COMPETITION AND CONSUMER CHOICE IN THE MVPD MARKETPLACE, INCLUDING AN EXAMINATION OF PROPOSALS TO EXPAND CONSUMER CHOICE, SUCH AS A LA CARTE AND THEME-TIERED OFFERINGS

HEARING

BEFORE THE

SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET

OF THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

JULY 14, 2004

Serial No. 108–110

Printed for the use of the Committee on Energy and Commerce

Available via the World Wide Web: http://www.access.gpo.gov/congress/house

U.S. GOVERNMENT PRINTING OFFICE

95–453PDF WASHINGTON : 2004

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON ENERGY AND COMMERCE

JOE BARTON, Texas, *Chairman*

W.J. "BILLY" TAUZIN, Louisiana
RALPH M. HALL, Texas
MICHAEL BILIRAKIS, Florida
FRED UPTON, Michigan
CLIFF STEARNS, Florida
PAUL E. GILLMOR, Ohio
JAMES C. GREENWOOD, Pennsylvania
CHRISTOPHER COX, California
NATHAN DEAL, Georgia
RICHARD BURR, North Carolina
ED WHITFIELD, Kentucky
CHARLIE NORWOOD, Georgia
BARBARA CUBIN, Wyoming
JOHN SHIMKUS, Illinois
HEATHER WILSON, New Mexico
JOHN B. SHADEGG, Arizona
CHARLES W. "CHIP" PICKERING, Mississippi, *Vice Chairman*
VITO FOSSELLA, New York
STEVE BUYER, Indiana
GEORGE RADANOVICH, California
CHARLES F. BASS, New Hampshire
JOSEPH R. PITTS, Pennsylvania
MARY BONO, California
GREG WALDEN, Oregon
LEE TERRY, Nebraska
MIKE FERGUSON, New Jersey
MIKE ROGERS, Michigan
DARRELL E. ISSA, California
C.L. "BUTCH" OTTER, Idaho
JOHN SULLIVAN, Oklahoma

JOHN D. DINGELL, Michigan *Ranking Member*
HENRY A. WAXMAN, California
EDWARD J. MARKEY, Massachusetts
RICK BOUCHER, Virginia
EDOLPHUS TOWNS, New York
FRANK PALLONE, Jr., New Jersey
SHERROD BROWN, Ohio
BART GORDON, Tennessee
PETER DEUTSCH, Florida
BOBBY L. RUSH, Illinois
ANNA G. ESHOO, California
BART STUPAK, Michigan
ELIOT L. ENGEL, New York
ALBERT R. WYNN, Maryland
GENE GREEN, Texas
KAREN McCARTHY, Missouri
TED STRICKLAND, Ohio
DIANA DeGETTE, Colorado
LOIS CAPPS, California
MICHAEL F. DOYLE, Pennsylvania
CHRISTOPHER JOHN, Louisiana
TOM ALLEN, Maine
JIM DAVIS, Florida
JANICE D. SCHAKOWSKY, Illinois
HILDA L. SOLIS, California
CHARLES A. GONZALEZ, Texas

BUD ALBRIGHT, *Staff Director*
JAMES D. BARNETTE, *General Counsel*
REID P.F. STUNTZ, *Minority Staff Director and Chief Counsel*

SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET

FRED UPTON, Michigan, *Chairman*

MICHAEL BILIRAKIS, Florida
CLIFF STEARNS, Florida *Vice Chairman*
PAUL E. GILLMOR, Ohio
CHRISTOPHER COX, California
NATHAN DEAL, Georgia
ED WHITFIELD, Kentucky
BARBARA CUBIN, Wyoming
JOHN SHIMKUS, Illinois
HEATHER WILSON, New Mexico
CHARLES W. "CHIP" PICKERING, Mississippi
VITO FOSSELLA, New York
STEVE BUYER, Indiana
CHARLES F. BASS, New Hampshire
MARY BONO, California
GREG WALDEN, Oregon
LEE TERRY, Nebraska
JOE BARTON, Texas, (Ex Officio)

EDWARD J. MARKEY, Massachusetts *Ranking Member*
ALBERT R. WYNN, Maryland
KAREN McCARTHY, Missouri
MICHAEL F. DOYLE, Pennsylvania
JIM DAVIS, Florida
CHARLES A. GONZALEZ, Texas
RICK BOUCHER, Virginia
EDOLPHUS TOWNS, New York
BART GORDON, Tennessee
PETER DEUTSCH, Florida
BOBBY L. RUSH, Illinois
ANNA G. ESHOO, California
BART STUPAK, Michigan
ELIOT L. ENGEL, New York
JOHN D. DINGELL, Michigan, (Ex Officio)

CONTENTS

	Page
Testimony of:	
Baxter, Thomas G., President, Time Warner Cable	150
Fitzpatrick, Paul, COO, Crown Media Holding and Hallmark Channel	154
Hooks, Ben W., CEO, Buford Media Group	116
Kimmelman, Gene, Senior Director, Public Policy and Advocacy, Consumers Union	104
Larue, Janet M., Chief Counsel and Legal Studies Director, Concerned Women for America	160
Liggins, Alfred, Chairman, TV One	113
Plummer, Glenn, Chairman, National Religious Broadcasters	147
Pyne, Ben, Executive VP, Disney and ESPN Affiliates, Sales and Marketing	123
Material submitted for the record by:	
Grocery Manufacturers of America, prepared statement of	236

COMPETITION AND CONSUMER CHOICE IN THE MVPD MARKETPLACE, INCLUDING AN EXAMINATION OF PROPOSALS TO EXPAND CONSUMER CHOICE, SUCH AS A LA CARTE AND THEME-TIERED OFFERINGS

WEDNESDAY, JULY 14, 2004

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON TELECOMMUNICATIONS
AND THE INTERNET,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2123, Rayburn House Office Building, Hon. Fred Upton (chairman) presiding.

Members present: Representatives Upton, Bilirakis, Stearns, Gillmor, Cox, Deal, Whitfield, Cubin, Shimkus, Wilson, Pickering, Fossella, Buyer, Bass, Walden, Terry, Barton (ex officio), Markey, Wynn, Doyle, Gonzalez, Towns, Rush, Stupak, Engel, and Dingell (ex officio).

Also present: Representative Hall.

Staff present: Neil Fried, majority counsel; Howard Waltzman, majority counsel; Will Nordwind, policy coordinator and majority counsel; Will Carty, legislative clerk; Billy Harvard, legislative clerk; Peter Filon, minority counsel; and Gregg Rothschild, minority counsel.

Mr. UPTON. Good morning.

Mr. SHIMKUS. Good morning.

Mr. UPTON. Thank you. Where is my apple? Today, we are examining competition and consumer choice in the MVPD marketplace. The evidence suggests that the vast majority of Americans enjoy more choice, more programming and more services than any time in history.

Approximately 88 percent of all U.S. households get their TV through a multichannel video provider rather than over the air. While cable operators still hold the largest share of the MVPD market, DBS operators are gaining. Cable has approximately 75 percent of the MVPD market, and DBS has approximately 22 percent. But the DBS growth rate has exceeded the cable growth rate by double digits almost every year since the introduction of DBS more than a decade ago.

DirecTV is now the second largest MVPD behind Comcast, and EchoStar is the fourth largest behind Time Warner. Another DBS provider, Voom, entered the market in the fall of 2003 and already

has 10,000 subscribers. DBS operators have also entered into agreements with telephone companies and Internet service providers to bundle digital subscriber lines, DSL services, with their video offerings, which should increase the attractiveness of DBS for consumers interested in one-stop shopping.

I also want to acknowledge the contribution of small cable operators across the country and encourage continued good faith pursuit of marketplace arrangements through the National Cable Television Cooperative in order to ensure optimal opportunity for small cable companies to compete in the marketplace.

Since Congress eliminated most forums of cable regulation in 1996, the cable industry has invested $85 billion in its infrastructure, bringing hundreds of channels, interactive services, such as video-on-demand, broadband and voice services to the consumer. Moreover, the number of national cable networks has grown from 145 in 1996 to 339 in 2003—134 percent increase over the 7 years.

So in my view, the vast majority of Americans enjoy more choice, more programming and more services than any time in history. That is why I oppose an attempt by the government to impose an a la carte system on the MVPD marketplace. The current business model upon which video programming and distribution relies has evolved over many years and has brought enormous benefits to the consumer.

A little bit of history is also important to recall. At its inception in the Cable Act of 1992, retransmission consent contemplated a cable operator paying cash to the broadcast network in order to get consent to retransmit the broadcast network on the cable operator's system. However, many cable operators balked at paying the price set by the network, so the networks and the cable operators agreed to non-monetary compensation in the form of carriage of the network's sister cable channels for less or no cash.

That was an innovative, market-based arrangement, which has led us to the universe that we have today, which provides tremendous diversity in programming and an impressive number of channel offerings and multiple tiers. An a la carte system would set back the clock and put us in the same boat that we were in when cable operators were balking at the price set for retransmission consent for the broadcast network. Of course, the only way around repeating that history is that if along with a la carte the Federal Government were to get back into the business of rate regulation, a business that Congress wisely got out of back in 1996. And when we got out of that business, the industry reacted by investing the $85 billion in cable infrastructure upgrades, and consumer's got an enormous upgrade and offering choice, quality and, yes, service. Add to that the enormous competitive pressure brought by the DBS industry, and we have a marketplace that is working. In my view, the government must resist the urge to reregulate and retinker with the marketplace.

But let me address another important aspect of the a la carte issue which involves our ongoing debate regarding decency and indecency. As the author of the Broadcast Decency Act of 2004, I share the desire of so many parents across the country who do not want objectionable cable programming coming into their homes. And while the Constitution imposes significant limits on the gov-

ernment's efforts to regulate indecent cable content, that does not absolve the cable industry from its corporate responsibility to American families.

I would note that most of the major cable operators have embarked upon a massive public education campaign to inform parents of their right to have blocked for free programming which they find objectionable, and we will continue to monitor the effectiveness of those efforts.

Having said that, there are those in the indecency debate who believe that families should not have to pay in the first place for programming which they believe is objectionable and then have to have blocked for free. However, I believe that an a la carte would result in higher prices to the consumer and cause families to pay more to get the channels that they do want than if they just blocked for free the channels they did not want.

