the file and the worksheet or spreadsheet page or cell. Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant or not intended to be put in evidence, the participant offering the same shall plainly designate the matter offered excluding the immaterial or irrelevant parts. If other matter in such document is in such bulk or extent as would unnecessarily encumber the record, it may be marked for identification, and, if properly authenticated, the relevant and material parts may be read into the record, or, if the Commission or presiding officer so directs, a true copy of such matter in proper form shall be received in evidence as an exhibit. Copies of documents shall be delivered by the participant offering the same to the other participants or their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the entire document and to offer in evidence in like manner other material and relevant portions thereof.

* * * * *

(c) *Commission's files.* Except as otherwise provided in § 3001.31(e), in case any matter contained in a report or other document on file with the Commission is offered in evidence, such report or other document need not be produced or marked for identification, but may be offered in evidence by specifying the report, document, or other file containing the matter so offered.

* * * * *

(e) *Designation of evidence from other Commission dockets.* Participants may request that evidence received in other Commission proceedings be entered into the record of the current proceeding. These requests shall be made by motion, shall explain the purpose of the designation, and shall identify material by page and line or paragraph number. Absent extraordinary justification, these requests must be made at least 28 days before the date for filing the participant's direct case. Oppositions to motions for designations and/or requests for counter-designations shall be filed within 14 days. Oppositions to requests for counter-designations are due within seven days. At the time requests for designations and counter-designations are made, the moving participant must submit two copies of the identified material to the Secretary of the Commission.

(f) *Form of prepared testimony and exhibits.* Unless the presiding officer otherwise directs, the direct testimony of witnesses shall be reduced to writing and offered either as such or as an exhibit. All prepared testimony and exhibits of a documentary character shall, so far as practicable, conform to the requirements of § 3001.10(a) and (b).

* * * * *

(k) * * *

(3) * * *

(i) * * *

(*d*) A hard copy of all data bases;

(*e*) For all source codes, documentation sufficiently comprehensive and detailed to satisfy generally accepted software documentation standards appropriate to the type of program and its intended use in the proceeding;

(*f*) The source code in hardcopy form;

* * * * *

(*i*) An expert on the design and operation of the program shall be provided at a technical conference to respond to any oral or written questions concerning information that is reasonably necessary to enable independent replication of the program output. Machine-readable data files and program files shall be provided in the form of a compact disk or other media or method approved in advance by the Administrative Office of the Postal Rate Commission. Any machine-readable data file or program file so provided must be identified and described in accompanying hardcopy documentation. In addition, files in text format must be accompanied by hard-copy instructions for printing them. Files in machine code must be accompanied by hardcopy instructions for executing them.

* * * * *

(4) *Expedition.* The offeror shall expedite responses to requests made pursuant to this section. Responses shall be served on the requesting party, and notice thereof filed with the Secretary in accordance with the provisions of § 3001.12, no later than 14 days after a request is made.

22. Amend § 3001.43 as follows:

a. Revise paragraphs (e)(4) introductory text and (e)(4)(i),

b. Revise paragraph (g)(1)(iii), and

c. Revise paragraph (g)(2)(iii).

§ 3001.43 Public attendance at Commission meetings.

* * * * *

(e) * * *

(4) The public announcement required by this section may consist of the Secretary:

(i) Publicly posting a copy of the document in the office of the Secretary of the Commission at 1333 H Street, NW., Suite 300, Washington, DC 20268–0001;

* * * * *

(g) * * *

(1) * * *

(iii) Ten copies of such requests must be received by the office of the Secretary no later than three working days after the issuance of the notice of meeting to which the request pertains. Requests received after that time will be returned to the requester with a statement that the request was untimely received and that copies of any nonexempt portions of the transcript or minutes for the meeting in question will ordinarily be available in the office of the Secretary 10 working days after the meeting.

* * * * *

(2) * * *

(iii) Ten copies of such requests should be filed with the office of the Secretary as soon as possible after the issuance of the notice of meeting to which the request pertains. However, a single copy of the request will be accepted. Requests to close meetings must be received by the office of the Secretary no later than the time scheduled for the meeting to which such a request pertains.

