The advisory committee submitted a final report to the Secretaries in December 1993. The BLM and Forest Service (FS) endorsed many of the Committee's recommendations on rental implementation and administration, but rejected the proposed rental schedule on the basis that it did not represent fair market rental.

The advisory committee report made several recommendations. These included use of rental schedules instead of individual appraisals for setting rental payments, acceptance of market ranking methods that relate to the population served, a phase-in period for increases in the base rent greater than \$1000 during the first year, a provision for charging 25 percent of the gross sublease income, and annual increases based on the Consumer Price Index, Urban Consumer, U.S. City Average. These recommendations have been accepted with some modification and are included in the BLM proposed rule.

The advisory committee also recommended a schedule for both television and FM radio stations. The committee report stated its proposed schedule did not reflect fair market value, but was recommended as a basis to resolve the longstanding dispute over rental value. The FS and the BLM did not adopt the recommendation of the advisory committee regarding the rental schedule because it did not represent fair market value.

In addition, the committee recommended consistent implementation of regulations by both the FS and BLM and elimination of provisions requiring users, as a condition of granting the right-of-way, to perform a service or task not directly related to the use being authorized. The BLM proposed rule has been coordinated with the FS. It includes language that any requirement placed on the applicant must be legal and not result in additional costs unrelated to the use authorized.

U.S. Forest Service Action

In July 1993 the FS published in the Federal Register its proposed schedule and invited public comment. The comment period ended October 12, 1993. The FS has not taken final action on its proposal. The comments received suggested several changes that would reduce impacts on users and improve implementation. Some of these comments have been adopted in the BLM proposed rule.

Congressional Restrictions

During the last 5 years, appropriations-related legislation has limited the amount of increases in rental payments. In 1990 and 1991 rental increases were prohibited. Appropriations legislation for fiscal years 1992 and 1993 allowed the BLM to increase the rental payments by up to 15 percent above the rent in effect in 1989. For fiscal year 1994, the Omnibus Budget Reconciliation Act directed the agencies to assess and collect an annual rental payment 10 percent above the rent paid in 1993.

Government Accounting Office Report

The General Accounting Office (GAO) report (GAO/RCED-94-248) released in early July 1994 showed that rental payments for communication uses on lands administered by the Forest Service and BLM do not reflect fair market value. During the last 5 years, annual appropriations have limited the amount of the increase in rental payments. As long as these limits are in effect, rents charged will not reflect fair market value. At the same time GAO reported that both agencies lack reliable and complete program-wide information needed to effectively manage the program.

The GAO report recommended that both agencies develop a rental system that ensures payment of fair market value. It also recommended improving management oversight and development of a program wide information system that identifies the number and types of users and the total amount of rental payments paid.

June 12, 1994

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2800

[WO-260-4210-02-24 1A]

RIN 1004-AC12

Rights-of-Way, Rental Schedule for Communication Uses

Agency: Bureau of Land Management, Interior

Action: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) requests comments on proposed amendments of right-of-way regulations containing procedures for setting fair market rent for communication uses located on public lands. The proposed rule would establish rental schedules and procedures for 11 categories of communication service for which fair market value is required for the use of public lands. The proposed schedule has been developed in cooperation with the Forest Service (FS). The proposed schedule is an attempt to improve the processing of right-of-way authorizations for communications use of public lands and reduce agency appraisal costs associated with setting and updating rental payments on approximately 1,500 authorized communications uses for which rent is currently required.

DATES: Comments should be submitted by September 12, 1994. Comments received or postmarked after the above date may not be considered in the decisionmaking process on

issuance of a final rule.

ADDRESSES:- Comments should be submitted to: Director (140), Bureau of Land Management, Room 5555 MIB, 1849 C Street, N.W., Washington, D.C. 20240. Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: David Cavanaugh, (202) 452-7774.

SUPPLEMENTARY INFORMATION:

The proposed rental schedule is applicable to commercial and private communication uses authorized by a BLM right-of-way authorization. The uses include television broadcast, FM radio broadcast, rebroadcast devices, cable television, commercial mobile radio service, private mobile communication, cellular telephone, common carrier microwave, private microwave, facility manager, and miscellaneous uses. The proposed rule also would require payment of a percentage of the sublease rent collected by the holder from its tenants. Rental payments are waived for applicants or holders who provide public telecommunication services and are licensed by the Federal Communications Commission (FCC) as a noncommercial, educational radio or television station.

The following objectives have been adopted to guide development of the rental schedule and implementation of procedures to balance carefully the public's interest in obtaining fair market rent: (1) allow the continued growth of communication markets and services, especially in rural areas; (2) design a process that is cost effective, sets rental payments that are predictable and can be easily updated; (3) provide incentive for improved management of communication sites.

The proposed rule takes into consideration recommendations of the Radio and Television Broadcast Use Fee Advisory Committee, information provided by users, industry groups, private appraisers, and comments received by the FS in response to their proposed policy published in the Federal Register on July 13, 1991.

Comparative information provided by BLM and private appraisers was screened carefully only to include examples of land rent. The rent paid does not include any payment for services such as power, access, building and/or tower space, or maintenance. Information used was provided by the principals in those transactions.

The proposed procedures will provide a consistent approach for the administration and assessment of rental payments for communication uses on public lands. The schedule provides

incentives for co-locating single users within existing facilities under a multiple use right-of-way authorization. The rule also outlines a process for setting and updating rental payments and phasing in substantial increases in rental payments.

Background

The BLM's process for setting fair market rent for communication uses has been directly influenced by FS efforts to set a rental payment schedule. In a 1983 administrative appeal decision, the FS determined that the formula used to determine fair market rental for communication site use was not in compliance with the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701 et seq.). The formula used at that time was two-tenths (0.2) of 1 percent of the permittee's investment plus 5 percent of the rental fees received by the FS permittee.

The formula has remained unchanged for about 40 years, as have FS rental payments.

In 1985, the FS adopted a new policy for setting rental payments. Under that policy, communication use rental fees were to be based on (1) a fee schedule, (2) individual site appraisals, or (3) competitive bidding. In 1989, the FS

implemented regional schedules under that policy. Proposed rentals generated opposition from industry groups--primarily television and radio broadcasters--and complaints to Congress. At the same time, efforts by certain BLM State Offices to increase rental payments caused similar complaints to Congress.

To forestall significant increases in rental payments, Congress enacted a moratorium prohibiting any increases in rental fees above those in effect on January 1, 1989. This affected both agencies. The FS was also asked to review the schedules, with particular emphasis on their impact on rural communities in the Western United States, and to report their findings to the congressional Appropriations Committees. The report was submitted to Congress in 1991.

The BLM and FS entered into a Memorandum of Understanding (MOU) in April 1991. The MOU provides for cooperation to develop and implement similar methods for determining rental fees.

In November 1991, Department of the Interior and Related Agencies Appropriations Act limited increases in communication site fees in Fiscal Year 1992 to 15 percent over the levels in effect on January 1, 1989. The conference report also directed both the FS and BLM jointly to establish a broad-based advisory group.

Pursuant to that direction, an advisory group, the Radio and Television Broadcast Use Fee Advisory Committee, was established, which included BLM, FS, and representatives from the broadcast industry (users of both public and private communication sites). The advisory committee prepared and submitted a report to the Secretaries of the Interior and Agriculture in December 1992.

The advisory committee report made several recommendations. These included use of rental schedules instead of individual appraisals for setting rental payments, acceptance of industry-recognized market ranking systems, a phase-in period for rent increases greater than \$1,000, a provision for charging 25 percent of the gross sublease income, and annual increases based on the Consumer Price Index (Urban Consumer, U.S. City Average).

The advisory committee also recommended a specific rental schedule. The schedule included a discount of 30 percent from estimated rental value to account for perceived difficulties in obtaining use authorizations on Federal lands. The advisory committee report indicated that the rental schedule did not reflect fair market value, and it was required to be amended by BLM.

On July 13, 1993, the FS published a Federal Register notice of proposed policy ("Fee Schedule for Communication Uses") and

invited comments. The FS proposed to adopt a revised rental schedule for television broadcast, FM radio broadcast, commercial mobile radio, and cellular telephone uses on National Forest System lands. The proposed schedule would supplement individual FS regional schedules adopted in 1989 and modified in 1992. The regional schedules of the FS recognize 13 types of communication uses. They include (1) radio broadcast, (2) television broadcast, (3) broadcast translator, (4) cable and subscription television, (5) mobile radio-commercial communications, (6) cellular telephone, (7) common carrier microwave relay, (8) industrial microwave relay, (9) mobile radio-internal communications, (10) natural resource/environmental monitoring, (11) passive reflector, (12) amateur radio, and (13) personal/private receive only.

In August 1993, the Omnibus Budget Reconciliation Act (Act) was signed into law. The Act directed the BLM and FS to assess and collect in 1994 an annual rental payment 10 percent above the rent paid in 1993. For most right-of-way holders required to pay rent, this was the first increase since 1989.

Summary of Comments Received by the Forest Service

The FS received 84 letters providing suggestions and comments regarding the proposed schedule. In general, the comments reflected confusion over the definition of uses covered,

how geographic areas would be determined, and rents calculated. Comments also suggested that the proposed rents were excessive, that the information relied upon was not representative, and that provisions regarding indexing and revenue sharing (25 percent of the gross sublease income) were not commonplace in the private rental market. Many comments expressed concern that adoption of the schedule would have an adverse impact on small businesses.

Comments provided several suggestions. Several suggested that additional price levels be added to improve fairness and reduce impact on permit holders in rural areas. Several comments suggested that commercial mobile radio users should not be subject to paying 25 percent of the gross sublease income when their primary business, or only use of the facility, is to rent space to other customers. With respect to television and FM radio, most of the comments suggested that the advisory committee report be the basis for setting rental payments. Several comments provided information on rents currently being paid and suggested what are considered to be reasonable rental payments.

The BLM proposed schedule has been developed considering comments received by the FS, and the comments have been adopted or incorporated as appropriate.

Statutory Requirements

43 U.S.C. 1701(a)(9) states that it is the policy of the United States to receive the fair market value of the use of the public lands and their resources unless otherwise provided by statute.

43 U.S.C. 1761(a) gives the Secretary of the Interior authority to grant, issue, or renew rights-of-way for communication uses, including systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals.

43 U.S.C. 1764(g) requires the payment of a rental. The holder is required to pay in advance the fair market value as determined by the Secretary granting, issuing, or renewing such right-of-way. The Secretary may waive part or all of the payment when it is found to be equitable and in the public interest. Rights-of-way issued at less than fair market value are not assignable except with the approval of the Secretary issuing the right-of-way. The regulations implementing right-of-way provisions of FLPMA are found in 43 CFR part 2800. Provisions regarding rental payments are found in 43 CFR subpart 2803, and state in part that the holder of a right-of-way grant or temporary use permit is required to pay annually, in advance, with certain exceptions, the fair market value rental. This is determined by the authorized officer, applying sound business management principles and, so far as practicable and feasible,

using comparable commercial practices.

Factors Considered in Developing the Proposed Rental Schedule

The proposed schedule takes into consideration a variety of factors. These factors include (1) recommendations of the Radio and Television Broadcast Use Fee Advisory Committee, (2) market information provided by users, industry groups, private and Government appraisers, and (3) practical considerations associated with developing a cost-effective method for setting and collecting fair market value for communication site use of public lands.

The BLM has incorporated many of the recommendations of the Radio and Television Broadcast Use Fee Advisory Committee regarding use of a schedule instead of individual appraisals to set rental payments, a phase-in period, use of an index to update annual rental payments, and a provision for charging 25 percent of the gross sublease rent. However, the BLM amended the recommended rental schedule.

The television schedule recommended by the advisory committee was based on a market ranking system that is no longer published, and the rental payments did not represent fair market value. The advisory committee schedules were based on setting the highest rent for the largest market and for each smaller

market dividing the rent in half. The rent suggested by the advisory committee was further reduced by 30 percent to reflect what a majority of members of the advisory committee believed to be the difference between a private lease and BLM or FS authorization. The advisory committee schedule would have resulted in a reduction in current revenues from radio and television use on public lands.

The proposed rental schedule for television and radio is higher for certain markets, and lower for others, than the schedule recommended by the advisory committee. This reflects comparable market information, elimination of the suggested 30 percent discount, and an effort to develop a reasonable schedule that covers markets ranging from small rural ones in Montana and Wyoming to larger ones serving Phoenix, Las Vegas, and Reno. To increase fairness, the proposed schedule includes 9 rent levels instead of 6 as recommended by the advisory committee.

Market information was obtained from industry groups, individual users, appraisers, and other persons responding to the FS notice. Market information compiled by BLM and FS appraisers was carefully screened to exclude from the rents reported any payment for services such as power, access, building and/or tower space, or maintenance. This information has been compiled by each BLM State Office for purposes of preparing individual appraisals. Since very few appraisals have been prepared over

the last 5 years, some of the information is outdated. Therefore, BLM considered more than market information. The public is requested to provide information as to communication site rentals on private land established within the last 3 years. This information would be considered in adjusting the rental schedules proposed in this rule.

A representative sampling of reliable market information to develop a national schedule for a variety of communication uses is difficult to obtain. The information is not readily available, the number of recent transactions is relatively small, and often the information is incomplete or conflicting. Generally, information provided by appraisers is the most complete and has supplemented information provided by various industry groups. This variety of information has been used to establish relative values for various communication uses, depending on population or location criteria.

Comparable private leases reflect several factors relevant to market value. One, strategically located mountaintops are valuable for communication purposes. Mountaintop sites allow users to send signals from point to point or deliver a signal that covers a geographical area. Mountaintop communication sites often provide better coverage, and are less expensive to develop, than other alternatives for reaching the same size population.

Two, rental payments for broadcast uses are related to the population served by the television or radio transmitter. Strategically located mountaintops serving larger populated areas are generally more valuable than those serving smaller markets. Locations within the same market that provide the best coverage will also rent for more than secondary locations. It should be noted that not all mountaintops have value for broadcast use. The proposed schedule attempts to reflect the rent for typical locations on BLM administered lands, rather than rentals set for specific authorizations and established by appraisals.

Three, there is competition for strategically located mountain sites. Private or public mountain locations close to populated areas that have access and power are preferred by broadcast users. There are few places where there is direct competition between private and public sites. The sites used are those that provide the best coverage. However, in many areas rents charged on private lands are higher than rents charged for similarly located sites on public land.

Four, mountaintops generally are intensively developed and often command premium rental payments when compared to single use sites. The multiple user sites provide a mixture of high and low power communication uses, including radio, television, and mobile radio and cellular. These sites often include large buildings, a variety of towers, and well maintained public or private roads.

Five, various nonbroadcast uses are not dependent upon the population served. These uses include microwave, cellular, and mobile radio facilities in rural areas. Rental payments for these uses are related to general real estate values in the immediate area of the site.

Six, there is little difference in the rental payment for single use sites in small rural markets. Often rent paid in the private rural market does not vary significantly among the various communication uses. This is due to local economic conditions and forces within the market to provide a basic level of communication service.

In developing the schedule, consideration was given to current assessed rent. Since current BLM rentals are based on individual appraisals, rental payments established in the last 5 years were considered to reflect fair market value. This information was used as a benchmark for assessing reasonableness and providing a measure of consistency in areas where there was little direct market information.

Industry groups have objected to use of market information for setting rental payments on public lands. They argue that the rights authorized under terms of a BLM or FS grant are different than those provided under a private lease, and that private landowners provide more service and do not require compliance

with stringent environmental requirements. They also argue that television and radio broadcasters provide a public service and, therefore, that rental payments should be partially or totally waived. The few cases in which there has been competitive bidding for communication site uses on Federal or State lands do not support these contentions.

Practical considerations also contributed to development of a rental schedule. The FS has been engaged in a 10-year effort, which BLM joined in 1990, to determine fair market rent for communication site uses. In addition, both the BLM and the FS have supported the use of a regulatory schedule to reduce the costs and delays associated with obtaining individual appraisals. It is estimated that the annual costs of updating and appraising BLM right-of-way grants for communication use would be \$3-4 million. This is approximately double the current annual revenues from communication site rights-of-way. Use of a schedule would be more cost effective.

Rents charged in the private market are not based upon schedules. Instead, rents are based upon negotiations between the landowner and the prospective user. The rent is set on an individual basis, depending on the use and the terms and conditions of the lease agreement.

To the extent practicable, the schedules proposed attempt to

approximate a reasonable rent for the authorized use. They do not attempt to replicate site-specific appraisal values. Instead, the schedule merely establishes a reasonable amount of rent to be assessed for the type of authorized use based on location or population criteria. Therefore, the BLM believes the proposed rental schedule reflects fair market value.

Bureau of Land Management Communication Use Program

The BLM currently administers approximately 3,200 communication use authorizations. In accordance with agency regulations, approximately 50 percent of the authorizations pay no rent. Right-of-way holders not required to pay annual rent include Federal, State, and local government agencies. The remaining communication use right-of-way holders pay an annual rental based upon agency-approved appraisals. Generally, communication use authorizations are reappraised every 5 years and new rental payments are established. However, for a variety of reasons, most of the communication use rental fees are currently out of date.

Section 2803.1-2(c)(3)(i) of 43 CFR states that the rental shall be based on either a market survey of comparable rentals, or on a value determination for specific parcels or groups of parcels. Most communication use rental fees are based upon individual appraisals prepared by agency staff appraisers. Some

BLM State Offices have instituted market surveys or administrative schedules for setting rental payments. Current regulations also allow use of competitive bidding for purposes of determining rental for the use of public lands. Bids less than fair market rental value of the lands are not considered.

The proposed rule would establish a rental payment schedule for various communication uses for which fair market rental is required. However, with the concurrence of the BLM State Director, the authorized officer may reduce or waive the rental when it is determined that the rental will cause undue hardship on the holder/applicant and that it is in the public interest to waive the rental payment. Current right-of-way rental waiver policy is not affected by this proposed schedule.

The proposed schedule reflects rental values for BLM-authorized communication uses. The BLM right-of-way authorization is similar to a private lease for communication purposes. The authorization is for 30 years or the life of the project, and contains provisions regarding renewal, termination, assignment, and liability. Other provisions may include subleasing and bonding. New applicants for use of public lands are subject to application and processing fees associated with complying with environmental requirements. New and existing users may be subject to reimbursement of reasonable costs associated with agency monitoring of use. Therefore, the

proposed schedule reflects a reasonable estimate of the fair market rental value for communication uses on public lands.

Impacts on industry and users paying rental vary. Television and radio broadcasters in large markets, or users whose rent has not been adjusted for 5, 10, or more years, may experience a significant increase. However, there are several situations where rental payments will decline. The best estimate is that total revenues from BLM-authorized communication uses will be approximately the same. However, costs associated with individual billing and preparing and updating appraisals will be significantly reduced. Although rental increases may be significant in some cases, they will be phased in over a 5-year period. In addition, the current regulations include a provision (43 CFR 2803.1-2(b)(2)(iv)) allowing partial waiver or deferral of rental by the authorized officer based on a claim of hardship.

Finally, the provision for rounding of right-of-way rental payments would be removed in the proposed rule. This would simplify the calculation of rental payments by BLM and their payment by right-of-way holders. The rounding provision has unnecessarily complicated the calculation of rental fees, and increased billing errors, with little or no benefit to the customer. The rounding provision and its removal are revenue neutral. Revenues would be neither enhanced nor diminished.

Communication Uses Covered by Proposed Schedule

The proposed schedule is applicable to the communication uses described below. The proposed rental schedule is not applicable to holders of facilities authorized under terms of a right-of-way grant to public telecommunications service operators providing public television or radio broadcast service. However, such holders would be responsible for paying a percentage of the gross sublease rent received from tenants in the facility that do not qualify as nonprofit entities. The term "primary use" is the predominant use of the facility by the holder authorized under terms of the right-of-way authorization. The term "facility" is defined as the building, tower, and other related incidental improvements authorized under terms of the right-of-way authorization.

Television Broadcast

This category includes right-of-way holders that operate facilities authorized by the Federal Communication Commission (FCC) that primarily broadcast UHF and VHF audio and video signals for general public reception. The schedule is applicable to primary transmitters that principally serve a community (city, cities, metro area, or county) reached by the transmitter. Principal communities covered do not include outlying areas served by translators. This category does not include stations

licensed by the FCC as a Low Power Television (LPTV) or rebroadcast devices such as translators, or transmitting devices such as microwave relays serving broadcast translators.

FM Radio Broadcast

This category includes right-of-way holders that operate FCC licensed facilities primarily used to broadcast frequency modulation (FM) audio signals for general public reception. The schedule is applicable to primary transmitters that principally serve communities reached by the primary transmitter. Principal communities covered do not include areas reached by broadcast translators. This category is not applicable to stations licensed by the FCC as low power FM radio, and does not include rebroadcast devices such as translators, boosters or AM synchronous transmitters or microwave relays serving broadcast translators.

Rebroadcast Devices

This category includes right-of-way holders that operate FCC licensed facilities primarily used to rebroadcast a signal from its point of origin. This category includes translators and low power television, low power FM radio, and microwave relays. Microwave as used in conjunction with LPTV and broadcast translators are included in this category.

A translator is a rebroadcast device that transmits signals of a primary TV or FM station to another location that would not otherwise receive the original signal. The schedule is applicable to rebroadcast devices licensed to the principal community or other political subdivision which it primarily serves. Translators are generally located in the same service area and are inherently low power in nature.

LPTV refers to television translator stations that are permitted to originate programming for broadcast to the general public. They are limited to 10 watts VHF and 1000 watts UHF.

Cable Television

This category includes right-of-way holders that operate FCC licensed facilities that primarily transmit video programming to multiple subscribers in a community over a wired network. Cable television includes head-end microwave or satellite antennas and receiver systems used for television reception that retransmit by cable or microwave (wireless cable) methods. These systems usually operate as a commercial entity within an authorized franchise area, providing their services to subscribers who pay a periodic fee. This category does not include rebroadcast devices that retransmit television signals of one or more television broadcast stations, or personal or internal antenna systems such as private systems serving hotels or residences.

Commercial Mobile Radio Service (CMRS)

This category includes right-of-way holders that operate an FCC-licensed commercial mobile radio facility providing primarily mobile communication service to individual customers. The right-of-way holder owns the facility (building and tower) and operates, maintains, rents, or sells commercial mobile radio equipment in the facility. Although the primary use of the building is to provide communication service to customers for a fee, a portion of the income to the owner may be derived from renting space for other communication uses unrelated to the primary use of the facility. Primary services generally include two-way voice and paging services such as community repeaters, trunked radio (specialized mobile radio), two-way radio dispatch, and public switched network (telephone/data) interconnect service.

Private Mobile Communications

This category includes right-of-way holders that operate FCC licensed private mobile radio systems primarily used by a single entity for the purposes of internal communications. This use is not sold and is exclusively limited to the user in support of business, community activities, or other organizational communication needs. Services generally include private local radio dispatch and private paging services.

Cellular Telephone

This category includes right-of-way holders that operate FCC-licensed systems primarily used for mobile communications, using a blend of radio and telephone switching technology. They provide public switched network services to fixed and mobile users within a tightly defined geographic area. The system consists of cell sites containing transmitting and receiving antennas, cellular base station radios, telephone equipment, and often microwave communications link equipment. The cell sites are linked to a mobile telephone switching office, often via microwave, and at that point into the Public Switched Network. This category includes Personal Communication Systems, a digital mobile telephone service, and enhanced specialized mobile radio.

Common Carrier Microwave

This category includes right-of-way holders who operate FCC-licensed facilities primarily used for long-line intrastate and interstate telephone, television, information, and data transmissions. These uses are regulated by State public utility commissions and are required to provide service to any consumer with the ability to pay according to published rate schedules. The microwave system is an integral part of the company's primary business of providing communication service.

Private Microwave

This category includes right-of-way holders that operate FCC-licensed facilities primarily used by pipeline and power companies, railroads, and land resource management companies. Communication services associated with this category may include private mobile service, private two-way dispatch service, private paging, supervisory remote control/sensing, and microwave voice/video/data services. This use is solely in support of the holder's primary business activity. The use is not regulated by the State public utilities commission because the service is not for sale and is used solely for internal purposes.

Facility Manager.

This category includes right-of-way holders that operate a facility primarily owned, operated, and maintained by a holder who may or may not have a FCC license, but does not operate telecommunications equipment. The primary purpose of the facility is to rent or lease space to a variety of tenants for telecommunication purposes. The building owner generally provides space in the building and/or tower, and utilities, access, security, and backup generator services.

Communication services provided by the tenants of a facility manager may include TV or FM radio broadcast, cable television,

microwave, cellular telephone, amateur radio operators, and mobile radio. Mobile radio uses include two-way voice and paging services such as community repeaters, trunked radio, and two-way radio dispatch, and Public Switched Network (telephone/data) interconnect service. Tenants hold lease agreements with the facility manager. Microwave facilities used in conjunction with broadcast uses and mobile radio are included in this category.

Other Communication Uses

This category includes other FCC-licensed private communication uses such as amateur radio, personal/private receive-only antennas, passive reflectors, and natural resource and environmental monitoring equipment.

Amateur radio includes equipment used by individuals or groups licensed as amateur radio operators.

Personal/private receive-only includes radio and TV receiving antennas, satellite dishes, and other equipment and/or facilities designed for the reception of electronic signals, to serve private homes, including recreation residences. These facilities are personally owned and are not operated for profit.

Passive reflectors include devices used to bend or ricochet electronic signals between active relay stations or a relay

station and a terminal.

Natural resource and environmental monitoring includes the transmission of telemetry data from a remote site to a central receiving station. Uses may include weather stations, streamflow gauges, seismic stations, wildlife monitoring, and snow measurement devices.

General Application of Proposed Schedule

The proposed rental schedule applies to right-of-way holders who are authorized to operate and maintain communication facilities on public lands. The proposed base rent charged is for the primary use of the building. The primary use is defined as the predominant use of the facility by the holder and authorized under terms of the right-of-way authorization. The use may be classified as television broadcast, FM radio broadcast, rebroadcast devices, cable television, cellular telephone, commercial mobile radio, private mobile radio, private microwave, common carrier microwave, facility manager, or be included under the miscellaneous category. Tenants occupying space in the facility under terms of the authorization will not be required to have a separate BLM authorization.

The proposed rental schedules will be applicable to new and existing communication use authorizations requiring annual

payment of fair market rental as of the date of publication of the final rule. However, the authorized officer may use other methods including individual appraisals or competitive bidding for new sites, or existing sites where it is shown that the rental schedule does not represent fair market value. Rental payments covering portions of calendar years will be prorated.

There are three major categories of use: broadcast, nonbroadcast, and other.

Broadcast includes television, FM radio, rebroadcast devices, and cable television. The proposed rent for broadcast categories will be based on the following procedures:

1. The right-of-way holder will provide a 1-millivolt contour map or statement to BLM identifying the principal community (city, cities, metro area, or county) served by the transmitter. Communities served do not include areas served by translators.

2. Rent for television, FM radio, and rebroadcast devices (translators and low power television) will be based on the population of the principal community or communities the transmitter primarily serves. The population of the principal community will be based on the most recent United States census information.

3. Rent for cable television will be based on total basic subscribers as reported by the holder.

4. Rent for rebroadcast devices will be based on the U.S. census population of the principal community identified in the FCC license that is served by the transmitter.

The following examples are provided to illustrate how the base rent for a broadcast use would be calculated.

A television facility in Clark County, Nevada, principally serving the communities of Las Vegas (pop. 258,259), North Las Vegas (pop. 47,707), Henderson (pop. 64,942), and Boulder City (pop. 12,567) would pay a proposed annual rental of \$16,000 per year. This is based on total population of the principal communities of 370,908.

An FM radio facility in Imperial County, California, principally serves El Centro (pop. 31,384), Yuma, Arizona (pop. 106,895), and San Luis Rio Colorado, Mexico (pop. 76,684). The annual rent would be calculated based on the total population of the communities. The proposed annual rent would be \$4,000 per year, based on the population of its principal communities of 214,983.

The rent for nonbroadcast uses--commercial mobile radio

service, private mobile communication, cellular telephone, common carrier microwave, private microwave, facility manager and miscellaneous uses--will be assessed on a different basis. Rent will be based on county population where the transmitter is located or the population of an adjacent or nearby county served by the transmitter, whichever is greater.

The following examples are provided to illustrate how the base rent for nonbroadcast uses would be calculated.

The proposed rent for a right-of-way holder owning a facility in Pershing County, Nevada, (pop. 4,436) primarily used for common carrier microwave would be assessed \$1,500.

A commercial mobile radio service facility in Madison County, Idaho (23,674), serving the Idaho Falls community in Bonneville County, Idaho (72,207), would be assessed a proposed rent of \$1,500. Since the transmitter serves a trade area that is predominately in the adjacent county, the Bonneville County population would be used to determine the rental payment.

A holder owning a commercial mobile radio service facility used primarily to provide mobile radio service in the San Diego County (pop. 2,498,016) market would pay a proposed rent of \$12,000.

The third major category is miscellaneous communication uses. These uses include amateur radio, personal/private receive-only, passive reflectors, and natural resource and environmental monitoring equipment. These uses may be permanent or temporary and the rent is either a flat rent of \$75 for a full year or a prorated rent if the term is less than a year.

Additional Users

The fair market rent depends on the type of communication use and the demand for it in a local market. Therefore, the market value may change if there is a significant change from a single use to a multiple use facility.

Authorized holders may allow other users in their building under terms of their right-of-way authorization. Additional users will not be required to have a separate right-of-way authorization.

It is proposed that all categories of use be subject to a provision regarding the payment of a percentage of gross rent received from the sublease rent of space in the facility. The facility owner will be responsible for paying the base rent for the authorized primary use of the facility, plus a percent of gross sublease rent for tenants within the facility. Gross sublease rent is defined as the rent received by the holder of

the communication use right-of-way grant from tenants for space in the building or on the tower. Gross sublease rent does not include road or building maintenance or service fees for power and backup generators.

The BLM proposes to assess all users holding a right-of-way authorization a base rent plus 15 percent, for the first 5 years, of the annual gross receipts received from renting space in the facility. In the sixth year after the effective date of this rule, the percentage would be increased to 25 percent. This provision would apply to any use co-located in the facility for which the owner is receiving a sublease rental payment. The following procedures will be used to calculate the rent:

1. BLM will initiate a billing for the annual base rent calculated from the proposed schedule; and
2. When making the assessed annual base rent payment, the holder will submit a certified statement to the BLM regarding rent collected from tenants during the previous year, and include the required percentage of gross rental with the total payment.

The proposed rental payment required for the category of facility manager is also based on a base rent plus 15 percent of gross receipts from rental of space in the facility. In the sixth year after the effective date of this rule, the percentage

would be increased to 25 percent. The percentage applies to all population strata for that category.

Annual Fee Updating

Under current procedures rental payments are updated every 5 years. During the 1980's, the increases were often fairly substantial and resulted in complaints and increased appeals. In many cases rental payments had not been updated for 10 to 15 years. Limitations on the agency's authority to increase rent over the last 4 years have exacerbated the problem.

The base rent proposed in the schedule will be updated annually based on the U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, published in July of each year. Calculating the amount of the annual adjustment involves changing the previous year's rental by the change in the level of the CPI-U for the current year. The following example illustrates the computation of percent change:

CPI-U, U.S. City Average	136.0
Less CPI for previous period	129.9
Equals index point change	6.1
Divide by previous period CPI	129.9
Equals	0.047
Result multiplied by 100	0.047 x 100

Equals percent change

4.7

Market information regarding use of an index was mixed. However, more recent transactions indicate that increases in annual rent are linked to changes in the Consumer Price Index instead of increases in land value. This reflects the desire of property owners to maintain the relative value of the annual payments in terms of annual inflation.

Comments received by the FS expressed concern that the Consumer Price Index may dramatically increase rents beyond the ability of right-of-way holders to pass on the increases to their customers. These correspondents also were concerned that the increases over time would be higher than normal increases in land rents in the private market. The BLM agrees with the comments and proposes to limit annual increases based on the CPI-U to no more than 5 percent.

Phase In

To reduce potential impact of large increases in rent, BLM proposes to phase in substantial increases in the base rent and percentage of gross rental receipts. Additional rent based upon a percentage of gross rent for space rental in the facility will not be phased in. Initial increases in the base rental payments in excess of \$1,000 or 20 percent of the current rent, whichever

is greater, will be phased in over a 5-year period. Subsequent increases in rent above the first year will be based on an equal annual installment, plus the inflation adjusted increase.

As an example, if the current base rent is \$700 and the new rent based on the schedule is \$2,700, the first year's rent would be \$1,700 plus the inflation-adjusted increase, and the rent for years 2 through 5 would be increased \$250 per year. Assuming a 2 percent increase in the CPI-U during the 5 year phase-in period, the base rents would be calculated as follows:

Year 1	$(\$700 \times 1.02) + \$1,000 = \$714 + \$1,000 = \$1,714$
Year 2	$(\$1,714 \times 1.02) + \$250 = \$1,748 + \$250 = \$1,998$
Year 3	$(\$1,998 \times 1.02) + \$250 = \$2,038 + \$250 = \$2,288$
Year 4	$(\$2,288 \times 1.02) + \$250 = \$2,334 + \$250 = \$2,583$
Year 5	$(\$2,583 \times 1.02) + \$250 = \$2,635 + \$250 = \$2,885$
Year 6	$\$2,885 \times 1.02 = \$2,943$

Additional rent based on a percentage of gross rent received from tenants covered by the right-of-way authorization would also be phased in. The percentage would be set at 15 percent during the first 5 years after the effective date of this rule, and 25 percent thereafter.

Exceptions

The proposed rental payments only apply to those

communication users that are required to pay a fair market rental. Current regulations exempt Federal, State, or local government agencies or instrumentalities thereof, except municipal utilities and cooperatives whose principal source of revenue is customer charges. Also exempt are rights-of-way authorized under a statute that explicitly does not require payment of a rental, and facilities constructed under the Rural Electrification Act of 1936, as amended.

The BLM proposes to close a loophole through which "exempt" agencies derive revenue from the rental of space within their facility or the area authorized. Section 2803.1-2(b)(1)(i) would be amended to require "exempt" agencies to pay fair market rent for those uses from which they derive revenue from the rental of space.

It is BLM's intent to use the rental fee schedule for all existing communication uses covered by the proposed rule. However, when it is determined by the authorized officer that the rental payment schedule does not reasonably reflect fair market rent, other reasonable means will be used to estimate the rental payment. The BLM reserves the right to use individual appraisals or other valuation procedures to calculate rental payments for communication uses.

Periodic Review of Rental Schedule

The communication use rental schedule will be re-evaluated, and if necessary, revised periodically to ensure that rentals are fair. Schedules based on county population will be re-evaluated after completion of the next census in 2000. The updated county population information will be substituted for 1990 county population figures.

Partial Waiver of Rent

43 U.S.C. 1764(g) provides authority to charge less than fair market value if the holder provides at reduced or no charge a valuable benefit to the public or to the programs of the Secretary concerned. Actions taken by the holder at no cost or reduced costs to the public may be considered in granting a temporary, partial, or full waiver. Any requirement placed on the applicant or holder as a condition of granting or renewing the authorization is required to be legal and not result in additional costs unrelated to the use authorized. Therefore, requirements that the building owner set aside 10 percent of its space for Government use or that Federal agencies be granted free use in the building should be considered in setting fair market rent.

Basis for Rental Schedule

In developing the schedule, the BLM has considered

information from a variety of sources. This includes information provided by industry groups, existing BLM rents that are believed to reflect fair market value, data and information provided by BLM appraisers, and information gathered by the FS in preparing their schedule. The BLM has also taken into consideration the recommendations of the Radio and Television Broadcast Use Fee Advisory Committee. The rental schedules are included in the proposed regulatory text.

Public Comment

The BLM is requesting public comment on all aspects of this proposed rule as well as comments on specific questions. Specific comments are requested regarding the following questions:

1. Is the proposed schedule reasonable? If not, what information can you provide that would help in setting a fair and reasonable schedule?

2. Are the proposed phase-in methods for base rents and percentage of gross rental receipts reasonable? If not, please suggest a method that can be easily implemented.

3. Are the categories clearly defined? Would there be any potential problems in determining the category of use? Please

provide suggestions to improve the description of each category of use.

4. Are there any potential problems in setting the base rent for commercial mobile radio services based on the population of the county in which the transmitter is located or the nearby or adjacent county predominantly served by the transmitter, whichever is greater? Please suggest alternative methods.

To conform with the format requirements of the Code of Federal Regulations, the Note at the beginning of Group 2800 is being removed, and the information provided there is being included in new sections 2800.0-9, 2810.0-9, and 2880.0-9. There is no substantive change involved.

The principal author of this final rule is David Cavanaugh of the Division of Lands, BLM, assisted by the staff of the Division of Legislation and Regulatory Management.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The Bureau of Land Management has determined that this rule is categorically excluded from further environmental review pursuant

to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, and that the rule will not significantly affect the 10 criteria for exceptions listed in 516 DM 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

This rule has been reviewed under Executive Order 12866.

