

THE PRIVATE USE OF PUBLIC ASSETS Examples of Auction and Lease Fees Paid on Public Resources

The nation's airwaves are the most precious natural resource of the Information Age, highly sought after by a range of commercial firms—from broadcasters to cell phone companies and taxis—that use them as an input to production. The airwaves, more technically called the radio spectrum, are also a publicly owned asset like the navigable waterways, the atmosphere and the mineral wealth under federal land. As with these other public resources, policymakers need to find a way to ensure that citizens receive a fair return from the private use of this public resource.

Where scarce and valuable public assets are made available for commerce—such as the lease rights to extract coal and oil, cut timber and graze herds on public lands—a combination of auctions and lease fees generate billions of dollars in public revenue. Auctions, fees and royalties are typically used to allocate public assets for three reasons. One is to ensure that a scarce resource is assigned to firms that value it most highly. A second reason is that internalizing the opportunity cost of alternative uses gives licensees a financial incentive to use the resources efficiently. A third objective is to provide a fair return to the public, revenue that can either help to reduce other taxes, or which can be earmarked to pay for public investment in the same sector. Here are some examples of lawmakers' efforts to ensure that citizens receive a fair return on the commercial use of public assets. In fact, federal and state policies offer several examples of lawmakers' efforts to ensure that citizens receive a fair return on the commercial use of public assets. These include:

The Outer Continental Shelf: Environmental Dividends from Offshore Oil & Gas Leases

The Outer Continental Shelf (OCS), the federal portion of the continental shelf, is a huge source of underwater petroleum and natural gas, yielding \$18 billion worth of oil and natural gas in 1998, according to the Congressional Research Service (CRS). As in the current situation with spectrum, commercial demand for use of the OCS was driven by improvements in technology that enabled private companies to extract greater value from a public asset—in this case, new technologies for offshore drilling. In response to the increased demand, Congress passed the Outer Continental Shelf Lands Act in 1953 to supply “orderly leasing of these lands, while affording protection of the environment and ensuring that the federal government received fair value for both lands leased and the production that might result.”

Since the passage of the Act, the area has yielded over \$122 billion in revenue for the federal government and for coastal states bordering the OCS, according to a May 2000 CRS report. Commercial users of the OCS pay rent on leases, bonuses to secure a lease tract, and royalties on the petroleum or natural gas that is ultimately extracted. In the last decade, OCS revenue has made up 90 percent of deposits for the **Land and Water Conservation Fund**, a government trust fund used to acquire new parks and recreation lands and fund government agencies such as the National Park Service and the Fish and Wildlife Service.

Alaskan Oil: Cash Dividends through the Alaska Permanent Fund

The **Alaska Permanent Fund** is a public investment fund created in 1976 and financed with state oil revenues. The Fund creates renewable wealth for all Alaskans from a non-renewable resource. Since its first deposit, the fund has earned about \$25 billion in net income and pays out an annual dividend to every citizen of that state (nearly \$2,000 per Alaskan last year). The state constitutional amendment that established the fund calls for “at least 25 percent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue-sharing payments, and bonuses” from oil reserves on state land to be deposited in the fund. However, it stipulates that these deposits must be invested, not spent, to ensure that future generations receive a return from the commercial use of a public asset. The policy arose in reaction to an earlier auction of Prudhoe Bay leases, which netted \$900 million but yielded only temporary benefits. The fund is managed by an independent state agency, the Alaska Permanent Fund Corporation. In 1998, income from the investment fund actually surpassed state oil revenues for that year.

Leasing Public Lands: A Dividend for States from Timber and Grazing

Ensuring that the public receives a return on its public lands falls to a range of agencies. The Bureau of Land Management, for example, administers commercial use of public lands for extracting energy and minerals, logging timber, grazing and rights-of-way for pipelines. According to the agency, every one of these commercial activities employs an auction or leasing system that brings in either public revenue or an in-kind dividend. The U.S. Forest Service, for example, awards logging contracts the highest bidder usually through an oral auction. Since 1908, one-quarter of the revenues taken in by the Forest Service has been passed to states and earmarked for use on roads and schools in counties where the forests are located. The Forest Service sets the amount to be distributed, and the states divvy up that amount among the programs within each county. In addition, in 1976, Congress established the **Knutson-Vandenburg Fund**, a trust fund that receives a portion of timber sale receipts to be used for reforestation and other enhancement activities in timber sale areas.

States have developed their own policies to ensure a public return on the commercial use of public land. In Idaho, for example, 2.5 million acres of public land, including 780,000 acres of commercial timberland, are held in trust by the Idaho Department of Lands. The state auctions leases to graze livestock and harvest timber, and is required under law to obtain fair market value for such transactions. In the past, revenue from land use went directly to a set of endowments, the largest of which serves public schools. Idaho recently revised its policy; revenue now goes to an earnings account and can be appropriated by the state legislature for various purposes, including education. However, schools continue to receive income from the investment of the endowment fund, which was valued at \$515 million in 2001.

The Land Grant College Act: An Educational Dividend from Public Lands

Under the 1862 Land Grant College Act, signed by President Lincoln, federal land was donated to the states, on the condition that proceeds from the sale of the land and its income be used to establish and support at least one college per state. These colleges broadened the scope of higher education, promoted technical education related to agriculture and industry, and opened higher education opportunities to women, African Americans and the poor. More than 100 schools have been founded or have directly benefited from the Act, including leading research universities such as MIT and the University of California system, historically black colleges such as Tuskegee University and Native American colleges such as the Navajo Community College in Arizona.

Spectrum Licenses: 'Public Interest Obligations' and Limited Auctions

In theory, the principle of ensuring a return to all citizens for the private use of public resources has governed the airwaves since the dawn of broadcasting. The Communications Act of 1934 recognized that the spectrum is a publicly owned natural resource. The Act required that broadcast stations, as a condition for receiving exclusive licenses for free, must in return serve as “public trustees” of the airwaves and fulfill certain “public interest obligations,” such as airing children’s educational programming and public affairs content. Critics contend, however, that broadcasters have failed to deliver an “in-kind dividend” in the way of public interest programming and should pay for occupying spectrum with an estimated market value exceeding \$300 billion.

The problem is that our outdated regulatory structure—based on rigid spectrum “zoning” and perpetual, zero-cost licensing—gives incumbent users no incentive to give up spectrum or to use it more efficiently. In 1993 Congress authorized the use of auctions to ensure the “competitive assignment” of *new* spectrum licenses. Although FCC auctions since 1994 have attracted more than \$36 billion in bids for new allocations, primarily from cell phone companies, broadcasters and other incumbent licensees continue to use the spectrum rent-free. This has resulted in both an urgent shortage of spectrum for emerging wireless technologies and the inefficient use of spectrum by incumbent licensees, since free use of the resource fails to internalize any opportunity cost.

Ideally a combination of auctions and annual rental fees for commercial use of the airwaves would both ensure a fair return to the public and be earmarked to capitalize a **Digital Opportunity Investment Trust** to invest in educational innovation, non-commercial media and other neglected public investments in America’s digital future. Trust income could be invested in innovative educational software and content, digitizing library and museum collections, training teachers to use advanced technologies and for the future of public broadcasting. Proponents compare this “electronic land grant” for financing digital era education investments to the historic 19th century grants of federal land that financed the creation of colleges across the nation and expanded educational opportunities for generations of Americans.

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