* * * * *

[FR Doc. 00–3026 Filed 2–7–00; 1:08 pm]

BILLING CODE 7710–FW–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–247; FCC 99–362]

Fees for Ancillary or Supplementary Use of Digital Television Spectrum

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies Petitions for Reconsideration of the Report and Order in this proceeding. It reaffirms the previously established fee of five percent of gross revenues received from feeable ancillary or supplementary services provided by DTV stations. It also reaffirms the conclusion that home shopping, infomercial, and direct marketing services are not feeable.

EFFECTIVE DATE: January 15, 1999.

FOR FURTHER INFORMATION CONTACT: Mania Baghdadi, Policy and Rules Division, Mass Media Bureau (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, (''*MO&O*''), FCC 99–362, adopted November 19, 1999 and released November 24, 1999. The full text of this

Commission *MO&O* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW–A306), 445 12 St. SW, Washington, DC, 20554. The complete text of this *MO&O* may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Synopsis of Report and Order

I. Introduction

1. In our Report and Order (''*R&O*'') in this proceeding, (63 FR 69208, December 14, 1998), we implemented Section 201 of the Telecommunications Act of 1996 (''1996 Act'') which adopted Section 336 of the Communications Act of 1934, requiring broadcast television licensees to pay a fee if they provide certain types of ancillary or supplementary services on their digital television (''DTV'') bitstream. Based on the criteria set forth in Section 201, we adopted rules to require DTV licensees to pay a fee of five percent of the gross revenues received from the provision of such ''feeable'' ancillary or supplementary services. We also provided guidance on which services are subject to this fee and specifically concluded that home shopping, infomercial, and direct marketing services would not be feeable.

2. The National Association of Broadcasters and the Association for Maximum Service Television have filed a joint petition (the ''NAB/MSTV Petition'') asking us to set the fee at two percent of gross revenues rather than five percent. The Office of Communication Inc. of the United Church of Christ, the Benton Foundation, the Center for Media Education, the Civil Rights Forum and Media Access Project have filed a joint petition (the ''UCC, *et al.* Petition'') asking us to hold that home shopping, infomercials, and direct marketing services are subject to fees. We deny both petitions for reconsideration.

II. Background

3. Pursuant to the 1996 Act, the Commission has assigned each existing broadcast television station an additional channel to convert to digital technology. We are requiring broadcasters to provide on their DTV bitstream at least one over-the-air video program signal at no direct charge to viewers. 47 CFR 73.624(b). Aside from this requirement, we have given broadcasters great flexibility in the services they provide over their DTV bitstream. They may offer a wide range of ancillary or supplementary services such as computer software distribution, data transmission, teletext, interactive materials, aural messages, paging services, audio signals, and subscription video.

4. The 1996 Act requires broadcasters to pay a fee to the U.S. Treasury to the extent they use their DTV bitstream to provide ancillary or supplementary services—

(A) For which the payment of a subscription fee is required in order to receive such services, or

(B) For which the licensee directly or indirectly receives compensation from a third party in return for transmitting material furnished by such a third party (other than commercial advertisements used to support broadcasting for which a subscription fee is not required). 47 U.S.C. 336(e)(1).

The 1996 Act directed the Commission to establish a program to assess and collect this fee based on the following three objectives:

- ''To recover for the public a portion of the value of the public spectrum resource made available for such commercial use'';
- ''To avoid unjust enrichment through the method employed to permit such uses of that resource'';
- To ''recover for the public an amount that, to the extent feasible, equals but does not exceed (over the term of the license) the amount that would have been recovered had such services been licensed pursuant to [the competitive bidding process.]'' 47 U.S.C. 336(e)(2).

5. In the *R&O,* we established a fee program that requires broadcasters to pay a fee of five percent of the gross revenues they receive from feeable ancillary or supplementary services offered on their DTV bitstream. We reasoned that this fee is consistent with the three objectives set forth in the Act. It also represented a reasonable fee in light of the record in the proceeding, in which some parties argued for a very low or nominal fee and others for a fee of more than ten percent.