That belief is underscored in the GAO October 2003 cable industry report to Congress which concludes in pertinent part that, quote, "Adopting an a la carte approach would provide consumers with more individual choice but could require additional technology and impose additional cost on both cable operators and subscribers. A move to an a la carte approach could result in reduced advertising revenues and might result in higher per channel rates and less diversity in program choice. If cable subscribers were allowed to choose networks on an a la carte basis, the economics of the cable network industry could be altered, and if that were to occur, it is possible that cable rates could actually increase for some consumers."

To me we can draw a comparison between the business model of the MVPD marketplace and that of your average newspaper. Both rely on subscriptions and ad revenue to survive. Take today's USA Today. It costs 50 cents. It is going up to 75 cents. For me I want to see the sports, the front section and the business section. All the other sections automatically go into my recycling bin. I would imaging that I would pay a lot more on a daily basis for just the sections that I want if they had to be offered on a stand-alone basis. In essence, that is what an a la carte mandate would bring to the MVPD marketplace.

In conclusion, I want to compliment my colleague, Mr. Deal, for all of his attention to the issue. While we might disagree on the merits of the government requiring a la carte or theme-tiered offering, I know that he has the best interests of the consumers in mind, and I salute his determination to see that this issue has a fair hearing before this subcommittee today. And I yield to my friend and winner of the American League All Star Game last night against my National League guys, Mr. Markey.

Mr. MARKEY. Thank you, Mr. Chairman, very much, and thank you for holding this very important hearing. The backdrop of our discussions this morning is the reality that cable rates continue to rise each year. This has been the case since the 1992 Cable Act's consumer rate protection rules, which saved consumers over $3 billion from 1993 to 1995, were eliminated by Congress in the Telecommunications Act of 1996. These consumer rate protections were removed based upon the faulty premise that full-blown price competition would arise primarily from the telephone industry. It turns

out that the telephone industry never did get into the cable industry. It is a lot like Samuel Beckett's, "Waiting for Godot." We are still waiting for them to arrive. And yet the premise was that we could remove regulations because there would be real competition provided by the telephone industry in the cable sector, but they never deployed.

And so as a result, in 95 percent or so communities in America, there is only one land-based provider. And of course that means that while the USA Today is a paper that you might want to go through and pick out the different sections that you want, if you are not happy with them at all, you can always purchase the Washington Post, and you can go through that entire paper in terms of the what they are doing or the New York Times or the Washington Times or a whole bunch of other papers here in Washington DC for their sports section, for their news section, which is not in fact possible when it comes to cable providers. There is only one, and it is whatever they provide, which is the basis of the selections which you can make.

During the House floor debates on the 1996 Telecom Act, I offered an amendment which sought to prohibit the elimination of the consumer rate protections until that telephone company, that second newspaper, arrived in town. When it arrived in town providing competition for price and services, then there was deregulation of the marketplace, because competition would then be the protection for the consumer. The Markey consumer rate protection amendment failed, and in the absence of any widespread assault on cable markets from the telephone industry, cable rates have steadily and annually risen at a pace far in excess of the rate of inflation.

It is true that the cable industry in the last several years has also made significant investments in upgrading their facilities. It is true as well that cable has deployed broadband service and forced the phone industry and others to respond. It is also true that more and more cable operators are entering the voice marketplace and offering consumers savings on their phone bills. Yet it remains true that many consumers continue to complain about rising cable rates, lack of choice and the channels they don't want are forced upon them.

When questioned about why rates continue to go up, operators typically point to increases in programming costs. The cable programming marketplace is highly concentrated. The number of cable channels truly independent of cable operators or television networks is a paltry few. The biggest problem from a public policy standpoint is that there doesn't appear to be any near-term competition that will emerge to keep a check on consumer rates, and there doesn't appear to be any end in sight to annual programming rate increases either. That is not a good situation.

Proposals have recently emerged to explore the possibility of offering cable channels on an a la carte basis as a way of addressing the dysfunction and concentration in the cable programming marketplace. Mandating an a la carte option for all cable operators, for all cable consumers may not be a panacea. As opposed to an a la carte mandate, permitting certain cable operators to voluntarily ex-

periment and try a la carte offerings strikes me as the best way to find the right answer.

When a la carte was offered as an amendment in this subcommittee during consideration of the 1992 Cable Act, I opposed it. I did so because, in part, because of concerns that such a proposal would adversely affect the ability to have a great diversity of programming with the independent editorial voices of minority programmers, foreign language programmers and other less powerful voices in the media mix struggling to get into cable. We now have a 12-year track record to assess, and while there may have been some successes in getting diversity on the cable tier, overall such voices, when they exist, still tend to be owned and controlled by the same large programmers who seem to dominate the cable dial.

Today, some of the voices of diversity are calling for an experiment with an a la carte in order to foster diversity in the cable marketplace. I would like to ask, Mr. Chairman, unanimous consent to submit for the record a number of letters and submissions from entities addressing the diversity of voices question and the issue of a la carte. They are a letter from Brian Woolfolk; a letter from Tracy Jenkins Winchester, president of Colors, a multicultural television network founded by an African-American civil rights organization; comments from Steven Davis, chairman of the Black Education Network; and a letter from Jonathan Rintels, executive director of the Center for Creative Voices in the Media, a group of prominent independent producers. This is a complex issue, everyone will agree, to certain problems, and there appears to be no easy answer or short-term solution, but these issues do need greater attention, and I congratulate you on this excellent hearing today.

Mr. UPTON. Without objection, it will be made part of the record.

[The information referred to follows:]

MW MATTOX WOOLFOLK, LLC

A Government Relations Firm
513 Capitol Court NE Suite 100 Washington, DC 20002
Tel: +1.202.547.9505 Fax: +1.202.547.6797
www.mattoxwoolfolk.com

July 13, 2004

Congressman Fred Upton
Chairman
House Energy and Commerce Committee
Subcommittee on Telecommunications and the Internet

Congressman Edward Markey
Ranking Member
House Energy and Commerce Committee
Subcommittee on Telecommunications and the Internet

2125 Rayburn House Office Building
Washington, DC 20515

Dear Congressmen:

A properly designed a la carte system has the potential to empower both African American consumers and African American Programmers. The current system of begging an inherently conflicted cable or satellite system, in order to win favorable access to consumers continues to drive African American programmers closer and closer to extinction. Instead of going out of business, African American programmers will take their chances with a la carte, where they have a fighting chance.

These programmers are talented and proud. These business people will enthusiastically embrace an a la carte system that grants them the ability to sell their programming in an open media marketplace. Their common response to the question, "is your programming compelling enough for people to choose and pay for a la carte?" is an emphatic "YES". Of course, African American programmers would love to be part of the Old Boy's Cable system where you get $20 or $30 million dollars worth of subscriber fees every month for whether people want their programming or not. But, none of them are part of that system.

Obviously, Big Media fears African Americans being empowered to choose the programming they see. I can empathize with the position of Big Media. Why be held accountable to your customers if you don't have to be and a disproportionate amount of your customers are African Americans who are not likely to continue subsidizing programming they do not want?

A poll conducted from April 16 to April 19, 2004, asked the following question:

"Most cable companies do not allow their customers to customize their basic cable TV package by subscribing only to the channels they would like to watch. Instead, cable customers must subscribe to a pre-arranged basic package of programming. As a cable customer, would you prefer to choose for yourself the programming to be included in your basic cable subscription or is the cable company's prearranged basic package satisfactory?"

65% of African Americans responded that they prefer to choose for themselves.[1]

It is extremely ironic that Big Media is promoting a disingenuous anti-choice campaign on the backs of the minority programming community that it has long disrespected. Fortunately, the industry's own research and statements discredit many of the unfounded allegations the industry is making about a la carte programming.

I applaud the Subcommittee's efforts to shed light on problems with the current system. I also urge the Subcommittee to continue to ask the tough questions that need to be asked. A properly constructed a la carte system has the potential to provide African American programmers access to a marketplace from which they have long been denied. I look forward to working with you to develop a media system more accountable to both African American consumers and African American programmers.

African American Programming will thrive in the right a la carte system

African Americans consumers represent 20% of cable and satellite viewers despite being only 13% of the population. African Americans are disproportionate consumers of both premium and pay per view services. It has been reported that African Americans make up nearly 1 out of 3 HBO subscribers, contributing over $100 million per month in subscriber fees to HBO, which is owned by Time Warner. If African Americans can choose HBO and make HBO highly profitable, why should they be prevented from choosing an African American network.

In the September 15, 2003 issue of *Broadcasting and Cable*, BET Founder Bob Johnson is quoted as saying: "There should be a black pay cable channel right alongside HBO and Showtime. It would stimulate the production of black feature films; films could be

[1]From the cross-tabs of a poll conducted on behalf of the Concerned Women of America April 16 to April 19, 2004.

placed theatrically, then put on the pay service and then sold into syndication and later on cable."[2]

Access Denied

The following is a list of some African American programmers who have been denied access to distribution in the current system. This list is not meant to serve as an a la carte positioning on the part of these networks. They can speak for themselves. This list, however, is meant to express the many different resources and experiences available to the House Energy and Commerce Committee, as it continues to address these important issues.

Black Education Network
Steven Davis, Chairman
Harlem, New York and Marietta, GA
Phone: 917-903-5509

The Black Education Network ("BEN") tried for years to gain access to distribution from cable systems. BEN even took the unusual step of attempting to buy cable systems in order to be in a position to barter to get their programming on other systems. BEN attempted to buy cable systems spun off during the Comcast and AT&T merger. Despite outbidding other bidders by $100 million, BEN was not granted the cable systems. BEN has filed a discrimination and breach of contract suit against Comcast.

In June, BEN announced plans to begin broadcasting 2 hours of programming per week on Pax TV. BEN continues to pursue access to distribution. BEN has filed comments in support of digital multicast must carry as a means to access distribution.

Christian Television Network
Rev. Glenn Plummer
15565 Northland Dr., Suite 900W
Southfield, MI 48075
Phone: 248-559-4200
Website: www.ctnusa.org

CTN needed hundreds of African American Pastors to organize their congregations to pressure Comcast to have CTN distributed on the Detroit Comcast system. CTN is also on systems in New Orleans and Baton Rouge. However, the network has been unable to get beyond its current 3 million subscribers because they were not granted access to wider distribution.

---

[2] "Allison Romano, Johnson Raps Cable Industry for 'Lip Service' to Blacks, Broadcasting & Cable, September 15, 2003.

