

WANTED: LEGAL PEARLS OF WISDOM

ARE Louisiana's oyster beds worth an annual \$2 an acre? That's the rent the state charges for the tracts it leases out on a first come, first served basis.

But the rental value of those seabeds is worth more than that according to Baton Rouge lawyer Mary Olive Pierson. She has

filed suit challenging the method of awarding and charging for oyster leases.

The present approach, she claims, is a give-away, and she wants all leases reallocated at public auction, and to prove her point, she cites rents bid at a recent auction held in New Orleans to allo-

cate leases on tracts for which the leaseholders have failed to make their payments.

When oystermen default, their beds are allocated by auction to the highest bidders. Last year, the auction brought in an average of over \$6 an acre. This year, 25 people showed up and the successful

bidders paid an average of \$4.71 per acre for one-year rights. As from next year, their rents drop to \$2 an acre.

Additional testimony that \$2 is too cheap: the demand is greater than the supply. Three hundred people are on the waiting list for their own oyster beds.

Airwaves worries

THE Department of Commerce has invited comments on how to allocate the radio frequency spectrum in the United States. Its National Telecommunications and Information Administration (NTIA) identifies property rights as at the heart of the debate.

Prime Minister Margaret Thatcher's government in Britain believed it had solved the problem: she intended to charge TV companies the full market rent for the right to broadcast their programmes. A last-minute change to the Broadcasting Bill, however, has compromised that principle.

The market approach to pricing the airwaves has begun to find favour in a number of countries. New Zealand plans to implement a free market system of auctioning spectrum. Australia recently auctioned - in a closed tender limited to existing AM broadcasters - the use of 2 FM broadcast stations in four cities, and intends to auction additional FM stations.

The failure to charge the full market rent for the right to use a scarce natural resource has serious economic consequences. At the very least, it constitutes a hidden subsidy which distorts competition and the allocation of capital resources.

IN THE U.S., the under-pricing of the spectrum is illustrated by the market in non-federal licenses.

Legally, the licensee has no recognised property right in its assigned spectrum, and may not buy or sell the spectrum rights. In fact, because of the under-pricing of access to the spectrum, a "secondary market" exists in which licenses are traded at private auctions.

This market exists because the licenses are

INSITE reviews plans to raise revenues by tapping the rental value of the airwaves.

transferable. Reports the NTIA: "The price paid by the acquiring firms in such cases suggest that often the economic value of the spectrum assignment represents a substantial part of the value of the overall transaction."*

Asks the NTIA: does this situation create "quasi-property rights" in the spectrum, "because the value of spectrum is captured by private parties receiving a 'windfall' in receiving a license, and not by the public?"

Public comment is now invited on this situation. A strong lobby on behalf of the US broadcasting industry is expected, because the stakes are high. According to one estimate, over half the value of a mass media property is attributable to its license, as opposed to physical assets.

But if the market price is to be paid by users, how is that value to be established? The NTIA lists, among its options, the use of leases, the acquisition of which would be on payment of a fee. "The process would be akin to common Federal Government leases of various economic rights to resources, such as rights to oil, minerals, grazing land, timber, or water."

The serious danger with this approach is that the Federal Government will demur to the landowning lobby and once again under-price the natural resource - which is what it is now doing with oil, grazing land, timber and water rights!

One formula which NTIA does not list has been identified by Nicolaus Tideman, a professor of

economics at Virginia Tech, Blacksburg, Virginia. In his submission, he states: "The most practical way to assess the value of spectrum use is to create an options market in spectrum use rights.

"If every user were required to pay the amount that some other would be willing to pay for the use of a similar resource, that would achieve simultaneously the public appropriation of the value of the frequency spectrum, the efficiency of continuity in assignments, and private retention of the component of the value of frequency allocations that arises from the labour and capital that have been invested in particular applications.

"The required options market could be created in the following way. Once a year or so the NTIA would solicit bids for spectrum use from anyone who wished to participate. These 'spectrum assessors' would be required to make offers on a wide range of frequencies, perhaps as many as would typically be allocated to several dozen users. To avoid appropriating the value resulting from the labour and capital of users, assessors would be required to provide assessments that did not take sudden jumps at particular frequencies, and that varied geographically according to reasonable factors such as population density and income.

"Each assessor would post a bond, guaranteeing that if a frequency allocation became available, someone could be found who would be willing to pay the assessed rent. If no-one wished to pay the assessed rent, the frequency would be assigned to the person who bid the highest rent, and the assessor's bond would be docked for the shortfall. For his services, an assessor would be given something like 1% of the rent collected from those allocations for which he was the assessor who stated the highest value."

MRS THATCHER, while pursuing her policy of privatisation, favoured a direct auction among prospective TV companies to establish the market rent of the spectrum.

But this economic principle has been compromised. In April, Home Office minister David Mellor announced that a new clause was to be inserted into the Broadcasting Bill which required



• David Mellor: New clause under attack

the new Independent Television Commission to allocate franchises by also taking into account the quality of programmes. This clause, incorporated after pressure from existing franchise holders, rests on the logic that some entrepreneurs would out-bid others by offering low-cost/poor quality programmes.

This special pleading is attacked by Prof. Tideman. He suggests that the British government should stick to its original plan, and allocate franchises to the bidders of the highest rents. Then, it would be possible to negotiate subsidies for programmes on the basis of whatever the government believed to be in the public interest.

The debate over the rent of the airwaves is not an academic one. Because of the under-pricing of a natural resource, over the decades taxpayers have been denied billions of dollars which legitimately belonged to the public coffers. The economic consequences have been serious. One is that the burden of taxation on wages and profits have been higher than they need have been - for the sake of providing windfall gains for the corporations that are given cheap access to the radio spectrum

Economists have yet to trace the knock-on effects of this failure of public policy on jobs, the level of prices and competition. But the consequences have been enormous; because hundreds of billions of dollars have been diverted into the pockets of the broadcasters in rents that they would have gladly paid to the Treasuries of the world for the right to use a public resource!

* Federal Register, Vol. 54, No. 235, Dec. 8, 1989, p. 50702.

Ranchland grazing gives food for thought

THE scale of underpricing publicly-owned ranchland in the US is indicated by the fact that, last year, the Bureau of Land Management spent about \$43m on management and improvements but received only \$17.8m in grazing fees. Taxpayers make up the difference.

The policy of under-renting the grazing land — 174m acres under the

direct control of the BLM — began with President Ronald Reagan. Efforts to raise the rents and lower the over-grazing have been thwarted by politically well-connected ranchers.

A Democrat Representative, George "Buddy" Darden, introduced a Bill to raise BLM fees closer to the price that a rancher would pay a private landowner

for grazing rights. Washington observers say that the Bill will not make it out of the House Interior Committee, which is stacked with politicians representing the western cattle states.

Syndicated columnist Jack Anderson has a description for this official largesse: "It is nothing more than living on the public dole."