III. The NAB/MSTV Petition

6. NAB/MSTV argue that we failed to consider two studies they submitted that they believe call for a fee of two percent of gross revenues rather than five percent. The first study, prepared by Jerry Hausman, purports to establish ''the low and declining value of comparable spectrum,'' and also that digital ancillary or supplementary services ''face significant business and technological uncertainty.'' The second study, prepared by Kent Anderson, describes several surveys of technology licensing fees in the private sector. The Association of Local Television Stations (''ALTV'') submitted comments supporting the NAB/MSTV Petition. The National Cable Television Association (''NCTA'') filed an opposition to the petition.

7. Contrary to NAB/MSTV's suggestion, we did consider the two studies in reaching our decision in the *R&O*. Indeed, consistent with a recommendation in the Hausman Study, we declined to impose an upfront or hybrid fee on DTV licensees that provide feeable services. Although we rejected arguments based on the two studies to set the fee lower than five percent, we explained in the *R&O* our reasons for doing so. We reaffirm this decision and amplify our reasons below.

8. The Anderson Study describes several surveys of royalty rates used in licensing various technologies in the private sector. Although we did not cite the Anderson Study explicitly and our discussion of the issue was brief, the *R&O* did reject arguments that we should set a lower fee based on analogies to copyright royalty rates. We declined to do so because the policy concerns and economic considerations involved in setting a fee for ancillary or supplementary services appear to be different from the considerations involved in negotiations over private licensing rights. We have more closely examined the Anderson Study and are not persuaded that we should alter our decision. Indeed, the Anderson Study itself acknowledges that ''[e]ach licensing negotiation has unique characteristics, making it very difficult to demonstrate that the royalty observed for any one licensing agreement reasonably applies to another.'' This statement confirms our reluctance in the *R&O* to directly base the fee required under Section 336(e) on analogies to private licensing arrangements.

9. Aside from this concern, the Anderson Study can actually be read to *support* a fee of five percent of gross revenues. The NAB/MSTV Petition, at 5, argues that the Anderson Study ''found that licensing rates for unproven technologies without 'highly favorable economics' tended to be very low.'' But the full sentence in the Anderson Study that is cited to support this statement states: ''For 'minor' innovations the range [of running royalty rates] is 1 to 5 percent, and for 'major' innovations it is 3 to 8 percent. Only in the case of innovations characterized as 'revolutionary' (*i.e.*, suggesting highly favorable economics) do the rates rise to the 5 to 10 percent range.'' The five percent fee we have established thus falls somewhere in the middle of these reported ranges and could even be

characterized as falling within the range of royalty rates for ''minor innovations.'' More generally, Anderson summarizes the overall results of his research as ''show[ing] that some technologies earn royalties on the order of 2 to 3 percent or less, most earn royalties of 5 percent or less, and only those technologies with unusually favorable economics receive rates of more than 10 percent.'' Again, this places a five percent fee squarely in the average range, which we believe is reasonable. This is especially the case since we are not imposing an upfront or hybrid fee on DTV licensees. By comparison, a fair number of the royalty arrangements described in the Anderson Study appear to involve upfront payments in addition to royalty fees. Taking these upfront payments into account suggests that the five percent fee we have established may actually fall toward the low end of the total licensing payments (royalties plus upfront fees) surveyed in the Anderson Study.

10. We now turn to the Hausman Study. Based on an econometric study of the FCC's previous auctions, Hausman reports that prices for spectrum auctioned by the Commission have been decreasing over time on a per megahertz per population basis. He also posits that there will be significant sunk cost investments required to provide DTV ancillary or supplementary services, and also significant business and technological uncertainty facing these services. Hausman concludes that ''the combination of overall declining auction results over time and the significant business and technological uncertainty with respect to sunk costs would lead to an expected outcome of relatively low auction results for spectrum used for ancillary services.'' Noting that the *Notice* had sought comment on setting the fee in the range of one to ten percent, Hausman recommends ''that the Commission initially begin with a fee toward the low end of the range.''