The rule will bring annual rental fees charged holders of authorizations for communications sites on public lands, which have been held to artificially low levels for many years, to fair market value as required by statute and administrative direction.

The fees that would be placed in effect by this proposed rule would bring existing rental charges for communications sites authorization holders on the public lands more into line with those who lease land from private landowners. The increased revenues resulting from this fee schedule will result in increased payments to States and counties in which the public lands containing the authorized facilities are located under current statutory authorities.

Moreover, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that the rule will not have a significant economic impact on a substantial number of small entities. The proposed rule, with its fee schedule, affects only that segment of the communications industry operating on the public lands. There are 57 FM radio broadcast sites, 26 television broadcasting facilities, and approximately 3,200 other permits in effect on these lands. Available records do not indicate how many of these permits are held by small entities. The phase-in of annual fees proposed in this rule will allow any small entities that may be affected to adjust to the new fees over a period of time and thereby minimize the risk of adverse impact due to the magnitude of some fee increases under the rule.

Because the rule will result in no taking of private property and no impairment of property rights, the Department certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights, as required by Executive Order 12610.

The Department has certified to the Office of Management and Budget that these regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget

under 44 U.S.C. 3501 et seq.

List of Subjects

43 CFR Part 2800

Communications, Electric power, Highways and roads, Pipelines.
Public lands--rights-of-way, Reporting and recordkeeping
requirements.

43 CFR Part 2810

Public lands--rights-of-way, Reporting and recordkeeping
requirements.

43 CFR Part 2880

Public lands--rights-of-way, Reporting and recordkeeping
requirements.

Under the authority of Sections 303, 310, and 501-511 of the
Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733,
1740, and 1760-1771), Part 2800, Group 2800, Subchapter B, of
Chapter II of the Code of Federal Regulations, is proposed to be
amended as follows:

PART 2800--RIGHTS-OF-WAY, PRINCIPLES AND PROCEDURES (AMENDED)

1. The Note at the beginning of Group 2800 is removed.

2. The authority citation for part 2800 continues to read as follows:

Authority: 41 U.S.C. 1733, 1740, and 1760-1771.

Subpart 2800--Rights-of-Way; General

3. Section 2800.0-5 is amended by revising paragraph (j) and adding paragraphs (aa) through (cc) to read as follows:

§ 2800.0-5 Definitions.

* * * * *

(j) Facility means an improvement constructed or to be constructed or used within a right-of-way pursuant to a right-of-way grant. For purposes of communication site rights-of-way, facility means the building, tower, and/or other related incidental improvements authorized under terms of the right-of-way grant.

* * * * *

(aa) Base rent means the amount required to be paid by the holder of a right-of-way on public lands for the primary use authorized under terms of the right-of-way grant.

(bb) Gross rent means the rent received by the holder from tenants for space in the building or on the tower. Gross rent does not include road or building maintenance or service fees for power and back-up generators.

(cc) Primary use means the predominant use of the facility by the holder authorized under terms of the right-of-way grant.

3. Section 2800.0-9 is added to read as follows:

§ 2800.0-9 Information collection.

(a) The information collection requirements contained in part 2800 of Group 2800 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004-0102 and 1004-0107. The information is being collected to permit the authorized officer to determine if use of the public lands should be granted for rights-of-way grants or temporary use permits. The information will be used to make this determination. A response is required to obtain a benefit.

(b) Public reporting burden for this information is estimated to average 41.8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding

this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (873), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004-0102 or 1004-0107, Washington, DC 20503.

Subpart 2803--Administration of Rights Granted (AMENDED)

4. Section 2803.1-2 is amended by revising paragraph (b)(1)(i), paragraph (c)(1)(iv), and the first and third sentences of paragraph (c)(3)(i), and adding paragraph (e), to read as follows:

§ 2803.1-2 Rental.

* * * * *

(b)(1)* * *

(i) The holder is a Federal, State, or local government or agency or instrumentality thereof, except government entities granting space to other parties who are using the space for commercial purposes, and municipal utilities and cooperatives whose principal source of revenue is customer charges;

* * * *

(c) (1) * * *

(iv) Rental for the ensuing calendar year for any single right-of-way grant or temporary use permit shall be the rental per acre from the current schedule times the number of acres embraced in the grant or permit, unless such rental is reduced or waived as provided in paragraph (b)(2) of this section.

* * * *

(3)(i) The rental for linear right-of-way grants and temporary use permits not covered by the linear right-of-way schedule set out above in this paragraph, including those determined by the authorized officer to require an individual appraisal under paragraph (c)(1)(v) of this section, and for communication uses covered by the schedule and nonlinear right-of-way grants and temporary use permits (e.g., reservoir sites, plants sites, and storage sites) shall be determined by the authorized officer and paid annually in advance. * * * All such rental determinations shall be documented, supported, and approved by the authorized officer. * * *

* * * *

(e) The annual rental payment for communication uses listed below shall be based on rental payment schedules. The rental schedules apply to right-of-way holders authorized to operate and maintain communication facilities on public lands, and state the base rent charged for the primary use of the building. They do not apply to rights-of-way granted to public telecommunications service operators providing public television or radio broadcast services. The schedules do not include the percentage of the gross rent required by paragraph (e)(6) to be paid by the holder.

(1) The schedules are applicable to communication uses providing the following services:

(i) Television broadcast includes facilities primarily used to broadcast UHF and VHF audio and video signals for general public reception. This category does not include stations licensed by the FCC as a Low Power Television (LPTV) or rebroadcast devices such as translators, or transmitting devices such as microwave relays serving broadcast translators.

(ii) FM radio broadcast includes right-of-way holders that operate FCC licensed facilities primarily used to broadcast frequency modulation (FM) audio signals for general public reception. This category is not applicable to stations licensed by the FCC as a low power FM radio. This category does not include rebroadcast devices such as translators, boosters or AM

synchronous transmitters or microwave relays serving broadcast translators.

(iii) Rebroadcast devices include FCC licensed facilities primarily used to rebroadcast a signal from its point of origin. This category includes translators and low power television, low power FM radio, and microwave relays. Microwave facilities used in conjunction with LPTV and broadcast translators are included in this category.

(iv) Cable television includes FCC licensed facilities that primarily transmit video programming to multiple subscribers in a community over a wired network. This category does not include rebroadcast devices that retransmit television signals of one or more television broadcast stations, personal or internal antenna systems such as private systems serving hotels or residences.

(v) Commercial mobile radio service includes FCC licensed commercial mobile radio facilities primarily providing mobile communication service to individual customers. Such services generally include two-way voice and paging services such as community repeaters, trunked radio (specialized mobile radio), two-way radio dispatch, and public switched network (telephone/data) interconnect service.

(vi) Cellular telephone includes FCC-licensed systems

primarily used for mobile communications using a blend of radio and telephone switching technology, and providing public switched network services to fixed and mobile users within a tightly defined geographic area. This category includes Personal Communication Systems, and digital mobile telephone service.

(vii) Common carrier microwave includes FCC-licensed facilities primarily used for long-line intrastate and interstate public telephone, television, information, and data transmissions.

(viii) Private microwave includes FCC-licensed facilities primarily used by pipeline and power companies, railroads, and land resource management companies. Communication services associated with this category may include private mobile service, private two-way dispatch service, private paging, supervisory remote control/sensing, and microwave voice/video/data services. This use is solely in support of the holder's primary business activity.

(ix) Facility manager includes holders who may or may not have FCC licenses, but do not operate telecommunications equipment. The primary purpose of their facilities is to lease or sublease space for a variety of tenants who engage in telecommunication activities. The building owner generally provides space in the building and/or tower, and utilities, access, security, and

backup generator services.

(x) Other communication uses include FCC-licensed private communication uses such as amateur radio, personal/private receive-only antennas, passive reflectors, and natural resource and environmental monitoring equipment.

(2) The rental schedules will be updated annually based on the U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI-U, U.S. City Average, published in July of each year).

(3) Increases in base rental payments over 1994 levels in excess of \$1,000, or 20 percent of the 1994 rent, whichever is greater, will be phased in over a 5-year period. In 1995, the rental payment will be the 1994 rental, plus \$1,000 or 20 percent of the 1994 rental, whichever is greater, plus the annual adjustment under paragraph (e)(2). The amount exceeding the above \$1,000 or 20 percent threshold will be divided into 4 equal installments, and beginning in 1996 the installment, plus the annual adjustment in the total rent, will be added to the previous year's rent.

(4) With the concurrence of the BLM State Director, the authorized officer may use other reasonable measures to determine fair market rent when it is determined by the authorized officer

that the estimated rental payment does not reasonably reflect fair market rent for the individual authorized use.

(5) Annual rental payments shall be calculated and submitted based on the following schedules:

Broadcast Annual Base Rental Schedule

Population ¹	Television ²	FM Radio ²	Rebroadcast Devices ³	Examples of Principal Community & Population Served ⁴
2,000,000 +	\$45,000	\$34,000	\$22,000	Los Angeles
2,000,000 (1,000,000)	\$30,000	\$21,000	\$15,000	
1,000,000 (500,000)	\$24,000	\$18,000	\$12,000	Phoenix 983,403 Salt Lake 725,956
500,000 (250,000)	\$18,000	\$11,000	\$7,000	Tucson 405,360 Albuquerque 384,736 Las Vegas 258,205
250,000 (125,000)	\$10,000	\$6,000	\$4,000	Reno 133,530 Boise 125,716 Yuma 106,895
100,000 (50,000)	\$4,000	\$3,000	\$2,000	Las Cruces 62,126
50,000 (25,000)	\$2,500	\$2,000	\$1,000	Pocatello 46,080 Idaho Falls 43,828 Farmington 33,997
25,000 (15,000)	\$2,000	\$1,500	\$800	Grand Junction 29,034 Twin Falls 27541 Montrose 24,423
15,000 (10,000)	\$1,000	\$800	\$500	Butte, MT 3991 Bozorth, MT 2178

1. Population is based on U.S. Census information for principal community (city, cities, metropolitan area, county, or counties) served by the transmitter.

2. In addition to the base rent, the holder shall pay 15 percent of the gross rent received from space rented in the facility for the first 5 years, and 25 percent of the gross rent thereafter. The rental schedule for FM radio and television uses is applicable to primary transmitters that principally serve a community (city, cities, metro area, or county) reached by the transmitter. Principal communities covered do not include outlying areas served by translators.

3. Base rent based on city or cities.

4. The population shown is for the principal community served. If the transmitter principally serves two cities such as Idaho Falls and Pocatello, the total population would be used. If the principal community served included the entire county, the county population would be used.

Cable Television Annual Rental Schedule

Total Basic Subscribers	Base Rent ¹
200 or less	\$ 400
201-500	\$ 700
501-1500	\$1400
1501-2500	\$2000
2500 +	\$2400

¹ In addition to the base rent, the holder shall pay 15 percent of the gross rental revenue from space rented at the facility for the first 5 years after the effective date of this rule and 25 percent thereafter.

NONBROADCAST RENTAL SCHEDULE¹

Population	Comm. Mobile Radio Service ²	Private Mobile Lic.	Cellular Telephones	Private Microwave	Common Carrier Microwave	Local Municipality	Examples of County, Service and Population
2,000,000 +	\$12,000	\$10,000	\$10,000	\$10,000	\$10,000	\$0,000	<ul style="list-style-type: none"> San Diego 2,096,016 Minneapolis 2,127,101
1,000,000 - 1,999,999	\$10,000	\$6,000	\$5,000	\$6,000	\$5,000	\$2,500	<ul style="list-style-type: none"> Revere, MA 1,110,414 San Bernardino, CA
500,000 - 999,999	\$5,000	\$4,000	\$3,000	\$4,000	\$3,000	\$5,000	<ul style="list-style-type: none"> San Jose, CA 775,969 Porter, MI 666,500 Scott, CA 514,951
100,000 - 499,999	\$3,000	\$2,000	\$1,000	\$2,000	\$1,000	\$1,500	<ul style="list-style-type: none"> Hamden, MI 480,577 Marion, OH 378,183 Wichita, KS 251,667
50,000 - 99,999	\$1,000	\$1,000	\$2,000	\$1,000	\$1,000	\$1,500	<ul style="list-style-type: none"> Ada, ID 99,175 Boise, CA 121,250 Glenn, CA 111,414 Yuma, AZ 106,695
50,000 - 49,999	\$1,500	\$1,000	\$2,500	\$1,000	\$1,000	\$1,500	<ul style="list-style-type: none"> Alsea, OR 90,145 San Juan, NM 91,605 Hamsville, ID 72,207 Hamrick, ID 66,026
50,000 - 49,999	\$1,000	\$5,000	\$2,500	\$1,000	\$1,000	\$5,000	<ul style="list-style-type: none"> Elk Head, MI 50,218 Clarks, MA 47,849 Iron Falls, WI 45,560 Clair, AZ 40,316
50,000 - 49,999	\$5,000	\$5,000	\$2,500	\$1,000	\$1,000	\$5,000	<ul style="list-style-type: none"> Grainfield, CO 39,074 Madison, OH 36,018 Carson, NY 106,059
10-14,999	\$5,000	\$5,000	\$2,500	\$1,000	\$1,000	\$5,000	<ul style="list-style-type: none"> Sacramento, CA 14,761 Madison, CA 14,462 Big Horn, WY 10,375 Hanley, OH 10,660

¹ In addition to the base rent, the bidder shall pay 15 percent of the gross rent received from space rented in the facility for the first 5 years, and 25 percent of the gross rent thereafter.

² Rental payments for commercial mobile radio is based on the population of the county in which the transmitter is located or the population of the adjacent county if the county is predominantly serviced by the transmitter, whichever is greater. As an example, Kelly Ridge in Madison County, Idaho, principally serves the Idaho Falls area in Bonneville County. Although the transmitter is located in Madison County, the rent would be based on the base rent for Bonneville County.

³ Population based on 1990 census.

Rental Schedule Other Communication Uses

Use	Base Rent
Amateur Radio	\$ 75
Personal/Private Receive Only- Antenna	\$ 75
Local Exchange Carriers ¹ Population Served	
0-100	\$100
101-300	\$250
301-500	\$400
501-1000	\$600
6001+	Common Carrier Schedule
Passive Reflectors	\$ 75
Environmental Monitoring Equipment	\$ 75

¹ A radio service that provides basic wireless telephone service, primarily to isolated private areas.

(6) In addition, the right-of-way holder shall submit a certified statement regarding rent collected from tenants during the previous year, and pay 15 percent of the gross rent received from the authorized rental of space within the facility each calendar year from 1995 through 1999, and 25 percent of such rent each calendar year thereafter. Tenants occupying space in the facility under terms of the authorization will not be required to have a separate BLM authorization.

(7) The television and FM radio broadcast right-of-way holder will provide a 1-millivolt contour map or statement to BLM identifying the principal community (city, cities, metro area, or county) served by the transmitter.

PART 2810--TRAMLOADS AND LOGGING ROADS

Subpart 2812--Over O. and C. and Coos Bay Revested Lands

5. Section 2812.0-9 is added to read as follows:

§ 2812.0-9 Information collection.

The information collection requirements contained in part 2810 of Group 2800 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004-0102 and 1004-0107. The information is being collected to permit the authorized officer to determine if use of the public lands should be granted for rights-of-way grants or temporary use

permits. The information will be used to make this determination. A response is required to obtain a benefit.

PART 2880--~~RIGHTS~~ OF-WAY UNDER THE MINERAL LEASING ACT (AMENDED)

Subpart 2880--Oil and Natural Gas Pipelines and Related
Facilities: General

6. Section 2880.0-9 is added to read as follows:

§ 2880.0-9 Information collection.

The information collection requirements contained in part 2880 of Group 2800 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004-0102 and 1004-0107. The information is being collected to permit the authorized officer to determine if use of the public lands should be granted for rights-of-way grants or temporary use permits. The information will be used to make this determination. A response is required to obtain a benefit.

Assistant Secretary of the Interior

Mr. VENTO. Thank you, Mr. Millenbach.

We are pleased to welcome Gordon Small from the Forest Service; Mr. Small.

TESTIMONY OF GORDON SMALL

Mr. SMALL. Thank you, Mr. Chairman, and members of the subcommittee. We do appreciate the opportunity to participate in your review of the communication site fee schedules.

The issues surrounding communications use fees are similar to other fee issues on Federal lands.

In the case of communications site uses, we have determined that the fees currently charged for over 6,000 authorizations on National Forest System lands are well below the rental values received for similar uses of private land. This is based on numerous market surveys and site-specific analyses utilizing comparable non-Federal market rental information.

Since the 1950s, Forest Service fees for communication site uses were based on a formula that included a percentage of the permittee's investment in the facility, plus 5 percent of the rental fees from subtenants. There was no provision to update these.

However, an administrative appeal decision made by the Forest Service in 1983 concluded this fee formula did not yield fair market value and therefore was not in compliance with FLPMA.

We have sought since the mid-1980s to comply with FLPMA. We have used a number of information sources to develop proposed market-based fees that more accurately reflect fair market value.

We concluded that fee schedules were the most cost-effective means to establish rental fees for this use and directed our regional offices to adopt regional schedules. However, because fees have not been adjusted for many years, some permittees face significant fee increases and there has not been full agreement with the proposed fee schedules. Congress has been actively involved in this matter since 1990, prohibiting the implementation of proposed fee schedules in annual appropriation acts. In 1992, Congress directed the Radio and Television Broadcast Fee Advisory Committee be established to advise the Secretaries on appropriate methods of determining fees for radio and television broadcast uses.

In early 1993, the advisory committee submitted its report to the Secretaries that included a recommended fee schedule for radio and television broadcast. This recommended schedule did not represent fair market value but rather was an attempt to resolve the dispute over rental fees.

We endorse the advisory committee's recommendation that the agencies adopt separate fee schedules for radio and television broadcast facilities, as was done for other categories of communication uses.

The committee recommended and we adopted the concept of a "footprint" or ground lease where only the building owner holds an authorization. Individual subtenants in the building would not be issued separate authorizations or pay separate fees as in the past. Building owners would be assessed 25 percent of the gross rental income they receive from subtenants in the facility. This assessment would be added to the base rental fee for the land occupied by the building to arrive at the fee paid to the United States. The

base rental fees would be indexed to a Consumer Price Index to allow for adjustments to inflation. A phase-in would be used to minimize impacts on small business.

The fee schedules we adopted in 1989 and modified in 1992, were supplemented by a proposed fee schedule we presented for public comment in a July 1993 Federal Register notice. This proposed fee schedule affects the four major communications uses on National Forest System lands—radio and television broadcast, commercial mobile radio, and cellular telephone use—near major metropolitan areas. This notice also incorporates many of the recommendations of the advisory committee.

Since the proposed fee schedule was published in July 1993, we have been working closely with BLM to develop appropriate fee schedules that will reflect fair market value for these uses that will apply both to the National Forest System and to other Federal lands. Because the BLM is required by its regulations to establish fees using individual appraisals of its authorization, its fees have historically approximated fair market value far more closely than Forest Service fees.

The "footprint" lease, or ground lease, approach was explained poorly in our proposal last year. As a result, there has been confusion about how fees would be applied to subtenants in authorized buildings. With explanations to the affected groups, we believe, there is now more understanding that there will not be separate permits or fees involving the United States beyond those between subtenants and their landlords. We also believe the proposed approach provides an important incentive for improved management of communication sites. Issuing one authorization to each building owner will substantially reduce the administrative burden for agencies and be consistent with private market practice.

In conclusion, Mr. Chairman, the Forest Service intends to establish fees for communication uses on National Forest System lands that are fair and equitable to permittees and comply with FLPMA's requirement that the public receive fair market value for the use of its land. We believe our efforts over the past 5 years provide ample information to establish fair and equitable fees. We recognize that discounts or partial waivers of fees may be appropriate for some communication uses when it can be determined to be in the public interest.

It is our intent to establish a communication site fee schedule in cooperation with the BLM by November 15, 1994, to be implemented as soon as possible following publication of a final policy and fee schedule.

This concludes my prepared statement. I will be glad to answer question.

[Supplemental testimony of Mr. Small follows:]

SUPPLEMENTAL STATEMENT
UNITED STATES DEPARTMENT OF AGRICULTURE
Concerning Communications Site Fees

Background

The Federal Land Policy and Management Act of 1976 (FLPMA) requires that the United States receive fair market value for the use of Federal lands and their resources except in certain limited circumstances when fees can be statutorily waived. Fair market value may be determined by appraisal or other sound business management principles.

Fees collected for the sale of National Forest resources and the use of National Forest System lands are deposited in the U.S. Treasury. Twenty-five percent of all such fees are paid to the State in which the National Forest is situated. These funds are used for the benefit of public schools and public roads in the county or counties in which the National Forest is located.

Based on a 1983 administrative appeal decision, the Forest Service determined that its existing standard fee formula used for communications uses did not result in a fee which represented fair market value. In 1985, the Forest Service published in the Federal Register the current policy for determining fees for communications uses. The policy described three methods for establishing fees: 1) Site appraisal; 2) Competitive bid; or 3) Regional or geographic fee schedule based on market studies.

All Regions chose to develop fee schedules which would apply to most communications uses. Fee schedules were implemented in the Pacific Northwest Region (R-6) in 1986 and in the Eastern Region (R-9) in 1987. All other Regions adopted fee schedules in 1989, which were scheduled for implementation in 1990.

Appropriations Act Provisions

An administrative provision was included in both the FY 1990 and FY 1991 Appropriations Acts for the Department of the Interior and Related Agencies that prohibited expenditures of funds to implement the new fee schedules adopted in 1989, and prohibited any increase in fees above the amounts in effect on January 1, 1989. The FY 1990 Conference Report directed a report on how the agencies would ensure that any proposed fee increases would adequately reflect local fair market conditions. The Conference Committee expressed concern that a market survey approach to establishing communications site fees might result in an inequitable fee schedule for rural areas.

In the 1991 report to Congress, the Forest Service determined that market surveys and appraisals were the best methods for determining fees since they are based on an analysis of comparable rental fees. Based on other conclusions found in the report, the Forest Service modified the fee schedules for various uses including common carrier microwave, mobile radio-internal, and amateur radio. These amended schedules were adopted in 1992. The amended schedules identified fees for commercial uses, such as radio and television broadcast

that were to be established using appraisals or other sound business management principles.

The 1992 and 1993 Appropriations Act for the Department of the Interior and Related Agencies restricted the Bureau of Land Management and the Forest Service from raising rental fees for communications uses on Federal lands by more than 15 percent over those in effect on January 1, 1989. In addition, direction was contained in the Conference Report for both agencies to work together and establish an advisory group to review the rationale and methods used to establish fair market rental for broadcasters. The Radio and Television Broadcast Use Fee Advisory Committee (the Advisory Committee) was established in June 1992.

As a result of the 1992 Appropriations Act, the Forest Service implemented those fee schedules which previously had been adopted but not implemented due to the moratoriums in the FY 1990 and 1991 Appropriations Acts. Field offices were notified of their authority to increase fees 15 percent when supported by market evidence. A combination of appraisals and rental fee schedules was used to establish fair market rental values. The method used depended upon the type of use and the size of the population served by the communications site.

Communications Site Appraisals

In order to determine the fair market value of communications uses which provide service to large urban areas, the Forest Service issued a contract in late 1991 to a private independent appraiser for the appraisal of 12 large communication sites. The appraisals included communications sites in Arizona, California, Idaho, Montana, and New Mexico. The conclusions of the appraiser support previous studies which indicate the fees currently paid for communications uses located on National Forest System land are significantly below fair market value for the authorized use.

The appraisal reports do not represent a decision to implement new fees. However, they are an indication of value and are considered during the process of fee establishment. In addition to the appraisal reports, the Forest Service will consider other information that provides an indication of market value. This will include information provided by the authorization holders and the recommendations of the Radio and Television Broadcast Use Fee Advisory Committee. Once this information is analyzed, authorization holders will be notified of the decision to establish fees.

Advisory Committee

As required by the Federal Advisory Committee Act, the Advisory Committee represented a balance of the interests involved in the fee issue. It was comprised of both private and public users, and other groups who have an interest in fees collected from the use of Federal lands.

The Radio and Television Broadcast Advisory Committee was assigned the following three duties: 1) Review and report on the appropriate methods to establish fair market rental fees; 2) Review and report on reasonable options for establishing fair market value; and, 3) Review and report on the appropriateness of waivers or reductions in fees for radio and television

broadcast uses based on requirements for licensing under the Communications Act of 1934.

The Committee recommends a number of actions it believes would resolve issues associated with radio and television transmitter fees on NFS and public lands. These actions have been incorporated into the Forest Service's proposed fee schedule, with the exception of the Committee's recommended fees.

Federal Register Notice

The Forest Service has developed fee schedules for television and FM radio broadcast, commercial mobile ("2-way") radio, and cellular telephone based upon recent appraisals. The schedules were published in the Federal Register on July 13, 1993. The published schedules reflect fees charged by private landowners and correspond to population densities of the areas served by various communications facilities. The proposed fees for television and FM radio broadcast include a flat fee linked to population density, plus 25% of any rental (sublease) income received by the permittee. The proposed fees for commercial mobile radio and cellular telephone are flat fees linked to population density, except for commercial mobile radio use within areas serving 500,000 or more persons. The proposed fee for commercial mobile radio use within such areas is a flat fee (\$12,000) or 25% of rental income received by the permittee, whichever is greater.

The public comment period for the published schedules closed on October 12, 1993. Of the 84 comments received, the most significant focus on the following issues: 1) rural sites for television, FM and commercial mobile radio with low population densities need to be recognized; 2) use of appraisals for urban sites; 3) need to clarify how schedules apply when multiple uses occur at the same facility or site; 4) use of the Consumer Price Index (CPI) to update fees; 5) justify use of the 25% of rental income fee component; 6) fee phase-in policy is poorly understood; 7) use of a single lease or permit for all multiple-user facilities; and 8) delay publication of final schedules until public comment is received on urban industrial and common carrier uses.

Omnibus Budget Reconciliation Act of 1993

The recently enacted Omnibus Budget Reconciliation Act (P.L. 103-66), requires a 10 percent increase in fees for all communications site uses beginning in 1994. Billings for 1994 communications site fees have been issued which reflect the increases directed by Congress.

Cooperation with the BLM

The BLM is currently preparing a Federal Register notice to amend its regulations, and at the same time, propose a fee schedule covering all of its communications uses. The BLM used the public comment on the Forest Service proposed schedule in addition to its own information in preparing the schedule.

Since publication of the July 1993 schedule, the Forest Service has worked closely with the BLM to compile additional market information in rural areas. Joint meetings have been held with agency appraisers, communications industry representatives, and permittees. A data base of nearly 2,000 comparable private market transactions has been compiled.

Implementation Plans

The Forest Service and the BLM will continue the joint effort to establish fair and equitable fees based on fair market value and plan to publish and adopt final fee schedules in the Federal Register in November 1994, to be implemented as soon as possible following publication.

Mr. VENTO. Thank you, Mr. Small.

There is a lot of concern, obviously, the input that I am receiving here is that recently the BLM is putting in the record a new proposed fee schedule, this footprint rental concept, and have been working closely with the Forest Service.

Mr. Small, what does this mean in terms of the Forest Service for proposal that was put forth last year? Are you now going to be delayed yet again or are you going to be ready to go with a revised fee schedule about the same time?

Mr. SMALL. We are hoping to have our final fee schedules consistent, where the BLM and the Forest Service will have the same schedule. When somebody comes to get a permit or a lease on public land, whether it be BLM or the Forest Service, we will be talking the same prices, the same rules, et cetera. We expect to be ready to have this out by November 15, both the Forest Service and the BLM—on a final rule for the BLM and final notice for the Forest Service.

Mr. VENTO. Of course, without any special instructions from the Appropriations Committee, then you would put it into effect. Does this anticipate a phase-in, too?

Mr. SMALL. Yes.

Mr. VENTO. Why are we into that phase-in? If you had a hardship provision in there, won't that be sufficient?

Mr. SMALL. In the case of the BLM, they have been able to keep their fees much closer to the market value. I would like to say that we are almost trying to get our fees up to fair market value—you know, because BLM has been appraising fees for some time.

Our fees are so far off the market that we are talking about very substantive increases in some cases, and the other argument is that people have subtenant leases out there that need time to move into this new process. We believe that we can ease the discomfort if we sit down with the permittees and go through this, and it is going to take some time. So we think the phase-in makes a lot of sense.

Mr. VENTO. Last year, Mr. Millenbach and Mr. Small, there was a lot of criticism of the appraisal process. Now I note since last year, and I hope my colleague, Mr. LaRocco is paying attention, you had done consultations on about 2,000 operators. What was the purpose and nature of those consultations?

Mr. Small. Mr. Millenbach.

Mr. SMALL. The most recent ones we have been using are a total of about 1,500. But we are trying to get comparable private leases. Comparable in terms of population, comparable in terms of amenities provided so that we can compare apples with apples and be sure that we are setting equitable fees. We have had the Miling appraisal that people have already talked about and then we did this market survey where we gathered all of the information that we could find in the market related to how much people pay for similar ground rent on private land in similar markets. We rated that information according to population and the price paid and came up with these fee schedules.

Mr. VENTO. So 2,000 comparable private market transactions have been compiled, so you have that as a basis to move forward.

Mr. SMALL. Two thousand since about 1983. The more recent ones total about 1,500. You go and talk to the people who are involved in the transaction, and you document all of the various aspects of the transaction, who was paying for what, how much, and so forth.

Mr. VENTO. And that is the basis upon which you have arrived at the conclusion that you are receiving only about 10 or 15 percent of what others are receiving on a comparable basis and BLM is receiving about 50 percent of what others are receiving, Mr. Millenbach? If you disagree with what I am saying, Mr. Small, I hope that you will speak up.

Mr. SMALL. I agree.

Mr. VENTO. Mr. Millenbach.

Mr. MILLENBACH. Could you repeat the question please, sir?

Mr. VENTO. With these comparables, to use the same comparable private market transactions when judging what BLM is collecting, like 50 percent or 55 percent, of those comparable market transactions, do you share data with the Forest Service on this?

Mr. MILLENBACH. Yes. We have been using the Forest Service data to arrive at a lot of the data that we have used to set up our proposed schedules in the proposed rulemaking.

Mr. VENTO. Is this going to avoid most of the criticism in terms of the appraisal process in your judgment that was leveled last year at the BLM and Forest Service?

Mr. MILLENBACH. Well, we have used a lot of data that the Forest Service used in hopes that that would ameliorate some of those kinds of concerns. We have also used some other information that we had on hand to arrive at the numbers that we have used, such as the market information that our own appraisers have compiled in their field operations.

We are collecting rental payments on current BLM sites, and while some of those are somewhat outdated, we do have some information based on existing appraisal—existing rentals that we are collecting on the existing BLM sites which we have used to come up with the numbers. And then finally we have consulted with the Forest Service appraisers and the lands people over there to come up with a proposed schedule that we have incorporated into our proposed rule making. We think that that gives us a better handle on what the fair market value might be and gives us more confidence in our numbers.

Mr. VENTO. Well, another point of contention with the industry has to do with the practice called take-backs. What are we talking about here? You are not supposed to ask a question if you don't know the answer, but I don't know the answer.

Mr. MILLENBACH. Take-backs are where the company would rent a communication site from us and then we would ask them to reserve part of the building for us to put some government equipment in, equipment transmitters, and these kinds of things, and then we would give them a discount for them affording us the opportunity to do that.

Now, there have been some complaints from the industry folks, I think it is primarily to the Forest Service—I probably should let them talk about this—using the sites for water storage tanks and picnic tables and these kinds of things, and they believe that those

uses are not related to the communication sites and that the government shouldn't be asking them to do that. We have traditionally used take-backs to put our equipment into their buildings and use their buildings for our own purposes; for example, fire radios and these kinds of things. The BLM has not had a lot of arguments from our users for doing that.

Mr. VENTO. Mr. Small, did you want to comment about this take-back issue?

Mr. SMALL. The advisory committee had a lot of beneficial effects and there were a lot of things that came out of that discussion that were very helpful. It was obvious from the members there that they were very concerned about this take-back issue. We were not aware that there was much of that going on as there was.

As a condition to your permit, other types of things might be required, like picnic tables or a certain amount of space we have reserved in the building and so forth. We find that to be inappropriate and we are going to be changing that as part of this new policy. Everybody is focusing on the fee issue here, and the advisory committee got caught up in the same thing. They wanted to see what the cake tasted like when they got done with all of the discussion. But fundamentally, there will be some very sound changes here and one of those is to get out of the take-back business.

Mr. VENTO. So the idea would be that the new schedule would not include that particular provision. I guess it would permit it, but it would not be considered a normal course of doing business unless it was absolutely essential?

Mr. SMALL. It would be prevented basically, because it does all kinds of things that get a little bit spooky.

Mr. VENTO. How much do you get involved—in the last question I raised with the GAO—in this whole issue of access to these sites?

Have you had complaints from transmission operators—those that seek such access—and have not been able to use it for television or radio, or that the fees have been inordinately high to such businesses?

Mr. SMALL. Fees have never been an issue. Once in a long time, because it is a fairly competitive business, there will be some issue about a commercial communicator feeling they are not getting a fair shake by somebody that owns a building, but that is a fairly rare occurrence. These people have noted—

Mr. VENTO. Mr. Small, or Mr. Millenbach, do you have the ability to remedy that particular problem?

Mr. SMALL. Yes.

Mr. VENTO. In your contracts, do you have a clause or provision where they cannot discriminate, where they have to accept a sublease, and have to do it on a comparable price? How do you deal with it? I am not proposing it, I am wondering how you deal with that particular problem or how you remedy it if a problem does occur.

Mr. SMALL. We had a recent situation that occurred in Vermont where a permittee felt that he was being charged an exorbitant amount of rent by the landlord. So we did a lot of checking in the private market area up there to find out how much people are paying on other mountains and we found out that the amount the landlord was proposing to have paid was consistent. So in that case

we wrote back to the tenant and told him that based on our information, that was a fair figure.

Mr. VENTO. Guaranteed by good housekeeping. I mean it is sort of a service above and beyond, but it is the sort of involvement where you get involved because you own a footprint, a piece of land.

Mr. Millenbach, do you have similar experience? Do you have a remedy in your contract? I mean this was one of my questions, I think I got an example, which was good.

Mr. MILLENBACH. Well, I can give you a similar example. We have a mountain down by San Diego called Otai Mountain. And we have a number of competing land users up there. What we came up with was a communication site management plan that would try to allocate the space up there and come up with fair market value rentals. We did appraisals on those particular sites. We haven't been completely successful. Not all of the users up there have accepted the plan that we came up with, and they have appealed to the Interior Board of Land Appeals and that is where it stands right now.

Mr. VENTO. I don't know what that means, but does it mean that somebody has a tower site or you have a fee increase that you are putting in for the original footprint or is it for a subleasee? My question really goes to, is there a provision in the contracts or in the lease that deals with any type of discrimination in terms of not accepting a subleasee or charging an exorbitant price? Mr. Cavanaugh is indicating that he knows something about it.

Mr. CAVANAUGH. Yes, there is. There is a nondiscriminatory clause in there.

Mr. VENTO. It is in there, so you do have a remedy, but it isn't a constant problem. It may be a good question, but it hasn't been a problem. So it is another requirement, I suppose.

Mr. Small, did you want to add? I see you were conferring with staff. Did you want to add anything to your statement?

Mr. SMALL. I was going to say exactly what Dave did, that there is a nondiscrimination clause.

Mr. VENTO. Okay. The issue here, of course, is not keeping track of the records, and that to me seems to be rather astounding. I realize that there are thousands of these sites, but nevertheless you would think that the forest supervisor or the BLM district manager would in fact on occasion examine this, try to keep track. Is it simply because the agencies don't require a paperwork trail on subleases, or you don't have to share that information? Or is it just that your records are in shambles?

Mr. MILLENBACH. Well, on the subleases, while we are not collecting a rent, there is a—

Mr. VENTO. Well, you are collecting something, though, you are collecting 5 percent in the case of the Forest Service. Do you collect no benefit from a sublease?

Mr. MILLENBACH. On most of our sites, that is correct.

Mr. VENTO. Are you proposing to change that?

Mr. MILLENBACH. Yes, sir. The new regulations will provide for a base rent of the site and then eventually a 25 percent share of the rent that the building owner and facility owner are collecting.

Mr. VENTO. Anything about the recordkeeping and not looking at these? If we went out there will we find the same thing the GAO found? The GAO is saying that nobody was up at the site for 7 years, no BLM personnel.

Mr. MILLENBACH. Well, you could probably find sites like that; yes, sir. That is one of the new things that we have to do under these regulations, is go ahead and put in place a program to find out who these subleases are and do some compliance on that to make sure that we are getting the rent that we are due under the regulations.

Mr. VENTO. Probably a lot of surprises out there.

Mr. Small.

Mr. SMALL. We know that recordkeeping is a problem on these. I guess I wouldn't characterize it in a way that says the Forest Service doesn't think it is important, but we have to spend the appropriated funds, what they are appropriated for, and there is very little appropriated funds to be used in this manner.