The Employment and Career Channel
Broderick Byers, Chief Executive Officer
253 W. 51st St., 3rd Floor
New York, NY 10019
Phone: 212-445-0754
Website: www.employ.com

The Employment and Career Channel has been unsuccessful at its attempts to gain wide carriage of its career based programming despite the obvious opportunities the economic downturn should have presented for this African American owned network. Broderick Byers participated in Congressman Scott's braintrust on minority media issues.

New Urban Entertainment Television (NUE-TV)
Silver Spring, Maryland (Filed for Bankruptcy in 2002)
Robert Townsend, Former Chief Operating Officer
Phone: 703-476-4427

This is an unfortunate example of what is wrong with the cable industry. In 2000, Producer Quincy Jones joined a team of highly experienced African American cable executives to found a cable network. The network eventually had to file for bankruptcy, because it was not able to access any significant distribution.

Urban Broadcasting Company
Peggy Dodson, Chairman and Chief Executive Officer
Harlem, New York
Phone: 212-283-7477
Website: www.e-ubc.com

Peggy Dodson founded the Urban Broadcasting Company ("UBC") based on a business model poised to exploit digital convergence. UBC plans to provide web based broadcasting technologies, merchandising, sports, entertainment and public policy programming. In 2003, UBC signed an exclusive rights deal to broadcast Florida A&M University games. UBC was forced to have this programming distributed by other networks during last year's football season. Ms. Dodd was part of a January 2002 Black Enterprise cover story on African American women in the digital economy. Unfortunately, UBC has not had much luck winning access to distribution despite its successful programming.

A la carte already exists

The concept of a la carte and tiered programming are not new. It is extremely disappointing to see opponents of a la carte and tiered programming warn against the doom of an a la carte or tiered programming system when Big Media already offers a wealth of services in a la carte or tiered. The only new issue is whether cable companies or consumers will control what is offered a la carte or in tiered programming.

Ironically, a recent article in the cable industry press reveals how the cable industry is using a la carte tiers of ethnic programming to attract ethnic subscribers to their cable systems.[3] Of course, these ethnic subscribers are forced to buy hundreds of channels they may not want before they can buy the ethnic programming they desire. Comcast claims that its Latino programming tier has enabled the company to double its Hispanic customers over the last 14 months. Time Warner cable has offered a Latino tier since January 2003. Adelphia sells a 12-channel Spanish tier for $5.95 per month and a package offering six different networks for $4 per month. For $10 to $20 per month, some cable customers can access Asian programming. This programming has been so successful that cable and satellite companies have used these offerings to compete for new customers.

Minority programming arguments against a la carte are based on resistance to submit to a business model in which consumers elect to receive and purchase content. However, the aforementioned examples provide solid real market examples of how ethnic programming thrives under models in which consumers must elect to receive programming.

Discriminatory distribution is the real threat to African American programmers

No African American programmer has successfully launched a cable network in over 20 years! Black Entertainment Network (BET) Founder Bob Johnson launched BET over 20 years ago with the backing of Liberty Media, then the largest cable company in the country, and significant political and community pressure. Unfortunately, Congress eliminated one of BET's most effective tools in applying political pressure to obtain distribution by enacting the Cable Act of 1992 that eliminated the authority of local governments to address carriage issues in franchise renewal agreements.

The cable situation for African American programmers reminds one of the civil rights era when broadcasters refused to allow African Americans access to programming of their choice.

[3] Simon Applebaum , Mano a Mano! Cable Takes the Ethnic Fight to the Skies, July 5-18, 2004.

Congressman Robert C. "Bobby" Scott hosted a Congressional Black Caucus event on minority media ownership during the 2003 Congressional Black Caucus Annual Legislative Weekend. The participants included representatives from the following African American owned networks: New Urban Entertainment, Urban Broadcasting Network, CoLours Television, Employment Channel, Russell Simmon's Fabulous Television Network, and Black Education Network. The eerie similarities of the panelists' stories continue to haunt me. They all tried for years to win carriage on cable and satellite systems and were given the run around. They were told that no one would want to watch their programs, despite the industry statistics that are in stark contrast to this baseless assertion. They were told that there was not enough room on the cable systems, only to see networks owned by Big Media launched. They all played the cat and mouse game of being denied financing because they did not have distribution and being denied distribution because they did not have financing.

The inability for African American programmers to set their own subscriber fees is also an issue. According to BET Founder Bob Johnson, "BET probably has the lowest subscriber fee of any channel that has been around 20 years. Why, when BET is as old as MTV, ESPN, CNN, and USA Network? I think it is failure on the part of the cable industry to reciprocate to black subs that spend more dollars per capita on cable than white subscribers. We get 15-16 a sub. We should be getting 45-50 per sub. It would have been a 2-per-year increase over 20 years. If "Diversity Week" means anything, it should be to bring to the attention of the industry that there is a deficit between black subscribers and money going in to produce compelling programming of interest to African-American viewers and delivering cable channels targeted to African-Americans. I think the issue of original programming is clearly tied to distribution and sub revenue."[4]

If BET, which is universally accepted as the best positioned African American network, can not produce amply compelling programming due to its inability to get cable companies to pay it a fair price, every other venture or attempted adventure is fighting a losing battle. The right a la carte system would address these issues by giving more price control to programmers. BET and other African American programmers should be free to set their own rates.

Advertising models are changing

Opponents of a la carte assert that without mass audiences, African American programmers will be unable to attract advertisers. How ironic. The cover story of a recent issue of *Business Week* was about the fragmentation of markets and the advertising industry's more sophisticated focus on niche markets.[5] The article cited African American media companies among the beneficiaries of this market fragmentation. This

[4] Allison Romano , Johnson Raps Cable Industry for 'Lip Service' to Blacks, Broadcasting & Cable, September 15, 2004.

[5] Anthony Bianco, The Vanishing Mass Market: New technology. Product proliferation. Fragmented media. Get ready: It's a whole new world, BusinessWeek, July 12, 2004.

is yet another reason why African American programmers are well positioned to benefit from niche audiences in an a la carte system.

It is also important to note that mass advertising revenues are generally not available to cable networks until they pass the 25 to 30 million subscriber mark. Only Viacom owned BET has met this threshold. And even after exceeding this threshold, BET Founder Bob Johnson continues to complain of discriminatory treatment by advertisers. Therefore, the argument that in an a la carte system, African American programmers will miss out on mass advertising markets is completely without merit. This market does not exist for African American programmers who are denied mass distribution. Trends reflect that African American programmers would have a stronger case to make with niche market programming in an a la carte system.

Conclusion

Technology and consumer choice require that Congress address issues of consumer choice and vertical integration. African American consumers can ill afford to continue suffering at the hands of a monopoly system that denies them access to their content of choice. African American programmers have compelling content, but are denied the opportunity to distribute this content to customers that want it. A la carte is one tool that, if applied responsibly, could solve some of the disparities in African American programming and media consumption. I also encourage Congress to consider how aggressive application of anti-trust law, prohibitions against vertical integration, and digital multicasting must carry could also address some of these problems.

Sincerely,

Brian Woolfolk

Brian Woolfolk
Partner
Mattox Woolfolk, LLC

July 13, 2004

Congressman Fred Upton
Chairman
House Energy and Commerce Committee
Subcommittee on Telecommunications

Congressman Edward Markey
Ranking Member
House Energy and Commerce Committee
Subcommittee on Telecommunications

2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressmen:

CoLours TV is a 24 hours, seven days a week, multicultural television network that was founded by African American civil rights organizations in 1999. We are currently distributed nationwide in 9 million homes through EchoStar's Dish Network. As President of this unique network, I am compelled to share my insight on the debate to include the "a La carte" proposal as part of the reauthorization of the Satellite Home Viewer Improvement Act (SHVIA).

I have studied this "a la carte" issue from three perspectives: operator, programmer, and consumer. I am an African American woman who has worked in the cable industry for 19 years since graduating from Georgetown Law in 1985. I worked for 11 years in management at the corporate headquarters of a top- ten cable operator, Jones Intercable, which was eventually acquired by Comcast. I have been an executive for two programming companies: Fox Family Channel (which is now ABC Family) and CoLours TV. I have also been a cable tv consumer since 1985. Prior to entering the cable industry, I spent eight years working on capitol hill with Members of Congress.

The concept of "a la carte" is very appealing and seductive. However, when you look at the underlying structure of how cable programming is distributed in the United States, the concept is not sound or practical for all three parties involved. The argument that a la carte will provide consumers more choice at a lower price does not have any merit because the technical and operational factors for delivering services in this manner will actually increase the financial output for operators thus increasing the price for consumers.

At CoLours TV, we cannot see the intrinsic value of being offered as an "a la carte" programming service. Our operational expenses would increase tri-fold due to increase marketing and affiliate support, and our advertising revenues would decrease due to lower viewership. However, this would only be true if we were delivered in the 80 million homes that received cable and satellite programming.

The real issue is not whether "a la carte" will diminish the opportunity for diversity of multicultural programming but the fact that ethnically diverse programming owned by people of color is not being carried by major cable operators. The limited amount of ethnically diverse programming that is carried by cable operators is either substantially owned by the cable operator or one of the large broadcast/cable programming conglomerations such as Viacom.

The reality is that it is very difficult, if not impossible, for independent, ethnically owned programming networks to get distribution on the 9 major companies who own and control cable and satellite distribution. CoLours TV is carried on satellite as a result of Congress' efforts in 1999 to include public access on satellite companies. Since that time, we have not been able to get significant distribution with other satellite or cable television carriers. The quality of our programming is the same as when any of the other networks such as Comedy Central or CNBC first launched their programming. The difference is that they have leverage with being owned by a broadcast and cable company.

The "a la carte" issue has spun-off a critical issue concerning multicultural tv audiences being able to see networks/channels that reflect their interests. An "a la carte" model may not be the right economic model to resolve this problem. However, Congress should continue on this path to determining an economic model that will address this issue of giving ethnically diverse consumers the opportunity to see programs that meet their expectations.

An economic model that Congress may want to explore is the "digital tier option". Many Latino programming services and Asian services are being launched on digital tiers with some success. Why there are few or no attempts to launch Native American tiers or African American tiers is puzzling. There are numerous African American based programming channels that could be bundled on a tier but no operator is attempting to meet the cultural demands of the African American audience. The population of African Americans is comparable in size to the Latino population in this country. Furthermore, these diverse tiers could address other underrepresented segments of our society, such as the religious community or the gay community.

I urge Congress to continue to explore the underlying issue of consumer choice and consumer access. I hope through your efforts, the multicultural tv audience that I represent will have access and the opportunity to choose my network.