11. As an initial matter, we question a number of the underlying assertions made in the Hausman Study. Even assuming it is true that there is a downward trend in per megahertz, per population prices for the spectrum auctions the Commission has previously held, this does not necessarily mean that an auction of the spectrum used for DTV ancillary or supplementary services would follow this trend. As we stated in the *R&O,* the auction values realized by the Commission in conducting a particular spectrum auction reflect factors that are specific to the particular spectrum being auctioned. These factors include the anticipated demand for the telecommunications services provided using the particular spectrum and the technological uncertainty associated with the application. The *R&O* pointed to evidence that suggests that the broadcast spectrum that will be used to provide DTV ancillary or supplementary services could command higher prices than predicted by the trend described in the Hausman Study. In particular, we noted that the sales values of broadcast properties have increased sharply over the past several years, reflecting the increasing value of their spectrum licenses. The NAB/MSTV Petition faults the *R&O* for focusing on this evidence and for not placing greater weight on the value of *non*-broadcast spectrum because most ancillary or supplementary services will be non-broadcast in nature. But we think it is reasonable to expect that the prices investors pay for television stations reflect not only the anticipated profits from providing broadcast video programming on the station but also the projected profits from ''non-broadcast'' ancillary or supplementary services that they can now provide on the station's DTV bitstream. The recent sales prices for television stations thus shed some light on the value of the spectrum used to provide the ancillary or supplementary services.

12. In addition, we question the Hausman Study's assertions regarding the degree of uncertainty and sunk costs DTV licensees will face in providing ancillary or supplementary services. Whether or not they choose to provide ancillary or supplementary services, DTV licensees will need to invest in DTV facilities in order to provide a free, over-the-air digital broadcast service. Given this, it would appear that the incremental or marginal cost of providing any feeable ancillary or supplementary services may not be as significant as Hausman and NAB/MSTV suggest. The most substantial costs incurred by broadcasters, such as transmitters and towers, will be sunk or fixed costs that are already incurred in connection with the provision of nonfeeable services, thus minimizing the additional investment required to provide feeable services. We consequently agree with NCTA that the risk associated with offering ancillary or supplementary services will be diminished by the fact that DTV licensees will be providing nonfeeable broadcast services.

13. We also think Hausman and NAB/MSTV overstate the level of uncertainty broadcasters face in developing ancillary or supplementary services. We fully recognize developing and implementing these services will entail challenges and risks. But broadcasters are not venturing into completely uncharted territory. They have been authorized to provide ancillary services on parts of their analog signals for years, although these services have been limited due to the lack of capacity on analog channels. Broadcasters have also become increasingly involved over the years in developing and selling programming carried on cable networks, and they can translate this experience into providing subscription programming over their DTV bitstream should that appear profitable to them. More recently, a number of broadcasters have invested in internet-related companies, suggesting that the internet's interactive and datacasting applications, which potentially could also be offered over the DTV bitstream, may prove profitable.

14. Aside from the questions we have about some of the Hausman Study's underlying assertions, we have a more fundamental objection to the conclusion NAB/MSTV seek to draw from it. In particular, neither NAB/MSTV nor Hausman provides a persuasive basis to conclude that Hausman's assertions, even taken at face value, require us to set the fee at two percent rather than five percent of gross revenues. The Hausman Study seems to acknowledge this in that it has no firm recommendation on the level of the fee, only suggesting that the FCC initially set the fee ''toward the low end of the range'' and that the Commission ''might consider'' initially setting the fee at one percent or less. For its part, the NAB/MSTV Petition argues that the studies it has submitted ''provide [ ] strong support for the Commission to set a low initial fee'' and concludes that the fee should be two percent of gross revenues, yet it provides no rationale why a ''low fee'' necessarily means a fee of two percent as opposed to five percent.