We have over 6,000 new applications every year for special use permits of all kinds. We have over 72,000 authorized uses.

As we have gotten into this exercise and have chosen sites and dug out information, we have actually found television stations and all kinds of things up there that we didn't know were there. Folks don't see them unless they stop and go into the building and check on the permit.

We just have not had the resources or people to put into it. This whole process is moving us toward a much more efficient situation, where it will just be this one instrument and we will depend on this statement signed by an officer of the corporation much the same as they do in private practice. Our administrative burden will be a whole lot less.

Mr. VENTO. So you are actually transferring it. The proposals would transfer that responsibility to whoever has the rental, or the footprint area, to keep track of this and to keep you appraised of it.

Mr. SMALL. Right.

Mr. VENTO. So you can get the tape, punch it up, and you have the information on that particular rental area.

Mr. SMALL. That is the way they do it in private practice.

Mr. VENTO. It sounds sensible to me.

One of the concerns that has come up—and that you maybe heard me voice earlier—is where we have nonprofits or others that actually are seeking these permits, and they have it. Are they going to have the same expectation of them then to keep track of who else they are putting on their towers and keep track of what they are doing?

Mr. SMALL. If they get into the profitmaking business, yes.

Mr. VENTO. How do you know they are not if you are not looking at it more closely? I mean, obviously, you aren't going to do an analysis into it if it is some obvious not-for-profit group, an educational television station, or something of this nature.

But what about the actual cost of in fact administering those sites? I mean, indirectly it is nice that the Forest Service doesn't or the BLM doesn't necessarily have the resources to make a contribution to public television. I mean, if you are going to do admin-

istrative work, I think it is great that we are able to do it. But I think at the point where we are putting these things on a cost basis we ought to be looking at what the overall administrative cost is. That is basically what we do by putting a minimum charge on the per year on the transponders, isn't it?

Mr. SMALL. Translators.

Mr. VENTO. Translators, yes.

Mr. SMALL. Yes.

Mr. VENTO. We don't even have a minimum charge on the non-profits?

Mr. SMALL. I believe BLM has cost recovery regulations. Forest Service doesn't.

Mr. VENTO. Does not. So is that proposed that you would have the cost recovery included in these new rules and regulations? They would be continued, and the Forest Service is apparently agreeing to that, is that correct?

Mr. SMALL. Cost recovery would not be part of the fee schedule that we are talking about, but the Forest Service and BLM are working on several fronts to get more consistent regulations that deal with when you come to the public lands.

Mr. VENTO. Maybe we can get a couple more FTEs, you know, with cost recovery on that. It is not a lot to an individual station, but it might mean a lot to your program in terms of getting the type of help you need.

Well, there are a lot of questions here. Let me yield to my colleague, Mr. Synar, for questions.

Mr. SYNAR. Thank you, Bruce.

Now, Mr. Small and Mr. Millenbach, the television and FM broadcasters currently pay rent to public lands for communications facilities. On the Forest Service it is about \$185,000 and BLM it is \$250,000 for a total of \$425,000. Is that correct? Forest Service \$185,000, BLM \$250,000?

Mr. SMALL. Yes, that number sounds right. Yes, that is right.

Mr. SYNAR. Now the revenue that will be generated from all communications facilities in 1994, accounts for—I see the Forest Service is \$1.8 million, BLM is \$2 million. Is that correct?

Mr. CAVANAUGH. Yes, sir.

Mr. SYNAR. Now, only about \$425,000 a year—or roughly 10 percent of that current annual revenue from communication sites—comes from broadcasters, is that correct?

Mr. MILLENBACH. That is correct.

Mr. SYNAR. So what segment of the industry currently pays the most in Federal rental fees? Isn't it the commercial mobile radio operators?

Mr. MILLENBACH. It is what we are calling in our regulation the common carriers.

Mr. SYNAR. Right. Now, of the 9,000 permits that you have issued to the television FM broadcasters, the Forest Service has 164, of which 68 are television, 96 are FM radio, and BLM has 65—25 are television, 40 radio—for a total of 229. Is that correct?

Mr. SMALL. Yes, that is correct. By the way, that is for the Western States. We recognize—

Mr. SYNAR. Correct. Now, Mr. Small, if the Forest Service implemented its proposed fee program, how would the broadcasters be affected by that?

Mr. SMALL. Based on our 1993 proposed fee schedule—of course, the BLM schedule is just out and there would be a slight adjustment—but the fees, the base fees, not talking about the 25 percent, but the base fees would go up to about \$1,355,000 approximately, somewhere in that area.

Mr. SYNAR. How does that estimate compare to the advisory committee's estimate in its impact on the proposed increase?

Mr. SMALL. The advisory committee's numbers—if you apply this, the advisory committee's schedule, it would be about a million dollars, about \$355,000 less.

Mr. SYNAR. So the bottom line is the difference between the NAB and the Forest Service proposal is \$300,000.

I am missing something here, I think. Why are they screaming about the \$300,000? I mean, if the NAB is up in arms because they think they are going to hurt some small broadcasters by assessing an increase evenly across all broadcasters, isn't the logical extension of that argument is that smaller broadcasters that NAB is worried about will actually pay less?

Mr. SMALL. Yes. The population is a driving factor on these schedules. If you look at our schedules that we have out, the smaller broadcasters, and smaller communities, pay substantially less than the big ones.

Mr. SYNAR. Now the NAB says that the fee schedules which you propose are unfair because these agencies administer about 50 percent of the lands in the West, most of which are ideal for communication sites. Thus, they argue they have nowhere to go to if you all cut them off. What is the truth of that argument?

Mr. SMALL. We do have a lot of good sites, but there is also a number of sites out there in private ownership. We are able to find over 2,000, but currently there are about 1,500 current leases on private lands.

Mr. SYNAR. How long does it take you to grant a permit or a right-of-way authorization?

Mr. SMALL. Too long.

Mr. SYNAR. Good answer.

All right. Let's go into another area here. You haven't—I want to talk to you about this GAO report, obviously, and which you all are familiar with as of today. You haven't been meeting your statutory requirements to collect fair market value, have you, Mr. Millenbach or Mr. Small?

Mr. MILLENBACH. No, sir.

Mr. SMALL. No, sir.

Mr. SYNAR. Mr. Small, do you agree with GAO's findings with respect to Mt. Wilson?

Mr. SMALL. Yes, we do.

Mr. SYNAR. Mr. Small and Mr. Millenbach, do you agree with the overall accuracy of the GAO's report?

Mr. SMALL. I haven't had a chance to really review it in detail, but from the pre-briefings, it would sound like we would agree with what they have to say.

Mr. MILLENBACH. We would concur.

Mr. SYNAR. You all both will agree that you don't know how many unpermitted communications users are operating on Federal land, is that correct?

Mr. SMALL. That is correct.

Mr. SYNAR. GAO testified earlier that one facility owner on Mt. Wilson receives about \$465,000 a year in subtenant rents yet pays you all, the Forest Service, Mr. Millenbach, only about \$24,000 a year in fees. Can you provide other examples of where the primary permittee is not paying fair market rent to the Government but is getting fair market value from a subtenant?

Mr. SMALL. Well, Mt. Wilson is Forest Service. We have a number of examples. As we have gone through this and tried to estimate the effects of these fees, we have actually gone out and had our folks check to see what is there.

Mr. SYNAR. That is a unique thing, going out and looking. Very innovative.

Mr. SMALL. From that we have been able to get a better idea of what the effects might be. We have a number of situations out there very similar to Mt. Wilson, and it isn't just radio and TV. We find it is all across the board.

We can find mobile radio situations where people are making substantial amounts of money and other mobile radio situations that are very marginal operations. It is all across the board.

Mr. SYNAR. Okay. Will you agree with the GAO's finding that you don't have this as a high priority in your agency?

Mr. SMALL. That is true.

Mr. SYNAR. Now, finally, do you believe additional staff will be necessary to properly implement the new fee schedules to insure that all the revenues are collected, Mr. Small and Mr. Millenbach?

Mr. SMALL. I think we can probably do it with our existing staff. It will take us a while to do it. Once it is done we will have more efficient use of the existing staff.

Mr. SYNAR. You know GAO disagrees with you on that, don't you?

Mr. SMALL. Like I say, I haven't had a chance to really look at their report in detail.

Mr. MILLENBACH. I agree. I would say the same thing.

Mr. SYNAR. I am sorry. GAO agrees with you. You may not need additional staff. I stand corrected.

Mr. SMALL. After it is implemented, we should be a lot more efficient in this whole process.

Mr. SYNAR. Finally, GAO has recommended that you proceed with the implementation of your fee schedules unless Congress explicitly prohibits you from doing it through new authorization language. Will you do this?

Mr. SMALL. Yes.

Mr. MILLENBACH. Yes, sir.

Mr. SYNAR. All right. Now NAB's representatives have informed the subcommittee staff that they support the bills pending in the House and the Senate. One is Mr. LaRocco's. They said they do not endorse the Forest Service and the BLM proposal. They said they negotiated in good faith with the Federal representatives to the committee but felt betrayed because the Secretaries did not accept

all the recommendations of the committee report, particularly the recommended fee schedule.

Mr. Small, I want to clarify for the record, at the time you were serving on the advisory committee, did you have the authority to commit the Secretary to any recommendations in the report such as whether the Department would grant public service discounts to FM and television broadcasters? You did not have that authority, did you?

Mr. SMALL. I could not commit the Department.

Mr. SYNAR. All right. And the Federal members on the advisory committee, did they have—did you ever represent to the broadcasters or others that you could commit the Secretaries?

Mr. SMALL. No, I never did.

Mr. SYNAR. So are the agency official positions—excuse me. With respect to the discount issue which we have been hearing about, what are the agencies that you represent official positions with respect to offering public service discounts?

Mr. SMALL. If you will bear with me a little bit, I would like to go into a little bit of discussion on that point because it has been a very contentious one.

Public service discounts have been an issue for a long time, and early on in the process we worked with the industry to say, tell us, give us an example of how much air time is actually public service. Well, since 1985, they have had no requirement to actually provide public service, and they have never been able to come up with any kind of meaningful numbers in that context.

When we got into the advisory committee meetings, there were several different factors. I think you have already picked up on the fact that the Forest Service and the BLM issued different types of authorizations. So from the agency's perspective, the way we are doing it now, we issue a special-use permit which is a 30-day license which is a very different type of authorization from a lease or from a right-of-way authorization that BLM issues.

When we are talking about discount, we had no agreement in the committee on issues like public service, so what we did as a matter of convenience, and to move the report along, was to group several items in that discount area. And that included things like public service. It included things like the nature of the authorization.

If we were trying to continue down the path of issuing special-use permits instead of leases, then we would probably be saying some sort of a discount was warranted. But when you start issuing a lease and people can borrow money on invested capital, that is a very different situation, and the discount is not warranted.

Mr. SYNAR. Mr. Millenbach.

Mr. MILLENBACH. In our proposed rules, they do not reflect this 30 percent discount that was recommended by the advisory committee.

We liked a lot of the comments and the suggestions we got from the advisory committee. You can see that in our proposed rule-making that quite a few of those have been incorporated—the rental schedule itself, for example.

Mr. SYNAR. I know you have accepted a lot of the recommendations. I want to focus in on this discount. The NAB representatives

say you all proposed the 30 percent discount for broadcasters. Is that correct?

Mr. MILLENBACH. I am going to defer to Mr. Cavanaugh who was on the committee.

Mr. SYNAR. Mr. Cavanaugh.

Mr. CAVANAUGH. I don't recall us proposing a 30 percent. We indicated that that had been used once before.

Mr. SYNAR. Now the second part of this question is, is there any quantifiable information for a 30 percent discount?

Mr. CAVANAUGH. No.

Mr. SYNAR. Before I interrupted you, Mr. Millenbach—and I apologize—you did accept a lot of the advisory committee's recommendations?

Mr. MILLENBACH. Yes, sir. We accepted the recommendation for rental schedules. We accepted the phase-in suggestions for substantial increases that they had made. They have made a recommendation that annual increases in the schedules be made based on the Consumer Price Index. And we have also accepted their recommendation to assess a 25 percent rental on the subleases.

Mr. SMALL. Congressman, there is an absolutely critical point here on this discount business. We recognize that in dealing with the government it is a little bit more difficult from time to time. Now in most of these issues we are talking about, the people already are on the mountaintops and have permits or have leases, so it is kind of a moot point to them. They are there.

But in order to be equitable in this process we deliberately set our fee schedules at the low end of the range of market evidence. We did that in lieu of going with any kind of a discount. If you tack a 30 percent discount on top of that low end price range that the Forest Service had established for this stuff, you are really undercutting fair market value.

Mr. SYNAR. You are doing two other things, too. First of all, to your knowledge, do States or private landowners grant public service discounts?

Mr. SMALL. I am sorry. Repeat the question.

Mr. SYNAR. States and private interests don't provide discounts?

Mr. SMALL. Not that I am aware. You are always going to get into the issue of when you are in a real rural area and people want to have TV, obviously, they are going to grant them whatever they need. But in terms of a public service, no.

Mr. SYNAR. So if we were to give that 30 percent discount, not only is it something new for the marketplace, but those who are not giving it would then be undercut, and their revenues would be hurt, correct?

Mr. SMALL. Yes.

Mr. SYNAR. And the vice versa would be also correct that if we raise to fair market value, States and private interests would benefit because those fees would go up, correct?

Mr. SMALL. It just makes a more level playing field for everybody.

Mr. SYNAR. And more revenues for the States since we share the revenues. Good news for States rights people, right?

Okay. Thank you, Mr. Chairman.

Mr. VENTO. Yes. Mr. LaRocco.

Mr. LAROCO. Thank you, Mr. Chairman. Mr. Small and Mr. Millenbach, did you sign the advisory committee document?

Mr. SMALL. I believe we did. I think Dave and I were the members on that advisory committee.

Mr. LAROCO. You were members? Mr. Cavanaugh, were you a member?

Mr. CAVANAUGH. Yes, I was.

Mr. LAROCO. So you were three of the—

Mr. SMALL. We were two.

Mr. MILLENBACH. Those two.

Mr. LAROCO. Mr. Cavanaugh was a member and Mr. Small?

Mr. SMALL. Right.

Mr. LAROCO. You both signed the document?

Mr. CAVANAUGH. Yes, we concurred—or I concurred.

Mr. SMALL. I don't recall whether it was actually signed or not, but it probably was. It has been a while now.

Mr. LAROCO. Okay. But I think the answer is probably yes? Okay.

Mr. Cavanaugh, you are an appraiser?

Mr. CAVANAUGH. Yes, I am.

Mr. LAROCO. The GAO was saying earlier that there were no appraisers as a part of this process. I didn't understand, and now I am confused.

Mr. CAVANAUGH. I think in regard to the GAO process in their review, there were no appraisers, but on the advisory committee we did have myself as well as a Lee Smith from Reno, Nevada, who was an appraiser.

Mr. LAROCO. In your own words, why was there a 30 percent discount? Why was it proposed? Was it a negotiations tool? Was it a tradeoff for something else that was gotten on the footprint or whatever? I mean, obviously, you were participants. So, in your own words, why was there a discount?

Mr. CAVANAUGH. Well, as you can imagine, an advisory committee like this, bringing together a group of people on an issue that has been out there for a long time, there were sharp disagreements. And to help move the process along this was a mechanism to help move that along and get us thinking about what those values should be. So it was a compromise of sorts, just to help move the process.

Mr. SMALL. From the Forest Service perspective, as I mentioned before, at the time we were talking with the advisory committee, we were still thinking about special use permits, the 30-day revokable license. In that context, I went along with that 30 percent.

Other people might have been reading—they went along with it because it was public service. The Forest Service never went along with it as a public service discount, but we were hung up in the committee on that issue.

As I recall, the way it was finally resolved, people went around the table and threw up numbers on the flip chart, and they added them up and averaged them, and that was the discount. It got fairly informal there.

Mr. CAVANAUGH. And then they asked, at the very end, can you live with it? They all went around the table. Can you live with it? And nobody died.

Mr. LAROCO. Nobody died. Okay.

Mr. CAVANAUGH. Nobody died.

Mr. LAROCO. Well, I think it is an important point for my chairman to hear that there was a diverse group of people there. Some people have criticized the advisory committee by saying it was out of whack and it was tilted and it was out of balance because there were broadcasters that dominated the committee. And how many broadcasters were on this committee?

Mr. CAVANAUGH. Two.

Mr. LAROCO. Two out of twelve, okay. I thought maybe there was just one, but—

Mr. CAVANAUGH. Charlton Buckley and Mr. Danzinger.

Mr. LAROCO. Now, also, you had mentioned that there had been, I think, 1,500 different appraisals made, Mr. Small?

Mr. SMALL. Fifteen hundred different comparable leases that were examined.

Mr. LAROCO. Were those made before the committee had convened or during that period?

Mr. SMALL. It has been an ongoing process. We had well over 1,000, I am sure, at the time we were convening with the committee.

Over the past several years we have continued to gather information. We continue to work with different segments of the industry, too, because we are talking radio and TV. And there are many other segments and a lot of them have been providing lease information for their own, you know, segments of the industry.

Mr. VENTO. Would you yield, Mr. LaRocco, on a clarification point?

Mr. LAROCO. Yes.

Mr. VENTO. Thank you.

In terms of the appraisals I see in your statement, on page 8 of your supplemental statement, Mr. Small, it indicates that the data base of nearly 2,000 comparable private market transactions has been compiled. I think some of them must be BLM. Is that the reason you are using 1,500?

Mr. SMALL. I am using 1,500 because of the recency of the data. We have a data base that includes over 2,000 lease transactions, but when it came down to developing the fee schedule we dropped out the older ones.

Mr. VENTO. Okay. So the impression here from this statement is that these are all recent, but these are not. Thank you for your clarification.

Mr. SMALL. Yes, 1,500 of them are the more recent ones.

Mr. VENTO. Thank you, Mr. LaRocco.

Mr. LAROCO. Mr. Chairman. Under FLPMA obviously you are required to receive fair market value. What percentage of all of the fees, for example, in the BLM are fair market value, Mr. Millenbach?

Mr. MILLENBACH. Well, there are a lot of them that are not. The grazing fee issue that we are embroiled in right now is a good example of where the Department is trying to raise the fees to reflect fair market value.

I think that for some of our mineral activities, for example, oil and gas and coal leasing, we have a pretty good handle on what

fair market value should be, and we are collecting that. Other aspects, for example, the Mining Law of 1872, we are not collecting fair market value.

You know, I can't give you a percentage, but those are some examples of areas where we are and where we are not collecting fair market value.

Mr. LAROCO. Are you required under FLPMA on fair market value to charge fair market value, for example, on recreational users and boat ramps and other things like that?

Mr. MILLENBACH. We try to collect those in areas where we are able to.

You have probably been to BLM recreation sites in your own State, for example, where they have the drop boxes for camp sites, and, in fact, you probably have had complaints from your constituents complaining about the rise in fees for BLM camping and recreational facilities, and that is a reflection of us trying to move toward a more fair market value system in the use of those recreational sites.

Mr. LAROCO. How about you, Mr. Small, in the Forest Service?

Mr. SMALL. I guess I would say that of course in the area of timber sales, we probably are getting—I am sure we are getting fair market value on timber sales. I would say on all realty transactions, like land exchanges and land purchases and things like that, that is all fair market value based, and that has been the salvation of that program by doing that.

As you move away into the more specialized uses, the track record gets much spottier. A lot of special uses I am sure are very close or right at fair market value. Others we have a big gap. We are looking at communication sites now, but there are other types of uses out there we need to look at.

Mr. LAROCO. Well, we are trying to look at that.

While you might disagree with the advisory committee report being a negotiated settlement, if you will, or a negotiated document, and that you didn't have to live by that, it was an attempt to bring the various users and the management agencies together to resolve this issue. And, of course, there was give and take as you have said.

I don't know why you settled on 30 percent. I would be interested to know why it wasn't 40 percent or why it wasn't 20 percent. But I guess during the discussions over the table, just like any conference committee or anything else, you were trying to resolve an issue at the time, and you came up with 30 percent and thought that would be reasonable.

Was it possible that 30 percent was agreed upon because of existing improvements to any of the sites by the present site users who had improved the site in any way or maintained the site?

Mr. SMALL. No. It was strictly, from my personal perspective, the fact that we were still thinking special-use permits at the time. We were thinking 30-day licenses. We were talking about rights authorized.

And if you read the reports you will see several things grouped there. Public service has been a longstanding hot issue on this one. And from the Forest Service perspective, we never really concurred on any concept that it would be public service.

In order to move the report along, we had the option, I had the option somewhere along the process to just deep six this whole effort. But there were a whole lot of things in this report that are very good. The industry gave us a lot of good input that is going to make this whole process a lot more efficient. We do really appreciate that, and we feel bad that the industry felt they were sandbagged on this one.

But the reason the report is out is because they also recognize that the fees, the schedule that was ultimately developed, did not represent fair market value. They agreed to put that caveat in there because we needed to have that in there to have any kind of credibility when what came out.

Mr. LAROCO. Well, I don't know if they feel sandbagged. Once you get an agreement and you go off the agreement and you go off in a different way, then you have instant polarization again. I think it is human nature, and it is just common with regard to user groups and management agencies. We see that all the time in public land States. But also what happens out West is some people think a deal is a deal, and they think there is something here we are going to take up. That is why I introduced the bill.

So I think you have given some important insights into the workings of this thing. I would hope that through the course of this hearing, at least what we have heard today and through the completion of it, that we not just denigrate this agreement.

I think in the wisdom of Congress there was an attempt to put some people together at a table and say go out there and thrash it out a little bit. I am not sure that anybody in Congress ever expected the agreement to say, well, this is fair market value. We are going to ratchet up our user fees, you know, 12,000 percent, and everybody is going to shake hands and hope that Congress accepts something like that.

Mr. SMALL. As I mentioned earlier when you look at the Forest Service and BLM schedules, you will see the numbers are very much on a conservative edge. And to now come back and apply 30 percent to something like that would be, in the case of BLM in particular since their fees are much closer to fair market value than the Forest Service are, you are going to wind up reducing current fees for some of that strategy.

Mr. LAROCO. Go ahead, Mr. Cavanaugh.

Mr. CAVANAUGH. I would like to clarify something.

There was never any real agreement that the recommendations of this committee would be it. This was just an advisory committee. They were writing the report advising the Secretaries, and it was something for the Secretaries to consider, and so there was never any real agreement. I think the advisory committee did an outstanding job in moving the process along, and we don't want to denigrate their work because there was a lot of serious discussion there.

Mr. LAROCO. And their work is your work.

Mr. CAVANAUGH. Right.

Mr. LAROCO. I am trying to make the point that you were one—you were 2 out of 12. You were one-sixth of this committee. And so you just can't say that somebody else did it and we weren't part of the whole thing.

Mr. CAVANAUGH. No, we don't.

Mr. SMALL. We thought there was value in the Secretaries seeing how far this thing could go, where the industry was willing to go, and then they could decide what they wanted to do with it from there. But it was the Secretaries' call at that point.

Mr. LAROCO. How about if you took the proposed fee schedule without the 30 percent discount and then added in some sort of an inflation factor over the out years for a decade or something like that? Is that a good starting point?

Mr. SMALL. The problem with the fee schedule, the advisory committee fee schedule, is it started with a number. It anchored at the top of the market. And then it made arithmetical reductions based on population. It was just another approach to doing this.

Most of the heat on this issue has come from places like Albuquerque, New Mexico. And when you get to the middle of that range, the market doesn't track what the advisory committee did, and that is at the core of a lot of this discussion.

Mr. LAROCO. I see. Okay. Well, thank you. I have more than used up my time.

Mr. VENTO. I think it was well used.

The point is, of course, that what I think we are saying is that this isn't the advisory committee proposal the BLM is putting into the record today, that much of what was discussed in the advisory committee is reflected here like the 25 percent allocation from subleasees.

But that the leases here are longer. They are not the 1-year leases. It is a rental concept as opposed to a short-term lease concept—in other words, the footprint is something BLM had used and Forest Service sees the wisdom of now. And, furthermore, that there are provisions in here like the hardship issue in terms of providing some sort of a safeguard. So these are, I would think, major points.

And, of course, that you used the low end. In other words, you have reduced these fees to the lower end of that. And, of course, that is even lower than what the fair market value is. To reduce those 30 percent would then cause some other difficulties. Much of that is based on population, and there is a phase-in here. I mean, that is another factor.

For instance, I really don't see the need for that, I mean, at least for 5 years. It seems to me to invite further intrusion in terms of freezing it at some particular point because of the immediate concerns. So I am concerned about that.

With the hardship and the other provisions in there I would think that you don't need that particular provision. I am not enamored. I think trying to compromise before you get to this point is difficult.

Well, in any case, I commend you for your work.

Congressman Synar had one more request.

Mr. SYNAR. For the record, gentlemen, will you provide the subcommittees with a listing of all broadcast permittees who sublet?

Mr. MILLENBACH. All broadcast permittees who sublet?

Mr. SYNAR. Who sublet.

Mr. MILLENBACH. Okay.

Mr. SMALL. Okay.

[The information follows:]

The Bureau of Land Management (BLM) right-of-way authorizations grant the right to construct, operate, and maintain a communication facility for a specific communication use. In some cases, the holder is granted the right to sublease to others. The holder is not required to provide a list of other users in the building. There are cases where the BLM has authorized the location of other users in the facility. The other users have a different serial number, and, therefore, it is difficult to track against the primary holder's authorization.

The following is a listing of broadcasters that we believe have additional users in their facility. The BLM does not maintain a separate listing of other users in a facility. The listing is based on the recall of appraisers and realty specialists familiar with the sites. The authorized user may or may not have the right to sublease and other users may be in trespass. In some cases, the BLM may have required an applicant to go into an existing facility instead of constructing a new facility or constructing a new tower, even though the primary user does not have the right to sublease. Other users in the building may include commercial and nonprofit entities. It is likely that interviews with primary users and inspections of facilities would uncover additional users.

State	Serial Number	Holder
California	CA-06071	KRXV.
	CA-18106	Victory Christian.
	CA-19155	Claridge Broadcast.
	CA-20250	Ruby Broadcast.
	CA-20253	Morong Valley Broadcast.
	CA-22093	Cal/Ore Broadcast.
	CA-24093	North State Communications.
	CA-26322	KRVX.
Idaho	CA-27708	Radio Association, Inc.
	ID-04072	KMVT TV.
	ID-04325	Retlaw Broadcastings.
Montana	MT-38967	NEPSK, Inc.
	MT-15903	Beaverhead Madison Broadcast.
Nevada	NV-53800	Sierra Broadcast.

Mr. SYNAR. First of all, can you do that?

Mr. SMALL. It is going to take some work. We are going to have to go out there and do some work.

Mr. SYNAR. I would hate to have you have to go on site and look at this stuff.

Mr. VENTO. Isn't this really necessary in terms of what your proposed rule is, in any case, that you would have to have information on subletting? This is something that needs to be done.

Mr. SMALL. Because of the workload on our people, and the fact we have so limited resources to address this, we have taken examples like Mt. Wilson or Deer Point or these that we know have been real flash points, and we can give you that information for those sites.

To go out to every site—

Mr. SYNAR. We will work with you. We know the difficulty. You may want to call the broadcasters.

Mr. VENTO. The concern is even with the nonprofits may be subletting themselves.

Mr. SMALL. Down the road, they probably don't even want to get into this aspect of it, but we are all moving toward a more geographic information system environment. It may be possible some day to link up the FCC data base with GIS information, Forest

Service. Some of this stuff is automated. That is a few years down the road, but we see some real opportunities.

Mr. VENTO. Mr. Small, the GIS system is good, but the point is what happens to the \$2 million you receive now, your \$1.9 million? BLM gets, I guess, about a fourth of that.

Mr. SMALL. Twenty-five percent to local governments, and the rest to the Treasury.

Mr. VENTO. To the Treasury. This is another problem that rangles, I think, the folks in the field because they see they are bringing in this revenue and then this \$20 million that is being discussed here, whether it will ever materialize, will again go, part of it, to the States, about a quarter of it, and the rest to the U.S. Treasury.

Mr. SMALL. The advisory committee did make a point. It didn't wind up in writing, but I found it interesting. They said we would care a lot less about paying these higher fees if we got better service. They say, why don't you take the fees and just use our fees to administer the permits? We explained we weren't able to do that.

Mr. VENTO. Well, this is a thorn under the saddle.

The point is that with regards to these roads and access points, do you actually have to provide access to each one? In other words, across Forest Service lands, across private lands—that is another issue, I guess.

Mr. SMALL. That is another issue.

Mr. VENTO. But it is a point where it is considerably more than just what we are talking about, small areas on the top of a mountain. The fact is there might be a 3-mile road or more that actually is an extension that goes—

Mr. SMALL. We do provide access across national forest land. You asked a difficult question because we have some of those situations where private individuals now are gating the private access and putting a meter on that gate and charging the permittees to get up on top of the mountain—

Mr. VENTO. So there are some other private access questions here in terms of getting to public lands, which is something we have discussed in a previous GAO report and which we found that literally millions of acres of public land—50 million acres—is not accessible. This is an example where it interferes with an ongoing concern of a permittee. Of course, this could occur whether or not the site was private, State, or Federal.

Well, gentlemen, I think that you have been very helpful in terms of responding to the questions. We hope that we get more information and data that is useful to us and that we can permit this program to go in effect. Thank you.

The final panel on this morning's hearing is the private witnesses and State witnesses. We have E.B. "Jay" Kitchen, the president of the National Association of Business and Educational Radio; Mr. Kent Parsons, the vice president of the National Translator Association; and Mr. Dennis Devore, the right-of-way manager from the State Land Board of Colorado.

PANEL CONSISTING OF E.B. "JAY" KITCHEN, PRESIDENT, NATIONAL ASSOCIATION OF BUSINESS AND EDUCATIONAL RADIO (NABER); R. KENT PARSONS, VICE PRESIDENT, NATIONAL TRANSLATOR ASSOCIATION; AND DENNIS DEVORE, RIGHT-OF-WAY MANAGER, STATE LAND BOARD OF COLORADO

Mr. VENTO. Gentlemen, welcome. I will invite my colleague in a moment when you all get adjusted—you may as well stay standing, Mr. Parsons, because Congressman Synar is going to do the honors here in terms of requiring your oath in terms of testimony.

[Witnesses sworn.]

Mr. VENTO. Gentlemen, Mr. Kitchen, Mr. Parsons, and Mr. Devore, your statements have been made a part of the record in their entirety, so you can feel free to briefly summarize or read the relevant portions.

Welcome. Thank you for your patience.

Mr. Kitchen.

STATEMENT OF E.B. "JAY" KITCHEN

Mr. KITCHEN. Thank you, Chairman Vento. We certainly appreciate your holding this hearing. We think it will bring a lot to light and help clear up some very difficult issues.

NABER is a trade association that represents a very broad base of telecommunications users. I am here today representing that segment of our membership who are site owners and managers of communication sites both on private and Federal lands. I am also here representing literally tens of thousands of businesses that use these sites in order to provide communications on a day-to-day basis for running their businesses.

I would like to start off by saying that there are a number of areas of agreement between NABER, the Forest Service, and BLM. Our members certainly agree that the fees that have been paid up until this point are too low. They are definitely not fair market value.

We certainly applaud the Forest Service and BLM for proposing a footprint lease. We think that will eliminate a number of the problems that exist today, including such things as it taking 18 months or so to get a permit. Mr. Small has recognized that that period is too long a time and certainly delays the implementation of communication systems today.

We are in general agreement on the base fees for commercial mobile radio. I believe that the Forest Service has proposed five categories of base fees. We have proposed seven, just breaking it out a little bit more to identify different segments or stratas within the communications industry.

Our major problem as far as the proposal of the Forest Service and BLM—as they say the devil is in the detail. Our concern is in the footnotes. The footnote that would propose a 25 percent surcharge or 25 percent of gross revenue, whichever is greater, that or the base fee, is just unacceptable to the members of our association. It is unacceptable because we don't understand it.

We have spent considerable time reviewing leases in the southern California area. A subgroup of ours called the Equitable Fee Committee reviewed over 100 leases in southern California in a

survey type approach, similar to some of the surveys that the Forest Service and BLM have done, and concluded that the average fee for a commercial mobile radio user in that vicinity was something on the order of \$10,000, totally different than what numbers we are hearing from the Forest Service.

One of our members up in the Boise, Idaho, area contracted with appraisers there to do a study and came up with a value for commercial mobile radio of \$3,500 per site as opposed to \$10,000 recommended by the Forest Service. We just don't understand these differences, and our biggest concern is we are being asked to buy a pig in a poke. We don't understand where the data is coming from.

We recognize the Forest Service has their responsibilities as far as confidentiality with respect to the information they get, but we kind of feel like those of us that have seen the ads on television for the car dealer where you come in and you can buy a car for \$100 over invoice. You go in and you never are quite sure what that invoice figure is. That is the way we feel. We don't know what that base figure is that these fees are being based upon.

And while we have worked with both BLM and the Forest Service, and I think worked very well to try and resolve this, that is the one sore point. If we could finally be convinced of where that data is coming from or they could be convinced of ours and we could eliminate the 25 percent of gross revenue, I think we would be a long way toward a resolution of the problem.

There have been numbers thrown out here this morning of fees collected by the government of \$2,000 to \$4,000 or so with \$400,000 returns.

I think it is critical to point out that the fees are not the only expenses of these sites. The people that lease these sites have to go in and build the roads, provide the power, take care of snow removal, build the buildings, provide security. I know our members personally, and I don't see many of them out there driving Rolls Royces and living in big houses with servants. They are just not making that kind of money.

Another difference that is important to point out is that in commercial mobile radio we are talking about somebody that is putting up a building and providing a communications site for small businesses. These small businesses are paying to support that site. For a site manager to charge 25 percent of his gross revenue—or have to pay 25 percent of his gross revenue, excuse me, to the Federal Government—just doesn't make economic sense. I don't think there is any businessman out there today where you can take 25 percent of his gross right off of the top and expect him to stay in business.

I mentioned small businesses. It has come up in the hearings this morning that 90 percent of the users on these lands are other than broadcast. It is the small business community out there that stands to suffer dramatically from these increased fees.

We think that the fees that the Forest Service and BLM have proposed are unrealistic. We think that they are tending to provide incentives for private sites to have windfall profits and that they will increase their fees in order to compete, so to speak, with the Federal Government.

We just think that these actions are unfair, that what BLM is sure to do and the Forest Service—certainly they represent the taxpayer and our members say we are willing to pay our fair share. But I don't think that we are here to agree to exorbitant fees that are going to cause businesses to have a great deal of difficulty continuing to provide the kind of communication services they need. I don't think we are here to have whatever fees are set by the government skew the fees in the private industry.

That concludes my comments. I will be glad to answer any questions.

Mr. VENTO. Thank you, Mr. Kitchen.

[Prepared statement of Mr. Kitchen follows:]

**Testimony of the *National Association of Business
and Educational Radio***

Before the *Subcommittee on National Parks, Forests and Public Lands* of the Committee on Natural Resources and the *Subcommittee on Environment, Energy, and Natural Resources* of the Committee on Government Operations

July 12, 1994

My name is E. B. (Jay) Kitchen and I am the president of the *National Association of Business and Educational Radio (NABER)*.

NABER is a national trade association representing companies that provide wireless communications services such as private carrier paging and specialized mobile radio to businesses and individuals. Our members encompass all wireless-communication services other than cellular, and broadcast radio and television communications. In addition, our membership includes companies who own, manage, or operate communications sites, antenna towers, mobile base stations, and other transmission facilities for wireless communications.

In the states of the Mountain West, many providers of mobile communication services operate transmission facilities on lands managed by the U.S. Forest Service and the Bureau of Land Management (BLM). Federal policies affecting public land user fees have significant implications for providers and users of wireless communications in the West.

Areas of Agreement with the Agencies

Allow me to note at the outset that there are important matters on which the two agencies and our members generally agree. We recognize it is well past time for restructuring the fee system. Many of our members approve of the Forest Service's plan to reduce administrative expenses with the "footprint lease." Under this lease plan, only individual site operators would be required to hold site permits and tenants (or sublessees) would operate under the site authorization of the primary permit holder. Our members are also not opposed to the notion that the industry should pay the government a fair price that reflects rental rates that are currently being paid in the marketplace.

In this regard, attached is a draft of a fee schedule NABER proposed last year, and which, we believe, accomplishes the objective of establishing rates based on those being charged in the marketplace.

However, we have been unable to bring this issue to resolution because the agency insists on using a process that determines the "fair market value" of public lands-based electronic communications sites that, we believe, is highly questionable with regard to its methodology and the underlying assumptions that were incorporated into its analysis. The result has been that the values put forth as "fair market value" by the Forest Service, in our opinion, are seriously overstated.