Sincerely,

Tracy Jenkins Winchester
President

Stephen E. Davis
Chairman

275 Lenox Avenue, Box 5549, New York, NY 10027
Tel: (718) 783-0460 Fax: (718) 228-2837
Email: benassetgroup@aol.com

Board of Directors

Stephen E. Davis
Chairman

Michele Clark Jenkins
Vice Chair

Carlton A. Brown
Treasurer (Acting)

Regina A. Illery
Secretary

Linda D. Bernard
Robert E. Cambridge
Alonzo E. Huffman
Rich E. Lassiter
Donna M. Lewington
Dr. James E. Lyons, Sr.
Dr. Rudolph W. Murray
Hon. Chris Owens
Wesley D. Rubiff

SUBSIDIARIES

BEN Investment Group, Inc.

BIG Investment, Inc.

Black Education Network, Inc.
1165 Hillpond Road
Suite 13
Marietta, GA 30062

COMMENTS OF THE BLACK EDUCATION NETWORK, INC.

HOUSE TELECOMMUNICATIONS SUBCOMMITTEE HEARING ON A LA CARTE PROGRAMMING

July 14, 2004

The Black Education Network, Inc. (BEN) was founded in 1996 by Stephen Davis and Regina Illery with a vision toward creating a television network that presents entertaining programming that is intelligent and informative. BEN is proud to present authentic and diverse images and viewpoints from all peoples of the African Diaspora. BEN's objective has always been to build long-lasting partnerships and alliances with as many Black institutions as possible. The purpose has been to create a base of programming and production resources as well as brand loyalty through a community vested in the network. To that end, BEN has been and desires to continue to build enduring relationships with Historically Black Colleges and Universities, religious organizations, Black medical professionals and organizations, the Black independent film community, the Black policymaking community, the Black press, the Black fraternities and sororities, and the not-for-profit organizations that serve the Black community, including civic, charitable, and professional organizations.

BEN has signed an agreement with Paxson Communications Corporation to broadcast two hours of weekly programming on PAX-TV. The BEN branded programming on PAX-TV is set to launch on September 30, 2004. As part of its PAX programming, BEN will debut a series entitled "Independent Perspectives" which will spotlight the brilliant and compelling independent short films and documentaries from Black independent filmmakers, never before seen in a national forum. In addition, BEN will borrow on the voyeuristic attractions of reality tv with an innovative health show that focuses on the medical case studies of the famous and not so famous. BEN hopes to expand its programming to a 24 hour format within the next twelve (12) months.

Unfortunately the Black Education Network has had an incredibly difficult time trying to access an African American customer base that has made it clear that they want to be able to access our programming. Our network has endured an unbearable distribution system at the expense of the millions of African American families that would be enriched by our content.

- Page 2

We have formed an alliance with Dr. Randall Maxey, President of the National Medical Association, to ensure that we are able to present high quality health programming directed towards underserved minorities. Of course, without distribution, we have been denied the opportunity to deliver this vital programming to our customers.

We urge Congress to ensure that the next generation of telecommunications laws makes access to distribution and enhanced consumer choice central principles. We are confident that if African American consumers had the choice, they would choose our programming. We also encourage Congress to support digital multicast must carry. Digital multicast must carry will enable our company to pursue distribution channels currently denied us by cable systems.

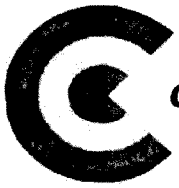
Sincerely,

Stephen Davis

Chairman,

Black Education Network

July 13, 2004



Center for Creative Voices in Media

JONATHAN RINTELS
Executive Director

ADVISORY BOARD

TONY ADAMS
HINTON BATTLE
WARREN BEATTY
PEGGY CHARREN
VIN DI BONA
BLAKE EDWARDS
DIANE ENGLISH
JONATHAN ESTRIN
TOM FONTANA
ROGER GIMBEL
MARSHALL GOLDBERG
CRAIG HAFFNER
LEONARD HILL
GREGORY ALLEN HOWARD
GERALD ISENBERG
MARTIN KAPLAN
RICHARD MASUR
MARY MCCORMACK
DOROTHEA PETRIE
FRANK PIERSON
SARAH PILLSBURY
MARIAN REES
DAVID W. RINTELS
VICTORIA RISKIN
JAMES SADWITH
SISSY SPACEK
SANDER VANOCUR
PAUL WAGNER

July 13, 2004

Dear Member of Congress:

In preparation for the July 14 hearing of the House Subcommittee on Telecommunications and the Internet concerning whether cable and satellite operators should offer their customers an *a la carte* option for purchasing cable networks, please find attached Comments from the Center for Creative Voices in Media.

The Center for Creative Voices in Media (CCVM) is a nonpartisan, nonprofit 501(c)(3) dedicated to preserving in America's media the original, independent, and diverse creative voices that enrich our nation's culture and safeguard its democracy. Many Oscar, Emmy, Peabody, Tony, and other prominent creative award winners are members of CCVM's Board of Advisors.

A poll of CCVM's advisors found those who responded were unanimously in favor of allowing consumers to have an *a la carte* option for two reasons important to our nation's democracy and culture:

- An *a la carte* option will improve the diversity of viewpoints and voices on television – a fundamental goal of our nation's telecommunications policy.
- An *a la carte* option is a far preferable and First Amendment-friendly structural solution to the problem of "indecency" on cable than is government regulation of programming content.

We hope you find these comments useful as you consider this important subject. If you have any questions or wish to discuss this further, please don't hesitate to contact me.

Sincerely,

Jonathan Rintels
Executive Director

1220 L Street, N.W., Suite 100-494 • Washington, D.C. 20005 • (202) 448-1517 tel
www.creativevoices.us • (202) 318-9183 fax • jonr@creativevoices.us

COMMENTS OF THE CENTER FOR CREATIVE VOICES IN MEDIA

to the

House Subcommittee on Telecommunications and the Internet

Regarding *A La Carte* Programming and Pricing Options for Programming Distribution on Cable Television And Direct Broadcast Satellite Systems

Jonathan Rintels
President and Executive Director
CENTER FOR CREATIVE VOICES IN MEDIA
1220 L Street, N.W., Suite 100-494
Washington, DC 20005
(202) 448-1517
www.creativevoices.us
jonr@creativevoices.us

July 13, 2004

I. SUMMARY

Voluntary *a la carte* pricing options in cable and satellite programming distribution would promote the nation's fundamental media policy goal of – and the public's interest in – viewpoint diversity. Today, viewpoint diversity in television is on life support. As the Federal Communications Commission concluded in its 2002 Biennial Order, concentrated media ownership harms viewpoint diversity. These grim statistics document today's excessively concentrated ownership:

- Five giant media conglomerates (Viacom/CBS/UPN/MTV/etc., GE/NBC/MSNBC/CNBC/Bravo/etc., Disney/ABC/ESPN/etc., News Corp./FOX/FX/Fox News/etc., and Time Warner/WB/CNN/TNT/etc.) control approximately a 75% share of broadcast and cable prime-time viewing, roughly the same share of TV households in prime time as the three broadcast networks controlled 40 years ago, pre-cable.

- Of the 91 major cable television networks each available in more than 16 million homes, more than 80 percent are owned or co-owned by just six media conglomerates – the same five giant media conglomerates plus Liberty Media.

- The same five giant media conglomerates now also produce the vast majority of programming for television. Of the 40 new series airing on the four major broadcast networks in the 2002 season, 77.5 percent were owned in whole or part by the same four networks, up from 56.3 percent the prior season – an increase of over 37 percent in just one year -- and up from just 12.5 percent in 1990.

Cable and satellite programming packages are inherently un-diverse, larded with networks unwanted by consumers that are in the package only because they are affiliated with broadcast media conglomerates or cable operators. These "bundles" are shaped not by consumer demand, but by the conglomerates' and operators' demands, thus distorting the marketplace. This distortion makes television's "marketplace of ideas" and viewpoints less diverse. Voluntary *a la carte* cable empowers consumers to create their own menu of diverse network options, without regard to network ownership. We believe this can only increase viewpoint diversity for the public.

In addition, as media artists passionately devoted to Constitutionally-protected free expression and fearful of government regulation of programming content, we see an added important benefit to *a la carte* cable and satellite. *A la carte* would allow consumers to not pay for and receive in their homes channels they deem "indecent," as they must presently when those offending cable networks are bundled on a take it or leave it basis. This is a far better structural solution to indecency concerns than government regulation of program content, which chills Constitutionally-protected free, original, creative expression – the very speech we all should encourage.

II. INTRODUCTION

The Center for Creative Voices in Media (CCVM) is a nonpartisan, nonprofit 501(c)(3) dedicated to preserving in America's media the original, independent, and diverse creative voices that enrich our nation's culture and safeguard its democracy. Many Oscar, Emmy, Peabody, Tony, and other prominent creative award winners are members of CCVM's Board of Advisors. Under its former name of "Center for the Creative Community," CCVM actively participated in the 2002 FCC Biennial media ownership proceeding, filing Comments, Comments on the Initial Regulatory Flexibility Analysis, Reply Comments, and *ex parte* filings.[1] It is also participating in the FCC's "Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television."[2] CCVM is also a founding member of the "Public Interest, Public Airwaves" Coalition which advocates that the FCC promulgate public interest obligations for broadcasters in the coming age of digital television, including an obligation to broadcast independently produced programming to promote the nation's oft-

[1] Comments of Center for the Creative Community, *In the Matter of 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Cross Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets,* MB Docket No. 02-277, January 2, 2003 (CCVM 2002 Biennial Comments); Comments on the Initial Regulatory Flexibility Analysis, MB Docket No. 02-277, January 2, 2003; Reply Comments of Center for the Creative Community, MB Docket No. 02-277, February 3, 2003; Testimony of Jonathan Rintels, Executive Director of CCVM at FCC En Banc Hearing, Richmond, VA, February 27, 2003; *Ex Parte* submissions, MB Docket No. 02-277, filed April 14, 2003 (2), April 18, 2003, May 14, 2003.