15. We continue to think that a fee of five percent of gross revenues is reasonable in light of the criteria set forth in Section 336(e). A central theme underlying NAB/MSTV's arguments and the studies they have submitted is that we should set the fee so as not ''to discourage the development of new ancillary and supplementary services'' and to ''promote [ ] the efficient use of digital spectrum.'' We agree that this is a worthy goal and, indeed, Section 1 of the Communications Act states that one of the Act's purposes is to promote an ''efficient'' radio communication service. 47 U.S.C. 151. But this general policy cannot trump the specific statutory criteria set forth in Section 336(e)(2) for establishing the fee, none

of which require that the fee be designed to maximize efficiency. Indeed, taken to its logical conclusion, the goal of maximizing efficiency and encouraging ancillary or supplementary services would mean that the fee should be set at zero or some nominal percentage rate as this would eliminate any influence the fee would have on a DTV licensee's decision to provide ancillary or supplementary services as opposed to nonfeeable broadcast video programming. But clearly this is not what Congress intended. A fee system that raised no or only nominal revenue from licensees that provide ''feeable'' ancillary or supplementary services would (quite literally) make Congress's enactment of Section 336(e) all for naught.

16. In the end, implementing Section 336(e) is not, to paraphrase one of the parties, an exact science. NAB/MSTV acknowledge that the Commission has ''broad discretion under the Act in setting the fee level.'' In exercising this discretion, we have sought to promote the efficient use of the spectrum and the development of innovative ancillary or supplementary services by DTV licensees. But this discretion is bounded by Section 336(e), which requires us to design the fee not only to approximate the revenue that would have been received had these services been licensed through an auction, but also to recover a portion of the value of the spectrum used for these services and avoid ''unjust enrichment'' of DTV licensees who have been given the exclusive right to apply for DTV channels without having to bid for them at an auction. Weighing these factors and the comments submitted in the proceeding—some of which argued for a fee of less than one percent while others argued for a fee of over ten percent—we established a fee of five percent of gross revenues generated from feeable ancillary or supplementary services. The amount raised by this fee will vary with the gross revenues from these services, *i.e.*, with the willingness of consumers to pay for such services. As a consequence, if the consumer value for these services is low, the fee payment will be small. Given this, and the record in this proceeding and the criteria set forth in Section 336(e), we continue to believe this is a reasonable fee and consistent with the statute, and therefore deny the NAB/MSTV Petition.

IV. The UCC, et al. Petition

17. In the *R&O*, we decided not to impose fees on revenues received from home shopping, infomercial or direct marketing services. We reasoned that:

> [t]he purpose of this proceeding is not to exact fees from existing broadcasters for existing services but, rather, to design a program for the assessment of fees on ancillary or supplementary services which will be provided on the DTV bitstream. We agree with the commenters who argued that home shopping and infomercials are commercial advertisements, excluded by statute from the scope of ancillary and supplementary services as they are video services received by viewers without a fee. [Footnote omitted.] We therefore find that home shopping channels and infomercials are free, over-the-air television services, supported by commercial advertisements, and not subject to a fee.

18. UCC, *et al.* ask the Commission to reconsider this decision. They interpret the 1996 Act as requiring us to impose fees on home shopping, infomercial, and direct marketing services. NAB, MSTV, ALTV, and Home Shopping Network (''HSN'') and ValueVision International (''ValueVision'') have opposed UCC, *et al.'s* petition for reconsideration and argue that the Commission was correct in concluding that these services are not subject to fees.

19. UCC, *et al.* interpret the *R&O* as basing this conclusion on two rationales: (1) That home shopping, infomercials, and direct marketing services are ''existing'' services, and therefore grandfathered from the fee requirements in the Act; and (2) that these services are ''commercial advertisements'' rather than programming services, and consequently fall within Section 336(e)(1)(B), which exempts from fees ''commercial advertisements used to support broadcasting for which a subscription fee is not required.'' As to the first rationale, UCC, *et al.* argue that the 1996 Act does not give the Commission authority to grandfather existing services from the new statutory fee requirements. As to the second rationale, UCC, *et al.* maintain that it is arbitrary and capricious to categorize home shopping and similar services as ''commercial advertisements'' exempt under Section 336(e)(1)(B) because Congress, the Commission, and the broadcast industry have consistently characterized these services as *programming* not as commercial advertisements.