Flawed Analysis Leads to Overstating "Fair Market Value"

To determine fair market value, the Forest Service commissioned an independent appraiser to appraise 12 Forest Service sites in the western U.S. The chosen appraiser, Mr. Paul Meiling, employed a number of methods, which again, we believe, are unorthodox and controversial. These include:

1. The appraiser ignored relevant geographic markets: One of the principle rules of appraisal is the concept of the "neighborhood" or "market area." A properly conducted appraisal is based on comparisons with market transactions in the immediate geographic area. To ensure accuracy, an appraiser should use market information from outside the market area only if no relevant or meaningful information can be found in the local or immediate market area.

However, Mr. Meiling did not consider market data from the relevant geographic markets. Instead, data was taken from sites in other parts of the country. The result of this methodology is that the appraised value for each of the sites commissioned in the study bear no relationship to their local, relevant geographic market.

2. The appraiser's lack of familiarity with land mobile communications caused him to fail to account for major differences between commercial broadcast communications and land mobile communications: For example, Mr. Meiling predicated his view of "value" on the notion that the Forest Service sites he appraised, by the nature of their elevation or coverage, dominate their respective geographic markets and that unless a mobile communications provider can base transmitters on the site, he would be unable to provide the wide-area coverage necessary to serve his customers. While it might be true that television and FM radio broadcasters must rely on the higher elevation, wider-area coverage sites, this is not necessarily the case for mobile radio.

Mr. Meiling seemed to perceive that land mobile services are typically provided through a single transmitter providing service over great distances, a more accurate view is that mobile communications services consist of an interconnected network linking contiguous coverage areas. Most mobile communications providers don't rely on just one high elevation site to service a given market area. For instance, terrain and tall buildings can cause "dead" pockets where signals can't penetrate, so other transmitters are needed at strategic locations. Also, as spectrum becomes increasingly scarce, communications providers re-use frequencies to make more efficient use of their channels. This requires systems to have more sites, usually at lower elevations, to provide adequate coverage to a given area.

To give a better sense of these differences, consider that while television transmitters frequently operate at 1 million watts or more and FM radio often transmits at 50,000 watts or more, mobile communications typically operate in a power range of 10 to 1,000 watts. These differences can correspond to differences in the relative value between sites.

3. The appraisals make flawed assumptions about supply and demand and price elasticity—as they are affected by the dynamics of pricing, availability, and location of mobile communications sites: Unlike television or FM radio broadcast transmitters that often rely on one primary, optimally-placed location to cover a market area, there is considerable more flexibility in where wireless telecommunications sites can be located. This high "substitution" factor has a distinct influence on the supply and demand variables for mobile communication sites.

Mr. Meiling based his work on an inaccurate model of a mobile communications site market. He assumes the market is characterized by *high* demand and *limited* supply. In actuality, there are far more land mobile communication sites than he acknowledges. In fact, the market for

sites is highly competitive, where mobile communications providers have choices for locating transmitters. Thus the market dynamics would more accurately be described as *moderate* demand and *good* supply.

Meiling's flawed notion of the market for mobile communications sites failed to recognize the considerable price *elasticity* that exists. Prices, in terms of rates that "willing buyers" will pay, are highly responsive to the price and availability of other suitable antenna locations. The scarcity of suitable alternate locations that Meiling used to develop an argument for exponentially higher fees for mobile communications sites is more flight of fancy than reality.

Forest Service Appraisals Are Not Consistent with Private Studies

In 1993, the Equitable Fee Committee, a coalition of users and providers of land mobile communication services in Southern California, contracted an independent survey of the communication site marketplace in the Los Angeles Basin area. This study compared over 300 leases for non-broadcast communications; over 100 of which were for land mobile or microwave. This study determined the typical rate for leases in the land mobile/ microwave category was \$9,400. In contrast, Mr. Meiling's appraisals found the following valuations for commercial land mobile to be \$55,000, industrial microwave to be \$24,000; and common carrier microwave to be \$63,000.

In another case, a market appraisal and rental valuation was conducted for the Shaffer Butte (Boise, ID) site for the "Land Mobile Commercial Communication" category. This study, conducted by Idaho Land and Appraisal Service Company, used comparable sites within the Boise geographic area. While the Forest Service study determined "fair market value" to be \$10,000, this study appraised the site at \$3,500.

These discrepancies call into question the values for "fair market value" established by the Forest Service and cited in the Report by GAO. This supports our long-standing contention that the figures given by the Forest Service for fair market value are substantially overstated.

Land appraisal is not an an exact science and like other disciplines, there is ample room for legitimate professional differences of opinion. However, based on Mr. Meiling's depiction of the market for mobile communication sites and what NABER understands about his stated preference for unconventional methods, one reason he may have been chosen to conduct the appraisal was that his analysis had a greater likelihood of reaching conclusions for "fair market value" that are relatively high.

On at least one occasion, Mr. Meiling's professional opinion has been overturned. A 1988 civil court decision in a property condemnation case, in Salt Lake County District Court, found Mr. Meiling's appraisal of the Ensign Peak communication site was higher than fair market value. The court determined that Mr. Meiling's 1983 appraisal for \$100,000 and an appraisal for \$204,000 for 1985 were not valid. Instead, the court determined that the fair market value of the site in question was \$28,000 (Civil Case No. C82-7433, Industrial Communications v. Salt Lake City Corporation).

Questions Regarding GAO's Use of "Fair Market Value" Data

In its report, the GAO concluded that the Forest Service and BLM are not fulfilling their mandate to charge use-fees based on fair market value. To bring the evidence to bear to support this theory, we believe GAO made questionable use of certain data and other information and are troubled by the manner in which Forest Service data is presented and by the manner in which non-verifiable or controversial information is presented as fact in the report. In our opinion, further questions exist with regard to:

1. GAO predictions for revenue generation. For instance, the report claims that the estimated shortfall between what the agencies are currently collecting and what they would receive if "fair market value" fees were put into place is particularly disturbing. In the report, the gap is depicted as the difference between about \$4 million and \$25 million. Although it has not been disclosed how the \$25 million figure was calculated, we suspect it resulted from multiplying the inflated "fair market values" by the number of current permit holders. Given what is known about the elasticities of the mobile communications markets, where customers are responsive to shifts in price, describing this approximately \$21 million revenue shortfall (\$25 million - \$4 million) as a type of "opportunity cost" is misleading. It doesn't appear any adjustment was made for possible "attrition" of customers moving to less costly private-land sites if very high fees were charged on public lands.

2. The differential cited by GAO between "fair market value" and what the Forest Service currently collects. To dramatize its hypothesis of this wide disparity, the GAO report includes a table citing differences from three separate examples (taken from large, medium, and small markets). For the large-market example, GAO used mobile communications data from Mt. Wilson (overlooking Pasadena and Burbank, CA) comparing (1) "fair market value" as \$60,000 (the figure determined by Mr. Meiling) and (2) the revenues the Forest Service currently receives for commercial mobile radio sites as a range of \$460 to \$1,100 for each site. This is an unfair comparison and, we believe, misrepresents the relationship between what the federal government currently collects and what it could expect to collect with "fair market" rents.

In addition to using the controversial figure reached by Mr. Meiling, the table fails to note that under the current Forest Service procedures, the secondary users (sublessees) are also paying fees to the Forest Service. As a result, the total fees the Forest Service currently receives from a site consist of the fee paid by the "site manager" (primary permit holder) and fees paid by the tenants (secondary permit holders). What GAO doesn't state is that the total fees collected are considerably more than the range of \$460 to \$1,100 noted in the table.¹

¹ GAO may have assumed that sublessee payments to the Forest Service should not be applied to offset the "fair market value" the mobile communications site manager should pay since Mr. Meiling's assessment also envisions that the tenants (secondary permittees) would also pay the agencies a sum equal to 40% of what they remit as rent to the primary permit holder. However, Mr. Meiling and GAO fail to recognize that most customers of the multi-use site manager fall into the private or internal communications category. According to the model that Meiling depicted, these "rack and box" customers would not be required to pay the agencies a permit fee if their equipment is located on a primary permit holder's site. The GAO's example fails to note that these "private" communications users must hold permits under the current system and the fees they remit to the agency should properly be added to the \$460 to \$1,100.

3. GAO's reluctance to acknowledge that added costs are associated with holding a "site-use authorization" (holding a permit) as opposed to leasing space in the private market.

Doing business with the federal government involves much more red tape and hidden costs for communication site managers. For instance, (1) Permit holders must comply with two sets of regulations and zoning restrictions-- the federal government and those of the local jurisdiction. (2) The federal government reserves the right to use up to 10% of the permit holder's space, with no compensation or reduction in rent. This is known as a "take-back." (3) Permit holders incur 100% of the development costs to construct and maintain their communication sites. Site managers put in the roads, bring in electricity, etc-- all to stated federal environmental specifications. (4) It is a lengthier and more costly process to secure a site authorization from the federal government than resolving most private-land lease agreements.

Common Goals

For years, the BLM, the Forest Service, and the broadcast and mobile communications industries have been working together in good faith to find an equitable solution to this complex issue. However, in the heat of this debate, a number of mutual goals have remained unattainable.

More to the point, a common goal for our members, their customers, American taxpayers, the federal agencies, and those who use modern wireless communications technology, should be to find the "right" balance among:

- making sure federal land resources continue to be available for efficient delivery of broadcast and mobile communications services to the public,
- ensuring that taxpayers receive a fair price from every communication company with transmitters on public land, and
- optimizing the income mix from all rent-paying permit holders on public lands (such that "too high" rental rates do not result in a reduction in total revenues).

To stray too far from this delicate equilibrium will not serve any party in the long run. At one extreme, underpricing public lands shortchanges the taxpayer. At the other, if public land electronic sites are priced higher than their value vis a vis the relevant geographic market, the taxpayer could come up short again. This is because communications service providers would migrate to private lands, possibly costing the federal government significant revenues.

Impacts on Commerce and Small Business

NABER does not suggest that anyone, including small businesses, should not have to pay higher rates for the privilege of using public land to transmit radio signals. However, it would be a mistake for the federal government to assume that across-the-board increases in permit fees to bring rates up to someone's inflated notion of what "fair market value" should be could not result

range used in this example.

in traumatic dislocation and hardship for many providers of mobile communications and their customers. For some of these small businesses, exponentially higher fees are even more serious if you consider the considerable sunken costs they have in their facilities. If they could not afford to pay the higher rates the GAO has indicated they should pay, they would most likely lose their considerable investment in towers, buildings, equipment, power, and road construction they've already incurred, but not yet recouped, on their public lands site.

Such dramatically higher fees would have grave repercussions in the industry, particularly in the niche known as "specialized mobile radio" (SMR). Many of these permit holders are "mom and pop" dealers of two-way radios who will have to pass their higher costs to their customers, which typically are other small businesses such as plumbers, taxi cabs, delivery and messenger services, construction contractors, farmers, ranchers, loggers, and other companies who need inexpensive, dispatch and two-way mobile radio communications.

The Proper Role of Federal Land Policy

We've shown that the dynamics of mobile communications are significantly different than those of commercial broadcasting. Yet, for some land mobile service providers, higher elevation, mountain-top sites can offer advantages over lower elevation locations. In many cases, these higher elevation sites are those managed by the Forest Service and BLM.

The aim of federal policy for use fees should be to conform to price structures in the private market. The goal should not be to use whatever "monopoly" power the agencies have to influence the prevailing rates in the private markets. As the agencies move ahead with their efforts to collect rates based on fair market value, we offer one important caveat. There is some danger that, through the adoption of exponentially higher fees, the federal government could create major distortions in the marketplace. In its report, GAO argues that below "fair market value" Forest Service and BLM rates may have helped kept private-land rates artificially low. (Although no evidence was offered to support this theory). However, we believe that it is not the role of the federal government to establish any type of fee schedule designed to compensate, adjust, or redress other "artificial" factors that may influence the private market.

If federal rates are designed with the intent of establishing a higher, price floor for the entire communication site market (both for public lands and private property), we believe this moves beyond what Congress intended in the 1976 amendments to the *Federal Land Policy and Management Act*. We offer that the appropriate role for the agencies, instead, is to follow trends in the private marketplace and set rental rates based on those that exist in the market.

The bottom line is that excessive, and in our opinion, unjustified, rate increases will cost jobs and hurt many small businesses. If companies choose to relocate their facilities or are unable to "pay the freight," the dramatic rate increase will not deliver this tremendous influx of revenues the agencies and GAO predict.

I thank you for the opportunity to express the views of our members. I will be happy to answer any questions.

Addendum:

Site fees for Commercial Mobile Radio proposed by NABER. This fee schedule is contained in Senate Bill 2106.

<u>service area pop.</u>	<u>NABER proposed fees</u>
1,000,000+	\$12,000
500,000-999,999	\$5,000
250,000-499,999	\$3,500
150,000-249,999	\$2,000
75,000-149,999	\$1,000
30,000-74,999	\$500
29,999 and fewer	\$300

Mr. VENTO. We are pleased to welcome Mr. Parsons who is the vice president of the National Translator Association. Mr. Parsons.

TESTIMONY OF R. KENT PARSONS

Mr. PARSONS. Thank you, Mr. Chairman, for the opportunity of speaking to you today on behalf of rural America. I am going to read pretty much out of the article there, the document that I provided you.

Local television programming is a necessity to rural America, and TV translators are the signal source. I should add to that for local programming.

A TV translator is an electronic device, usually located on a mountaintop or high tower, which transmits a single TV channel from a primary broadcast station located near an urban area to rural communities beyond the coverage of the primary station.

For the past 38 years I have worked as a translator engineer/specialist, and I am very familiar with sites located in Utah, and I will use this State as an example.

Translator stations are needed to provide television signals to 20 percent of the population in 80 percent of the geographic area of the State of Utah. I have an attachment there as No. 1.

Translators with as little as 1 watt output power are used to provide TV to a community as small as 10 people—Caineville, Utah. Larger 100 watt translators are used to provide TV to larger cities such as St. George, Utah, population approximately 28,500. They are also used to relay signals from mountaintop to mountaintop over distances up to 135 miles. Of the 91 translator sites in Utah, 64 are on Federal land, 27 are located on either State, private, or Indian lands, and there is an attachment there indicated as attachment No. 2.

The site owners do not charge any rental fees for TV translators located on private or Indian lands in the State. Almost all of the translators in Utah are financed and operated as a public service by universities, counties, cities, towns, nonprofit TV associations, and civic clubs.

Rural areas depend on the translator stations for emergency broadcast service information concerning high wind warnings, flood warnings, and, this season, range fire warnings.

Now, many of the roads and power lines to these translator sites were originally constructed, financed, and maintained by the local residents. As a result of these site developments, many other services have become available to the general public.

For example, Monroe Peak, located in Sevier County, is a good illustration of a communications site located on U.S. Forest Service land which provides numerous other public services in addition to the translator signals. Sevier County provides dispatch, two-way, and paging services to three counties—Sevier, Piute, and Wayne. This involves 16 fire departments with 255 volunteer firemen; 14 ambulances with 137 volunteer EMTs; from the Sheriff's Department, 183 search and rescue volunteers and dispatch services for the three counties. 911 emergency services for these three counties is also provided through this repeater site.

One final example of translator services is the service to Wayne County. A total of 21 TV translator stations are required to provide

local, in State, TV channels to these residents. Seven different BLM sites are involved—all this for a population of 2,177 people in the county. This is from the 1990 census.

The U.S. Forest Service, BLM, Park Service, and U.S. military control a high percentage of the mountainous land in Utah, some say as high as 90 percent of the high mountaintops. Therefore, most translator sites are located on public lands because there is no alternative site locations that could serve the communities.

During the months of March through July, 1992, I videotaped three typical translator sites in Utah. I wrote the script for these tapes. Subsequently, the NBC affiliate, KUTV-2 in Salt Lake City, edited the tapes and the script. Together, we produced an 11-minute taped presentation that was used in the advisory committee meeting in Washington, DC, July 14, 1992. I have included this tape as attachment No. 5.

As a member of the Radio and Television Broadcast Use Fee Advisory Committee and as a representative of the National Translator Association, I generally support the concepts of the report to Congress from the committee concerning the communications site use fees on public lands. The 11-member committee represented all segments of the communication industry and convened in a very orderly manner. Approximately 65 hours of meetings produced, in my estimation, the best solution to a very complex and controversial fee increase proposal.

You already are aware of the duties of the committee.

Appraisal and schedule methods were discussed at length, and the general consensus of the committee was that the schedule method was the best choice. In my opinion, the schedule, in conjunction with the population served by the station, is the fairest and most reasonable option.

A majority of the committee members agreed that government entities and noncommercial educational licensees should be exempt from all fees. The majority also felt that the commercial broadcast stations should be given a 30 percent discount from the proposed appraisals because of services benefiting the general public and also because of inconsistent guidance, instruction, and policy interpretations among various Forest Service and BLM regions and districts.

A short time was spent discussing next-best alternative use.

My observation of sites developed for TV translator stations while working in Utah, Nevada, Arizona, Idaho, Montana, Wyoming, Virginia, and Michigan, was that if these sites were never developed as translator sites, the land probably would not be used for any significant purpose.

On July 14, 1992, a fee schedule for broadcast translator stations located on U.S. Forest Service lands was mutually agreed on by the Forest Service and the National Translator Association. The schedule has been implemented in various regions, and there is an attachment three. The NTA is still in agreement with this schedule. See attachment four.

My purpose for testifying in this hearing today is to attempt to convey to this subcommittee the importance of local television and similar services from FM broadcast translators to the rural citizens

of this great country delivered via broadcast translator stations located on Forest Service and BLM lands.

Generally, rural people are independent and ambitious and because of these qualities have developed a network of translator stations that provide a very important service to rural America. They can receive local news and weather, emergency broadcast services, and other local programming pertaining to the area in which they live.

Most of these sites have been installed and maintained by the local citizens in relationship with the U.S. Forest Service and BLM. It has been a good partnership. Thank you.

Mr. VENTO. Thank you, Mr. Parsons.

[Prepared statement of Mr. Parsons and attachments follow:]



NATIONAL TRANSLATOR ASSOCIATION

OUR AIM - TO PROVIDE FM and TV SIGNALS in EVERY HOME

P. O. BOX 628 • RIVERTON, WY 82501 • PHONE 1-307-856-3322

July 8, 1994

CONGRESSMAN MIKE SYNAR
CHAIRMAN
HOUSE SUBCOMMITTEE ON ENVIRONMENT AND ENERGY AND NATURAL RESOURCES
B 371 B RHOB
WASHINGTON, D.C. 20515

Re: Use of TV Translator Stations
on Public Lands

LOCAL TELEVISION PROGRAMMING IS A NECESSITY TO RURAL AMERICA AND TV TRANSLATORS ARE THE SIGNAL SOURCE.

A TV translator is an electronic device, usually located on a mountain top or high tower which transmits a single TV channel from a primary broadcast station located near an urban area to rural communities beyond the coverage of the primary station.

For the past 38 years, I have worked as a Translator Engineer/Specialist and I am very familiar with sites located in Utah and will use this state as an example.

Translator stations are needed to provide television signals to 20% of the population in 80% of the geographic area of the state. (See attachment #1)

Translators with as little as one watt output power are used to provide TV to a community as small as 10 people (Caineville, Utah). Larger 100 watt translators are used both to provide TV to larger cities such as St. George, population of approximately 28,500, and to relay signals from mountain top to mountain top over distances up to 135 miles. (Emery County to San Juan County, Utah)

Of the 91 translator sites in Utah, 64 are on federal land and 27 are located on either state, private or Indian lands. (See attachment #2)

The site owners do not charge any rental fees for TV translator stations located on private or Indian lands in the state.

Almost all of the translators in Utah are financed and operated as a public service by Universities, counties, cities, towns, non-profit TV associations and civic clubs.

Cable TV companies use the no-cost translator-delivered signals to provide local programming and sell the signals to their subscribers. They generally pay for other input signals to their cable systems. For example, a cable system must pay for an NBC satellite feed from Denver, Colorado, but is not required to pay for an NBC feed from a local translator station. Consequently, the translator feed is used on the cable system but does not generate any income to the non-profit translator group.

Cable companies are only able to provide service to areas which are economically feasible. So in many locations, remote rural areas have only translator-delivered services.

In 1987, there were approximately 4500 licensed TV translator stations in the continental U.S. of which approximately 450 (one tenth) were licensed in Utah.

Rural areas depend on the translator stations for Emergency Broadcast Service information concerning high wind warnings, flood warnings, range fire warnings, etc.

Some communities in the outlying counties have to finance, install and maintain as many as five mountain top relay sites just to get the signal to their area. (For example, Salt Lake City to Henrieville, Utah)

Many of the roads and power lines to these translator sites were originally constructed, financed, and maintained by the local residents. As a result of these site developments, many other services have become available to the general public. For example, Monroe Peak, located in Sevier County is a good illustration of a communications site, located on USFS land, which provides numerous other public services in addition to the translator signals.

Sevier County provides dispatch, two-way, and paging services to Sevier, Piute, and Wayne Counties. This involves:

16 fire departments with 255 VOLUNTEER firemen

14 ambulances with 117 VOLUNTEER EMT's

From the Sheriff's Department: 183 search and rescue VOLUNTEERS and dispatch services for the three counties.

911 emergency services to three counties.

In addition, Sevier County provides space in its building and on its towers for Civil Air Patrol and Amateur radio repeaters, but does NOT charge for electrical power used by these groups.

Other licensees who provide public service from this site include the FBI, The University of Utah, Utah State University, Utah Natural Resources, Animal Control, U.S. Forest Service, and the BLM.

One final example of translator services is the service to Wayne County. A total of 21 TV translator stations are required to provide local, in state, TV channels to these residents. Seven different BLM sites are involved--all this for a population of just 2177 people (1990 census).

The USFS, BLM, Park Service and U.S. Military control a high percentage of the mountainous land in Utah. Therefore, most translator sites were located on public lands because there was no alternative site locations that would serve the communities.

During the months of March through July 1992, I videotaped three typical translator sites in Utah. I wrote the script for these tapes. Subsequently, the NBC affiliate, KUTV Channel 2 in Salt Lake City, edited the tapes and the script. Together, we produced an 11 minute taped presentation that was used in the Advisory Committee Meeting in Washington DC July 14, 1992. I have included this tape as attachment #5.

As a member of the RADIO AND TELEVISION BROADCAST USE FEE ADVISORY COMMITTEE and as a representative of the NATION TRANSLATOR ASSOCIATION, I generally support the concepts of the report to Congress from the committee concerning communications site use fees on public lands. The eleven member committee represented all segments of the communications industry and convened in a very orderly manner. Approximately 65 hours of meetings produced, in my estimation, the best solution to a very complex and controversial fee increase proposal.

The duties of the committee, as set forth in the charge were to:

1. Review and report on appropriate methods for establishing fair market rental fees for radio and television broadcast uses on lands administrated by the Forest Service and BLM.

2. Review and report on the appropriateness of waivers or reductions in rental fees for radio and television broadcast uses based on requirements for licensing under the Communications Act of 1934 and within the authority of the Federal Land Policy and Management Act of 1976.
3. Review and report on reasonable options, including the next best alternative use, for establishing fair market rental fees for radio and television broadcast uses.

Appraisal and schedule methods were discussed at length, and the general consensus of the committee was that the schedule method was the best choice. In my opinion, the schedule in conjunction with the population served by the station, is the fairest and most reasonable option.

A majority of the committee members agreed that government entities and non-commercial educational licensees should be exempt from all fees. The majority also felt that commercial broadcast stations should be given a 30% discount from the proposed appraisals because of services benefiting the general public, and also because of inconsistent guidance, instruction, and policy interpretations among various Forest Service and BLM regions and districts.

A short time was spent discussing "NEXT BEST ALTERNATIVE USE".

My observation of sites developed for TV translator stations while working in Utah, Nevada, Arizona, Idaho, Montana, Wyoming, Virginia, and Michigan, was that if these sites were never developed as translator sites, the land probably would not now be used for any significant purpose.

On July 14, 1992, a fee schedule for Broadcast Translator Stations located on U.S. Forest Service lands was mutually agreed on by the USFS and the National Translator Association (NTA). The schedule has been implemented in various regions. (See Attachment #3)

THE NTA IS STILL IN AGREEMENT WITH THIS SCHEDULE.
(See attachment #4)

My sole purpose of testifying at this hearing today is to attempt to convey to this subcommittee, the importance of local television (and similar services from FM broadcast translators) to the rural citizens of this great country, delivered via broadcast translator stations located on U.S. Forest Service and BLM lands.

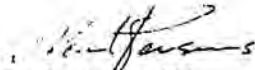
Generally, rural people are independent and ambitious, and because of these qualities have developed a network of translator

stations that provide a very important service to rural America. They can receive local news and weather, emergency broadcast services, and other local programming pertaining to the area in which they live.

Most of these sites have been installed and maintained by the local citizens in relationship with the USFS and BLM.

IT HAS BEEN A GOOD PARTNERSHIP!

Respectfully submitted,

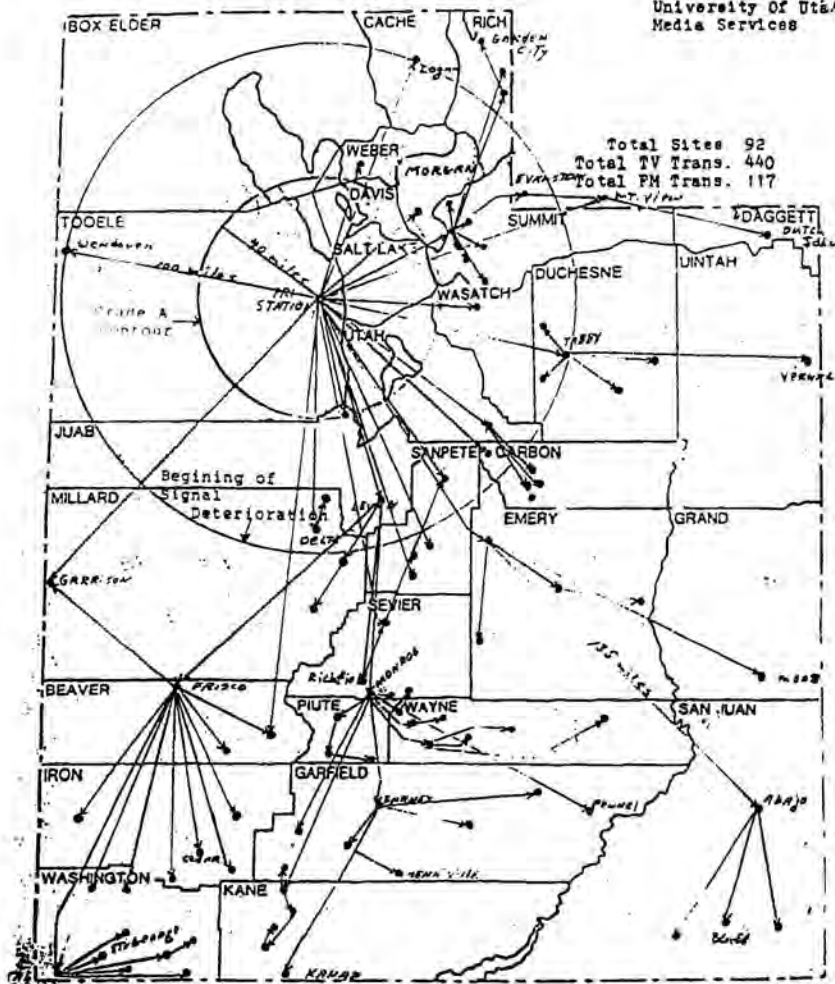


R. Kent Parsons
Vice President
National Translator Association

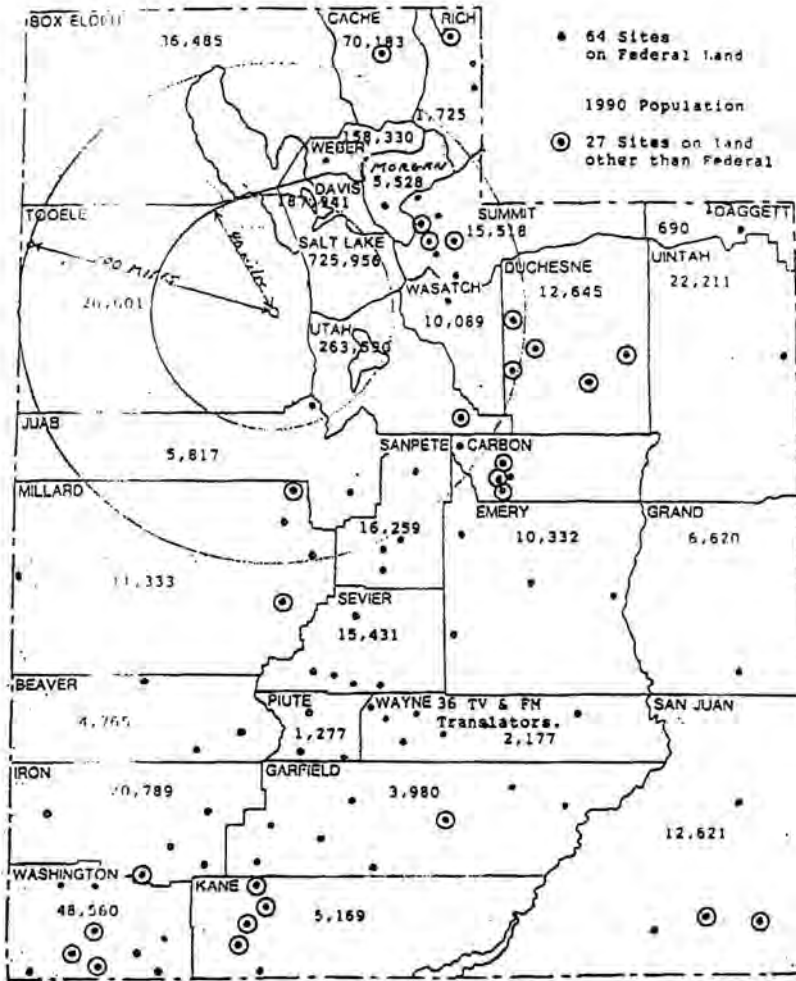
ATTACHMENT # 1

T.V. & F.M. TRANSLATOR SITES
IN UTAH

7-10-87
R. Kent Parsons
University Of Utah
Media Services



ATTACHMENT # 2

T.V. & P.M. TRANSLATOR SITES
IN UTAH

ATTACHMENT # 3

PACIFIC SOUTHWEST REGION FEE SCHEDULE FOR COMMUNICATIONS USES:

Capitalized and highlighted sections represent changes in the schedule.

The fees have been adjusted using the Consumer Price Index - Urban. For example, a fee of \$75 in 1990 has been adjusted to \$82 for the 1992 billing year.

FINAL FEE SCHEDULE - PACIFIC SOUTHWEST REGION	
Use Category	Annual Fee for Billing Year 1992 or Appraisal Requirement
Personal Use	
Amateur Radio	\$ 82
Receive Only	82
Industrial Use	
Common Carrier Microwave	
	Northern-3,285
	Central- 6,023
	Southern-6,023
Local Exchange Network	
Population Served	
0 - 100	82
101 - 300	274
301 - 500	329
501 - 1,000	548
over 1,000	full common carrier microwave fee.
Environmental Monitoring	82
Industrial Microwave	
	Northern 1,095
	Central 3,833
	Southern 5,476
MOBILE RADIO: INTERNAL	548
Passive Reflector	548
Commercial Use	
BROADCAST TRANSLATOR	
Community of License	
0 - 15,000	82
15,001 - 30,000	548
30,001 - 60,000	1,095
60,001+	APPRAISAL/SOUND BUS. MGT PRACTICE
Cable and Subscription Television	
Households Served	
0 - 200	438
201 - 500	767
501 - 1,500	1,533
1500+	APPRAISAL/SOUND BUS. MGT PRACTICE



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CONGRESSMAN MIKE SYNAR

ATTACHMENT #4

CHAIRMAN

HOUSE SUB COMMITTEE ON ENVIRONMENT AND ENERGY AND NATIONAL RESOURCES

9 371 B RHOB

WASHINGTON D.C. 20515

JUNE 30, 1994

re: Broadcast Translator Fee Schedule Between
The National Translator Association and
The U.S. Forest Service.

Prior to July 14, 1992 the National Translator Association and U.S. Forest Service had spent many hours in meetings to work out an agreement on a fee schedule for TV Broadcast Translators on forest lands.

On July 14, 1992 a fee schedule, for Broadcast Translator Stations located on U.S. Forest Lands, was mutually agreed on by the USFS and the NTA.

This schedule has been implemented in the various regions, (see attached example from Pacific Southwest Region).

The NTA is still in agreement with this schedule.

Mr. David Cavanaugh of the BLM has been working on a schedule, and has assured the NTA of a similar schedule.

The NTA also supports the concept of the report to Congress from the eleven member RADIO AND TELEVISION BROADCAST USE FEE ADVISORY COMMITTEE concerning communication site use fees. We feel the report was fair and reasonable and should be considered by the forest service and BLM as they establish fee schedule for broadcast services on federal land. We feel the BLM and USFS should be allowed to accept public comment and to complete the regulatory process concerning fee schedules.

For your hearing on July 12, 1994, if necessary we will have a representative attend and participate. Please advise as soon as possible.

Sincerely,

Darwin Hillberry, President
National Translator Association

Mr. VENTO. And, finally, on this panel we have Mr. Devore. Mr. Devore, please proceed.

TESTIMONY OF DENNIS DEVORE

Mr. DEVORE. Thank you, Mr. Chairman.

I am the right-of-way manager for the Colorado Board of Land Commissioners, more commonly called the State Land Board. In addition, I am an MAI-designated appraiser and am the chief review appraiser for the State Land Board, primarily involved with commercial properties that are to be purchased or exchanged for State lands.

The Colorado State Land Board manages about 4 million acres of trust lands, the lands given to each of the Western States at the time of statehood. In Colorado, 95 percent of these are part of the school trust, and thus they have generically become known as the school lands. The State Land Board manages this asset to maximize revenue, as mandated by the enabling legislation.

At the Land Board all tower sites are handled by the right-of-way department because the process is most closely allied to this type of business. Right-of-way functions are quite different than normal real estate transactions where demand can be predicted, where buyers are sought out, and marketing is a constant necessity.

In the right-of-way business everything is reversed. The buyers come to the seller, and the sites are created only on demand to fulfill very specific needs.

At the State Land Board we seek the highest possible rental for each tower site while at the same time try to be fair to those who need to utilize our lands. We do not sell tower sites but instead prefer to hold them as income-producing properties. Although many users would prefer to purchase these sites, it would fragment the State lands, and renting them has proven to be very lucrative. By retaining ownership, the Land Board is able to take advantage of being in the right place at the right time.

The Land Board does not normally use market value appraisals to determine the correct rental rate. One reason is that market value is a lump sum number, not an annual rental rate. Perhaps more importantly, we have found that appraisals are not the best way to determine the value for these sites. Traditional appraisal methods do not function well in demand-created situations such as found in the right-of-way business where, for instance, highest and best use becomes a point of contention.

The right-of-way market is inherently imperfect and comparables may vary greatly. Rental rates and terms are individually negotiated and parties seldom have the opportunity to comparison shop.

To avoid appraisal-related problems, I measure or estimate the market rent for each site. In right-of-way terms this is sometimes called the "going rate." It can be estimated without a formal appraisal, and it eliminates any argument about highest and best use because the use is implied in the rate.

To determine the proper rental I use the following procedure:

One, we have a \$250 per year minimum. Basically, this is cost recovery.

Two, comparable tower site leases are investigated to determine a reasonable amount to charge. When agreement is reached, this amount becomes rental for the first 5 years.

In the right-of-way business the market rent should relate to the market value of the land, but most often it is difficult to rationalize this relationship. A recent example in our agency will demonstrate this fact.

Earlier this year, the State Land Board issued a tower site lease for an airport VOR navigational facility at Steamboat Springs. Because Federal FAA funds were involved, a formal appraisal was required. The market value of the land was determined to be \$22,000.

I reviewed the appraisal and then investigated other tower site leases and determined that market rental should be about \$5,000 per year. Relative to the market value of the land, this would indicate a 23 percent annual return to the land, which would seem unreasonable based on traditional appraisal theory.

However, we successfully completed this lease at the \$5,000 rate without any objection from the city. The airport authorities will recognize the strategic location of the tower and the value that it adds to their airport.

When determining the rental rate for a tower site, the value is related to the ability to generate revenue for the user. Different users have quite different abilities to pay. To allow for this, we recognize five general categories. In ascending order they are:

One, amateur and public safety; two, low power FM/TV, which includes educational, neighborhood, and translators; three, cellular and radio common carrier—in this case, the more channels, the more valuable; four, full power FM; and, five, full power TV.

Other factors that contribute to value includes: one, the size of the broadcast market—perhaps the single most important factor; two, scarcity of sites caused by terrain, physical proximity, or local land use regulations; and, three, the number of channels or transmitters at the site. Generally, this applies only to cellular in category three above.

In summary, the Colorado State Land Board seeks to obtain maximum revenue for the use of these sites. The revenue is received in the form of an annual rental payment. Rent is set through a process of informed negotiation. The Land Board does not use market value appraisals except in unusual cases.