[2] Comments of Center for the Creative Community, *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television,* MB Docket No. 03-15, December 12, 2003.

stated goal of – and the public interest in – a wide diversity of viewpoints and voices in television.[3]

III. DIVERSITY OF VIEWPOINTS IN TELEVISION, A FUNDAMENTAL GOAL OF OUR NATION'S MEDIA POLICY, IS WOEFULLY INADEQUATE

We agree with the FCC that viewpoint diversity should remain a core national policy objective in regulating media ownership.[4] We agree with the Commission that a "diverse and robust marketplace of ideas is the foundation of our democracy" and that "it has been a basic tenet of national communications policy that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public."[5]

We support the Commission's conclusion that "outlet ownership can be presumed to affect the viewpoints expressed on that outlet."[6] This is a sound and fundamental principle upon which to regulate television, and, more broadly, media ownership, well-supported by precedent and the record. After all, few would suggest that Chevrolet and Cadillac are separate automotive company "viewpoints." Rather, the "viewpoint" is that of their conglomerate owner, General Motors. The same principle holds true in television

---

[3] *Report and Order, In the Matter of 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Cross Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets,* MB Docket No. 02-277, June 2, 2003, para. 18.

[4] Order, para. 18.

[5] Order, para. 19.

[6] Order, para. 27.

with regard to conglomerates that own multiple distribution outlets positioned to appeal to different segments of the viewing audience, just as Chevrolet and Cadillac are positioned by GM to appeal to different segments of the car market. The "viewpoint" is that of the owner – the conglomerate – and not of its subsidiary distribution outlet.

Unfortunately, however, while the Commission articulated this sound principle in its Biennial Report and Order, it failed to apply it in its analysis. Instead, throughout the Order, the Commission merely counts the number of distribution outlets and concludes viewpoint diversity is sufficient, without any further inquiry into either the ownership of those outlets or the share of the audience those owners control. Thus, applying the Commission's own principles, its conclusion that viewpoint diversity is sufficient in television is fundamentally flawed.[7]

As demonstrated by the millions of comments the Commission received – and the strong public and Congressional interest in – the 2002 Biennial, the public is extremely concerned about the absence of viewpoint diversity in television. This concern is justified by the grim statistics documenting extreme concentration of ownership in television distribution as well as in the production of primetime television programming. For example, an independent research study titled "Returning Oligopoly of Media Threatens Cable's Power" by respected Wall Street analyst Tom Wolzien finds, "Together, the five companies (Viacom/CBS/UPN/MTV/etc., Disney/ABC/ESPN/etc.,

[7] Petition for Reconsideration of the Center for the Creative Community and the Association of Independent Video and Filmmakers, *In the Matter of 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Cross Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets,* MB Docket No. 02-277, September 4, 2003 (CCC Petition for Reconsideration).

GE/NBC/MSNBC/CNBC/Bravo/etc., News Corp./FOX/FX/Fox News/etc., and Time Warner/WB/CNN/TNT/TBS/etc.) controlled about a 75% share of prime-time viewing, not including their nonconsolidated partnerships like A&E, Court TV, and Comedy Central... roughly the same percentage of TV households in prime time as the three nets did 40 years ago. The programming oligopoly appears to be in a process of rebirth."[8]

The so-called "500 Channel Universe" provides no relief from this concentration and lack of diversity of viewpoints and voices. Evidence in the FCC's Biennial record shows that of the 91 major cable television networks each available in more than 16 million homes, fully 80 percent (73 networks) are outlets owned or co-owned by the same five giant media conglomerates that control a 75% share of the national audience, plus Liberty Media.[9] The recent takeover of Vivendi/Universal and its USA, Sci-Fi, and other cable networks by GE/NBC makes this concentration even worse. The proposed Comcast takeover of Disney, although now withdrawn, potentially would have made this absence of diverse voices in cable networks and distribution still worse, potentially turning the "500 channels" of cable into one voice – that of Comcast/Disney.[10]

---

[8] Tom Wolzien and Mark McKenzie, *"Returning Oligopoly of Media Threatens Cable's Power,"* Bernstein Research, Sanford C. Bernstein & Co., February 7, 2003, p. 3. This study was completed prior to the purchase by GE/NBC of Vivendi Universal Entertainment, which includes the USA and Sci-Fi Networks, as well as Universal's television production business. This consolidation raises the percentages of concentration of ownership and audience share significantly.

[9] Comments Of The Writers Guild Of America Regarding Harmful Vertical And Horizontal Integration In The Television Industry, Relating To: CS Docket 98-82: *Implementation of Section 11 of the Cable Television Consumer Protection and Competition Act of 1992*, Appendix A, pp. 17-21, January 4, 2002, cited in CCC Comments, pp. 10-11. Now that GE/NBC has taken over Vivendi/Universal, owner of USA and Sci-Fi Networks, the concentration of ownership of cable networks is now worse than these numbers indicate.

[10] "Independent Producers Wary of Proposed Deal," *The New York Times*, February 14, 2004.

Until the last decade, the broadcast of primetime network programming produced by independent production companies not affiliated with those same broadcast networks ensured that the American public received a wide diversity of viewpoints and voices on television, despite the concentration of distribution in a few networks' hands. However, the elimination of structural rules that prevented networks from leveraging their chokehold power of access to the nation's publicly-owned airwaves to take over program production have made the production of programming today just as concentrated as the distribution of programming. The same giant media conglomerates that own the lion's share of the broadcast and cable networks and control the lion's share of the American broadcast and cable television audience also now produce the lion's share of original television programming. For example, of the 40 new series airing on the four major broadcast networks in the 2002 season, 77.5 percent were owned in whole or part by the same four networks, up from 56.3 percent the prior season – an increase of over 37 percent in just one year -- and up from just 12.5 percent in 1990.[11]

As CCVM noted to the FCC in its Petition for Reconsideration, using the principles the Commission laid down in the 2002 Biennial, the inescapable conclusion is that television today is excessively concentrated and viewpoint diversity is inadequate.[12]

---

[11] William T. Bielby and Denise D. Bielby, *"Controlling Primetime: Organizational Concentration And Network Television Programming Strategies," Journal of Broadcasting and Electronic Media*, Vol. 47, No. 4, pp. 573-596. GE/NBC's takeover of Vivendi/Universal, formerly one of the top non-network suppliers of programming to primetime television, including *Law and Order* and its several spin-offs, make these numbers even worse today.

[12] CCC Petition for Reconsideration, pp. 5-8.

IV. AN *A LA CARTE* OPTION FOR CONSUMERS WILL PROMOTE VIEWPOINT DIVERSITY IN TELEVISION

We believe that if cable and satellite operators provide consumers with the voluntary option of ordering channels *a la carte*, the extreme concentration in television will be significantly ameliorated and the nation's goal of viewpoint diversity will be substantially advanced.[13]

One of the primary tools that media conglomerates and cable operators use to maintain and strengthen their gatekeeper status is the mandatory requirement that consumers select from among only a few tiers, bundles, or packages of networks offered by the cable or satellite operator. Thus, a consumer who wants only BET, TV One, and Oxygen must either pay for a package containing a hundred or more channels or forego subscribing to those channels. A consumer who wishes to view networks not affiliated with either the cable operator or a media conglomerate with the muscle to force the cable operator to put its network in the bundle may not be able to get them at all, because the cable operator has little incentive to carry that non-affiliated channel in any package.

The media conglomerates' ability to leverage "must carry" of their broadcast networks to force cable operators to take their added – and unwanted -- cable networks or to place them in a preferred tier or channel position is well known. As Time Warner Cable complained to the FCC in its 2000 dispute with Disney/ABC:

> *In addition, Disney and ABC have mounted an extensive public relations campaign against Time Warner to elicit more money and better channel positions for various Disney channels: ESPN, ESPN2, Lifetime, The Disney*

[13] CCC 2002 Biennial Comments, pp. 27-31.

> *Channel, Toon Disney, and SoapNet, all linked to Time Warner's continued carriage of the ABC O&O Stations.*[14]

Satellite operators also are strong-armed into taking unwanted cable networks from the broadcast network media conglomerates and add them to their packages. In the Echostar dispute with Viacom earlier this year, Echostar wrote:

> *Among Viacom's strong-arm tactics is the demand that DISH Network carry Viacom-owned channels of little or no measurable appeal to viewers in exchange for the rights to carry the 16 owned-and-operated CBS stations. Viacom also threatened to withhold the Super Bowl from DISH Network customers until a federal judge intervened.*[15]

Thus, as the cable and satellite operators themselves admit, the cable networks these operators carry in their packages are not necessarily the networks the public demands, but the ones the media conglomerates demand they carry – or else. Clearly, not only does this distort the market by forcing cable operators to favor conglomerates' networks, it harms viewpoint diversity. While there may be more networks created, inevitably they are affiliated with the conglomerates who want to control as much "shelf space" as possible on the cable system. No new voices are created.[16]

The pernicious effect of this is that cable networks not affiliated with a conglomerate have a powerful incentive to sell all or part of themselves to either broadcast media conglomerates or cable operators such as Comcast to ensure they get

---

[14] "Opposition to Emergency Petition For Declaratory Ruling," Filed by Time Warner Cable, *In the Matter of TIME WARNER CABLE...*, May 2, 2000.

[15] *"Viacom's Demands Create Impasse in Negotiations for Rights to Carry Channels: DISH Network to Lose CBS in 16 Markets,"* News Release of EchoStar Communications Corp., March 9, 2004

[16] As the Commission noted in its 2003 Biennial Report and Order, "outlet ownership can be presumed to affect the viewpoints expressed on that outlet." *Report and Order*, par. 27.

cable carriage. GE/NBC's recent purchases of Bravo, USA, and Sci-Fi networks mean these networks not formerly affiliated with a broadcast network will have far more leverage to either gain cable and satellite carriage or move up to a preferred bundle or channel position. However, their independent voices and diverse viewpoints are gone. In the case of Bravo, NBC replaced much of Bravo's original programming with repeats of shows broadcast earlier on the NBC broadcast network – usually shows which failed on the NBC network -- thus disenfranchising Bravo's former audience and reducing viewpoint diversity.[17] As Leo Hindery, former head of AT&T Broadband says, "New channels owned by independents have little or no chance of success. It was inconceivable to me that that would happen. And I'm not a Pollyanna. I really believed in consolidation."[18]

Thus, even some seemingly "independent" networks that target underserved audiences such as minorities or women are forced to seek investment from media conglomerates to gain carriage on cable systems. BET is now owned by Viacom. When three different sets of African-American entrepreneurs tried to start competing channels to serve the African American audience, only TV One was able to get widespread cable distribution, gaining carriage on Comcast systems after it agreed to sell a substantial portion of itself to Comcast. As for the other two competing channels, New Urban Entertainment is out of business, and Major Entertainment TV airs on only a few small local cable systems.[19]

---

[17] "Master of the NBC Universal," *Broadcasting & Cable*, September 8, 2003.
[18] "Media Moguls have second thoughts," *USA Today*, June 2, 2003.
[19] "Broadcast Partners to Provide New Black Cable Network," *Black Press International,"* January 26, 2003.