20. We think UCC, *et al.* have misconstrued the *R&O* on these points. Our decision was not intended to grandfather existing services. Nor was it based on whether home shopping and similar services should be categorized as ''commercial advertisements'' or ''programming.'' We recognize that the *R&O*, may have been unclear on this point in that it referred to these services as ''commercial advertisements.'' But we did not intend this characterization to be the basis for our decision not to impose fees on these services. Rather, we based this decision on what we see as a threshold criterion in the statute: only *ancillary or supplementary* services are subject to fees under the Act. Because traditional home shopping, infomercial and direct marketing services are free, over-the-air, video services and therefore do not qualify as ancillary or supplementary services as we have defined that term in our rules, 47 CFR 73.624(c), they are not subject to fees. Or, as we put it in the *R&O*, these services are ''excluded by statute from the scope of ancillary and supplementary services as they are video services received by viewers without a fee.'' We take this opportunity to elaborate on this reasoning.

21. Section 336(e)(1), which defines the ''services to which fees apply,'' speaks only in terms of ''ancillary or supplementary services'' in delineating in subsections (A) and (B) the two types of such services that are subject to fees. In doing so, it necessarily excludes from the fees requirement services that are not ''ancillary or supplementary'' to begin with. Although the Act does not define the phrase ''ancillary or supplementary services,'' the Commission did so in implementing Section 336 in its DTV rulemaking proceeding, Fifth *R&O* in MM 87–268, (62 FR 26966, May 16, 1997). In that proceeding, we adopted § 73.624(c) of our rules, which provides an illustrative list of ancillary or supplementary services: they include, but are not limited to, ''computer software distribution, data transmissions, teletext, interactive materials, aural messages, paging services, audio signals, subscription video, and any other services that do not derogate DTV broadcast stations' obligations'' to ''transmit at least one over-the-air video program signal at no direct charge to viewers.'' 47 CFR 73.624 (b) and (c). Section 73.624(c) goes on to state ''that any video broadcast signal provided at no direct charge to viewers shall not be considered ancillary or supplementary.''

22. Traditional home shopping, infomercial, or direct marketing services are video broadcast signals and are offered at no direct charge to viewers. As such, they fall outside the scope of our definition of ''ancillary or supplementary services,'' and therefore are not subject to fees under Section 336(e)(1) of the Act. We think this is consistent with Congress's intent in enacting Section 336(e)(1). To be sure, we adopted our definition of ''ancillary or supplementary services'' after

enactment of the 1996 Act. But as HSN and ValueVision state, ''the Act's specific instruction that fees were to be assessed only on 'ancillary and supplementary' digital services was arrived at in the context of the Commission's contemporaneous consideration of [its then pending DTV rulemaking proceeding], in which the Commission repeatedly and consistently made clear that 'ancillary and supplementary' services are separate and distinct from existing, traditional over-the-air broadcast services.' We believe Congress drew the same distinction in enacting Section 336, excluding free, over-the-air broadcast video programming service from fees. Traditional home shopping, infomercials, and direct marketing services have long been a free, over-the-air broadcast service, or, in § 73.624(c)'s rubric, a ''video broadcast signal provided at no direct charge to viewers.'' It follows that in enacting Section 336 Congress did not intend to include these existing services within the phrase ''ancillary or supplementary services'' and subject them to fees.