The type of tower greatly influences the rental rate. Nonprofit sites pay much more than do commercial broadcasters. Subleasing of antenna space on the same tower is encouraged as it decreases the visual pollution created by the number of towers and is more efficient for all the parties involved. Vertical separation of antennas is 100 times more efficient than horizontal separation.

Lastly, the Land Board receives additional rental when subleasing occurs, normally 25 percent of any additional revenues.

That is all.

Mr. VENTO. So you use the 25 percent figure.

Mr. Kitchen. I think there was some misstatement or some unintentional misstatement, but is 25 percent the suggestion that came out of the advisory committee? I say they are suggestions, not necessarily agreements, because, obviously, there is disagreement. You

are disagreeing with it. We are disagreeing with some aspects of it.

So we have this new synthesis of rules being proposed by the BLM and Forest Service. Is it the 25 percent figure of what the subtenant pays in lease to the primary tenant that you are objecting to? You are saying that that is the problem. Are you speaking as a tenant or are you speaking as a subtenant when you say 25 percent is too much?

Mr. KITCHEN. I think you have to look at two different categories of communications users on the site.

If you look at a broadcast situation, for example, where they are in the broadcast business, they have to have a tower. And the fact that they have a tower there is some additional revenue that can be generated from hanging extra antennas on that tower. To collect 25 percent of that revenue may or may not make sense. That is up to the broadcast industry, and I certainly can't speak for them.

I am talking about a site owner or a site manager that goes in and puts up a building. His sole purpose for being there is to put 50 or 60 transmitters in there and lease the space in that building to those 50 or 60 individual small businesses. To then go and take 25 percent of that man's gross revenue, you have eliminated any margin he had for being in business in the first place. You are looking at 25 percent of the gross revenue of this primary business.

Mr. VENTO. No, no, you are looking at 25 percent of the fee paid by the subtenant to the primary tenant.

Mr. KITCHEN. But that is the business he is in.

Mr. VENTO. Well, I know. I think it is important. I don't know where all of his revenue comes from. The primary tenant is paying a certain amount for the site itself. In other words, you are saying the footprint being paid for by the primary tenant is enough, but today he would have to pay 5 percent; is that correct?

Mr. KITCHEN. Today he would pay 5 percent. But it is not of the fees. It is my understanding that the percentage today is based on the capital expenditure to improve the facility.

Mr. VENTO. The issue, as Mr. Devore has indicated, is that you are trying to set a value of a sublease or a subtenant as it relates to the site tower in terms of the market they are in fact serving and what the revenue might be that they can generate from it. On the other hand, it means that the primary tenant can retain 75 percent of the revenue from subtenant, just based on having that site and putting up the capital expenditure for the tower. I don't know what—

Mr. KITCHEN. And then there are a lot of ongoing operational expenses in terms of maintaining the site: Snow removal, security, power air-conditioning, heating, and all of those things that go into the site business. I am trying to make the distinction between a site manager that is running the business of providing a site facility vis-a-vis somebody that is in a different business, i.e. broadcasting, and so that the revenues that are coming in as a result of renting space from the tower are just kind of an add-on to their business.

Mr. VENTO. Yes. So they actually don't have to make this entity pay for itself in terms of what they pay in a fee and what they receive in terms of revenues for the subleasees.

Mr. KITCHEN. Exactly. If they are collecting, in the example that I heard earlier this morning, if they are collecting \$400,000 a year for—and I think that would be several buildings up there with many tenants in it—they are probably only collecting something on the order of a few hundred dollars or maybe a thousand or so per tenant.

Mr. VENTO. Well, that is a high value area. I think what you are talking about are lower value areas.

Mr. KITCHEN. Actually I am speaking to both. The way the Forest Service proposal was 12 percent in the top category—excuse me, \$12,000 or 25 percent, whichever is greater in the top category.

Mr. VENTO. We are talking about the permit fee for the actual footprint, is that correct?

Mr. KITCHEN. Yes.

Mr. VENTO. Because the other way of doing this would be to set a high enough fee for the primary tenant and eliminate the percent for subtenants.

In other words, this is an incremental way. There is less risk this way I guess than if you say, well, this is potentially a 30 transmitter or 30 sublease site, you pay that right now. You pay the value of the site up front.

What the agencies are trying to do here is incrementally deal with the value of the site as the market demonstrates. So by establishing a lower fee to the primary tenant the agencies are taking a certain amount of risk and on the other side if the primary tenant is successful in getting 5 sublessees or 10, then the agencies share. So incrementally that particular formula makes it easier.

In other words, the primary tenant puts up a basic site and has only enough subleases to cover the cost of the permit. I don't know what the threshold is to cover this situation. I guess most of this is assumed then that there is vertical integration, that is that the primary tenant is a broadcaster and is actually utilizing the site and the tower and other buildings themselves as well as subleasing to other broadcasters.

Mr. KITCHEN. I don't disagree with anything you said.

Mr. VENTO. But I mean that is my point that you want this incremental approach but the question is if you do it a different way, you take it up front and then you take your risks in order to attract customers.

Mr. KITCHEN. Well, in the southern California area where we went out and looked at 100 different leases, we found that the majority, the average lease was in the \$10,000 a year range, and there was no percentage of revenue. There was a letter from the Forest Service, I think it is about a year-and-a-half ago, that said that of the leases that they had looked at, they found 72 percent of the leases did not include a percentage of revenue, and only 28 percent of them did.

Mr. VENTO. Is it your testimony then that you think that the Forest Service, by having the sublease kicker into this particular proposal is collecting both on the fee side and on the lease side, but they only should be collecting one way or the other?

Mr. KITCHEN. Yes.

Mr. VENTO. Mr. Devore, is that your experience in Colorado? You said that you have a 25 percent sublease fee in Colorado with most

State lands in terms of sublease. Have you found this anomaly in Colorado to be difficult?

Mr. DEVORE. We don't have any sites specifically like the one he is referring to. Our experience with subleasing, the way we structure our leases, the primary tenant is a stand-alone tenant. Anything else that they get or attract is a way of reducing their operating costs.

And the rationale behind the 25 percent—it may be too simple, but we are always in a position to negotiate—is that about 50 percent of that rental will be for the overhead to operate that site, and that is pretty much standard I believe in the industry, that all of the overhead is taken care of. And then we split the difference with the owner of the tower as the landowner.

Mr. VENTO. Mr. Parsons, you have testified you served on the advisory committee, and you know, there have been statements and allegations made, that if the proposed fee schedule were to be implemented, there would be a blackout in the West, as small broadcasters, including transmitter operators, would be forced out of business.

Mr. PARSONS. I believe you are referring to an article that came out in a Utah newspaper?

Mr. VENTO. Well, it might have. I didn't have specific knowledge of the newspaper.

Mr. PARSONS. Yes, that was a newspaper. I was contacted by the writer of that article, and unfortunately I don't have the opportunity to edit what they print after you talk to them. It was never the intent—

Mr. VENTO. I have noticed that.

Mr. PARSONS. It was never the intent of my comments to indicate that there would be a blackout. I made a contact to John Anderson, U.S. Forest Service here in Washington. He again stated that that was not the case, that our agreement that was initiated in 1992 with the National Translator Association was still valid, and so unfortunately—

Mr. VENTO. So translators, I mean as such, the translators are really not into this proposed fee disagreement. They already have an agreement whereby they pay something like \$75 a year for each site according to Gordon Small. Is that correct?

Mr. PARSONS. Yes. Licensees of transmitters vary State-to-State. I think for the Rocky Mountain area, most of the translators are again licensed to nonprofit and public governmental entities. As I understand it, the fees to those people are waived, and a nominal fee of \$75 is charged for a translator for commercial. Most all of these translators that are installed are not really a big asset to the station itself. And while they still like to claim these people in their audience, in their viewing audience, they still do not support it with dollars very much. So it is generally supported by the local people.

Mr. VENTO. Well, obviously I think they look at it as important. I think one of the underlying currents here, which hasn't been stated, is that since the mountain tops are federally owned that they could charge whatever they wanted, and that there aren't good comparables with regard to these sites, and that there is this un-

derlying fear that the fees are arbitrarily set. Do you agree with that, Mr. PARSONS, that this figure is arbitrary?

Mr. PARSONS. In the committee hearing, and again it was about 65 hours—not hearings, in the committee meetings—I lost my train of thought.

Mr. VENTO. Well, I was just trying to point out the fact that the Federal mountain tops are the only areas really in many regions where you could logically put a translator, or for that matter, a TV or FM tower.

Mr. PARSONS. Well, in the mountainous areas again, you do have to use the high mountain tops. That is what we do, use them to an advantage, to get the signals to the communities. And when you get in an area that is predominantly controlled by the Federal Government, you don't have that many choices. And so consequently, through the years, in the rural areas it wasn't an issue, because the land was just regarded as wasteland, most of it, and now it becomes an issue for communications sites.

Mr. VENTO. Well, there has been an evolution in terms of the thought process, but people have a capital investment there, they are there, they are going to be there. We obviously want to have a policy that is fair and predictable.

One of the reasons I believe that I think we are in pretty good shape, is that the Forest Service—if what they say is true—says they have done 1,500 recent site comparables appraisals. We only have about 5,000 sites that pay a fee.

How many more comparables appraisals do you think should be done?

Mr. PARSONS. I have trouble with the comparables, because in many areas, there is no comparables. In other words, for instance in the Reno area, some of that area was compared with the California market.

Mr. VENTO. But aren't they going by population size rather than the same geographic area?

Mr. PARSONS. They are now. Initially they weren't.

Mr. VENTO. But more recent appraisals you think are accurate, more accurate?

Mr. PARSONS. The other problem I have with that is the fact that some of the comparables were thrown out simply because they said they were below fair market value. Some of the comparables on private markets.

Mr. VENTO. They were low?

Mr. PARSONS. Well, let me give you an example.

In the Salt Lake area, the broadcast stations in the Salt Lake area are on private land, pretty much. And some of them, it ranges all the way from \$4,000 per TV station to \$39,000 for a TV station. However, there are no takers at \$39,000. You could put a figure of \$100,000 if you wanted to, if you don't have any takers.

The site that is \$39,000 has a man there all the time, has a heliport, provides all facilities, security, everything else. So I had a hard time when they wouldn't accept the agreements that were in the act right now. For instance, the \$4,000 one was thrown out because it wasn't considered fair market value, and the higher figures were used.

Mr. VENTO. Well, I mean I suppose it is possible for somebody to say, I want the various groups that I am a member of to have this particular site for a nominal fee. Mr. Small indicated that the new schedule that is being proposed is toward the low end, they took the most conservative end in terms of proposing the new schedule. Do you have any comments on that?

Mr. PARSONS. Well, I think that came from the fact of the committee, and it was discussed at length and I think that was a product from the committee.

Mr. VENTO. Are these other factors worth anything that are in here, the discussion of a longer term footprint or rental area instead of the short-term leases. Are they worth anything to the broadcasters? What about the hardship language—is that of any value?

Mr. PARSONS. I think one thing that came out of the committee that is of value is the footprint. I worked closely with many districts and the districts, frankly, are petrified as to how to implement whatever action is taken.

Mr. VENTO. You are talking about BLM districts?

Mr. PARSONS. Yes, BLM and forest districts. I have lived in the area all my life and have been on panels with Region IV.

Mr. VENTO. You agree with the phase-in. Why do we need a phase-in?

Mr. PARSONS. I think the phase-in figure is primarily to reduce the shock of some fees that will be drastically increased, and I think it was just a shock factor.

Mr. VENTO. I am sort of appalled by the lack of information that the Forest Service and BLM have in terms of subleases. I don't know, Mr. Kitchen, the issue of really those that are just in business with the sites with regards to doing subleasing, in essence, their whole business. I don't know how that translates. But I think there is so little information, or at least inadequate information. I think one of the problems here is the fee revenue flow hasn't sustained enough of a focus by the Forest Service in terms of the dollars coming in. That is, I think, a problem.

Mr. KITCHEN. And each one of those subleasees today is getting a permit and paying a small fee to the Forest Service. I think it also is important for them, as I mentioned earlier, sometimes it is taking as much as 18 months to get a permit. So one of these folks that has a site and a local plumber or electrician or a rescue squad or a school bus operation comes along and wants to go on the air and put a transmitter at one of these sites, sometimes they are held up for 18 months.

Mr. VENTO. Mr. Synar.

Mr. SYNAR. It appears, Mr. Kitchen, that a number of the industry associations were given erroneous or misleading information with respect to the Forest Service fee schedule and has made this industry apoplectic. Frankly, I am disturbed by these type of tactics.

Now, representatives of your group met with this subcommittee staff and gave us information which stated the Congressional Budget Office had concluded that the proposed Forest Service fee schedule would result in an overall decrease in revenue from communications uses located on Federal lands because there would be

a mass exodus of communication providers from federally-owned sites, since the proposed fees were considerably higher than the lease rates. You are aware we contacted CBO about that information, and CBO said that NABER's characterization of the CBO analysis for the 1993 Budget Reconciliation Act was flat out wrong. In fact, CBO estimated that the Federal revenues collected under the Forest Service fee schedule would rise. Now, CBO notified you all about this issue, did they not?

Mr. KITCHEN. Members of NABER have met with—

Mr. SYNAR. Did they notify you?

Mr. KITCHEN. Yes, they did.

Mr. SYNAR. In response to CBO's concerns that NABER had mischaracterized the analysis, NABER agreed to contact each of the congressional offices that had received this information and explain the mistake, did they not?

Mr. KITCHEN. Yes, we did.

Mr. SYNAR. Now, the subcommittee was never informed by NABER of this mistake. Do you have copies of the letters that you sent to the congressional offices indicating NABER had misrepresented CBO's analysis?

Mr. KITCHEN. We have copies of the letters, but if I could go back—

Mr. SYNAR. Will you provide those to the committee?

Mr. KITCHEN. Certainly.

Mr. SYNAR. All right. Now, Mr. Parsons, you said that the article that was mentioned by Chairman Vento in the Salt Lake Tribune did not characterize the association's understanding of the proposed fee. We talked to an official representing the National Translators Association. They said they felt that the broadcasters were spreading those lies. Do you disagree with that?

Mr. PARSONS. That the broadcasters what?

Mr. SYNAR. Were spreading those lies that appeared in the article on April 25, 1994, in the Salt Lake Tribune.

Mr. PARSONS. I do not have knowledge of that. I can tell you it wasn't the NTA.

Mr. SYNAR. All right. Mr. Devore, according to your statement, the Colorado State Land Board does not rely on market appraisals unless required by law when setting fees for communication sites on State-owned land. But you do investigate the rents charged at comparable sites to ensure that the State Land Board's rents for communication sites are reflective of similar rents being charged in the marketplace; isn't that correct?

Mr. DEVORE. Yes, that is correct.

Mr. SYNAR. So the bottom line is you do charge based upon market data, correct?

Mr. DEVORE. Market rent, yes.

Mr. SYNAR. All right. In your statement you also cite an example of a case where the appraised value of the land did not correspond with the comparable market rates for the tower on that land. When an appraisal is done for a communications site, should it be based upon the market value of the communications site, or the value of the land in which the facility is located?

Mr. DEVORE. The real key here, the point I am trying to make is that the annual rental—these are income properties, they are

not—to come in and start arguing over highest investors as to whether one moment it is grazing land or at the top of the mountain and is timberland—

Mr. SYNAR. NAB believes that you should consider next best use for setting rents in the communication sector. You don't agree with that?

Mr. DEVORE. That wouldn't follow any logical appraisal technique or theory that I know of unless you agree that you are going to rent it at a use other than what you are going to use it for. I mean I don't quite understand it.

Mr. SYNAR. All right. At this time I would like to ask unanimous consent to introduce into the record a prepared statement of the Arizona and Washington State Land Boards. These States also charge rents based upon market data.

Mr. VENTO. Yes. Without objection, those statements will be included in the record.

Mr. SYNAR. Does Colorado, Mr. Devore, use a rent schedule for communications fees?

Mr. DEVORE. No, we do not.

Mr. SYNAR. All right. How many communication sites are there on State-owned property in Colorado?

Mr. DEVORE. Approximately 120.

Mr. SYNAR. All right. Now the Forest Service and BLM have over 9,000 permits for communications facilities. Mr. Devore, do you think it is a more reasonable approach for these agencies to move to a rent schedule than attempt to appraise each communications site, or, in the alternative, do you believe that they should determine on a going market rate for each site?

Mr. DEVORE. Ideally, I think they should have the same power that I do to negotiate each site as long as there are parameters that they have to stay within. However, they have a much bigger task and a lot larger geographical area and I can certainly understand adopting a schedule. A schedule at least gives you something to bounce off of and say that is what the schedule is.

Mr. SYNAR. Now, according to the Forest Service and BLM, their schedule is based largely upon—do you think that such lease information is a reasonable basis for developing a schedule, Mr. Devore.

Mr. DEVORE. When you say "lease schedule," what type of lease schedule.

Mr. SYNAR. Lease schedule on largely privately-owned land for communications sites.

Mr. DEVORE. Yes, if you can get the information, it would be ideal.

Mr. SYNAR. In your testimony you noted that retaining ownership in the communication sites on State lands that your State Land Board is able to take advantage of being in the right place at the right time. In short, Colorado makes no apologies for owning property that others desire to use for communications purposes, do they?

Mr. DEVORE. That is right.

Mr. SYNAR. Now, your statement also notes that when determining the rental value of the tower site, the value is related to the ability of the site to generate revenue for the user. In other words, if a television broadcaster and a commercial mobile radio operator

constructed towers of identical height on the same mountain top, the fees charged for each would be different. Now, in that scenario, you would charge the broadcaster more because of your expectation that they can generate more revenue; is that correct?

Mr. DEVORE. Yes, technically the scenario you are proposing, you would charge more.

Mr. SYNAR. Why do you set your fees like that?

Mr. DEVORE. Pardon?

Mr. SYNAR. Why do you set your fees like that?

Mr. DEVORE. Well, we don't have a situation like that.

Mr. SYNAR. Let's say that that is the case.

Mr. DEVORE. Why would we charge more for a user who could generate 100 times more revenue than the other user? Because they will pay more.

Mr. SYNAR. Oh. What the market will bear?

Mr. DEVORE. That is correct.

Mr. SYNAR. Now, the NAB asserts that the Forest Service and BLM erred in setting their fee schedule because they did not consider the financial condition of broadcasters. Did you review the books of the broadcasters in Colorado when establishing their rental payments?

Mr. DEVORE. No.

Mr. SYNAR. So how did you know what they could bear?

Mr. DEVORE. We may not have charged them as much as they can bear, but through—

Mr. SYNAR. So you picked a fee out of the air?

Mr. DEVORE. No, it is informed, based on what information I could find out.

Mr. SYNAR. You have heard us discuss today the 30 percent discount that the NAB wants for public service and other considerations. Colorado, Arizona, Washington State have obviously rejected these discounts for such considerations. What is Colorado's position and rationale for not providing public service discounts to commercial broadcasters?

Mr. DEVORE. Frankly, it has never come up. I have never had a user mention it. But if they did, all our market rents are what the appraisal industry would call "net to the landlord." And we are just comparing comparables that are in the same "net to the landlord" position.

Mr. SYNAR. I find that interesting. They have never appealed it on a State level, but they do on a Federal level?

Mr. DEVORE. That may be a difference between the State and Federal process.

Mr. SYNAR. Our staff informs me to remind you, that I am not being critical of you, we are trying to set a record here of what you do compared to what they want us to do. Mr. Kitchen, back to you. I understand that you were a member of that 11-member advisory committee.

Did you think the workings of the committee were fair?

Mr. KITCHEN. I think that we spent a great deal of time trying to develop a consensus and not everybody agreed with the bottom line.

Mr. SYNAR. Various industry segments were equally represented by knowledgeable people such as yourself, would you agree?

Mr. KITCHEN. When you say "equally represented," I am not sure quite what you mean?

Mr. SYNAR. There were a lot of knowledgeable people representing the various factions that would be affected by this.

Mr. KITCHEN. Correct.

Mr. SYNAR. The chairman was Richard Spight who was a member of the private sector, wasn't he?

Mr. KITCHEN. That is correct.

Mr. SYNAR. Do you believe that the agency officials were equally knowledgeable and professional in their conduct?

Mr. KITCHEN. We certainly—there were those times when we agreed with a lot of their input, but again—

Mr. SYNAR. I didn't ask you that. Were they knowledgeable and professional in their conduct?

Mr. KITCHEN. Yes.

Mr. SYNAR. Now, the NAB, in their prepared statement, Mr. Kitchen, for this hearing today asserts that the agency officials controlled the meeting agenda and wrote and reviewed the report. The subcommittee staff reviewed the minutes—we, in anticipation of that testimony, reviewed the minutes of the advisory committee's public meetings, which indicated to us that Chairman Spight controlled the meeting's agenda and you were involved in reviewing and commenting on the drafts and review of the report. So who is right?

Mr. KITCHEN. My recollection is that Mr. Spight was in control of the meetings, and set the agenda and led to discussion.

Mr. SYNAR. Now the advisory committee was chartered to advise the Secretaries of Agriculture and Interior on methods for setting fair market value, consider the next best alternative use, and public service discounts in setting communications fees; is that correct? That is what your charge was?

Mr. KITCHEN. Yes, although there was some debate amongst the committee members as to exactly what that meant.

Mr. SYNAR. The advisory committee was not directed by Congress to establish a fee schedule for communication sites, was it?

Mr. KITCHEN. That is correct.

Mr. SYNAR. By proposing a fee schedule, didn't the committee overstep its authority?

Mr. KITCHEN. We didn't feel so, no.

Mr. SYNAR. But you agree that it was not part of your direction from Congress?

Mr. KITCHEN. It was not part of our direction, but the consensus of the group was that our report was meaningless without something like that.

Mr. SYNAR. Were the Secretaries of Agriculture and Interior bound by the law to accept and implement the advisory committee's recommendations?

Mr. KITCHEN. I am not an attorney. I couldn't answer that.

Mr. SYNAR. Did the agency officials that participated in the advisory committee ever lead you to believe that the committee's report would be accepted in its entirety by the Secretaries?

Mr. KITCHEN. Not by the Secretaries, no.

Mr. SYNAR. Mr. Parsons, you were also a member of that 11-person advisory committee. Do you agree with Mr. Kitchen on all of those points I just asked?

Mr. PARSONS. Yes, I do.

Mr. SYNAR. Mr. Kitchen, didn't the Forest Service and BLM adopt most of the advisory committee recommendations?

Mr. KITCHEN. Absolutely, and we support that.

Mr. SYNAR. All right. So you would agree that the agencies did consider the advisory committee report and make discretionary changes in their programs where they felt appropriate.

Mr. KITCHEN. I am sorry, I didn't hear whether you said did or did not.

Mr. SYNAR. In other words, they accepted some and rejected some, but they didn't make discretionary changes in the report, did they?

Mr. KITCHEN. That is correct.

Mr. SYNAR. All right. They made changes which the law allowed them to do, is that correct?

Mr. KITCHEN. I don't think they—if you are talking about the government officials, I don't think they made any changes at all. I think the report was written by the subcommittee and they reviewed it as did the other members of the committee.

Mr. SYNAR. All right. Now, does NABER believe the appraisals, market surveys, or negotiations are the basis for determining fair market value?

Mr. KITCHEN. Not necessarily, no.

Mr. SYNAR. Okay. Do you support the fee schedule in the advisory report which is not based upon fair market value?

Mr. KITCHEN. We supported the fee schedule in the advisory report and have suggested some fine-tunings to that since then, with the exception of the 25 percent of gross revenue.

Mr. SYNAR. I think that is all, Mr. Chairman.

Mr. KITCHEN. Excuse me. If I might.

Mr. SYNAR. Let me just for a second conjecture. If Congress privatized all of the Federal lands in the West tomorrow, Mr. Kitchen, do you believe the new landowners would accept the fee schedule which you support or would they, like the Forest Service and BLM, charge rents based upon fair market value.

Mr. KITCHEN. I am sorry, I couldn't hear what you said.

Mr. SYNAR. For conjecture's sake only, if we privatized all of those Federal lands in the West tomorrow, do you believe the new landowners would accept the fee schedule you all negotiated, or would they attempt, like the Forest Service and BLM to charge rents based upon fair market value?

Mr. KITCHEN. I think that based on our information that the fee schedule is pretty darn close to what people are charging now.

Mr. SYNAR. So you think if we privatized it, they would just accept the advisory report and charge that?

Mr. KITCHEN. I think it would be something close. That is what our statistics indicate.

I just wanted to make the point, you had asked me about a letter and my staff has informed me that we did not send a letter.

Mr. SYNAR. Oh, you didn't.

Mr. KITCHEN. Could I have the opportunity to correct that, and I will inform you in writing as to exactly what happened. I am just not sure. I don't want to misstate the record.

Mr. SYNAR. Well, we want the record to be clear because you made a commitment that you would send a letter to the congressional offices about the misinformation. So have they been contacted by phone?

I will tell you what we will do, Mr. Kitchen. Just for your sake, why don't you write us a letter.

Mr. KITCHEN. That is what I would like to do to make sure I have an accurate answer.

Mr. SYNAR. Yes. Thank you.

[The information follows:]



July 22, 1994

The Honorable Bruce Vento
c/o C. Stanley Sloss, Esq.
Subcommittee on National Parks, Forests, and Public Lands
Committee on Natural Resources
812 O'Neill House Office Building
Washington, D.C. 20515

Dear Stan:

At the July 12 joint-subcommittee hearing, Mr. Synar posed several questions to NABER President E.B. "Jay" Kitchen regarding a dialogue NABER staff had had with the Congressional Budget Office. Because he had not been informed about this series of discussions, Jay couldn't provide an complete response to Mr. Synar's set of questions.

Mr. Synar graciously permitted Jay to provide a response in writing. A copy of Jay's letter to Mr. Synar answering the questions is enclosed as well as related attachments.

We've appreciated the opportunity to meet with staff of both subcommittees and to present our views in both oral and written testimony. Please let me know if you have questions or need additional information.

Sincerely,

Sheldon R. Moss

enc.



National Association of Business and Educational Radio

1501 Duke Street
Alexandria, VA 22314
703.739.0300
1.800.759.0300
FAX 703.836.1608

July 21, 1994

HAND DELIVERED

The Honorable Mike Synar, Chairman
Environment, Energy, and Natural Resources Subcommittee
Committee on Government Operations
2157 Rayburn House Office Building
Washington D.C. 20515-6143

Dear Representative Synar,

This letter is to respond to the questions you asked me during my testimony at last week's oversight hearings on rental fees for public lands-based communication sites. If you recall, I was unable to provide complete details at the time of the hearing.

You asked me about references we made, to your subcommittee staff as well as other congressional offices, to findings made by the Congressional Budget Office (CBO). We mistakenly reported that CBO had concluded that a July, 1993, fee schedule proposed by the Forest Service, if enacted, would prompt many communication companies to abandon their Forest Service permits and would result in an overall decline in federal revenues. You noted that CBO had advised you that those claims were not accurate and you then asked me whether we had subsequently contacted each congressional office to whom we provided this information to make them aware of our error. I can now report to you that the error is being corrected.

Since the hearing, I've met with NABER staff to reconstruct the chronology of events since the May 17, 1994, meeting between NABER staff and Brian McLaughlin of your staff, where we provided Mr. McLaughlin with the information about CBO's findings. To the best of my knowledge, this is what took place:

NABER was contacted by CBO sometime after the May 17 meeting with Mr. McLaughlin. As you indicated, CBO informed us that the one-page issue summary we had provided your staff, as well as a number of Senate offices, were inaccurate in regards to their description of CBO's findings. A member of the NABER staff spoke with Ms. Suzanne Mehlman at CBO and volunteered to contact each congressional office who had received a copy of the issue summary and correct the mistake. As of the day of my testimony, NABER had failed to follow up on that commitment. I cannot offer any excuse or justification for this oversight.

NABER - Protecting, Serving, and Leading the Mobile Communications Industry

The Honorable Mike Synar
 July 21, 1994
 Page 2

For your review, I've enclosed:

1. A copy of a June 2, 1994, letter from NABER to Ms. Mehlman at CBO acknowledging our error and indicating our intention of following up with each congressional office to correct our error.
2. A listing of the congressional offices who were provided with the one-page summary. (Your subcommittee was the only House office provided with this faulty information.)
3. Copies of letters we are mailing this week to the above-referenced congressional offices to correct our inaccurate representation of the CBO findings.

I appreciate this opportunity to set the record straight. Please do not hesitate to call me if you have questions.

Sincerely,



E.B. "Jay" Kitchen
 President

cc: Rep. Bruce Vento

enclosures

Mr. VENTO. Thank you, gentlemen, for your testimony. I think we made a good record today in terms of establishing some of the concerns, some of the outstanding questions, and hopefully they will be resolved. I thank you for your patience and your testimony.

If there are no further questions, no further business before the committees, the joint committee stands adjourned.

[Whereupon, at 12:30 p.m., the subcommittees were adjourned.]

APPENDIX

JULY 12, 1994

ADDITIONAL MATERIAL SUBMITTED FOR THE HEARING RECORD

OPENING STATEMENT

of

THE HONORABLE JAY DICKEY

Fourth District - Arkansas

Before the

National Parks Subcommittee

House Natural Resources Committee

**Government Operations Environment, Energy and Natural
Resources Subcommittee**

Regarding

Hearing on Communication Sites on Federal Lands

July 12, 1994

Mr. Chairman, thanks for holding this joint hearing today regarding the policies of federal land management agencies regarding permits for communications sites on federal lands.

My understanding is this has been a difficult and contentious issue among the land management agencies, users, and the Congress for many years. Differing agency policies have led to differing permit methods and differing fees, despite the fact that the law requires the fees to be set at fair market value. Involvement from the Congress has also sent mixed signals as the Congress attempts to reach a balance between its constituents and the policies of land management agencies.

My hope is this hearing will help to bring all of us together and focus on a fair, coordinated system of communication site permitting and fees throughout the federal government, while still protecting the taxpayers and the users.

I look forward to reviewing the testimony.

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(223)

GAO

United States General Accounting Office
Report to Congressional Requesters

July 1994

FEDERAL LANDS

Fees for Communications Sites Are Below Fair Market Value



GAO/RCED-94-248



United States
General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division

B-257764

July 12, 1984

The Honorable Mike Synar
Chairman, Environment, Energy,
and Natural Resources Subcommittee
Committee on Government Operations
House of Representatives

The Honorable Bruce F. Vento
Chairman, Subcommittee on National Parks,
Forests, and Public Lands
Committee on Natural Resources
House of Representatives

The U.S. Department of Agriculture's Forest Service and the Department of the Interior's Bureau of Land Management (BLM) are the two major federal land management agencies whose lands are used as communications sites for broadcasting and transmitting television, radio, and other electronic signals. For the most part, these sites are leased to private entities that construct and operate communications facilities. The vast majority of these sites serve communities in the western United States.

Concerned about whether the federal government is receiving fair market value¹ for the lands leased for communications sites as required by the Federal Land Policy and Management Act of 1976 (FLPMA), you asked us to review several issues regarding how the Forest Service and BLM are administering these lands. Specifically, you asked (1) whether the fees currently charged for using the communications sites reflect fair market value, (2) how the fees charged for using federal lands compare with the fees charged by nonfederal landowners, and (3) to what extent the government's ability to obtain fair market value has been affected by limits on fee increases contained in appropriations legislation. In addition, as agreed with your offices, this report provides information on problems related to managing the communications sites that came to our attention during our review. As also agreed, we focused our review on three commercial users of these sites: television broadcasters, FM radio broadcasters, and commercial mobile radio transmitters. The Forest Service administers most of the communications sites and has taken the

¹Fair market value refers to the price at which a willing seller would choose to sell and a willing buyer would choose to buy in a competitive marketplace.

lead in addressing the issue of what fees should be charged for leasing communications sites on federal lands.

This report is one of several products we have issued in the past few years addressing whether the federal government is receiving fair market value for the sale or use of the nation's natural resources. A list of related GAO products is included at the end of this report.

Results in Brief

The annual fees currently charged for using communications sites on lands administered by the Forest Service and BLM generally do not reflect fair market value. In many cases, the fees charged are significantly below fair market value. For example, the annual fees paid by television broadcasters at a large Forest Service communications site near Los Angeles, California, are only about 2 to 15 percent of fees based on the sites' appraised fair market value. The Forest Service's fees are based on an outdated formula that was established over 40 years ago, and BLM's fees are based on out-of-date appraisals. Forest Service and BLM officials estimate that charging fees based on fair market value would increase total federal revenues by over 600 percent—from about \$4 million annually to about \$23 million annually.

State and private landowners generally base their fees for communications sites on the fair market value of the sites, and their fees are generally higher than those charged by the federal government. In addition, officials in some western states we contacted told us that the low federal fees depress the fair market value of the state-owned sites. Consequently, the current federal fees may limit state revenues as well as federal revenues.

For several years, the Forest Service and BLM have been trying to establish fees that reflect fair market value. Although the Forest Service, BLM, and the communications industry agree that the fees currently charged for using the federal sites are too low, they disagree with the fee increases that have been proposed. Consequently, the conference report for fiscal year 1992 appropriations directed the Forest Service and BLM to establish an advisory committee to study the fees charged for using the communications sites. However, for the past 5 years, annual appropriations-related legislation has limited the amount by which the Forest Service and BLM can increase these fees. As long as these limits are in effect, the fees charged will not reflect the communications sites' fair market value.

H-257644

The Forest Service lacks the reliable and complete programwide information needed to effectively manage its communications sites. Specifically, data on the amount of fees users pay and on the number and types of communications sites located on Forest Service lands are unreliable or incomplete. In addition, numerous unauthorized communications users are operating on Forest Service lands, and annual inspections to ensure that the sites are properly maintained are rarely performed. BLM also lacks reliable data on the number and types of users of its sites and the fees collected. Forest Service and BLM officials acknowledged these problems and said that they occur because the program has a low priority within their agencies.

Background

The Forest Service and BLM are the two major federal land management agencies whose lands are used as communications sites. The Forest Service issues permits and BLM uses rights-of-way leases to grant authority for such use. Forest Service officials estimate that the agency has issued about 6,300 communications permits, which generate an estimated \$1.9 million in annual fees. BLM officials estimate that the agency has about 3,200 leases and collects about \$1.5 million to \$2.0 million in annual fees.

Lands on mountain peaks or otherwise at high elevations near population centers are the most desirable places to locate communications sites. The federal government owns a significant portion of the lands in the western United States, and many of the best communications sites in the West are on Forest Service lands. When these sites are located near population centers, the demand for their use for communications purposes is greater, thereby increasing their value. BLM lands are generally not located at high elevations near population centers; thus, the BLM sites are not as valuable as many Forest Service sites.

There are four major categories of communications users that pay for the use of federal lands: commercial, industrial, and personal users and organizations that perform natural resources and environmental monitoring.

A communications facility generally consists of a tower and a building. Antennas are located on the tower, and supporting electronic equipment is housed in the building. In many cases, the facility's owner rents space at the facility to other communications users, or subtenants. Large towers may have 20-30 subtenants transmitting and/or receiving signals. Many facility owners are also in the communications business. However, others

H-257564

are not and operate their facilities to generate rental income. At Forest Service sites, both types of facility owners are currently required to pay the Forest Service 5 percent of the rent they receive from subtenants. Generally, BLM does not require facility owners to pay the agency for subtenants.

Current Fees for Communications Sites Do Not Reflect Fair Market Value

Both the Forest Service and BLM are required to obtain fair market value for the use of their lands. But in most cases, the fees that the Forest Service and BLM collect for their communications sites are significantly below the fair market value.

Federal Agencies Are Required to Receive Fair Market Value

Title V of the Independent Offices Appropriations Act of 1952, as amended in 1982 (31 U.S.C. 9701) requires the federal government to levy fair fees for the use of its services or things of value. Under the Office of Management and Budget's Circular A-25, which implements the act, agencies normally are to establish user fees on the basis of market prices. In addition, the Federal Land Policy and Management Act of 1976 (FLPMA) requires federal agencies to obtain fair market value for the use of federal lands. FLPMA allows the agencies to discount or waive fees if the user of the land is another government agency or a nonprofit association or is providing a valuable benefit to the public at no charge or at a reduced charge. Forest Service and BLM officials indicated that they frequently grant fee waivers or discounts to these types of organizations.

Federal Fees Are Significantly Lower Than Fair Market Value

In general, the fees for the communications sites administered by both the Forest Service and BLM are significantly lower than the fair market value. Forest Service officials estimate that, nationwide, the agency is collecting fees worth about 10 percent of the fair market value of its sites. BLM officials estimate that the agency's fees represent about 50 to 65 percent of the fair market value of its sites.

The Forest Service has based its fees for communications sites on charging 0.2 percent of the permittee's investment in facilities and equipment. This formula, developed over 40 years ago, does not take into account the different types of uses or the size of the market near the site and is not adjusted for inflation. Since this approach has no relationship to fair market value, it has resulted in fees that are significantly below this value.