Similarly, Oxygen, a cable network targeting women, attempted to secure carriage on major cable systems without great success. Now, with Time Warner and Paul Allen, both cable operator heavyweights, onboard as significant investors, Oxygen is getting more carriage. As Jeff Pryor, who represents the Anime Network, notes, "No money, no carriage [on cable and satellite providers]. No carriage, no money. It's a chicken and egg situation."[20]

As creative artists, we have the utmost respect for Oxygen, TV One, BET, and all other networks that program for underserved audiences. We applaud their achievement in gaining the limited carriage they have. We don't criticize the fact that they've had to sacrifice their independence in order to secure that carriage – that's just the price of doing business in order to gain access to an audience where cable operators are gatekeepers over access to their systems. We simply point out that in an *a la carte* system, there is far less need or incentive for an independent network to give up a significant portion of its ownership to a cable operator or media conglomerate in exchange for securing cable carriage or favorable position in a cable network bundle. *A la carte* empowers the consumer to decide what networks get carriage by taking away the mandatory bundle.

We believe *a la carte* offers an excellent way to get around the extreme gatekeeper power of the cable operators and the lack of diversity of viewpoints when media conglomerates force operators to take their affiliated channels at the expense of non-affiliated channels. Attached as Appendix A is a description of how Videotron of Montreal offers its customers the option of network packages or *a la carte* selection. Under this system, media conglomerate channels such as Viacom's MTV are on an equal

[20] "America, the cable channel," *Orlando Weekly*, July 17, 2003.

footing with "BET" and "W Network," which describes itself as "a compelling and contemporary television network for Canadian women." Consumers who want those two networks that target underserved audiences do not have to pay for – and subsidize -- a premium package larded with channels that they are indifferent to or positively don't want.

Under the Videotron system, the consumer is empowered to choose a wide diversity of channels from a multiplicity of sources, if he so chooses. We believe this market-based approach is a far superior generator of viewpoint diversity in television than are the mandatory packages and bundles crafted behind closed doors by network and cable oligopolists. The latter have shown little interest in promoting viewpoint diversity. Indeed, as the corporate entities most responsible for the extreme vertical and horizontal integration that has so decimated viewpoint diversity in television, it's hard to take their newfound concerns about viewpoint diversity in a voluntary *a la carte* system seriously.

On the contrary, we believe that under an *a la carte* system, many new cable channels targeting underserved audiences and minority communities will start up. One of the biggest barriers to entry – getting into the gatekeeper cable operators' packages – will be ameliorated. The "chicken and egg" problem of "no carriage, no money," described above, will ease considerably, freeing up financing of new network ventures. With so few cable networks today targeting underserved and minority audiences in proportion to the numbers of underserved and minorities who watch television, today's status quo is unacceptable and indefensible. We believe many of new cable network ventures will target those underserved markets.

In addition, we also believe that *a la carte* will remove many consumers' "barrier to purchase" smaller unaffiliated already established networks, such as TV One and Oxygen, as they won't be forced to pay for a larded package full of unwanted channels to get them. Instead, they will be able to pick and choose the networks they want at a reasonable cost, as the Videotron example demonstrates.

While we understand that some incumbent cable networks now targeting underserved and minority audiences do not presently support *a la carte*, we believe the threats they foresee to their business models are overstated. Indeed, we believe *a la carte* could ultimately be good for their business, delivering to them and their advertisers a measurable audience that actively wants their programming. Indeed, we believe the threat to established networks such as TV One, BET, and Oxygen under *a la carte* will come from the new networks that spring up to compete with these incumbents in serving the same audiences. That competition is healthy and in the public interest.

V. VOLUNTARY *A LA CARTE* IS A BETTER STRUCTURAL SOLUTION TO "INDECENCY" IN TELEVISION THAN GOVERNMENT REGULATION OF PROGRAM CONTENT

As media artists passionately devoted to Constitutionally-protected free expression and fearful of government regulation of programming content, we see an additional important benefit to *a la carte* cable and satellite. It provides a smart, structural remedy to the problem of "indecency" on cable and satellite television. *A la carte* will allow consumers to not pay for and receive in their homes channels they deem "indecent," as they must presently when those offending cable networks are bundled on a

take it or leave it basis with the networks they do want. This is a far better structural solution to the indecency problem than involving the government in regulating content. Government regulation of content chills Constitutionally-protected free, original, creative expression – the very speech government should encourage.[21]

Requiring consumers to take cable networks they don't want creates a significant distortion of the marketplace. Consumers offended by MTV, for example, still contribute to MTV's bottom line because they must pay for a network bundle to view the networks they do want – and MTV is nearly always in that bundle. That market-distorting subsidy to MTV is still paid by the offended consumer even if he technologically blocks MTV on his television or chooses never to watch it. As a result, mandatory cable network bundles may promote the production of indecent content beyond what the marketplace actually demands.

A voluntary *a la carte* option would address this market distortion. *A la carte* thus represents a marketplace structural solution to the problem of indecency, while avoiding the Constitutional questions inherent in government regulation of cable network program content. The American public should not be forced to sacrifice its right and opportunity to watch Constitutionally-protected free, creative "unchilled" expression in order to protect the power of cable operators and media conglomerates to bundle their favored networks to that consumer on a take it or leave it basis.

---

[21] CCVM Letter to FCC Chairman Michael K. Powell, *In the Matter of COMPLAINTS AGAINST VARIOUS BROADCAST LICENSEES REGARDING THEIR AIRING OF THE "GOLDEN GLOBE AWARDS" PROGRAM -- File No. EB-03-IH-011.* "Eye on F.C.C., TV and Radio Watch Words," *The New York Times*, May 10, 2004.

VI. CONCLUSION

CCVM sees significant benefits to giving consumers the voluntary option of choosing *a la carte* the cable and satellite networks they want. *A la carte* will enhance viewpoint diversity. And *a la carte* promotes free, creative expression by empowering the consumer to not subscribe to offending content, enabling government to avoid the Constitutionally-worrisome regulation of cable network content.

For these important public policy reasons, we urge the Congress to support giving consumers the voluntary option of selecting "*a la carte*" the cable networks they care to subscribe to, in addition to maintaining their present option of selecting various packages, bundles, or tiers put together by their cable and satellite providers.

Respectfully submitted,

Jonathan Rintels
Executive Director
Center for Creative Voices in Media
1220 L Street, N.W., Suite 100-494
Washington, DC 20005

(202) 448-1517 (voice)
(202) 318-9183 (fax)

jonr@creativevoices.us

APPENDIX A

How Vidéotron Serves Cable*:

Cable in Canada -- Bundles, Theme Packages and à la Carte

Here's what you have to buy:

1) Basic Digital Cable *All the required channels*	**2) Converter Box** *Buy, Rent, or Lease*	**4) Programming** *Choice from 26 different bundles*
$8.24 includes:	Rent -- $9.00/month	iTelemax -- 38 channels -- $20.25
22 TV channels	Purchase -- $45 after credit	iUltra – 65 channels -- $27.75
30 Galaxie music channels		iMega -- 106 channels -- $40.50
14 radio channels	**3) Network Access Fee** *Waived if cable modem user*	20 channels à la carte -- $16.49
Onscreen TV guide		30 channels à la carte -- $22.50
PPV and Viewer's Choice	$2.24/month	English or French Movies -- $7.51
		Plus French, English and 9 other specialty theme bundles -- $2-$6

What might the Nielsen Average consumer choose? (Nielsen reports that Americans on average watch up from 12 - 17 channels including local broadcast)

Basic Digital Cable + network fee
$10.49
Rents one box (already purchased one other)
$9.00
Picks 20 Channels of the 90+ offered +
$16.49
Total per month
$35.98 US

If the average consumer could pick this kind of service, they'd pay only $36 US—all inclusive.

Create your bundle—or buy individually these 93 channels:

A&E	Discovery Health Channel	MusiMax	Speed Channel
ABC Burlington (WVNY)	Drive-in Classics	MusiquePlus	Spike TV – TV for Men
Animal Planet	ESPN Classic Canada	Mystery	Star – Canadian Showbiz
ARTV	EuroNews	National Geographic Channel	TBS Atlanta
BBC Canada	Family	NBC Plattsburgh (WPTZ)	TechTV Canada
BBC Kids	Fashion Television Channel	NHL Network	Telelatino
Black Entertainment (BET)	Food Network Canada	OLN (Outdoor Life Network)	Teletoon (English)
Book Television	Fox Sports World	ONE: Body, Mind & Spirit	Télétoon (French)
Bravo!	FOX Plattsburgh (WFFF)	PAX TV	The Biography Channel

Canal D	Game Show Network	PBS Plattsburgh (WCFE)	The Comedy Network
Canal Vie	Home & Garden Television	PBS Vermont (WETK)	The Documentary Channel
CBC Country Canada	i Channel – Documentaries	Planete	The Golf Channel
CBS Burlington (WCAX)	IFC -- Independent Films	Prime TV	The Learning Channel (TLC)
CLT -- Justice, Crime, Nature	Le Canal Nouvelles -- Quebec News	Report on Business Television	The Score – Stats and Scores
CNBC	Life Network	Réseau des sports (RDS)	The Sports Network (TSN)
CNN	Lonestar	Réseau France Outremer	Treehouse
CNN Headline News	Mentv	Rogers Sportsnet	TV Land
Country Music Television	Movieola – Short Films	SCREAM	TVOntario -- Educational TV
Court TV Canada	Mpix – "More movies"	Sextv: The Channel	Vision TV
CTV Newsnet	MSNBC	Showcase	Vrak.TV
CTV Travel	MTV Canada	Showcase Action	W Network
Déjà View – TV Favorites	MuchMoreMusic	Showcase Diva	XTreme Sports
Discovery Channel	MuchMusic	Space TV	YTV
Discovery Civilization			

If you choose a theme pack or a bundle, you can purchase additional channels:

Per channel $1.13/month
5 extra channels $3.75/month
10 extra channels $6/month
20 extra channels $10.51/month

Compare to Comcast in Arlington, VA:

Expanded Basic Cable + converter: $47.07 US
Digital Plus (the cheapest digital package): $65.01 US

Disclaimers:

1) Most cable channels are available on an a la carte basis—but some programmers require their channels be purchased as part of a bundle. So you can pick them for what Videotron calls the "a la carte" bundle, but they aren't available individually.