23. Further evidence of this can be found in Section 336(b)(3), which states, among other things, that ''no ancillary or supplementary service shall have any rights to carriage under section 614 or 615,'' *i.e.*, the statutory ''must carry'' rights broadcast television stations have to be carried on cable systems in their local area. 47 U.S.C. 336(b)(3). If a free, over-the-air home shopping broadcast service is considered an ''ancillary or supplementary service,'' stations carrying such programming would be rendered ineligible for must carry rights under Section 336(b)(3). We do not think Congress could have intended such a result given that, in Section 4(g) of the Cable Television Consumer Protection and Competition Act of 1992 (the ''1992 Cable Act''), it directed the FCC to determine whether home shopping stations served the public interest and were entitled to must carry rights. It would make little sense for Congress to charge us with this duty, and then four years later preclude home shopping stations from must carry rights under Section 336(b)(3) without a mention, either in the 1996 Act or its legislative history, of Section 4(g) of the 1992 Cable Act. A basic principle of statutory construction is to seek to construe statutory provisions so that they are consistent with each other. We think the most reasonable way to square Section 336 and Section 4(g) of the 1992 Cable Act is not to treat traditional home shopping, infomercials, and direct marketing services as ancillary or supplementary services.

24. We do not agree with UCC, *et al.*'s suggestion that our decision not to apply fees to home shopping, infomercials and direct marketing services means any service provided without charge to the viewer is exempt from fees regardless of whether a third party compensates a broadcaster for carriage. Nor do we agree with UCC, *et al.*'s argument that our decision effectively nullifies Section 336(e)(1)(B), which requires us to impose fees on ancillary or supplementary services ''for which the licensee directly or indirectly receives compensation from a third party in return for transmitting material furnished by such third party (other than commercial advertisements used to support broadcasting for which a subscription fee is not required).'' Our decision today does not exempt, for example, payments made to a DTV licensee by a stock broker to transmit stock quote data to the broker's clients even though the clients pay no direct fee for this service. This clearly would be an ''ancillary or supplementary service'' that is feeable under Section 336(e)(1)(B).

25. But where, as here, the service is a video broadcast signal provided at no direct charge to viewers, it is not feeable, even though the broadcaster may be receiving compensation from a third party to carry the service. As HSN and ValueVision point out, to hold otherwise would mean that ''all the affiliates of the ABC, CBS and NBC broadcast television networks arguably would be subject to fees for their free, over-the-air broadcast services because they receive compensation from their networks for airing network programming.'' These are video broadcast signals provided to viewers at no direct charge, and therefore are not ancillary or supplementary services and are not subject to fees. We consequently deny UCC, *et al.*'s Petition.

26. We make one final note. Our decision in the *R&O*, like our decision today, applies only to traditional home shopping, infomercials, direct marketing and similar services with no interactive or ''clickable'' elements and which can entail viewers purchasing products by calling a telephone number identified during the broadcast. We recognize that it may be possible in the future for these purchases to be made via an interactive system provided by the licensee on its DTV bitstream. For example, a DTV viewer may be able to purchase a product shown on a home shopping program by clicking a special icon displayed on the screen and transmitting a purchase order via the licensee's DTV bitstream. In reply comments submitted in the initial round of comments of this proceeding, ValueVision and HSN stated that such an interactive purchase order system was being explored and argued that revenues generated from this sort of system should be exempt from fees. Because such services are only at a nascent stage and the particular circumstances are unclear at this point, we decline to decide whether they would constitute an ancillary or supplementary service subject to a fee under Section 336(e)(1)(B).

V. Administrative Matters

27. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new or modified reporting and record-keeping requirements or burdens on the public. In addition, the Final Regulatory Flexibility Act Analysis set forth in the *R&O* in this proceeding remains unchanged.

28. Accordingly, pursuant to the authority granted by 47 U.S.C. 4(i), 303, 336(e), and 47 CFR 1.429, the Petition for Reconsideration filed jointly by the National Association of Broadcasters and the Association for Maximum Service Television, and the Petition for Reconsideration filed jointly by the Office of Communication Inc. of the United Church of Christ, the Benton Foundation, the Center for Media Education, the Civil Rights Forum and Media Access Project, are both hereby *denied*.

1. This proceeding is terminated.

List of Subjects in 47 CFR Part 73

Television, television broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–3068 Filed 2–9–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[WT Docket No. 98–143, RM–9148, RM–9150, RM–9196; FCC 99–412]

Amateur Service Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document revises the Amateur Radio Service rules to simplify the Amateur Radio Service operator license structure; streamlines the