B-237564

Forest Service and BLM officials advised us that there are significant differences between the fees they currently charge for communications sites and what the fees would be if they were based on fair market value. For example, an independent appraiser hired by the Forest Service appraised the market value of the use of the site for television broadcasters at Mt. Wilson, which is near Los Angeles, California, at \$75,000 annually, but the fees now being paid range from \$1,294 to \$9,600 annually—or from about 2 percent to about 15 percent of the fee based on the appraised value of the site. Forest Service officials estimate that on a national basis, if the agency's fees for communications sites reflected fair market value, revenues would increase by over 10-fold—from about \$1.9 million a year to about \$20 million a year.

The policy at BLM is to base the fees for its communications sites on site appraisals and to reappraise each site every 5 years to adjust these fees. BLM officials told us that because the program has a low priority, many of the appraisals the agency uses are out of date and no longer reflect fair market value. In addition, according to BLM officials, reappraisals have been infrequent. BLM officials estimate that if the agency charged fees that reflected fair market value, revenues would increase from about \$1.5-\$2.0 million a year to about \$3.0 million a year.

Federal Fees Are Less Than Those Charged by Nonfederal Landowners

States and private landowners also lease lands for communications sites. We found that unlike the federal government, these landowners routinely charge fees based on the fair market value of the lands. As a result, their fees are generally higher than those charged by the federal government.

To compare the states' and the federal government's processes for setting fees for communications sites, we reviewed the approach taken by seven western states—Arizona, California, Colorado, Idaho, New Mexico, Oregon, and Washington. Over two-thirds of all Forest Service permits for communications sites were issued to users in these states. Six of the seven states we reviewed based their fees on the fair market value of the sites. The one state that did not—Oregon—had a policy that limits the fee collected to the amount needed to recover administrative costs. The six states that charge market-based fees for their sites base their determination of fair market value on commonly accepted techniques: appraisals and market surveys of comparable private leases, or negotiations with prospective renters.

To illustrate how the state fees compare with the federal fees, we tried to identify a location where a state-owned site and a comparable federally owned site served the same area. We could not identify such a location. Consequently, we compared the fees charged at a state-owned location in the Tri-Cities area of Richland-Pasco-Kennewick (with a population of about 120,000) in eastern Washington with federally owned locations serving Boise, Idaho, (with a population of about 240,000) and Los Angeles, California (with a population of over 9 million). Under a recent lease for the state-owned site in the Tri-Cities area, an owner of an FM radio tower agreed to pay the state \$6,227 per year. In contrast, owners of FM radio towers on Forest Service land at Deer Point, Idaho, serving the Boise area, and on Mt. Wilson, serving the Los Angeles metropolitan area, paid lower fees. The owner of an FM radio tower at Deer Point paid \$4,513 per year. At Mt. Wilson, FM radio tower owners paid annual fees ranging from \$431 to \$679.

The current federal fees not only result in forgone revenues to the Treasury but may also result in forgone revenues to states and counties. Of the six states that base their fees on fair market value, officials in three states told us that the low fees charged by the Forest Service and BLM depress the market value of the state-owned communications sites. In addition, since 25 percent of the revenue received from national forests is returned to the states and counties where the national forests are located to benefit public schools and roads in the area, the lower federal fees deprive these states of additional revenues.

Like the states, four commercial private landowners in the West that we contacted indicated that they use the commonly accepted tools of appraisals, market surveys, or negotiations with prospective renters to set the fees for their sites. In general, the fees charged by these private landowners are significantly higher than those charged on federal lands. For example, a private landowner charges an FM radio station \$27,000 per year to broadcast from a site that serves the Seattle, Washington, metropolitan area. While there are no comparable federal sites serving this city, federal sites serving larger cities charge significantly less. For example, as mentioned previously, FM radio tower owners at Mt. Wilson in the Los Angeles area paid the Forest Service annual fees ranging from \$431 to \$679 a year.

Efforts to Obtain Fair Market Value Have Been Impeded

For several years, the Forest Service has attempted to increase the fees it charges for its communications sites to reflect fair market value. However, while industry representatives agree that the current fees are too low, they believe the fee increases proposed by the Forest Service are too high. In addition, for the past 5 years, appropriations-related legislation has limited the amount by which the Forest Service and BLM can increase the fees.

Federal Efforts to Obtain Fair Market Value

In the late 1980s, the Forest Service began efforts to revise its fee system to reflect fair market value, and these efforts continue today. The Forest Service and BLM have been working together to develop a fee system that can be used by both agencies. However, federal efforts to revise the fees have met with considerable opposition.

In an effort to determine what the fees should be, the Conference Committee Report on Interior and Related Agencies Appropriations for fiscal year 1992² directed the Forest Service and BLM to create an advisory committee to report on appropriate methods for establishing site fees that reflected the fair market value of two communications uses—television and FM radio. This committee, called the Radio and Television Broadcast Use Fee Advisory Committee (Advisory Committee), was made up of 11 voting members, including 6 representatives of the communications industry, 1 representative from the Forest Service, 1 from BLM, a private appraiser, a state land manager, and a representative of a commercial landowner who rents lands for communications sites. In December 1992, the Advisory Committee issued its report.³ The report estimated market-value fees for communications sites and proposed fees that were 30 percent less than these fees. The Advisory Committee believed the 30-percent reduction in fees was warranted to account for, among other things, the public service provided by the industry to the communities it serves. The Advisory Committee's proposed fees for television and FM radio have been supported by industry representatives. The fees recommended by the Advisory Committee are generally substantially higher than those currently charged by the Forest Service and BLM but are lower than the market-value fees identified by the Forest Service's appraiser. (App. I contains the fee schedules recommended by the Advisory Committee.)

While the Forest Service and BLM agreed with some of the findings in the Advisory Committee's report, the agencies disagreed with both the

²House Report 102-250 on H.R. 2686, enacted as P.L. 102-164.

³Report of the Radio and Television Broadcast Use Fee Advisory Committee, Dec. 1992.

Advisory Committee's methodology and the proposed fees because, in their opinion, the fees did not reflect fair market value. Consequently, the Forest Service began developing its own fee proposal, which it published in the *Federal Register* for public comment in July 1993. BLM did not participate in this effort, but BLM officials indicated that they generally supported the Forest Service's approach. The proposal recommends fees for four types of communications uses: television, FM radio, commercial mobile radio, and cellular telephone. (App. II contains details of the fee schedules proposed by the Forest Service.) The Forest Service has analyzed public comments on its fee proposal and has begun working with BLM to develop a fee system to be implemented by both agencies. BLM plans to publish this fee system in the *Federal Register* for public comment during the summer of 1994. After receiving and analyzing the public comments, both agencies plan to implement this fee system.

Table 1 illustrates the differences between the annual fees the Forest Service currently charges for its communications sites, its appraised market-value fees and proposed annual fees, and the Advisory Committee's estimated market-value fees and proposed annual fees. The table compares the fees for three Forest Service sites. These sites—Mt. Wilson, Sandia Crest, and Deer Point—were chosen to represent sites located near a large metropolitan area, a medium-sized city, and a relatively small city, respectively. They include markets of different sizes with multiple types of commercial users. These 3 sites are among the 12 sites that were appraised for the Forest Service by an independent appraiser in 1992. Mt. Wilson is the predominant communications site in the Los Angeles, California, area—the second largest broadcast market in the country. Seven television stations and 12 FM radio stations broadcast from this site. The site also serves numerous commercial mobile radio operators. Sandia Crest is the predominant communications site for the Albuquerque, New Mexico, area. Nine television stations, 12 FM radio stations, and 27 commercial mobile radio operators transmit from this site. Deer Point serves the area around Boise, Idaho. It is the predominant site for broadcasting in this area. Three television stations, six FM radio stations, and one commercial mobile radio operator transmit from this site.

Table 1: Comparison of Forest Service's and Advisory Committee's Annual Fees

Site and use	Forest Service's current range of fees	Forest Service's appraised market-value fees	Advisory Committee's estimated market-value fees	Forest Service's proposed fees	Advisory Committee's proposed fees
Mt. Wilson					
Television	\$1,294 - 9,600	\$75,000	\$60,000	\$45,000	\$42,000
FM radio	\$431 - 679	\$70,000	\$42,000	\$34,000	\$29,400
Commercial mobile radio	\$431 - 1,114	\$60,000	^a	\$12,000 ^b	\$12,000 ^c
Sandia Crest					
Television	\$115 - 2,353	\$21,000	\$15,000	\$19,000	\$10,500
FM radio	\$148 - 6,929	\$19,500	\$10,500	\$14,000	\$7,350
Commercial mobile radio	\$119 - 1,411	\$16,000	^a	\$7,500	\$3,500 ^c
Deer Point					
Television	\$671 - 712	\$13,000	\$3,250	\$6,000	\$2,625
FM radio	\$4,513	\$12,500	\$2,625	\$5,500	\$1,838
Commercial mobile radio	^a	\$10,000	^a	\$5,000	\$2,000 ^c

Note: The fees in this table apply only to facility owners.

^aCommercial mobile radio was not addressed by the Advisory Committee.

^bThis fee is the higher of \$12,000 or 25 percent of the revenues generated by the permittee.

^cThese fees are taken from a fee system developed by the commercial mobile radio industry.

^dThe one commercial mobile radio operator at Deer Point is a subtenant.

As table 1 shows, there are significant differences between the Forest Service's current range of fees and the fees based on appraised market value. Table 1 also shows that the market-value fees estimated by the Advisory Committee are generally lower than the Forest Service's appraised market-value fees. Appraisals and market surveys are two commonly accepted techniques for determining fair market value. The Forest Service used these techniques to develop its proposed fees.

The Forest Service's appraised market-value fees were based on formal appraisals done by an independent appraiser at 12 Forest Service sites in 1992. In contrast, the Advisory Committee's estimated market-value fees were based not on formal appraisals but, rather, on informal information provided by industry groups and appraisers and on the collective judgment of the Advisory Committee's members.

The Forest Service's proposed fees are consistently lower than its appraised market-value fees because of the approach the agency followed in developing its fee system. The Forest Service grouped the fees it developed into several broad categories of communities on the basis of population. The proposed fee assigned to each category in this fee schedule was based on what the Forest Service believed was the fair market value of the sites in the smallest community in each category. For example, under the Forest Service proposal, Los Angeles is in a fee category with other cities like San Diego. However, the proposed fee for this category is based on the fair market value of the sites in the smaller city—not Los Angeles.

Forest Service officials told us they took this approach because it is more practical and less costly to administer than determining the fair market value of each site. The Advisory Committee's report also supported the use of a fee schedule because, among other things, it was cost-efficient and predictable and could be consistently applied across the agency.

The Forest Service used a systematic process involving the commonly accepted techniques of appraisals and market surveys to develop its proposed fees. As previously discussed, the Advisory Committee did not employ these techniques. While the Forest Service's market survey data were provided to the Advisory Committee, the committee's report acknowledges that the data were not used because they would have resulted in fees that the Advisory Committee believed were too high. The Advisory Committee's report also acknowledges that the committee's proposed fees do not represent fair market value. In addition, representatives of the commercial mobile radio industry told us that the Forest Service's proposed fees for commercial mobile radio were too high.

It should be noted that while there are significant differences between fees proposed by the Forest Service and the Advisory Committee, there are several areas of common agreement. For example, both proposed systems provide for a phase-in of the new fees if the increase in fees to a user is \$1,000 or more.

Congressional Action Affecting Efforts to Obtain Fair Market Value

Because of concerns raised by users of federal communications sites, in each of the past 5 years, language has been inserted into appropriations-related legislation limiting the annual fee increases for Forest Service and BLM communications sites. In appropriations legislation for fiscal years 1990 and 1991, fee increases were prohibited. The

B-357544

conference report for fiscal year 1992 appropriations directed the Forest Service and *BLM* to create an advisory committee to study the site fees for television and FM radio. Appropriations legislation for fiscal years 1992 and 1993 allowed the agencies to increase the fees by up to 15 percent above the fees in effect in 1989. For fiscal year 1994, the Omnibus Budget Reconciliation Act directed the agencies to increase the fees by 10 percent above the fees in effect for fiscal year 1993. Unless additional legislation is enacted, the current limits on fee increases will expire at the end of fiscal year 1994.

Because of the significant disparity between the current fees and fees that reflect fair market value, fee limitations like those imposed over the last 5 years will not allow the agencies to obtain fair market value for many years, if ever. For example, the highest current fee for television broadcast at Mt. Wilson is \$9,600 per year. According to the Forest Service, the fee based on the current appraised market value of this site would be \$75,000 per year. At an increase of 10 percent a year—the rate allowed in fiscal year 1994—it would take more than 20 years for the fee to reach \$75,000. If inflation or other factors cause the fair market value of this site to increase above \$75,000 per year, it will take even longer for the fee to reflect fair market value.

Industry's Concerns About Proposed Fee Increases

The communications industry acknowledges that federal fees charged television, FM radio, and commercial mobile radio users are too low and should be based on fair market value. Industry representatives agree that generally accepted valuation techniques like appraisals, market surveys, and negotiations are appropriate ways to determine the fair market value of the communications sites. However, there is disagreement between industry and the federal agencies on the fees that represent fair market value.

To obtain more details on the views of the industry, we contacted representatives of several industry groups, including the National Association of Broadcasters, the National Association of Business and Educational Radio, and several state broadcasting associations. They raised several concerns in support of their position that the fees proposed by the Forest Service are too high. We reviewed the basis for each of these concerns.

Industry representatives expressed concern over the impact the proposed fees might have on small broadcasters serving rural areas throughout the

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western United States. Specifically, they stated that the higher rates may drive small broadcasters in rural areas out of business. They said that, as a result, service to rural areas would be reduced as broadcasters cease operations.

We asked industry representatives to provide us with the names of some rural broadcasters that may be harmed by the proposed fees. We were referred to state broadcasting associations in Idaho and Arizona, which identified 11 small broadcasters they thought would be good examples of ones potentially affected by the Forest Service's proposed fees. We contacted 8 of the 11 broadcasters; because of time constraints, we were unable to contact the other 3. None of the broadcasters we contacted said they would cease operations as a result of having their fees increased to the level recommended in the Forest Service's 1993 fee proposal. Furthermore, while none of the broadcasters we contacted were enthusiastic about the proposed fee increases, 5 of the 8 acknowledged that their fees were probably too low and that they could tolerate some increase in their fees. While this limited number of broadcasters may not represent all small broadcasters, their views do provide some indication of how such broadcasters would be affected by changes in the current fees.

The second concern raised by industry representatives was about the data used by the Forest Service to develop its proposed fee system. They said the agency's analysis was not based on sites comparable to those on Forest Service lands. Furthermore, they indicated that the appraisal and market data used by the Forest Service included sites that provided more amenities, such as better access to the sites and better site maintenance, than those provided by the Forest Service. According to the industry representatives, using such data resulted in fees that exceeded fair market value.

In discussing this point with the industry representatives, we asked for specific examples supporting their position. They did not provide us with any examples. In addition, Forest Service officials told us that in performing their analysis, they excluded sites with greater amenities than those available on federal lands. Furthermore, state and private landowners told us that, in most instances, their lands were leased with no amenities.

The third concern of industry representatives relates to the Forest Service's concept of fair market value. Industry representatives told us that since the Forest Service based its analysis on the "highest and best

use" of the lands, the agency was being too narrow in its view of fair market value. They said that the Forest Service should also consider the value of the "next best use" of the lands—such as grazing livestock or operating ski areas—and charge fees based on those activities. The representatives said that by considering the value of uses other than communications, the Forest Service would have a "broader" view of the fair market value of the use of the lands.

In its December 1992 report, the Advisory Committee concluded that basing fees on the "next best use" of a site would not be consistent with the requirements of FLPMA since by definition such fees would not be based on the fair market value of the use of the lands. The report also noted that setting fees based on an alternative use that is unrelated to the likely use would not result in a fee based on fair market value. Forest Service officials also believe this approach would not be appropriate. We agree.

The fourth concern expressed by representatives of the television and FM radio industry involves discounts they believe the broadcasters should receive for the public service they provide. Specifically, the representatives believe that since the broadcasting service is provided without direct cost to the public, the industry should receive a 30-percent discount on its site fees. The 30-percent figure was developed by the Advisory Committee and reflected the collective judgment of the committee's members. (In table 1, the 30-percent discount is the difference between the Advisory Committee's estimated market-value and proposed fees.)

FLPMA allows the Secretaries of Agriculture and the Interior to discount or waive fees if the user is another government agency or a nonprofit association or is providing a valuable benefit without charge or at a reduced charge. The Department of Agriculture's General Counsel has taken the position that reducing fees for broadcasters is not appropriate unless there is some direct and tangible benefit to the public lands. Similarly, BLM's Chief Appraiser told us that a public-service discount would be appropriate if the user was providing a tangible benefit that could be quantified in terms of savings or reduced cost to the government (e.g., operating and maintaining a road to a communications facility that also serves public recreation areas). However, the BLM official believes that providing public-service discounts to all broadcasters simply because they do not directly charge the public is not appropriate. We agree with these positions. Furthermore, Forest Service officials told us that while they frequently grant fee waivers or discounts, these have only been authorized

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for state, local, or other federal entities and for nonprofit associations such as universities and religious organizations.

Forest Service and BLM Lack Data Needed to Properly Manage Communications Sites

Forest Service and BLM officials told us that neither agency has the reliable or complete programwide information needed to manage its communications site programs. In addition, the Forest Service officials told us that (1) large numbers of unauthorized users are operating from the agency's communications sites and (2) the agency does not routinely inspect its sites to determine whether permittees are complying with the terms of their permit agreements.

In performing our review, we asked officials at Forest Service headquarters to provide us with information on the scope of its communications site program. Specifically, we asked them for programwide information on the total number and types of users and the total amount of fees generated from the agency's communications sites. However, these officials could not provide us with reliable or complete information on any of these items. The best information they could provide was based on estimates. Forest Service officials acknowledged that they needed these data to better monitor the operation of the program and to stay aware of trends or problems that might arise. However, they indicated that they did not have the resources available to address the inadequacies in the data because the program has a low priority within the agency.

Similarly, BLM officials told us that they do not have complete and reliable data on the total number and types of users at the agency's communications sites, or the total amount of fees generated. As a result, they could only provide us with estimates of the fees they were receiving from the sites, how much they should be receiving, and whether the bases for the fees they charged were up to date. However, on this latter point, agency officials told us that they knew many of the fees they were charging were based on out-of-date appraisals and did not reflect the fair market value of the sites. BLM officials told us that they are aware of the inadequacies in the data and the difficulties this problem presents for overseeing the program. Nonetheless, they said the program has a low priority within the agency, and they have no plans to address the inadequacies at this time.

In addition to the agency's problems with data, Forest Service officials acknowledged that there are large numbers of unauthorized users

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operating on Forest Service lands. This was evident in each of our visits to five national forests. During these visits, local Forest Service officials identified numerous users with no permits. For example, at Sierra Peak, in the Cleveland National Forest in California, local Forest Service officials told us that 20 subtenants on this site did not have permits. Forest Service officials told us that while they were aware of this problem, they have yet to address it because, in their opinion, it would frequently cost more to assign a permit than the permit would generate in fees at the current levels.

The Forest Service requires annual inspections of its communications sites to ensure that the sites are properly maintained by the users. However, during our visits to several forests, we were told by local forest managers that annual inspections are rarely performed. For example, during our visit to the San Bernardino National Forest in California, we found several sites that had not been inspected for about 7 years. Forest Service officials in the headquarters and field offices acknowledged that site inspections were infrequent and attributed this to the low priority accorded to the program.

Conclusions

The current annual fees for using the communications sites on Forest Service and BLM lands generally do not reflect fair market value. In many cases, the fees charged are significantly below fair market value. These low fees result in forgone federal revenues and could have the unintended consequence of resulting in forgone state and county revenues. While the Forest Service, BLM, and industry representatives agree that the current federal fees for communications sites are too low, they disagree on how much the fees should be raised.

An impediment to achieving fees that reflect fair market value is the legislative limits that have been placed on fee increases. If these limits continue, the federal government will not obtain fair market value for its communications sites for many years, if ever. The Forest Service and BLM do not have the basic information needed to effectively oversee their communications sites and to ensure that the agencies are collecting all of the revenues owed to the government. If this program is to be properly managed, these agencies need to develop and maintain complete and reliable programwide data on the number, types, and amount of fees that the sites generate. Furthermore, the Forest Service needs to ensure that all users of its communications sites are authorized and that site inspections are regularly performed.

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Matter for Congressional Consideration

If fair market value is to be obtained for the use of the communications sites on federal lands, the Congress should consider not renewing the current limits on fee increases. To minimize any impact that large increases in fees could have on the industry, the Congress may wish to consider directing the agencies to develop a phased-in approach to moving to fees that reflect fair market value.

Recommendations to the Secretaries of Agriculture and the Interior

We recommend that the Secretaries of Agriculture and the Interior continue to develop a fee system that ensures that fair market value is obtained for the use of their communications sites. The system should be implemented unless legislatively prohibited.

We also recommend that both Secretaries improve management oversight of activities at the communications sites by developing information systems that, at a minimum, provide them with accurate and timely programwide information on the number and types of users and the total amount of fees generated from users at the sites.

Recommendation to the Secretary of Agriculture

We recommend that the Secretary of Agriculture direct the Chief of the Forest Service to develop a strategy to ensure that unauthorized users are not operating on the agency's sites and that the sites are properly maintained.

Agency Comments

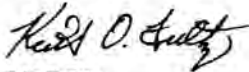
As requested, we did not obtain written comments on this report from the Forest Service or BLM. However, we discussed the report's content in conferences attended by responsible officials from both agencies, including the Acting Associate Deputy Chief of the Forest Service and the Chief Appraiser of BLM. Officials from both agencies generally agreed with the factual information in the report and suggested clarifications, which we incorporated where appropriate. We also discussed the contents of the report at a conference with officials of the National Association of Business and Educational Radio, which represents the commercial mobile radio industry. They generally agreed with the factual information in the report and also suggested clarifications, which we incorporated where appropriate. Officials of the National Association of Broadcasters declined to comment on the contents of the report, choosing instead to provide written comments on our final report when it becomes available.

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We conducted our review from May 1993 to June 1994 in accordance with generally accepted government auditing standards. We performed our work at Forest Service and BLM headquarters and field offices. We also contacted representatives of the television, FM radio, and commercial mobile radio industries, as well as individual users who operate communications sites on federal lands. Appendix III contains further details on our objectives, scope, and methodology.

As arranged with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after the date of this letter. At that time, we will send copies to the Secretary of Agriculture, the Secretary of the Interior, and the Director of the Office of Management and Budget. We will also make copies available to others on request.

This report was prepared under the direction of James Duffus III, Director, Natural Resources Management Issues, who may be reached at (202) 512-7756 if you or your staff have questions. Major contributors to this report are listed in appendix IV.



Keith O. Fultz
Assistant Comptroller General

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 Abbreviations

ADI	area of dominant influence
BLM	Bureau of Land Management
CPI-U	consumer price index-urban consumer
FLPMA	Federal Land Policy and Management Act of 1976
GAO	General Accounting Office
MSA	metro survey area
NAB	National Association of Broadcasters
SMSA	standard metropolitan statistical area

Appendix I

Fee Schedules Proposed by the Radio and Television Broadcast Use Fee Advisory Committee

In December 1992, the Radio and Television Broadcast Use Fee Advisory Committee (Advisory Committee) developed proposed fee schedules for the use of federal lands for television and FM radio broadcasting. The Advisory Committee was made up of 11 voting members, including 6 representatives of the communications industry, an appraiser, a state land manager, a private landowner, 1 representative from the Forest Service, and 1 from the Bureau of Land Management (BLM). The committee recommended using fee schedules instead of individual site appraisals because schedules are more cost efficient and easier to administer. The Advisory Committee considered market survey data prepared by the Forest Service, which had been developed from information on comparable private lease transactions. However, the committee was concerned that these schedules would impose too high a fee on broadcasters.

Before arriving at proposed fees for television broadcast uses, the Advisory Committee first developed estimated rental values using information obtained from several sources, including appraisers, industry groups, and informal surveys conducted independently by its members. The estimated rental values were ranked into population categories using the broadcast industry's "area of dominant influence" (ADI)¹ rankings of markets.

Estimated rental values for radio broadcast uses were derived by reducing the estimated rental values for television by 30 percent to show the difference between the relative values of radio and television stations. The radio use fee schedule, similar to the television use fee schedule, is stratified into population categories. Stratification of the radio markets is done by using the "metro survey area" (MSA)² ranking of markets based on population.

The Advisory Committee reduced the estimated rental values for both television and radio uses by 30 percent as an adjustment to account for such factors as the public service provided by the broadcasters. The committee recognized that the resulting recommended rental fees for television and radio broadcast uses did not represent fair market value. Tables I.1 and I.2 show the estimated rental value and rental fees for television and radio developed by the Advisory Committee.

¹ADI is a ranking of television markets based on the number of households with televisions (known as "television households") in a given geographical area.

²MSA measures the population served in a given metropolitan area.

Appendix I
Fee Schedules Proposed by the Radio and
Television Broadcast Use Fee Advisory
Committee

Table I.1: Television Rental Fee Schedule

ADI ranking of market	Estimated rental value ^a	Rental fee ^b	Markets ^c
1-10	\$60,000	\$42,000	Los Angeles, CA (2)
11-30	\$30,000	\$21,000	San Diego, CA (25) Phoenix, AZ (20)
31-70	\$15,000	\$10,500	Salt Lake, UT (42) Albuquerque, NM (52)
71-120	\$ 7,500	\$ 5,250	Tucson, AZ (78) Las Vegas, NV (79) Spokane, WA (80) Reno, NV (116)
121-210	\$ 3,250	\$ 2,625	Chico-Redding, CA (130) Boise, ID (142) Idaho Falls-Pocatello, ID (160) Yuma, AZ (180) Palm Springs, CA (170)
Non-ADI ^d		\$ 2,500	^e

^aRepresents 70 percent of the estimated value.

^bNumbers in parentheses represent Arbitron's 1992 ADI market rankings.

^cIncludes stations in home counties for non-ADI markets.

^dThe Advisory Committee did not provide an estimated rental value.

^eThe Advisory Committee did not provide specific examples of the affected markets.

Appendix I
Fee Schedules Proposed by the Radio and
Television Broadcast Use Fee Advisory
Committee

Table I.2: Radio Rental Fee Schedule

MSA ranking of market	Estimated rental value	Radio rental fee	Markets ^a
1-10	\$42,000	\$29,400	Los Angeles, CA (2)
11-30	\$21,000	\$14,700	Seattle-Tacoma, WA (13)
31-90	\$10,500	\$ 7,350	Salt Lake City, UT (36) Albuquerque, NM (79)
91-160	\$ 5,250	\$ 3,675	Spokane, WA (102) Reno, NV (136)
161-261	\$ 2,625	\$ 1,838	Chico, CA (163) Redding, CA (206) Tri-Cities, WA (215) Santa Fe, NM (230) Grand Junction, CO (249) Cheyenne, WY (258)
Not ranked ^b	^c	\$ 1,500	Pocatello, ID Idaho Falls, ID Missoula, MT Helena, MT Bend, OR

Note: Radio rental fees reflect a 30-percent reduction from television rental fees. According to the Advisory Committee, this reduction reflects the differences in the relative values of radio and television stations.

^aBased on a January 1992 MSA population. Numbers in parentheses represent Arbitron's 1992 MSA market rankings.

^bMarkets not included in the MSA ranking.

^cThe Advisory Committee did not provide an estimated rental value.

Additional recommendations made by the Advisory Committee included (1) requiring permittees who sublease space at the sites to other communications users to pay the government 25 percent of the gross rental receipts in addition to the permittee's annual fee; (2) having the agencies adopt a "footprint" lease, in which only the owners of the building, not the subtenants, would have to obtain a permit; (3) indexing the base rental fee to the consumer price index-urban consumer (CPI-U) with annual indexed fee increases of at least 3 percent but no more than 5 percent; (4) phasing in over a 2-year period those fees that represent an increase to an individual permittee of more than \$1,000; and (5) reevaluating the entire fee schedule after a period of no more than 10 years.

Appendix II

Fee Schedules Proposed by the Forest Service

In July 1993, the Forest Service published in the Federal Register a proposed schedule of fees for annual rental charges for four different communications users—television and FM radio broadcasters, and commercial mobile radio and cellular telephone transmitters—on lands in the National Forest System. The Forest Service's proposal is intended to establish fees that reflect fair market value, as required by law.

To develop these fees, the Forest Service completed surveys of lease transactions in the private market and carried out two separate appraisal efforts. Forest Service and ~~state~~ appraisers conducted 12 appraisals in 1990, and in 1992, a private independent appraiser hired by the Forest Service completed appraisals of 12 Forest Service communications sites located in the western states. The Forest Service decided to develop fee schedules instead of using on-site appraisals because fee schedules would be easier and less costly to administer and more consistent and predictable.

These schedules were based on (1) market data from over 1,500 private lease transactions; (2) current lease information from the cellular telephone and commercial mobile radio industries; (3) information from the Radio and Television Broadcast Use Fee Advisory Committee; and (4) discussions with industry representatives, private lessors, managers of commercial communications sites, state and local government representatives, and appraisers.

The Forest Service used a format for its television and radio broadcast schedules similar to the one used by the Advisory Committee. For example, the Forest Service used the ADI and MSA ranking systems,¹ respectively, to define the size of those markets. For commercial mobile radio, the Forest Service used population, based on U.S. Census reports, to define the size of the area served by each facility. Cellular telephone use was based on whether the facility was located within or outside a standard metropolitan statistical area (SMSA). Fees for each stratum were established on the basis of the lower range of values found in each stratum. Tables II.1 through II.4 present the Forest Service's fee proposal for communications uses of lands in the National Forest System.

¹The ADI system is a ranking of television markets on the basis of the number of television households in a given geographical area. The MSA system measures the population served in a given metropolitan area.

Appendix II
Fee Schedules Proposed by the Forest Service

Table II.1: Proposed Fee Schedule for Television Broadcast Use of Communications Sites

Number of households served, ranked by the ADI system	Proposed annual fee ^a	Examples of markets in each stratum
750,000 households and more	\$45,000	Los Angeles, CA; San Diego, CA
200,000-749,999	\$19,000	Albuquerque, NM; Las Vegas, NV; Fresno, CA; Tucson, AZ
120,000-199,999	\$6,000	Reno, NV; Eugene, OR; Boise, ID; Bakersfield, CA
50,000-119,999	\$4,500	Idaho Falls-Pocatello, ID; Missoula, MT
49,999 and fewer and non-ADI areas	\$3,000	Twin Falls, ID; Flagstaff, AZ

^aPlus 25 percent of income from space rental

Table II.2: Proposed Fee Schedule for Fm Radio Broadcast Use of Communications Sites

Number of persons aged 12 or older in radio markets, ranked by the MSA system	Proposed annual fee ^a	Examples of markets in each stratum
1,000,000 persons and more	\$34,000	Los Angeles, CA; San Diego, CA
400,000-999,999	\$14,000	Las Vegas, NV; Tucson, AZ; Albuquerque, NM;
200,000-399,999	\$5,500	Reno, NV; Boise, ID
75,000-199,999	\$4,000	Santa Fe, NM; Medford-Ashland, OR
74,999 and fewer and non-MSA areas	\$2,100	Montrose, CO

^aPlus 25 percent of income from space rental

Table II.3: Proposed Fee Schedule for Commercial Mobile Radio Use of Communications Sites

Number of persons within area served ^a	Proposed annual fee	Examples of markets in each stratum
500,000 persons and more	\$12,000 ^b	Los Angeles, CA; Oxnard-Ventura, CA; San Diego, CA; Phoenix, AZ; Las Vegas, NV; Bakersfield, CA
250,000-499,999	\$7,500	Albuquerque, NM; Salem, OR; Reno, NV
150,000-249,999	\$5,000	Boise, ID
60,000-149,999	\$2,500	Medford, OR; Santa Fe, NM
59,999 and fewer	\$1,200	Pocatello, ID; Idaho Falls, ID

^aBased on U.S. Census Bureau's estimates of population for the areas served by the facility

^b\$12,000 or 25 percent of income from space rental, whichever is greater

Appendix II
Fee Schedules Proposed by the Forest Service

Table II.4: Proposed Fee Schedule for Cellular Telephone Use of Communications Sites

Population served	Proposed annual fee	Examples of markets in each stratum
Within an SMSA	\$7,500	Los Angeles, CA
Outside an SMSA		
Urban or developed area	\$5,000	Kalispell, MT; Glenwood Springs, CO
Rural or undeveloped area	\$2,500	Transportation corridors

In addition to its proposed fee schedules, the Forest Service proposed charging television and FM radio permittees who leased site facilities to subtenants 25 percent of the subtenants' rents, similar to the Advisory Committee's proposal for television and radio broadcasters. Furthermore, for commercial mobile radio operators in the largest markets (500,000 and more), the Forest Service proposed charging \$12,000 or 25 percent of the income from space rental, whichever is greater. The agency believes that this approach more closely mirrors the current private market practice of charging a flat fee and a percentage of gross revenue. Other considerations in the fee schedules include an annual indexing of fees to keep revenue current with fair market value. The Forest Service also proposes to use the CPI-U to update the fee schedules. Additionally, the government would (1) adopt a "footprint" lease, in which only the facility manager has a permit, and (2) phase in fees if the fee increase is \$1,000 or more—with the full fee being reached by at least the 5th year. The agency also proposed that the fee schedules be reevaluated in 10 years or less.

The Forest Service's fee proposal is similar in a number of respects to the Advisory Committee's proposal. Both (1) use ADI and SMSA data to define their market sizes, (2) propose a 25-percent charge for rents paid to facility managers by subtenants, (3) propose a footprint lease arrangement, (4) propose a phase-in of fees if the increase to the user under the new proposal is \$1,000 or more, and (5) propose a total reevaluation of the fee schedule in 10 years or less.

Objectives, Scope, and Methodology

We were asked by the Chairman, Environment, Energy, and Natural Resources Subcommittee, House Committee on Government Operations, and the Chairman, Subcommittee on National Parks, Forests, and Public Lands, House Committee on Natural Resources, to determine (1) whether the fees currently charged for using communications sites on federal lands reflect fair market value, (2) how the fees charged for using federal lands compare with the fees charged by nonfederal landowners, and (3) to what extent the government's ability to obtain fair market value has been affected by limits on fee increases contained in appropriations-related legislation. Furthermore, we were asked to identify any management problems that came to our attention during our review. Our review included communications sites managed by the U.S. Department of Agriculture's Forest Service and the Department of the Interior's Bureau of Land Management (BLM). However, because the Forest Service administers most of the communications sites and has taken the lead in addressing the issue of what fees should be charged for leasing communications sites, our review focused on the Forest Service.

Our work addressed the major commercial users of federal communications sites: television and FM radio broadcasters and commercial mobile radio transmitters. We did not include the cellular telephone industry—the other major commercial user—because it agreed to the Forest Service's proposed fees.

To determine whether the federal fees currently charged reflected fair market value, we reviewed federal laws relating to Agriculture's and Interior's requirements for obtaining fair market value on lands they administer, along with implementing regulations. We also met with officials at Forest Service and BLM headquarters and field locations. We visited communications sites in five national forests, including the Angeles National Forest, San Bernardino National Forest, and Cleveland National Forest in California; the Cibola National Forest in New Mexico; and the Mt. Baker-Snoqualmie National Forest in Washington. The sites we visited were selected to provide examples of sites that are used for different communications purposes and sites that serve large, medium, and small markets.

We reviewed the methods used by the Forest Service and the Radio and Television Broadcast Use Fee Advisory Committee to develop their proposed fees to determine if these methods were consistent with commonly accepted techniques for determining fair market value. However, we did not verify the accuracy of the data or the computations

Appendix III
Objectives, Scope, and Methodology

used by the Forest Service or the advisory committee in developing their respective fee proposals.

To obtain the views of the broadcast radio and television portion of the industry, we met with officials of the National Association of Broadcasters (NAB) in Washington, D.C. To obtain the views of the commercial mobile radio portion of the industry, we met with officials of the National Association of Business and Educational Radio in Alexandria, Virginia. We also spoke with several members of the advisory committee to get a better understanding of the proceedings of that group. The officials from NAB recommended that we also speak with broadcasters in small television and radio markets in Arizona and Idaho to obtain their opinions on the proposed fee increases. Subsequently, executive directors for Arizona and Idaho state broadcasting associations provided names and telephone numbers for broadcasters in their respective areas.

To determine how the federal fees compared with the fees charged on nonfederal land, we compared the methods used by the Forest Service and BLM in developing their site fees to the methods used to calculate fees for the same activity on state and privately owned lands. We spoke with state officials responsible for communications site leases in Arizona, California, Colorado, Idaho, New Mexico, Oregon, and Washington. These states were selected because most of the Forest Service's communications permittees in the West are located there. We also spoke with four commercial land managers who manage private lands in California, Oregon, and Washington. We selected these landowners because a number of privately owned communications sites are located on lands they manage. State and private land managers told us what they charged lessees for various types of communications uses. We compared these fees with the fees currently charged by the federal government.