2) Canadian law requires half of the channels in any bundle you choose be "Canadian." Many, if not most, American channels, like TVLand, TechTV, MSNBC, Discovery, Food Network, and more, have undergone "Canadafication" to fit the requirements of the law and be considered "Canadian".

3) All conversions from CAD to USD obtained from http://finance.yahoo.com/currency, 07/01/2004.

Mr. UPTON. I recognize the chairman of the full committee, Mr. Barton.

Chairman BARTON. Thank you, Mr. Chairman, and before I give my opening statement, I have an announcement to make. The Oversight Investigations Subcommittee is about to commence a proceeding upstairs which we are going to vote on the issuance of a subpoena, and we need a quorum to do that, so I would hope that the members that also serve on this subcommittee, which are Mr. Bilirakis, Mr. Stearns, Mr. Bass and Mr. Waldren, Mr. Markey, Mr. Deutsch and Mr. Dingell, after their give their opening statements will come upstairs. This meeting in O&I shouldn't take more than 15 minutes. So if you are one of those members, we would encourage your attendance for the issuance of a subpoena in the Oversight and Investigations Subcommittee.

Mr. Chairman, I want to thank you for holding this hearing on competition and consumer choice in the multichannel video programming distribution, or MVPD, marketplace. The advent of MVPD such as cable and satellite operators have taken consumers from a world not too many years ago with at most three channels to one today with over 300 channels. As this subcommittee's hearings continue to demonstrate, the television industry is very competitive and very innovative.

I was one of the few members that voted against reregulating cable in this committee back in 1992. I was very glad to see that cable was deregulated in the Telecommunications Act of 1996. Since 1996, cable operators have invested over $85 billion, that is b, billion dollars to offer consumers digital broadband and video-on-demand services. Direct broadcast satellite, or DBS, operators are also now offering consumers a nationwide alternative to cable and they have captured 22 percent of the MVPD marketplace in just over 10 years. Consumers have and are continuing to benefit greatly in a deregulated marketplace.

Digital technology now gives over-the-air broadcasters an opportunity to offer consumers even more choices. Indeed, multicasting in new endeavors, such as USDTV, allow broadcasters to provide multiple strings of content where once they could only provide one. Broadband and compression technology are also starting to make it possible for consumers to stream the content of their choice over the Internet. 3G wireless technologies may soon make it practical for consumers to watch television on cell phones and other handheld devices. With additional industry investment and fiber optic cable, more consumers may soon be getting television services from their telephone company, so it is clear that competition is alive and well and consumer choices are growing.

I want to applaud Congressman Nathan Deal for raising the profile of how cable television is marketed by programmers to distributors and then to consumers. As this committee worked on legislation reauthorization the Satellite Home Viewer Improvement Act, Congressman Deal proposed an amendment restricting certain practices in negotiations. I was pleased that Congressman Deal was willing to withdraw his amendment so that the issue could be considered more carefully. The result of that decision is this hearing, and I want to comment Chairman Upton for holding this hearing. Congressman Deal has touched an important issue of fairness

in negotiations. I have great sympathy for Congressman Deal's perspective. I believe cable and satellite programmers should give consumers more options. I believe that parents and families should have more opportunities to choose family friendly programming and block channels that sometimes carry indecent programming. That said, I also have heard of problems associated with the so-called a la carte approach, which is the purpose of the hearing today.

In evaluating these a la carte proposals, the committee needs to ask many questions. No. 1, does anything currently prevent MVPDs from offering a la carte and theme-tiered service today? No. 2, would MVPDs be required to offer such service or should it be voluntary? No. 3, what would be the effect of an a la carte or a theme-tiered offering on prices? No. 4, would consumers have more or fewer channel choices to choose from under an a la carte system? No. 5, would independent, niche, minority and religious programming have an easier or harder time surviving in an a la carte atmosphere? No. 6, would consumers be able to decide what goes into a family tier or should we allow the company or cable company or the government to decide what channels go into this type of a package? And last but not least, would it end up being more expensive or less expensive for families to pick channels on an a la carte basis than to take the existing packages that they already have and then block channels using the free equipment that cable companies would provide?

I encourage the witnesses today to help us answer these important questions and to also offer constructive solutions. Consumers have a wide range of viewing options in the current environment, and while no one watches everything, everyone has something that they like to watch. We should carefully examine what impact a la carte and theme-tiered proposals will have on consumers. Our goal should be to maximize consumer choice and control over what comes into the home while preserving the diverse selection of programming for consumers to choose from. I look forward to hearing more about these issues in today's hearing. I yield back, Mr. Chairman.

Mr. UPTON. Recognize my friend from the great State of Michigan, Mr. Dingell.

Mr. DINGELL. Mr. Chairman, thank you. I want to thank you for calling the hearing, and I want to commend you for it. I am very pleased that this committee will focus on the question of competition in the video marketplace. Interestingly enough, much of the recent conversation on this topic is centered on whether Federal laws should be amended to promote a la carte programming. The notion that consumers should be able to purchase only those channels of their choosing and no more has an intuitive appeal to this consumer, and I am sure it would to most others as well. At the same time, many reputable parties, including the GAO, have concluded that an a la carte marketplace would leave consumers paying more for fewer channels and might lead to fewer programming choices. In other words, the consumer would be, in fact, worse off.

It occurs to me that I should quote my old dad who used to say, "Look before you leap," or to perhaps remind my colleagues of the Hippocratic Oath, which says first, "Do no harm." Federal law

today does not prevent video service providers from offering a la carte programming, but it also does not prevent contractual restrictions on a la carte service. Those who seek to change Federal law to encourage a la carte programming have the burden to demonstrate that such a dramatic change is necessary and will not ultimately hurt consumers. Work needs to be done by all to gather the information before that burden can properly be met.

On a related matter, I would note that I continue to receive complaints from constituents that cable rates continue to rise faster than the rate of inflation. The cable industry indicates otherwise, but it is quite clear that the marketplace is not yet sufficiently competitive. Most consumers still have only limited choice for their video service provider: The local cable company and the two national satellite companies. These companies compete on programming choices and related services, but they do not appear to compete on price or customer service.

A recent GAO report demonstrates that only additional competitors in the marketplace beyond the existing satellite competitors will force the kind of competition that we need and will begin to act as a restraint on cable price increases. Though the cable industry has criticized this finding as based on too little evidence, it certainly is a point that the committee should address and something which our consumers want us to look at.

The emergence of additional video competitors in the marketplace is certainly preferable to reregulating cable rates. That is why I have long championed the deregulation of cable's competitors and why I hope that the newly deregulated telephone companies will keep their promise and compete head on in this marketplace.

In addition, Federal policy must be aggressive in fostering the development of additional transmission paths to the home. Be it from broadband over power line or new wireless technologies, we must all do our part to ensure that consumers are able to benefit as quickly as possible from a competitive marketplace, and that would include using new and innovative approaches and techniques which might assist in the speeding of this competition. But if competition does not develop and my cable friends do not exercise some restraint, I think they will witness again a period of wrath from angry consumers and perhaps the Congress responding to those events.

I look forward to the testimony of our witnesses, and I thank you again for this hearing, Mr. Chairman.

Mr. UPTON. Thank you. Mr. Deal?

Mr. DEAL. Thank you, Mr. Chairman. I want to thank you and Chairman Barton for holding this hearing and also thank the witnesses for their willingness to testify.

Ladies and gentlemen, I regard the issues that we discuss today to be some of the most important ones we will face in this committee, because they involve the most fundamental freedoms and cultural directions of our society. As Americans, we truly regard our homes as our castles, our places of refuge where we raise our children and establish the values of our families. That is why Congress and this committee have focused on the importance of the right of Privacy in almost every aspect of our lives.

But just as our homes, our castles, are important refuges where our privacy should be guarded and protected, we also recognize that we live in the information age and that our castles must be connected to the outside world in order for us not to become isolated. Today, we will hear from some of those who link our castles to the outside world by way of their cable lines or satellite dishes. For almost 9 out of 10 Americans, these television avenues have become their primary source of news, information and entertainment, which they pay for in ever increasing amounts each month.

One of the main questions for us today is who are these new gatekeepers for the castles of America? Are they responsive and responsible to the wishes of the owners of the homes into which they come or have they abandoned their position of trust and confidence for the financial rewards that are being offered by those who want to breach the castle walls? As Members of Congress we should be especially concerned, for we have given them the keys to the homes of America in the form of free broadcast signals, and they are now using those keys to force homeowners to buy additional services whether they want them or not.

Who are these new gatekeepers? Are they elected officials responsible to the voters at the ballot box? No. Are they appointed government agents who are charged with protecting the well being of our citizens? No. They are five or six mega production cable and satellite conglomerates who control what comes into every American home and they are free from the normal constraints that apply to almost every other business in our country. They can tie and bundle their products with the power of a near monopoly and yet are exempt from our anti-trust laws. They can set prices that include the broadcast networks we have given them free of charge and refuse to tell this committee, the FCC or the Justice Department how those prices are arrived at and by contract seal the lips of the cable operators who deliver their products.

Some, such as Time-Warner, have characterized today's hearing as one on the issue of mandatory a la carte, which was also the characterization of the GAO study, mandatory a la carte. That is not the case. They have created a straw man to attack in an effort to divert our attention. We should explore all options: Tiering of compatible programs, choice of basic or expanded basic services and voluntary a la carte. We should be told why certain programmers have gone to a 10-year contract in an effort to block these choices. And above all, we should be told why consumers, the owners of their castles, should not be given the choice of what television programming they want in their homes. So far, these conglomerates have taken an arrogant approach.

I realize my time is running out, but let me just conclude by saying we should have them explain to us why the American public, why a family that wants to buy a cartoon program, Nick Tunes, should be forced to also buy the program, Logo, a gay and lesbian channel. Yes, these new gatekeepers have decided that families with small children who want to receive cartoons must be forced to buy a gay and lesbian program, a decision that was made by Viacom only a few weeks after they appeared before this committee to apologize for the Janet Jackson Super Bowl affair to assure us that they had learned their lesson. Of if your child wants to watch

Spongebob Squarepants, a child's program, they must also buy Undressed or Stripperella, two highly sexual adult programs. If you want to simply watch Nickelodeon, you must buy the sexually explicit programming of MTV and Spike TV. If this is the business philosophy is applied everywhere, candy stores would be required to sell marijuana.