To determine the effect that limits on fee increases contained in appropriations-related legislation have on the government's ability to obtain fair market value, we reviewed the legislative history and interviewed Forest Service and BLM officials in Washington, D.C.

Appendix IV

Major Contributors to This Report

Resources,
Community, and
Economic
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Division, Washington,
D.C.

Cliff Fowler
Ned H. Woodward

Seattle Regional
Office

Rodney R. Conti
Sterling Leibenguth

Office of the Chief
Economist

Joseph D. Kile

Office of the General
Counsel

Stanley G. Feinstein

Related GAO Products

Water Subsidies: Impact of Higher Irrigation Rates on Central Valley Project Farmers (GAO/RCED-94-4, Apr. 19, 1994).

Federal Land: Little Progress Made in Improving Oversight of Concessioners (GAO/RCED-93-42, May 27, 1993).

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Natural Resources Management Issues (GAO/OIG-93-177R, Dec. 1992).

Mineral Resources: Value of Hardrock Mineral Extracted From and Remaining on Federal Lands (GAO/RCED-92-195, Aug. 24, 1992).

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Rangeland Management: Current Formula Keeps Grazing Fees Low (GAO/RCED-91-18588, June 11, 1991).

Federal Lands: Improvements Needed in Managing Concessioners (GAO/RCED-91-163, June 11, 1991).

Forest Service Needs to Improve Efforts to Reduce Below-Cost Timber Sales (GAO/RCED-91-43, Apr. 25, 1991).

Forest Service Needs to Improve Efforts to Protect the Government's Financial Interest and Reduce Below-Cost Timber Sales (GAO/RCED-91-42, Apr. 24, 1991).

Recreation Concessioners Operating on Federal Lands (GAO/RCED-91-16, Mar. 21, 1991).

Oregon Dunes Recreation Area: Patenting of Mining Claims Complies With Law (GAO/RCED-91-5, Dec. 25, 1990).

Hardrock Mining on Federal Lands (GAO/RCED-90-106, Sept. 6, 1990).

Basic Changes Needed to Avoid Abuse of the 960-Acre Limit (GAO/RCED-90-100, July 31, 1990).

Mineral Revenues: Shortcomings in Onshore Federal Oil and Gas Production Verification (GAO/RCED-90-99, June 26, 1990).

Water Subsidies: The Westhaven Trust Reinforces the Need to Change Reclamation Law (GAO/RCED-90-136, June 5, 1990).

Federal Timber Sales: Process for Appraising Timber Offered for Sale Needs to Be Improved (GAO/RCED-90-136, May 2, 1990).

Reclamation Law: Changes to Excess Land Sales Will Generate Millions in Federal Revenues (GAO/RCED-90-100, Feb. 1, 1990).

Water Subsidies: Basic Changes Needed to Avoid Abuse of the 960-Acre Limit (GAO/RCED-90-6, Oct. 12, 1989).

Related GAO Products

Mineral Revenues: Options to Accelerate Royalty Payment Audits Needs Further Consideration (GAO/RCED-88-167, June 5, 1988).

Mineral Revenues: Implementation of the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (GAO/RCED-88-108, May 28, 1988).

Federal Land Management: The Mining Law of 1872 Needs Revision (GAO/RCED-88-72, Mar. 10, 1988).

Parks and Recreation: Problems With Fee System for Resorts Operating on Forest Service Lands (GAO/RCED-88-84, May 16, 1988).



United States
Department of
Agriculture

Forest
Service

Washington
Office

14th & Independence SW
P.O. Box 96090
Washington, DC 20090-6090

Reply To: 1510

Date: JUL 25 1994

Honorable Mike Synar
Chairman, Subcommittee on Environment,
Energy, and Natural Resources
Committee on Government Operations
United States House of Representatives
8371-B&C Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

Thank you for the opportunity to testify on July 12, 1994, at the Subcommittee oversight hearing on Communications Site Fees. As you requested, enclosed is a list of the television and radio broadcast facility owners and tenants currently occupying National Forest System lands.

If you need additional information, please let us know.

Sincerely,

JACK WARD THOMAS
Chief

Enclosure

cc:
Honorable Bruce Vento



Caring for the Land and Serving People

FS-6200-28b(3/92)

SUMMARY LISTING OF TV AND RADIO BROADCASTERS
ON FOREST SERVICE COMMUNICATIONS SITES

<u>STATE</u>	<u>TV BUILDING OWNERS</u>	<u>TV TENANTS</u>	<u>RADIO BUILDING OWNERS</u>	<u>RADIO TENANTS</u>	<u>STATE TOTAL</u>
Arizona	2	0	8	0	10
California	16	10	13	21	60
Colorado	0	0	0	8	8
Idaho	3	3	4	17	27
Montana	4	3	3	3	13
Nevada	3	3	1	9	16
New Mexico	10	3	6	13	32
Nebraska	0	0	0	1	1
Oregon	1	3	0	1	5
South Dakota	0	4	0	1	5
Washington	0	0	0	1	1
Wyoming	<u>2</u>	<u>1</u>	<u>3</u>	<u>2</u>	<u>8</u>
TOTAL	41	30	38	77	186

Note: List reflects all known broadcast owners and tenants (west of the Mississippi) including stations that are classified as PBS, religious, foreign language, and colleges or universities.

We are unable to collect final data due to fire-fighting commitments on three National Forests.

STATE: CALIFORNIA

TV BROADCASTERS			Call Sign
Community Served	Company		
Facility Owners - Hold Permit:			
Bakersfield	Burnham Broadcasting	KBAK	
Los Angeles Basin	McGraw Hill Broadcasting	KERO	
Los Angeles Basin	Ace Holding Company	KABC	
Los Angeles Basin	Hefel Broadcasting	KALB	
Los Angeles Basin	KCAL-TV, Inc.	KALV	
Los Angeles Basin	KOPB-TV, Inc.	KCAL	
Los Angeles Basin	KTLA, Inc.	KTLA	
Los Angeles Basin	Silver King Broadcasting Inc.	KNSC	
Los Angeles Basin	Univision TV Group	KHFX	
San Bernardino	Sending Telecasters, Inc.	KZKI	
San Bernardino	Fouzi Amusement Ent.	KRCA	
San Bernardino	Golden Orange Broadcasting	KDOC	
San Bernardino	Bill Welty	KSCI	
Santa Barbara	Smith Broadcasting of California	KEYT	
Santa Barbara	KSBV, Inc.	KSBV	
San Luis Obispo	Stauffer Communications, Inc.	KDOY	
Subtotal: 16			
Tenants - Occupies space in permitted facility; may/may not hold a permit:			
Los Angeles Basin	Silver King Broadcasting Inc.	KNSC	
Los Angeles Basin	Herriscope of LA, Inc.	KUHV	
San Luis Obispo	Central Coast Good News, Inc.	K36AL	
San Luis Obispo	Community Media Corporation	KADY	
San Luis Obispo	Matrix Broadcasting	K158D	
San Luis Obispo	Stauffer Communications, Inc.	KDOY	
San Luis Obispo	Smith Broadcasting of Santa Barbara	KEYT	
Bakersfield	Valley Public TV	K9PT	
Bakersfield	Ackerley Communications, Inc.	KGET	
Oakhurst	Pappas Telecasting	KPMH	
Subtotal: 10			
STATE TOTAL: 26			

RADIO BROADCASTERS			Call Sign
Community Served	Company		
Facility Owners - Hold Permit:			
Lessen County	Whitrick, Ralph	KONT	
Big Bear Lake	Wtn. Broadcasting Co.	KTOT	
Oakhurst	California Sierra Corp.	KMAT	
Calaveras County	Black Springs Broadcasting	KKFA	
Los Angeles Basin	Pacific Foundation	KPKF	
Los Angeles Basin	Douglas Broadcasting	KMAX	
Los Angeles Basin	KSGD-FM	KKGD	
Mammoth Lakes	KMMO-TV	KMMT	
Santa Barbara	Pinnacle Communications	KNTY	
Santa Barbara	Regents of University of Calif.	KCSB	
Santa Barbara	The Schulte Organization, Inc.	KRUZ	
Santa Barbara	Criterion Media Group, Inc.	KTYD	
San Luis Obispo	San Luis Obispo Bdrcasts., Inc.	KUNA	
Subtotal: 13			
Tenants - Occupies space in permitted facility; may/may not hold a permit:			
Red Bluff	Mokulity Broadcasting	KALF-AM	
Los Angeles Basin	Bansley FM Acquisition	KRTN	
Los Angeles Basin	KPMR, Inc.	KPMR	
Los Angeles Basin	Evergreen Media	KGBT	
Los Angeles Basin	Garnett/KIIS	KIIS	
Los Angeles Basin	Greater/KLSX	KLSX	
Los Angeles Basin	KPCC, Inc.	KPCC	
Los Angeles Basin	Viacom International, Inc.	KMEZ	
Los Angeles Basin	Bonneville Intern'l. Corporation	KBIG	
Los Angeles Basin	Hefel Communications	KTMG-AM	
Santa Barbara	South Coast Broadcasting	KCOR	
Santa Barbara	Savilew Broadcasting	KQSB	
San Luis Obispo	Hance Communications, Ltd.	KNSP	
San Luis Obispo	Dellar-Davis Broadcasting	KDOB	
San Luis Obispo	KCBX - FM 90	KCBX	
San Luis Obispo	Stratosphere Broadcasting	KSTT	
San Luis Obispo	K202 Radio, Inc.	K202	
San Luis Obispo	Westcoast Broadcasting, Inc.	KKJG	
San Luis Obispo	Brill, Gary & Virginia	K100	
San Luis Obispo	KXFM Broadcasting, Inc.	KYFM	
Lake Tahoe Basin	Western Inspirational Bdrcasts.	KNIS	
Subtotal: 21			
STATE TOTAL: 34			

TV AND RADIO BROADCASTERS ON FOREST SERVICE COMMUNICATIONS SITES

STATE: COLORADO

TV BROADCASTERS		RADIO BROADCASTERS	
Community Served	Company	Community Served	Company
Call Sign		Call Sign	
Facility Owners - Hold Permit:		Facility Owners - Hold Permit:	
None		None	
Subtotal:		Subtotal:	
Tenants - Occupies space in permitted facility; may/may not hold a permit:		Tenants - Occupies space in permitted facility; may/may not hold a permit:	
None		Grand Junction	First Star Corporation
		Grand Junction	Monument Broadcasters
		Grand Junction	Monument Broadcasters
		Grand Junction	Mesa Broadcasting
		Gunnison	High Country Communications
		Salida/Buena Vista	Crested Butte Electric
		Steamboat Springs	KFMJ, LP
		Aspen	Aspen Broadcasting
Subtotal:		Subtotal:	8
STATE TOTAL: 0		STATE TOTAL: 8	

TV AND RADIO BROADCASTERS ON FOREST SERVICE COMMUNICATIONS SITES

STATE: IDAHO

TV BROADCASTERS		RADIO BROADCASTERS	
Community Served	Company	Community Served	Company
Facility Owners - Hold Permit:		Facility Owners - Hold Permit:	
Boise	Northwest TV	Cascade/McCall	Idaho Heartland Broadcasting
Boise	King Broadcasting	McCall	State of Idaho
Boise	Sawtooth Communications	Sun Valley	Silvercreek Communications
		Burley	Faith Communications
			Subtotal: 4
Tenants - Occupies space in permitted facility; may/may not hold a permit:		Tenants - Occupies space in permitted facility; may/may not hold a permit:	
Boise	Boise State University	Boise	Pacific Northwest Broadcasting
Boise	Schuyler Broadcasting	Boise	Douglas Broadcast Group
Boise	Idaho Independent Television	Boise	Contemporary Media Corporation
		Boise	Citadel Broadcasting
		Boise	Boise Adventist Academy
		Boise	Boise VNA Association
		Boise	PTI Broadcasting
		Boise	Eagle Broadcasting
		Boise	Christian Broadcasting
		Boise	W.G. Boise
		Boise	Idaho Broadcasting
		Boise	Sundance Broadcasting
		Boise	Radio Broadcasting
		Boise	Boise State University
		Burley	Mini-Cassia Broadcasting
		Burley	Ricks College
		Sun Valley	Ketchum Radio, Inc.
			Subtotal: 17
Subtotal: 3			
STATE TOTAL: 6		STATE TOTAL: 21	

TV AND RADIO BROADCASTERS ON FOREST SERVICE COMMUNICATIONS SITES

STATE: MONTANA

TV BROADCASTERS		
Community Served	Company	Call Sign
Facility Owners - Hold Permit:		
Butte-Anaconda	KXLF	KXLF
Helena	Big Sky Broadcasting	KTVH
Missoula	CTM, Missoula, Inc.	KTMF
Missoula	Eagle Communications	KECI
	Subtotal: 4	
Tenants - Occupies space in permitted facility; may/may not hold a permit:		
Kalispell	Eagle Communications	KCPW
Missoula	KPMX	KPMX
Missoula	University of Montana	KUPH
	Subtotal: 3	
STATE TOTAL: 7		

RADIO BROADCASTERS		
Community Served	Company	Call Sign
Facility Owners - Hold Permit:		
Kalispell	Bee Broadcasting, Inc.	KBBZ
Missoula	KYSS-FM	KYSS
Missoula	Sunbrook Communications	KDXT
	Subtotal: 3	
Tenants - Occupies space in permitted facility; may/may not hold a permit:		
North Valley Broadcasting		KALS
GIP, Inc.		KQTS-AM
University of Montana		KUPH
	Subtotal: 3	
STATE TOTAL: 6		

TV AND RADIO BROADCASTERS ON FOREST SERVICE COMMUNICATIONS SITES

STATE: NEVADA

TV BROADCASTERS		RADIO BROADCASTERS	
Community Served	Company	Community Served	Company
Facility Owners - Hold Permit:		Facility Owners - Hold Permit:	
Reno	DR Partners	Reno	Radio Associates of Reno, Inc.
Reno	Sierra Broadcasting		
Reno	Sainte Limited		
	Subtotal: 3		Subtotal: 1
Tenants - Occupies space in permitted facility; may/may not hold a permit:		Tenants - Occupies space in permitted facility; may/may not hold a permit:	
Las Vegas	KLSB, Inc.	Reno	KRNO
Reno	Sierra Broadcasting	Reno	KLBB
Reno	Sainte Limited, Inc.	Reno	KRZQ
	Page Enterprises	Reno	KBOH
		Reno	Jonsson Communications Corp.
		Reno	Lobster/Olympic Broadcasters
		Las Vegas	KRCV
		Las Vegas	KUDA
		Las Vegas	KEYV
		Las Vegas	KJUL
	Subtotal: 3		Subtotal: 9
STATE TOTAL: 6		STATE TOTAL: 10	

TV AND RADIO BROADCASTERS ON FOREST SERVICE COMMUNICATIONS SITES

STATE: NEBRASKA

TV BROADCASTERS		RADIO BROADCASTERS	
Community Served	Company	Community Served	Company
Facility Owners - Hold Permit:		Facility Owners - Hold Permit:	
None		None	
Subtotal:		Subtotal:	
Tenants - Occupies space in permitted facility; may/may not hold a permit:		Tenants - Occupies space in permitted facility; may/may not hold a permit:	
None		Chadron	KLOE, Inc.
Subtotal:		Subtotal:	1
STATE TOTAL: 0		STATE TOTAL:	1

TV AND RADIO BROADCASTERS ON FOREST SERVICE COMMUNICATIONS SITES

STATE: NEW MEXICO

TV BROADCASTERS		RADIO BROADCASTERS	
Community Served	Company	Community Served	Company
Facility Owners - Hold Permit: Albuquerque/Santa Fe University of New Mexico Albuquerque/Santa Fe Pulitzer Broadcasting Albuquerque/Santa Fe Pro Journal Broadcasting Albuquerque/Santa Fe Univision Stat Group Albuquerque/Santa Fe Santa TV Corporation Albuquerque/Santa Fe Alpha Omega Albuquerque/Santa Fe All American TV Albuquerque/Santa Fe Continental Broadcasting Santa Fe/Albuquerque Son Broadcasting, Inc. Santa Fe/Albuquerque Journal Broadcastg. of New Mexico Subtotal: 10		Facility Owners - Hold Permit: Albuquerque/Santa Fe Commonwealth Broadcasting Albuquerque/Santa Fe Christian Broadcasting Albuquerque/Santa Fe Coastal Communications Albuquerque/Santa Fe NBC Communications, SM, Inc. Albuquerque/Santa Fe Twin Peaks Radio Albuquerque/Santa Fe Continental Broadcasting Subtotal: 6	
Tenants - Occupies space in permitted facility; may/may not hold a permit: Albuquerque/Santa Fe KXME Albuquerque/Santa Fe KOAT Albuquerque/Santa Fe KGSU Albuquerque/Santa Fe KLUZ Albuquerque/Santa Fe TV Facility Albuquerque/Santa Fe KAZO Albuquerque/Santa Fe KXAT Albuquerque/Santa Fe KXKS Albuquerque/Santa Fe KCBP Albuquerque/Santa Fe KASA Subtotal: 10		Tenants - Occupies space in permitted facility; may/may not hold a permit: Albuquerque/Santa Fe KUNM Albuquerque/Santa Fe University of New Mexico Albuquerque/Santa Fe KANU Albuquerque/Santa Fe KASY Albuquerque/Santa Fe KFLO Albuquerque/Santa Fe Family Life Radio Albuquerque/Santa Fe NM Classical Radio Albuquerque/Santa Fe KZZX Albuquerque/Santa Fe Penn Communication Corporation Albuquerque/Santa Fe Southwest Radio Corporation Albuquerque/Santa Fe KDOB Albuquerque/Santa Fe KRZA Albuquerque/Santa Fe Broadcast Media Enterprises Albuquerque/Santa Fe Claimor Broadcasting Albuquerque/Santa Fe KBOM Limited Partnership Albuquerque/Santa Fe KSLK Albuquerque/Santa Fe Progressive Broadcasting Albuquerque/Santa Fe Sungroup Broadcasting NM Subtotal: 13	
Subtotal: 3		Subtotal: 13	
STATE TOTAL: 13		STATE TOTAL: 19	

TV AND RADIO BROADCASTERS ON FOREST SERVICE COMMUNICATIONS SITES

STATE: OREGON

TV BROADCASTERS		RADIO BROADCASTERS	
Community Served	Company	Community Served	Company
Facility Owners - Hold Permit: S.Oregon/W. Calif. Radio Medford, Inc. (joint owners) Subtotal: 1		Facility Owners - Hold Permit: None Subtotal:	
Tenants - Occupies space in permitted facility; may/may not hold a permit: Bend Rodney Johnson Oregon Public Broadcasting (FS-owned building) S.Oregon/W. Calif. Radio Medford, Inc. Subtotal: 3		Tenants - Occupies space in permitted facility; may/may not hold a permit: Oakridge McKenzie River Broadcasting (FS-owned building) Subtotal: 1	
STATE TOTAL: 4		STATE TOTAL: 1	

TV AND RADIO BROADCASTERS ON FOREST SERVICE COMMUNICATIONS SITES

STATE: SOUTH DAKOTA

0

TV BROADCASTERS		RADIO BROADCASTERS	
Community Served	Company	Community Served	Company
Facility Owners - Hold Permit:		Facility Owners - Hold Permit:	
None		None	
Subtotal:		Subtotal:	
Tenants - Occupies space in permitted facility; may/may not hold a permit:		Tenants - Occupies space in permitted facility; may/may not hold a permit:	
Rapid City	Duhamel Enterprises	Central	SD State Radio Commission
Pierre	Heritage Broadcasting		KTSO
	SD State Radio Commission		
	SD Educational Television		
Central			
Subtotal: 4		Subtotal: 1	
STATE TOTAL: 4		STATE TOTAL: 1	

TV AND RADIO BROADCASTERS ON FOREST SERVICE COMMUNICATIONS SITES

STATE: WASHINGTON

TV BROADCASTERS		RADIO BROADCASTERS	
Community Served	Company	Community Served	Company
Facility Owners - Hold Permit:		Facility Owners - Hold Permit:	
None		None	
Subtotal:		Subtotal:	
Tenants - Occupies space in permitted facility; may/may not hold a permit:		Tenants - Occupies space in permitted facility; may/may not hold a permit:	
None		None	
Subtotal:		Subtotal:	
STATE TOTAL: 0		STATE TOTAL: 1	

Call Sign
KXLR



United States
Department of
Agriculture

Forest
Service

Washington
Office

14th & Independence SW
P.O. Box 96090
Washington, DC 20090-6090

Reply To: 1510/2720

Date: SEP 26 1994

Honorable Mike Synar
U.S. House of Representatives
Chairman, Subcommittee on Environment,
Energy and Natural Resources
Committee on Government Operations
B-371C Rayburn House Office Building
Washington, D.C. 20515-4606

Dear Mr. Chairman:

As requested in your letter of July 25, 1994, enclosed is a list of the television and radio broadcasters with permits on Forest Service lands, the number of subtenants in the buildings, and the rental revenues paid to building owners (primary permittees). The list is not complete, as several forests were unable to respond because of the ongoing fire situation in the West. We do include information on the major urban sites west of the Mississippi and believe it is correct within 10 percent of the actual totals.

Following are our responses to your request for additional information:

The median time it takes the Forest Service to issue a permit for communications uses.

Processing times for issuing permits vary, depending upon the complexity of the specific site. Generally, we believe the following timeframes reflect our processing times: (a) 4-6 months for a new tenant going into an existing building on an established mountaintop (site), (b) 6 months - 1 year for construction of a new building on an established site, and (c) 1.5 years to 5 years for new construction on a new site.

An explanation of why it takes "too long".

Even in the least complex and time-consuming situation, (a) above, several factors must be considered prior to issuing a permit, such as conflicts with forest land management plans, National Environmental Policy Act requirements, coordination with current users on the site (including a minimum 15-day comment period on the application), and proof of Federal Communication Commission license. For a complex site involving new construction, or designation of a new site, more detailed information and action is necessary, such as an environmental analysis and the associated surveys and clearances. Additionally, a prospectus may be needed when there is competitive interest in the proposal.



Caring for the Land and Serving People

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FS-4006-280 (4/93)



Honorable Mike Synar

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One of the most significant factors contributing to the amount of time it takes to issue a permit is the limited resources available for processing new requests. Proper administration of existing authorizations could require all available funds. In addition, there are about 6,000 new applications every year in the other categories of use.

Other factors, such as inconsistent instruction, policy interpretation, and lack of trained personnel, make it difficult to respond to the ever-increasing number of requests in acceptable and reasonable timeframes.

Efforts the Forest Service has undertaken or proposes to undertake to reduce the processing time for permits or leases in the future.

We believe our "footprint" or ground lease concept will significantly reduce the administrative burden on both new users and the Forest Service. If implemented, we would no longer require separate permits for tenants in a permittee-owned building. Use of the ground lease would improve the efficiency of the Agency's administration of the sites and result in considerable cost-savings.

In addition, we are currently reviewing our policy and procedures to determine ways to streamline the application process, developing consistent guidance and policy interpretation, and drafting cost recovery regulations that will propose the return of application and processing fees to the national forests for use in administering special use authorizations.

Thank you for your continued support and interest in our efforts to develop and implement new fee schedules for communications sites.

Sincerely,



JACK WARD THOMAS
Chief

Enclosure

**SUMMARY LISTING OF TV AND RADIO BROADCASTERS (Revised 8/15/94)
ON FOREST SERVICE COMMUNICATIONS SITES**

STATE	TV BLOC. OWNERS	FS FEE	TENANT RENT	TV TENANTS	FS FEE	RADIO BLOC. OWNERS	FS FEE	TENANT RENT	RADIO TENANTS	FS FEE
Arizona	6	\$10,049	\$ 22,750	0	\$ 0	8	\$ 2,754	\$ unknown	0	\$ 0
California	16	83,153	416,898	8	8,779	13	9,111	unknown	22	8,015
Colorado	1	0	unknown	1	64	0	0	0	11	888
Idaho	3	2,296	unknown	3	5,391	4	2,727	unknown	17	1,355
Montana	4	4,952	7,992	3	615	3	4,380	unknown	3	125
Nebraska	0	0	0	0	0	0	0	0	1	177
Nevada	3	5,114	20,985	3	1,663	1	127	0	9	1,677
New Mexico	10	16,550	151,083	3	2,792	6	2,961	14,400	13	2,386
Oregon	1	3,036	unknown	1	0	0	0	0	2	442
South Dakota	0	0	0	4	526	0	0	0	1	0
Washington	0	0	0	0	0	0	0	0	1	175
Wyoming	2	688	unknown	0	0	3	867	unknown	2	57
TOTAL	46	\$125,838	\$619,708	26	\$19,830	38	\$22,907	\$14,400	82	\$15,297
Total TV Broadcasters: 72										
FS Fees Collected: \$165,648										
Tenant Rents Collected: \$619,708										
Total Radio Broadcasters: 120										
FS Fees Collected: \$38,204										
Tenant Rents Collected: \$14,400										
(192 total)										
(\$ 183,872 total)										
(\$ 634,108 total)										

Notations:

List reflects all known broadcast owners and tenants (west of the Mississippi) including stations that are classified as PBS, religious, foreign language, and colleges or universities.

Tenant Rent column:

Amounts are paid directly to building owners from tenants as provided in the separate agreements between building owners and tenants. "unknown" denotes those cases where we do not have a record of the number of tenants in the building, or the building owner has not provided the figures to us.

FS fee column INCLUDES 5% of tenant rent figures, plus a base fee for the building.

We are unable to produce a factual accounting at this time, but believe the numbers are within +10 percent of actual amounts.



WASHINGTON STATE DEPARTMENT OF
Natural Resources

JENNIFER M. BELCHER
Commissioner of Public Lands
KALEEN COTTINGHAM
Supervisor

FAIR MARKET RENTS FOR FM AND TV BROADCASTER USE OF FEDERAL LANDS

WAYNE HARDY
WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES

TO THE JOINT HEARING OF THE
ENVIRONMENT, ENERGY AND NATURAL RESOURCES SUBCOMMITTEE
AND THE
NATIONAL PARKS, FORESTS AND PUBLIC LAND SUBCOMMITTEE
OF THE
HOUSE OF REPRESENTATIVES

REPRESENTATIVE MIKE SYNAR, OKLAHOMA AND MEMBERS OF THE TWO SUBCOMMITTEES

My name is Wayne Hardy and I am the communication program manager for the Washington State Department of Natural Resources (Department). The state owns three million acres of trust lands managed by the Department. I manage 87 communication sites that generate revenue for the trust beneficiaries. Fair market rents are charged to all users of the trust lands. The revenues from these lands are distributed for school and other public capital construction.

In 1991, Congress directed the Secretaries of Agriculture and Interior to form a broad based advisory committee of representatives from the radio and television broadcast industry. This committee was to recommend to the Secretaries the best method for determining fair market rents for the broadcast industry's use of federal lands.

I was selected for this committee to represent the interests of states, counties and cities.

Wayne Hardy

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July 20, 1994

The committee met four times in 1992 in open meetings and produced a report in December 1992 to the respective Secretaries. In my opinion, the committee's report did not satisfy the requirements set forth because it did not produce a rent schedule that reflects a fair market rent analysis. I subsequently produced a minority report to the committee's report explaining my objections.

This information was sent to the Secretaries and in March 1993, I testified before the Oversight Hearing of the U.S. Senate's subcommittee on Public Lands, National Parks and Forests, chaired by Senator Dale Bumpers (Arkansas). My testimony, the committee's report, my minority report and a Western States Land Commissioners Association Resolution regarding rent subsidies, all became a part of the hearing record. Acting Secretary of Agriculture, Charles R. Hilty, and Washington State Commissioner of Public Lands, Jennifer M. Belcher, also responded in support of the minority report.

Since that time, I have responded to the U.S. Forest Service, regarding rent schedules that were published in the Federal Register of July 13, 1993, Part VII. I have enclosed this response to the U.S. Forest Service to be included in the record. Also, the Government Accounting Office in Seattle, WA., and the U.S. Forest Service Supervisor's office in Montlake Terrace, WA., have contacted me regarding fair market rents, rental policies, overall communication site management and other related issues.

Wayne Hardy

Page 3

July 20, 1994

The remainder of this report will briefly discuss the Washington Department of Natural Resource's management policies regarding communication sites, rents and facilities on trust lands.

BRIEF HISTORY

The state acquired most of the lands it manages from the federal government in 1889, when Washington became a state. These lands are dedicated primarily to the support of public schools, state universities, state charitable, educational, penal and reformatory institutions, and the construction of capitol campus buildings. The legislature designated the Department of Natural Resources as manager of these lands, and its mandate is to generate income for the trust beneficiaries and to preserve the trust assets for future beneficiaries. Thus, management activities must be consistent with this responsibility.

DUTIES OF A TRUSTEE

The Federal Enabling Act, the state constitution, and common law set forth specific duties and limitations for managing state trust lands. The state's primary responsibility is to manage these lands for the long-term economic benefit of the public institutions they support. This principle is commonly called the trust mandate.

Wayne Hardy

Page 4

July 20, 1994

Courts have consistently ruled that the state has the same duties as a private trustee regarding managing trust property. These duties include:

- * administering the trust according to the provisions creating the trust,
- * undivided loyalty to the beneficiaries,
- * managing trust assets prudently,
- * making the trust property produce income without unduly favoring present beneficiaries over future beneficiaries,
- * reducing the risk of loss to the trust, and
- * keeping accounts.

When establishing resource management policies, the Department, as directed by the Board of Natural Resources, must uphold these duties.

DETERMINATION OF FAIR MARKET RENTS

The Department contracts with independent appraisers to evaluate the fair market rents being charged by other land owners on comparable communication sites statewide. Also, communication program managers obtain rent information from private land owners and the communication industry regarding rents being charged at comparable sites for similar uses. Appraisers and Department communication site managers take into consideration the physical attributes of each site such as; access, population reached from the site, power availability, demand from users and telephone availability. Also, rents

Wayne Hardy

Page 5

July 20, 1994

charged to other users by other land owners for similar sites are considered when determining fair market rents. The Department uses this information when formulating our rent schedules to make sure the trusts are receiving maximum revenue benefit from the use of trust land.

LESSEES AND SUBLESSEES ON TRUST LANDS

The majority of communication site users are lessees of the Department. Some communication operators do not want to utilize the Department's facilities. These users may elect to become sublessees to existing lessees. The Department's management policy regarding these sublessees is to allow two options to the new user when they apply for use of a Department communication site. The sublessee must agree to comply with site standards, rent payments and lease considerations and agree to select one of the options listed below:

1. A sublessee's radio unit will be considered another unit of the existing lessee. The existing lessee will pay fair market rent for the new sublessee's radio unit, or
2. The sublessee will enter into a lease agreement with the Department and pay fair market rent to the department even though the sublessee is located in the original lessee's communication facility.

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If a new lessee leases space in one of the Department's facilities, or if a new sublessee leases space in an existing lessee's building, the lessee or sublessee will pay rent for the following:

1. A building space (footprint) for each radio unit,
2. A space on the tower for each radio antenna,
3. Leasehold tax if applicable,
4. Power usage fee,
5. Road use fee, and
6. Any future assessments from public agencies.

Approximately twenty percent of the Department's rent revenue is obtained from sublessees in other lessee's buildings at the Department's communication sites.

AUDITING OR ACCOUNTABILITY

Accountability is relatively simple with the Department's present policy of charging rents based on actual sites, radio units, antenna spaces and spaces in Department facilities. An annual inspection will normally find the lessee who adds new radios and fails to contact the Department. The lessee is required to pay back rent, interest charges and a penalty fee for any unauthorized radios discovered during the site inspections.

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Another method of paying rent in a new lease agreement is one that is based on the "percentage of gross revenue" as determined by tax statements. The lessee leasing a communication site must report their annual gross income to the Department for determination of the annual rent. It costs the Department approximately thirty percent more management time with inspections, auditing and correspondence when entering into one of these agreements that rent radio unit space on a percentage of gross revenue basis. The percent of gross revenue type of lease, allows the trusts to receive increasing revenue as the lessee's income increases, however, the additional management costs must be considered.

DISCOUNTS OR WAIVERS

The Department's policy does not allow for waivers or discounts to lessees or sublessees. All lessees are treated similarly regarding rents, site compliance and lease requirements. Recently, the Washington State Legislature appropriated general fund revenue to pay a percentage of the fair market rents for amateur radio operators and non-profit television districts. The Department sets the fair market rents and the legislature uses general fund revenue to subsidize these two groups of communication users.

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SITE IMPROVEMENTS OR AMENITIES

The Department does not provide amenities such as power, telephones or security at communication sites. The access roads to the communication sites are existing logging roads that were constructed during timber sales on trust lands. The electric power that is available is normally paid for by one of the first lessees at the site. This lessee is allowed to charge a Department approved fee to future users for purposes of cost recovery. Telephone service may also be installed by lessees at their own expense. Most lessees will use microwave radio telephone type of communication equipment if necessary. Security of facilities is the responsibility of each lessee and it is required that vandal proof buildings be constructed with fences, gates and locks to protect each lessee's facilities.

CONCLUSION

The Department attempts to manage its communication program like a business. Rents, leases and facilities are constantly being evaluated and improved to protect the trusts and to encourage new lessees to enter into agreements with the Department. We try to assist lessees, to maintain the Department's facilities, to make new investments; and keep the rents competitive to maximize the revenue to the trusts.

Wayne Hardy

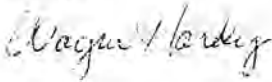
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This explanation of the Washington Department of Natural Resources policies and management direction is submitted to the subcommittees for your information. The Department attempts to maximize short term and long term revenue generation while protecting the trust's assets and not causing environmental damage to the ecosystems.

Finally, I want to state that the Congress, Secretary of Agriculture and Secretary of Interior take action to assure that the federal agencies be required to adopt rent schedules for the radio and television broadcast industry that are reflective of the fair market rents being charged on private and state lands. Otherwise the rental subsidies will continue to impact rents that the department collects by setting artificially low competitive rental rates.

Thank you

A handwritten signature in cursive script, appearing to read "Wayne Hardy".

enclosure



WASHINGTON STATE DEPARTMENT OF
Natural Resources

JENNIFER M. BELCHER
Commissioner of Public Lands

October 4, 1993

KALEEN COTTINGHAM
Supervisor

Gordon H. Small, Director of Lands
U.S. Department of Agriculture, Forest Service
14th and Independence SW
P.O. Box 96090
Washington, DC 20090-6090

Dear Mr. Small:

The Washington State Department of Natural Resources has eighty-eight (88) communication sites, for which I am the manager. The state of Washington, being a land grant state, was given lands by the federal government at statehood in 1889. These lands along with purchased lands, lieu lands, and transfer lands are reserved for the support of public schools, state universities, state charitable, educational, penal and reformatory institutions, and the construction of Capitol campus buildings. The Washington State legislature designated the Department as trustee of these lands, and its mandate is to generate income for the trust beneficiaries and to preserve the trust assets for future beneficiaries. I am directly involved in the determination of rents the Department charges to different communication site users as they use Department lands or facilities.

Since the publication of the Radio and Television Advisory Committee report in December 1992, subsequent actions of Congress, industry representatives and lobby groups have resulted in rent increases for federal communication agreements of ten percent per year. This does not represent the application of fair market rents to the users of federal communication sites. The agencies, along with congressional leaders who are the representatives of the public, must take action which assures the public that laws governing the rents for the use of federal land will be enforced. "Why should an industry such as the Radio and Television Broadcast Industry be subsidized by the public in their use of public land when it is not subsidized when using private or state land?" The answer to this simple question is not being provided by the industry.

I have reviewed the Federal Register of July 13, 1993, Part VII, Fee Schedule for Communication Uses. I want to first make a general statement regarding the fee schedule on page 37845, and then specifically comment on the four fee schedule considerations on pages 37842 and 37843.

FEE SCHEDULE

The rents listed on the fee schedule for the four use categories are lower than some of the state rental rates and higher than others. It appears that Table 1 is generally lower than Washington State Department of Natural Resources' rental rates. However, the rent schedule is a positive step in the direction of achieving fair market rents. One of the considerations that makes it difficult to compare Table 1 rents with state rents is that the agency is proposing to place a surcharge of 25 percent on the subtenant's rent,

Gordon H. Small, Director of Lands
 U.S. Department of Agriculture, Forest Service
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while Washington State charges rent for any additional sublessee radio unit in the facility of the master lessee. We also charge a 50 percent rental rate to an FM or TV broadcaster sublessee in an FM or TV master lessee's facility.

The schedule makes no provision regarding the number of radio units in a lessee's facility. It is not reasonable to charge a commercial mobile radio lessee who has one radio repeater at the site the same rent as another commercial mobile radio lessee who has 50 or 100 radio repeaters. The value of a communication site to a landowner is limited by topographic features, actual physical land space available and the number of frequencies in use at the site. If one lessee uses all the physical land or more of the available frequencies, they should proportionately pay more rent.

FEE SCHEDULE CONSIDERATIONS

1. Annual Indexing - An annual index such as the CPI-U will not ensure the rent is keeping current with fair market rent values. The index will only keep the established rent up to date with the cost of living index used. This cost of living does not have a direct relationship with fair market rent value. Only by examining the fair market rents can the agency be assured that its rents are comparable to the rents being paid for similar uses in the communication industry.
2. Footprint Lease - The "footprint lease" or "facility manager" concept is closer to what the market is doing regarding rents between the landowner, sublessees and the master lessee or facility manager. It will provide federal agencies with a method of accounting for and sharing in the growth of the industry and subsequent demand for the use of public lands.

Also, if the agencies lease a functional land area of so many square feet to a new lessee for the current rental rate, there is no need to be concerned if the lessee wants to construct one large building or several small buildings. The facility manager will make this management decision and the agencies simply collect the site rent and the 25 percent share for all sublessees in the facility manager's building or buildings.

The most difficult site management problem is how to fairly convert the existing site agreement holders to the new fair market rent. The old site areas should be reduced to the actual area being used by the existing lessee and a new site description amendment added to the agreement. The lease areas need to be as small as possible to maximize the potential rent revenue from the communication site. If the existing lessee does not want to reduce the size of the existing lease, then the agencies must determine the per acre or per square foot value for each specific communication site and the existing lessee must pay for the actual land area being used. These communication sites are very valuable public assets and the agencies must manage them for the benefit of the public today, and in the future.


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3. Fee Schedule Phase-In - If a lessee can prove economic hardship because of the implementation of fair market rents, the agencies should grant a "phase in" of the new rent, as you describe in the Federal Register. However, if the new fair market rents do not cause economic hardship as determined by a non-biased third party arbitrator, then the existing lessees should be expected to pay the new fair market rent like any new lessee at the site. The existing site users have had the advantage of subsidized rents for many years.
4. Reevaluation of the Fee Schedule - The agencies should insist on reevaluation of the fair market rents every five years. The communication industry technology and demand for land and facility space is increasing and changing as the population increases. Agencies will find themselves setting up for successive rent phase-ins every ten years if they allow the reevaluation interval to be ten years. Many private landowners use short term leases, one year or two years, so they do not have to reevaluate the rents.

One other issue mentioned in the Federal Register that I feel is very important is, communication sites that serve large urban areas should have the fair market rents determined by appraisals of comparable sites and communication uses. The other communication sites serving the rural, less populated areas should have the fair market rents listed in a fee schedule that has been determined by appraisers, and takes into consideration the different parameters normally used in rent determination by knowledgeable communication site landowners.

Thank you for the opportunity to comment on the fair market rent proposals.

Sincerely,


 Wayne Hardy
 Communication Program Manager
 Division of Lands and Minerals

INFORMATION
AND
RENTAL RATES
AS CHARGED BY THE
ARIZONA STATE LAND DEPARTMENT
FOR COMMUNICATION SITES
BY
CORALIE MCDONALD
COMMERCIAL LEASE ADMINISTRATOR

RENTAL RATES
FOR
COMMUNICATION SITES

I. Overview:

Rental Rates may vary depending on the type of site requested and whether it is under a permit or a commercial lease. However, all communication sites are considered to be unique, "high-value" locations which must NOT be valued as though the need for the site does not exist. Value in use is ESSENTIAL. The vast majority of sites are placed under a Special Land Use Permit (S.L.U.P.). Whereas, a lease conveys a leasehold interest for a specified term; a S.L.U.P. is a license and is usually issued for a shorter term, subject to cancellation.

II. Conditions for Issuing a Lease:

- A. Expenditure on the part on the applicant must be at least \$250,000;
- B. The use must be for a broadcasting station, television or radio, commercial communications, microwave or repeater site.

III. Types of S.L.U.P.s and Leases:

- A. SINGLE-USER SITES. A single-user site prohibits any secondary users, requires a higher minimum rental than multi-user sites and a mandatory percentage of gross income provision (except governmental agencies);
- B. MULTI-USER SITES. The multi-user site or joint use site allows for additional users if approved by the Department and the following conditions are met:

1. If Existing User is a Lessee:

- a. New user(s) must apply for a S.L.U.P. and pay State Land Department rent (minimum of \$1,200);
- b. Lessee must apply for sublease. Approval of sublease by the State Land Department (SLD) will be evidenced by issuance of a S.L.U.P. for new user(s). Lessee to pay SLD 50% of any rental(s) charged by lessee to new user(s).

2. If Existing User is a Permittee:

- a. New user(s) must apply for a S.L.U.P. and pay SLD minimum of \$1,200;

- b. Existing user may apply for new joint-use S.L.U.P. and pay minimum of \$1,200 if minimum rent applies;
- c. Existing user may charge new user for use of any equipment without paying a percentage to SLD.

IV. Minimum Rental Rates:

A. <u>CATEGORY OF USE</u>	<u>RURAL</u>	<u>INTERMEDIATE</u>	<u>URBAN</u>
1. Internal Communication (two-way radio repeater, industrial microwave or any combination)	\$1,500	\$3,500	\$5,000
2. Commercial Communication	2,500	6,000	8,000
3. Common Carrier	2,000	3,500	5,000
4. Radio Broadcast	2,500	6,000	8,000
5. Television broadcast	1,500	2,500	12,500
6. Cable and subscription television	1,500	2,000	3,500
7. Broadcast translator			
a. Television	1,500	1,500	1,500
b. FM	1,500	1,500	1,500
8. Passive Reflector	\$1,500	\$1,500	\$1,500

- B. The above rates assume "single-user" sites. For multi-user sites, \$1,200 minimums on S.L.U.P.'s MAY be utilized instead of \$1,500 minimums.

V. Rental Rate Criteria:

As stated in Section I, all communication sites are considered to be unique, "high value" locations. The rates shown in Section IV are minimums only. Relevant factors to consider for rent in excess of the minimum include:

- 1. Land Value (based on "value in use");
- 2. Value of proposed improvements;
- 3. Anticipated revenue generation;

4. Specific location;
5. Length of term;
6. Any other factor deemed relevant.

VI. Rental Rates:

A. Base Rental Shall be the Greater of:

1. "Minimum" rental rate as established in Section IV;
2. 10% of "in-use" land value;
3. 1 1/2% of actual or anticipated gross income;
4. 5% of actual or proposed improvement value.

B. Additional Income.

1. As a means of rental escalation, additional rental should be considered. For income producing uses, additional rental should be charged as a percentage of gross income AGAINST the base rent. In other words, "to the extent that a percentage of gross income exceeds the base rent";
2. Additional percentage rent shall be 1% to 2 2/1% of gross income. Higher income levels normally command a lower percentage within this range.

EXPANSION OF RENTAL RATES
FOR COMMUNICATION SITES

To determine what an individual user grossed during a year, we require a copy of their Federal Income Tax return. To determine what an individual is charging another (as a secondary user under a sublease), we ask the sublessee what he is paying the sublessor. Generally the person paying the funds will be more exact on the amount than the person collecting same.

The Department requires a Special Land Use Permit (S.L.U.P.) from a secondary user so that we may have more control of the site. The Department can deal only with the lessee/permittee of record. This allows us to deal with the sublessee directly.

Regarding amenities to or at any given site, the Department provides none. It is the lessee's responsibility to deal with power companies to obtain their electrical source. If a right of way is required to legally access the site, this is also the lessee's responsibility. The Department provides the land only.

The minimum rental rate chart was derived from a mass state wide appraisal of communication sites; this would include private, State, County and Federal lands.



**STATEMENT OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

SUBMITTED TO THE

**HOUSE SUBCOMMITTEE ON
NATIONAL PARKS, FORESTS AND PUBLIC LANDS**

AND THE

**HOUSE SUBCOMMITTEE ON
ENVIRONMENT, ENERGY AND NATURAL RESOURCES**

**ON THE ISSUE OF
OVERSIGHT OF FEDERAL COMMUNICATIONS SITES**

JULY 12, 1994

Chairman Vento and Chairman Synar, NAB appreciates the opportunity to submit a statement for the July 12, 1994, oversight hearing on the fair market value of federal communications sites. For the record, NAB would have preferred to testify in person. Given the timing of the subcommittee's invitation, however, we were unable to provide a knowledgeable witness on the hearing date.

NAB strongly supports a resolution of the dispute between our members and the United States Forest Service and Bureau of Land Management (BLM) over what constitutes fair market value for a federal communications site. Broadcasters who operate towers on these federal communications sites do not deny that fee increases to the Forest Service and BLM are warranted. Broadcasters have had, however, a long-standing dispute with these agencies on how to reach an appropriate measure of fair market value to be employed in establishing those increases, one which reflects local market conditions. Over the last five years, the fee increases proposed by the agencies have been unjustifiably high.

NAB recognizes that the purpose of this hearing is oversight of the two agencies which manage federal communications sites. After the Chairmen requested the U.S. General Accounting Office (GAO) to conduct a study on the fair market value of these sites, NAB staff met with GAO staff and provided them with information as needed.

Recommendations to the Committees

NAB respectfully requests that the subcommittees consider the following factors in its oversight of this issue:

- 1) Congress has consistently blocked the Forest Service's and the BLM's efforts to increase the rates for federal communications sites because the methodology employed by the agencies failed repeatedly to reflect local market values;
- 2) In 1991, Congress directed the agencies to establish an advisory committee to agree on a proper methodology to establish fair market value;
- 3) After establishing the committee, selecting its members, directing discussions at four separate meetings and writing the report, the agencies later rejected the conclusions of its own advisory committee;
- 4) NAB and its members support the adoption of the fee schedules embodied in the advisory committee report. The fee schedules represent increases of 200-900% in the first year of implementation;
- 4) When the agencies do implement new fee schedules for radio and television broadcasters which reflect local fair market values, significant increases should be coupled with a gradual phase-in; and

- 5) The agencies should provide radio and television broadcasters with some form of a fee waiver based upon public service, as provided in section 504 (g) of the Federal Land Management and Policy Act of 1976 (FLPMA).

Background

In the western United States, radio and television broadcasters serve very wide and scattered populations in many rural and mountainous areas. In the east and mid-west, many broadcasters build very high towers to reach their communities of license. In the west, however, broadcasters must transmit from the mountains themselves in order for their signals to be seen or heard clearly. Those mountains are owned primarily by the federal government and managed by either the Forest Service or the BLM.

Because the federal government has monopoly control over much of the land in these western states, many broadcasters have no choice but to build their towers on Forest Service or BLM land in order to reach their communities of license. There is no other option.

There are a number of factors that dictate where broadcasters can site their towers, such as the location of the communities that the Federal Communications Commission (FCC) has licensed them to serve, Federal Aviation Administration (FAA) regulations, soil conductivity for AM radio and the line of sight between the tower and the community served for FM radio and television. The higher the tower, the fewer the obstructions to the reception of the signal.

Fees Cannot Be Based on Erroneous Perceptions of Broadcasters' Ability to Pay

The business of broadcasting, although consistently perceived by the agencies as quite profitable, has recently experienced the worst economic difficulties in its history, due to changing market forces in the communications arena. The agencies have never been sensitive to the economics of broadcasting. This has proven to be a crucial factor in the agencies' failure to propose equitable fee increases.

The Forest Service's assessment that communications site users could bring in as much as \$25 million, a nearly 1500% projected overall increase over existing rates, is unrealistically high and unfair to the industry. In fact, were the agencies to attempt to collect those proposed increases, many broadcasters would be forced to cease operation rather than pay fees they cannot afford.

The Forest Service and BLM have approached the communications site issue from the perspective of the broadcasters' perceived ability to pay increased fees. During the advisory committee meetings, Forest Service staff developed a "statistical analysis" of the appraisal data they collected, and constructed a curved line that could be used in developing a rent schedule. This "statistical inference" was completely arbitrary, showing what they believed a broadcast market would yield without any supporting financial broadcast data.

This presentation during the advisory meetings demonstrated that the agencies know little about the current economics of broadcasting. In fact, the industry is perceived as a "cash cow" by the agencies.

The reality of the broadcast marketplace today is that many stations are experiencing record financial hardship.¹ In fact, 35-40% of all television stations lost money in 1991. These industry-wide losses are attributable to a soft economy, which has hurt advertising sales, and competition from other media, such as cable.

The economic situation for radio is even worse. In many cases, the amounts lost were significant. Research has shown that 58.6 % of all radio stations lost money in 1991.²

These are not "industries," Mr. Chairman, which can easily bear the brunt of excessively increased rental payments for federal site fees and continue to operate in a manner which the public has come to depend on and to expect. In most cases, these are small businesses, which provide valuable, free public service.

¹ More than one-half of all independent stations lost more than \$300,000 in 1991. More than one-quarter of the nation's more than 600 network affiliates lost at least \$475,000. 1992 NAB Television Financial Report, Washington, D.C.: NAB, 1992.

² All station types were affected: for full time AMs 64.9% lost money; for FMs, 55.3%; for AM-FM combos, 56.1%; and for AM daytimers, 67.5%. More than half of all full time AM stations lost more than \$19,000, more than half of all FM stations lost more than \$10,000, more than half of all AM-FM combos lost nearly \$16,000, and more than half of all AM daytimers lost more than \$16,000. 1992 Radio Financial Report, Washington, D.C.: NAB, 1992.

Consequently, broadcasters have disagreed with the methodology the agencies have employed in years past to appraise these sites. This methodology evaluates federal communication sites based on fees paid for the lease of private sites in different states and different media markets. The agencies' repeated unwillingness to grant broadcasters a waiver for a portion of the fee increase in recognition of the public service we provide free-of-charge to the communities we serve, as is allowed in FLPMA, has also been a source of conflict.

In an effort to mediate this dispute, Congress has intervened for the last four years, placing moratoriums and limits on fee increases and directing the agencies to employ a different methodology in setting higher fees.

Congress first interceded in 1988, when the Forest Service published a new fee schedule recommending individual site fee increases ranging from 900% to 8000%. Unable to convince the agencies to propose a more reasonable fee increase and unwilling to accept the agencies' proposal, Congress prohibited the agencies from implementing this schedule, freezing all fees in both the FY 1990 and FY 1991 Interior Appropriations bills.

Congress then rejected the findings of the March 1991 Forest Service report in which the agencies recommended fees based on individual appraisals that were, in many cases, double those initially proposed by the agencies. Following the release of the 1991 report, NAB met with the Forest Service's chief appraiser and other Washington staff, during which the agencies expressed an unwillingness to consider any compromise solution. Congress acted

again in the FY 1992 and FY 1993 Interior Appropriations bills, limiting fee increases to 15% per year.

As part of the FY 1992 legislation, Congress directed the agencies "to jointly establish a broad-based advisory group to determine acceptable criteria and methodology for communication site fees which incorporate local fair market value and next best alternative use." The committee was also directed to "incorporate appropriate fee waivers or reductions for public service by communications site users who provide for the public interest, convenience, and necessity as required under the Communications Act of 1934," and to report its recommendations to Congress.

That report is the product of nearly sixty-five hours of presentation, debate and votes by eleven committee members who were chosen and appointed by the Secretaries of Agriculture and Interior. Committee members included agency staff, local government representatives, an appraiser, private and corporate land holders and managers, one broadcaster with sites on federal lands, another with sites on private land, one operator of a translator and other communications users.

Mr. Chairman, the agencies largely controlled this advisory group. They selected the members, directed the discussion, brought in numerous appraisal and regional staff for presentations (a list of whom appears on page 26 of the report), and wrote the report.

Despite NAB's initial reservations about the committee, given that only one broadcaster with a tower on a federal site was represented, the outcome as a whole was balanced and fair. The report recommendations were agreed to by the chairman and other committee members, including the agency representatives. The report was signed by the agency designate Gordon Small, the Director of Lands for the Forest Service.

NAB supports the overall thrust of its recommendations and supports its implementation by the agencies in order to move a fair and reasonable fee schedule forward. Many valuable and constructive principles, most of which had never even been considered by the parties involved in years past, were accepted by the committee during the course of the four meetings.

For example, after years of controversy surrounding the process of individually appraising communications sites, the agencies agreed to the use of two separate fee schedules, one for radio and another for television, based on media market rankings.

The committee's rejection of the appraisal process, which was determined by the committee to be "too costly and time consuming" is especially important.

The committee also agreed to incorporate a 30% "adjustment" of fees, which reflects broadcasters' public service, differences in rights granted by the two agencies for the use of the site and differences in agency processing and administration versus that on private lands.

Mr. Chairman, the implementation of these recommendations will be a key factor in moving this issue towards resolution. The negotiation which took place between the city of Phoenix and its radio and television broadcasters in 1992 on the fees for city-owned sites can serve as a model of how this issue can be solved once and for all at the federal level.

Radio and Television Fee Schedules

The committee endorsed the use of two fee schedules, one for radio and another for television, based on the committee's analysis of the agencies' data on leased non-federal broadcast sites. Schedules were agreed upon as a preferred method of fee implementation over appraisals, competitive bidding or individual negotiations, for a number of important reasons. Broadcasters fully support the use of such schedules.

The committee agreed that the schedules would correlate to the Arbitron media market ranking systems, Metro Market Survey Area (Metro rank) for radio and Area of Dominant Influence (ADI) for television. Basing rental fee increases on these rankings is a useful manner of relating fees to local market conditions. The use of two different schedules also effectively recognizes the distinctive differences between the radio and television industries. Even in the same media market, radio does not have the earning potential of television and should not be subject to the same fee.

The committee agreed that schedules, as opposed to other fee setting methods, will reduce the administrative burden on the agencies in implementing fee increases. Schedules

will also reduce appraisal and appeal costs, as well as the backlog and delays associated with updating rental fees.

Mr. Chairman, these schedules should be implemented by the agencies. The increases proposed, including the following markets, are substantial:

MARKET (ADI)	1992 SAMPLE FEES	SCHEDULE FEE	% INCREASE
Los Angeles tv, #2	\$8,149.00	\$42,000.00	415%
Albuquerque tv, #52	\$1,400.00	\$10,500.00	650%
Reno tv, #116	\$650.00	\$2,625.00	304%
Deer Point, ID tv, #142	\$721.00	\$2,625.00	264%
.....			
(Metro Rank)			
Salt Lake City radio, #36	\$1,500.00	\$7,350.00	390%
Tucson radio, #65	\$1,000.00	\$7,350.00	635%
Santa Fe radio, #230	\$200.00	\$1,838.00	819%
Bend, OR, radio unrated market	\$300.00	\$1,838.00	512%

Flaws in the Appraisal Process

The committee's rejection of the agencies' methods of conducting site appraisals is a major step forward in resolving this issue. The appraisal process, which the agencies used as the basis for recommending fees in their 1991 report to Congress and which they unfortunately continue to advocate today, is badly flawed.

Most of the communications sites are located in western states where the federal government holds a monopoly on the most attractive land for broadcasters, that at the highest altitude. The scarcity of private land increases the market value of the federal sites. I believe that it is inappropriate for federal agencies to take advantage of such market power.

Because of this widespread federal land ownership across the west, the appraisers cannot find comparable privately-owned sites for site appraisals. Mr. Paul Tittman, the chief appraiser for the Forest Service, admitted during the advisory group meetings that it is difficult to find local comparables.

The methodology employed in the appraisal process which equates Forest Service sites in one state with private sites in other states is inappropriate and unacceptable.

In one example from the 1991 report, an appraisal conducted for a television site in Deer Point, Idaho, which serves the Boise area, proposed an increase to \$8,000 per year from \$721 per year, a 10,000% increase. (For purposes of comparison, the advisory committee

schedule recommends \$2,625 for this site, a 265% increase.) There is no site in the state of Idaho, private or federal, which is valued anywhere near the appraised fee. Comparables from Washington, Oregon and California were used to justify the Deer Point appraisal. All the broadcast stations serving Boise from this Forest Service communications site collectively would pay \$128,000 per year for the use of a 1/2 acre of land. There is no private site in the west which gets that kind of annual lease.

In New Mexico, the Forest Service hired Mr. Paul Meiling, an independent appraiser, to appraise Sandia Crest three different times. One appraisal, conducted from October 1991 to October 1992, proposed an annual fee of \$21,000 for television, a 1400% increase over the current fee of \$1,400. (The advisory committee schedule recommends \$10,500 for this site, an increase of 650%.) There are no private sites in the state of New Mexico with any fees comparable to the agency proposal. Mr. Meiling's appraisal, like others he conducted for the Forest Service, was based on private sites in other states, including California, Oregon and Texas.

The Forest Service appraisals ignored the utility value of the land for non-broadcast use. In most cases, the land has no other valuable economic use. The true value of the land is the opportunity cost of the land -- for what it would be used if the broadcaster were not using it. Where the site would have virtually no utility to any other broadcast tenant, then the rate should reflect this fact and therefore, be relatively low. If a site were to have many highly valued commercial uses (communications or non-communications), then the rental value could

be higher and reflect the ease and entry by a variety of firms. Where a particular site is located in the middle of a forest or an isolated mountain top with little or no access for other commercial uses, such as timber growth or grazing, the price that should be paid as broadcast rental should reflect the non-utility of such land for other activities.

In years past, the Forest Service appraisers have excluded "free" or "dollar a year" private sites from their market survey. Even today, the agencies deny that such sites exist. Such examples include:

- twenty existing free sites in Utah;
- Idaho farmers who allow broadcasters to put up towers for free so their community can receive service;
- private translator sites in New Mexico held by the Eagle Nest TV Association for \$1 per year for 99 years;
- free translator sites held by the Cliff Gila TV Club (towns of Cliff and Gila, New Mexico); and,
- at least 23 "dollar a year" sites in New Mexico.

What the agencies fail to consider in appraising sites at fee levels that bear no relationship to fair market value is what local broadcast service means to communities in the western states. They fail to see the look of amazement on the faces of those people in many of these rural communities who say, "You mean if you could put up a tower and an antenna on my ranch our community could get television?"

One such community is the Navajo nation, which owns land on Mt. Powell in New Mexico. It has a contract with KOB-TV in Albuquerque, New Mexico for an electronic site with payment set at \$1 for 20 years, with an option for additional 20 years. The appraisers employed by the agencies ignore these examples, and have told NAB members that the people who lease for these low amounts are not knowledgeable about real estate values. The Navajo nation and other small communities in the West may not know real estate, but they know that broadcaster service is a far more important consideration in serving the needs of the community than receiving the highest possible site fees.

Interpreting "Fair Market Value"

NAB's concerns regarding the agencies' appraisal methodology go right to the heart of the definition of "fair market value," an interpretation on which communication site users and the agencies have never been able to agree. Under FLPMA, the Forest Service's enabling legislation, the agency is allowed to collect "fair market value of the use of the public lands and their resources unless otherwise provided for by statute..."³ NAB believes that the appraisals and fee schedules proposed by the Forest Service and the BLM in years past are not based on local "fair market value," but rather on the broadcasters' perceived "ability to pay." Such fees are inconsistent with the statutory authority afforded the agencies under the law.

In competitive markets, the market price is reflective of the value of the product. If someone does not want to pay a certain price for that product, they can shop around and try

³ (43 U.S.C. sec. 1701 (a) (9); 90 Stat. 2743, 2745 (October 21, 1976).

to find a similar product at a lower price. Land, and particularly Forest Service and BLM land for broadcast purposes, is a different type of product in that there are few other sites suitable for broadcasting. In addition, the Forest Service and BLM approach incorrectly assumes that a communications site rejected by one broadcaster would be easily occupied by another. However, strict FCC and FAA regulation dictate the placement of broadcast towers, not just the availability of land.

It is possible, therefore, that the land would go instead to non-broadcast use, e.g., a sheep rancher who would be required by the agencies to pay a fee far less than that of a broadcaster. Another possibility occurs when the communications-dedicated site includes other communications firms. In that case, alternative use of the portion of the land used by the departing broadcaster would be impossible; that portion of the site would be unused and the Forest Service would receive no compensation.

Fee Waivers

Section 504(g) of FLPMA provides that agencies may grant total or partial waivers of fees where the holder of the right-of way "provides without or at reduced charges a valuable benefit to the public..." Previous agency policy, however, has rarely recognized any form of waiver or adjustment. Their rationale may be nothing more than simple bureaucratic inertia. The agencies have been willing to discuss only the most narrow type of a broadcasters public service waiver, often one based on an overly-literal formula which seeks to quantify the

number of minutes of public service announcements aired by stations. Such formulas ignore the breadth and depth of the free service that stations provide to their communities.

Mr. Richard Spight, the chairman of the advisory group committee, gave a report during the committee meetings recommending that the fee schedules be discounted 50 to 66%, with a CPI cap on future annual increases at 4%. Following this report, the whole committee voted to adjust the appraisals by 30% to incorporate broadcaster public service and improvements made to federal sites.

NAB believes that the advisory committee did not give enough consideration to public service. In fact, the "appraisal adjustment" was agreed to as a composite consideration based on a number of disadvantages public land presents to communications users. The committee should have more affirmatively recognized the vast amount of public service that broadcasters provide.

NAB recognizes, however, that for the first time in the history of this debate, a waiver was accepted by both Forest Service and BLM designates. I believe the committee's recommendation is fair and should be included in any future agreements. Of course, it now appears that the agencies are returning to their traditional opposition to any recognition of broadcasters' public service.

Broadcasters around the country provide valuable public benefits absolutely free-of-charge to local citizens, as opposed to the direct charges made by cable television operators and telephone companies. News, public affairs, warnings under the Emergency Broadcast System (as well as other emergency information), weather advisories and bulletins, and entertainment services are provided throughout each year, without charge, and only by broadcasters.

Opponents of the report recommendations have suggested that broadcasting is just like any other industry, in business solely to make money, and should not have input in the determination of fee increases. But unlike ranchers, miners, timber manufacturing, or even microwave relay, cellular phone and two-way radio services, broadcasters serve the public at no charge to the user. Radio and television programming is available at absolutely no cost to any American who owns a receiver.

Broadcasters are issued a federal license to serve our communities and in exchange accept the obligation to serve the public interest. Broadcasters alone have such obligations. Virtually every other commercial user of the spectrum merely receives a license and a frequency. These other users have, with few exceptions, no requirement other than to operate within FCC rules and federal communications law. Broadcasters, on the other hand, must comply with a lengthy list of regulations in order to retain their federal license to operate.

Every seven years for radio and every five years for television stations, a broadcast licensee must file for license renewal at the FCC. This process involves a demonstration that the licensee has satisfied a number of statutory and regulatory obligations, ranging from compliance with Equal Employment Opportunity rules to a variety of programming and station operation standards.

Perhaps the most important requirement is the one that demands a showing, in the station's local public file and noted on the renewal application, that it has provided programming responsive to the problems, needs and interests of the station's city of license and the entire service area of the station. These lists denote the programs that "significantly treated" the issues that the broadcaster determined were important to the local audience. Stations that have not provided a wealth of such issue-responsive programming can be the target of challenge at the time of license renewal. Thus, there are significant and genuine incentives for stations to use their licenses in the local public interest through the provision of responsive programming.

Broadcasters provide public service announcements (PSAs) on a range of concerns of local and national interest including drugs, alcohol abuse, AIDS prevention and programs related to the Forest Service. Moreover, the Emergency Broadcast Service, with nearly total participation by this country's broadcast stations, provides the only reliable mechanism of providing timely emergency information to our citizens.

Additionally, broadcasters are subject to a vast array of "political broadcasting" obligations, ranging from restrictions on the advertising rates that can be charged to any political candidate, to a requirement that all federal candidates be given "reasonable access" to a station's facilities. Congress repeatedly has characterized these political broadcasting rules as key elements in achieving an informed citizenry. Elected officials also rely on broadcasters to provide them with access to voters at election time and throughout the year.

Commercial broadcasters clearly qualify for waivers as provided under FLPMA because all of their programming is provided absolutely free-of-charge to the listening and viewing public, programming which the public values highly. Current ratings show that free, over-the-air television broadcast programming is still the most watched programming source available to the public.

Excessive site fees will reduce unequivocally the resources broadcasters have to provide the public benefits contemplated by the Communications Act and the relevant FCC rules.

Broadcaster Site Improvements

With the expectation of constant prices for federal land, broadcasters have, in many cases, invested considerable amounts of money to improve the broadcast site. These improvements made by the broadcaster include access roads, electric power delivery, fire towers, fencing and other necessary improvements to the site. For example, in Pajarto, New Mexico, it has cost television site users \$750,000 to build roads and bring in power.

This a "catch 22" for broadcasters. The agencies lease us land which has not been developed. After the improvements are made, broadcasters are then asked to pay a higher fee because of the enhanced value of the site. In effect, we are penalized for improving the site and adding to its value. Broadcasters would likely not have invested those sums if they thought that they would be charged the fees now proposed by the Forest Service.

Other Minor Concerns

NAB also has concerns about some of the minor provisions recommended by the committee.

NAB fully supports a phase-in period for increasing communications site fees, but is concerned that the committee chose to base the phase-in on a dollar figure, rather than a percentage increase. This is particularly unfair to small market radio station operators who may pay \$50 or less in fees at the present and will be faced with fees in the thousands of dollars.

NAB is also disappointed that the committee chose not to consider the "next best use" of the site as a factor in determining fair market value. In most cases, the next best alternative use for these sites is nothing -- there is no other use for the site. Without the income from a broadcaster rental, the agency sites would have no interest or use to other businesses. Although the agency appraisers never have acknowledged this fact, it was a prime consideration in the Phoenix site negotiations.

Phoenix as a Model

In the early 1980s, Phoenix, Arizona radio and television broadcasters were paying \$4,800 annually for the lease of land owned and managed by the City of Phoenix Parks Department. Even though these communications sites are owned and operated by the city, broadcasters have made all the improvements, constructing buildings, towers, power facilities, fencing and road maintenance. In 1989, the city announced plans to seek increased income from users. The city hired Paul Meiling, an appraiser used by the Forest Service, referred to earlier in this testimony.

Released in the fall of 1990, the appraisal proposed a fee schedule of \$35,000 per year for television broadcasters and \$25,000 per year for radio, based on a 3 to 5 year contract. In addition, Mr. Meiling suggested that the city consider collecting 50% of the rents received from other communications users who sublet building or tower space.

Close scrutiny of Mr. Meiling's appraisal revealed that he used privately-owned and operated communication sites in California and other nonrelated markets as comparables for the land in Phoenix. In addition, information collected by the Phoenix broadcasters revealed that tenant rents being collected were directly related to the capital amortization of the cost of construction with no profit.

Mr. Meiling's appraisal in Phoenix was unreasonable and out of touch with the local marketplace. The city decided to reject the appraisal and worked instead to negotiate a fee

that was more reflective of the local broadcast economy and what stations actually could afford to pay, while at the same time recognizing the city's budget dilemma.

In 1992, the city agreed to a 20-year contract with its 9 television and 14 radio stations operating on South Mountain. The agreed-upon fee was \$12,000 per year per station, with annual increases tied to the CPI, which has averaged 4% annually. As the 20th market for television and the 22nd market for radio, this figure is very much in line with the schedule recommended in the advisory committee report.

The final outcome in Phoenix was a compromise that benefitted both the city and the broadcasters who utilize city property. This negotiation in Phoenix serves as a model for how the advisory committee recommendations can finally resolve the dispute over a new fee structure for federal communications sites.

Conclusion

NAB supports the fee schedules embodied in the advisory committee report. It should be accepted and implemented by the agencies. A great deal of time and effort was put into the meetings and negotiations by the committee members. NAB believes that this committee came as close to a negotiated solution as is humanly possible.

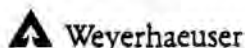
The acting Secretary of Agriculture's transmission letter to the Congress on January 21, 1993, which opposed the many of the report's recommendations, came as a shock and a

disappointment to NAB and to the members of the advisory group. NAB and its members are eager to resolve this dispute. Yet, at the same time, we do not believe that the agencies share our same willingness come to terms on solution that is fair and equitable to both sides.

NAB now believes that the Forest Service manipulated the advisory group and never had any intention of negotiating a resolution whatsoever. In fact, its position today remains the same as it was in 1988 -- it is continuing to pursue appraisals in the western states using the same methods with the same disregard for local market conditions.

Such a stalemate, Chairman Vento and Chairman Synar, is not in the public interest. Broadcasters have always been willing to pay reasonably increased fees, but the longer this dispute continues, the longer the agencies are without increased funding.

Again, NAB thanks the Chairmen and the members of the National Parks, Forests and Public Lands subcommittee and the Environment, Energy and Natural Resources subcommittee for the opportunity to submit a statement on the federal communications site fee issue.



700' 12th Street
Tacoma, Washington 98405

July 8, 1994

Chairman Bruce Vento
Subcommittee on National Parks, Forests, and Public Lands
House of Representatives
Washington, D.C. 20515

SUBJECT: PROPOSED COMMUNICATION SITE FEE SCHEDULE

Dear Mr. Vento:

I am writing in *support* of the fee schedule proposed by the U.S. Forest Service/BLM.

In my role as communication site manager with leasing responsibility for over 500,000 acres of land in the Puget Sound area, I have managed up to 15 different lessees, from small two-way to large FM uses, on eight different mountaintop sites over a period of 15+ years, and participated as a member of the USFS/BLM Citizens Advisory Committee on Communication Sites in 1992.

I believe the rate schedule is more than fair as proposed and I would encourage its adoption as a system to bring Federal lessees up to a reasonable level of fair market value, while providing a relatively reasonable and fair administrative method of managing fees, both of which were goals of the Advisory Committee.

The current fees charged, especially on USFS sites, are abysmally below fair market rates charged by private and other public lessors, especially when large metropolitan populations are recipients of their respective transmission sites. This is due in large part to the "freeze" on rates over the last 10+ years and the efforts of the lessee association to *keep* rates down.

Bruce Bento
July 8, 1994
Page 2

It's time the rates come up to at least *close* to fair market value to where the Federal Government and the American public receive a reasonable return for private business use of our lands.

I have attached a copy of an August 20, 1993, letter for your use also on this project. Thank you for the opportunity to respond.

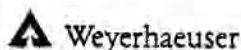
Yours truly,

WEYERHAEUSER COMPANY
Cascade Operations

A handwritten signature in dark ink, appearing to read "G. R. Beyerman", written in a cursive style.

Gary R. Beyerman

GRB:mtc
Enclosure



Cascade Area
 31002 Chiroka Pass Highway
 Enumclaw, Washington 98022
 Tel (206) 825 8110
 Fax (206) 825 8120

August 20, 1993

Director - Lands Staff (2720)
 Forest Service, USDA
 P.O. Box 96090
 Washington, D.C. 2090-6090

Re: Fee Schedule For Communication Users - Notice Of Proposed Policy Per Federal Register
 Vol. 58, No. 132, July 13, 1993

Dear Sir:

As both a communications site lessor for 15 years, and as a member of the USFS/BLM Citizens Advisory Committee, I was very pleased to see the rate schedule revised upward. I believe this new schedule more closely approaches the 'fair market value' that the American public expects for use of our collective resources.

For comments, I offer the following:

1. Proposed Annual Fees: Based on my experience and current leases the proposed fees average approximately 15-25% low; TV and FM being at least 15-20% low and mobile and cellular approximately 20-25% low.

The considerable and well-done appraisal work the USFS and BLM have done supports these higher rates. Due to the balance of the advisory committee, some potential recipients of higher rates were naturally advocates of discounts off fair market value (FMV) fees derived from these appraisals. This resulted in the 'compromise' fee schedule produced by the committee which resulted in lower-than-market fees.

Besides this reduction in government renewals, lower than market rates could give a competitive advantage to a federal site lessee compared to a similar lessee on adjacent non-federal land, which unfairly skews the playing field.

'Fair market value' is a recognized basic concept to our free market economy, and for the federal government to provide a system which programmatically devalues a comparative product or service because it is provided by the government, runs counter to both economic sense and prudent resource use. Therefore, rates that more approach real FMV without artificial discounts (for questionable 'public service,' 'next best use' qualifiers, etc.) are the most fair for all in the long run.

Director - Lands Staff
August 20, 1993
Page 2

2. Market Indices: The proposed use of the Arbitron ADI system for TV and the Metro market rankings for FM are clear, unbiased, publicly recognized and available, and provide a good 'market-derived' stratification within the fee structure.
3. 'Footprint' Lease/Sub-Lease 'Rent' Sharing: This concept is good as it provides both an administratively easy way for another sub-tenant to use an existing permitted site and minimize the clutter that can occur on a site if each user installs their own building and tower, rather than sharing a building and tower.

The 25% the USFS/BLM is proposing as their share of sub-tenant rent is reasonable although on the low side (30-35% is probably more appropriate).

The tenant base rent that the USFS/BLM would be sharing in however, needs to be 'clean' and based on an arms-length, fair market value. The prime lessee must not be able to have the sub-tenant provide inappropriate site improvements as a discount against the sub-lease 'rent' shared by the government.

4. Fee Phase-In: This is more than fair considering the abysmally low rates most lessees have been enjoying for years.
5. Annual Indexing: Again, typical and recognized in private industry and provides for a fair, easily documented and administrated practice.

I applaud your efforts to bring reality to yet one more segment of our government.

Yours truly,

WEYERHAEUSER COMPANY
Cascade Operations



Gary Beyerman
Specialty Forest Products Manager

GB:cs

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