Mr. Chairman, it is time that this hearing is held, and I thank you for having it. It is long overdue, for as the title of the late Star Allen's book says, "The Vulgarians Are At the Gate." I yield back.

Mr. UPTON. Mr. Wynn?

Mr. WYNN. Thank you very much, Mr. Chairman. I certainly appreciate you having this very important hearing, and let me begin by saying that I concur with the views you shared in your opening statement and your concern about the downside, if you will, of a la carte pricing.

I think it is absolutely true that we have emerging competition, significantly emerging competition, in this industry from satellite companies as well as some of the traditional cable companies and that, as the GAO pointed out, it is very likely that in an a la carte system we could see the unanticipated consequence of increased rates rather than lower rates.

There are a couple of points that I think are critical. One, we have talked a lot about diversity in the marketplace, and a la carte runs directly contrary to that. I think you will hear testimony to that effect. We have also talked about decency, and my colleague in his opening statement, Mr. Deal, just made a comment about that. The fact of the matter is some of the casualties of a la carte pricing might be the very wholesome programs that people would like to encourage as their market share decreases.

It seems to me that at this time Congress should not allow a regulatory scheme to emerge in which that kind of mixed programming, educational, religious, ethnic-based programs, are stifled or inhibited. This is particularly true as we anticipate new available spectrum. Instead, it seems to me that Congress should do everything in its power to encourage the expansion of niche programming and give programmers comfort in knowing that niche programming is a viable option.

I am particularly pleased today to have one of my constituents here, Alfred Liggins, representing TV One. He is located in my district in Lanham, Maryland, and I believe he will give you some excellent testimony on his viewpoints regarding a la carte pricing and how it would negatively affect minority and startup programming.

Additionally, let me point out that a la carte pricing schemes, if they are implemented, consumer costs are likely to increase, because the channels with fewer subscribers will have to make up for loss of revenue. Advertisers likely will pull ads from channels with lower viewership, thus causing a situation in which programmers have to pull their programs or distributors have to stop offering certain stations because of lower revenues. This is exact opposite of what we have been trying to encourage in terms of diversity in the marketplace.

So, Mr. Chairman, as I said, I believe that there are significant problems with a la carte pricing and that we should reject this approach as contrary to the notion of diversity and the concept of de-

cency on the airwaves. With your permission, I would like to include in the record a package of letters which include letters from the New York State Black, Puerto Rican and Hispanic Legislative Caucus, the National Congress of Black Women, Incorporated and approximately 12 mayors of various cities from around the country, New Jersey, Connecticut, Mississippi, California, Oklahoma, Louisiana, Illinois and Texas as well, small town mayors who oppose a la carte pricing.

Mr. UPTON. Without objection.

Mr. WYNN. Thank you, Mr. Chairman.

[The information referred to follows:]

THE NEW YORK STATE BLACK, PUERTO RICAN AND HISPANIC LEGISLATIVE CAUCUS

ROOM 442-A, LEGISLATIVE OFFICE BUILDING
ALBANY, N.Y. 12248
(518) 455-5347 • (518) 455-4535 FAX
e-mail: bpcaucus@assembly.state.ny.us

EXECUTIVE OFFICERS
Assemblyman Adriano Espaillat
Chairman
Assemblyman David Townsend
First Vice-Chair
Assemblyman Felix W. Ortiz
Second Vice-Chair
Senator Byron W. Brown
Third Vice-Chair
Senator Ruth Hassell-Thompson
Secretary
Assemblywoman Vivian E. Cook
Treasurer
Assemblyman Jose Rivera
Parliamentarian
Assemblywoman Aurelia Greene
Chaplain

MEMBERS
Senator
Carl Andrews
Assemblywoman
Carmen E. Arroyo
Assemblyman
Jeffrey L. Aubry
Assemblyman
Michael A. Benjamin
Assemblyman
William F. Boyland, Jr.
Assemblywoman
Barbara M. Clark
Assemblyman
Luis H. Diaz
Assemblyman
Ruben Diaz, Jr.
Senator
Ruben Diaz, Sr.
Senator
Martin M. Dilan
Assemblyman
Herman D. Farrell, Jr.
Assemblyman
David F. Gantt
Assemblywoman
Diane Gordon
Assemblyman
Carl Heastie
Assemblywoman
Barbara Hooper
Senator
Velmanette Montgomery
Assemblyman
Clarence Norman, Jr.
Senator
Kevin S. Parker
Senator
David A. Paterson
Assemblywoman
Crystal D. Peoples
Assemblyman
Jose R. Peralta
Assemblyman
N. Nick Perry
Assemblyman
Arthur Rhyzen Pousak, IV
Assemblyman
J. Gary Pretlow
Assemblyman
Phil Rosado
Assemblywoman
Annette Robinson
Senator
John L. Sampson
Assemblyman
William Scarborough
Senator
Ada L. Smith
Senator
Malcolm A. Smith
Assemblywoman
Michele R. Titus
Assemblyman
Keith L.T. Wright

EXECUTIVE DIRECTOR
Tyeola Barton

July 2, 2004

Mr. Michael K. Powell
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: MB Docket No. 04-207

Dear Chairman Powell:

I am writing in opposition to the proposed "a la carte" cable system being considered in Congress, as it does not benefit consumers.

The finest quality of our current cable system is its ever increasing diversity. Over the past twenty years, the number of cable program networks has grown from 28 to 339, with the array of programs offered on existing networks dramatically increasing annually. With the improved diversification of programming, American consumers have benefited from exposure to important channels that support varied voices, such as BET, Telemundo, TV One, ESPN Deportes, C-SPAN and The Learning Channel. Correspondingly, the viewing of cable programming has steadily increased.

The economics of the cable industry are based on licensing agreements between cable programmers and operators, the cost of which are passed onto consumers, and national and local advertising. Advertising earnings are generally based on the number of viewers a channel attracts. If a channel appeals to a specialized audience, under the "a la carte" system, its viewership will decline, as occasional viewers today would no longer subscribe. Loss of these viewers and those who might watch these channels regularly and not when offered "a la carte" will severely reduce advertising revenue and increase the cost of licensing agreements and the costs passed onto consumers.

Further, if channels do not have adequate revenue, the quality and diversification of programming will decrease. Judith McHale, President of Discovery Communications, has argued that "Discovery's award-winning networks will not exist in an *a la carte* environment and consumers will have lost the channels they regard as the pre-eminent source of high quality, family-friendly programming." Many of these channels will be forced out of business. We will no longer be able to enjoy the diverse programming of today.

An impressive and vibrant cable programming industry has developed without the need of government regulation. Cable offers consumers an incredible entertainment and educational value. Please help sustain this system. Do not support the "a la carte" proposal.

Sincerely,

Assemblyman Adriano Espaillat
Chairman

AE/mo

NATIONAL CONGRESS OF BLACK WOMEN, INC.
8484 Georgia Avenue, Suite 420 ♦ Silver Spring, MD 20910-3368 ♦ 301-562-8000 ♦ Fax 301-562-8808

NATIONAL OFFICERS

Hon. C. DeLores Tucker
NATIONAL CHAIR
Trish Morris-Yamba
FIRST VICE CHAIR
Yvette Taylor-Hachoose, Esq.
SECOND VICE CHAIR
Ramona Wright
THIRD VICE CHAIR
Ophelia Averitt
CORRESPONDING SECRETARY
Mary H. Starkey
RECORDING SECRETARY
Dr. Jacquelyn Jordan
TREASURER

BOARD OF DIRECTORS
Glinda Anderson *(MD)*
Sandra Ballard *(DE)*
Geraldine Dugkin *(DC)*
Marilyn Blakely *(VA)*
Isabell Cottrell *(TX)*
Dr. Falecee Jenkins *(NL)*
Joyce Jones *(CT)*
Cynthia McCoy *(IL)*
Hon. Alicia Reece *(CH)*
Dee Smith *(PA)*
Doris Spencer *(VA)*
Hon. Connie Stokes *(GA)*

FOUNDING MEMBERS
Hon. C. DeLores Tucker, *Convening Founder*
Hon. Shirley Chisholm, *Chair Emerius*
Rev. Willie Barrow
Lodi Baskerville, Esq.
Dr. Mary Berry
Hon. Cardiss Collins
Dr. Dorothy I. Height
Hon. Alexis Herman
Hon. Charlene Drew Jarvis
Mrs. Coretta Scott King
Hon. Gloria Lawlah
Hon. Hilda Mason
Ms. Jewell Jackson McCabe
Hon. Eleanor Holmes Norton
Hon. Wilhelmina J. Rolark, Esq.
Hon. Mary Terrell, Esq.
Ms. Pat Tyson
Hon. Shirley Witcher
Hon. Nadine Winter
Rev. Addie Wyatt

Visit our website at:
http://www.ncbw.org
E-mail: info@ncbw.org

Toll Free Number
1-877-274-1193

June 28, 2004

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
C/O Natek Inc., Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002

Re: MB Docket No. 04-207

Dear Chairman Powell and Ms. Dortch:

We would like to voice our concerns about the potential affects of requiring cable and satellite companies to sell basic cable networks on a channel-by-channel, or "a la carte," basis. On the surface, this idea sounds appealing, but a deeper look can only lead to the conclusion that a la carte packaging would have a chilling effect on programming diversity in America.

While we are encouraged by the networks efforts to expand diverse programming in recent years, ethnic and minority populations in the U.S. are still acutely underserved by television's current offerings. As a result, many opinion leaders have called on media businesses to generate more channels to serve audiences of African-Americans, Hispanics, Asians, and other ethnic groups. The imposition of an a la carte pricing model could bring these efforts to a screeching halt. Many of the channels that exist today will not be able to survive with the reduced subscriber base they will face under a la carte.

If cable and satellite companies sell channels a la carte, it would force networks to dramatically increase the per-subscriber fee they must charge. Ultimately, subscribers would find themselves paying about the same amount – and possibly more – for just a handful of channels, rather than having the hundreds from which to choose, as they do today.

With its multi-channel universe, cable provides a wealth of diverse resources allowing viewers the ability to share other cultures, communities, styles and viewpoints. The imposition of a la carte would drastically reduce, if not eliminate entirely, that opportunity.

A la carte directly challenges years of growth and expansion of diverse programming in today's media marketplace. As such, we urge the FCC to strongly consider the full ramifications of a la carte in their report to Congress.

Sincerely,

Dr. C. Delores Tucker
National Chair

Letters From Mayors Opposing Pay Per Channel Proposals:

Douglas Palmer, Mayor (Trenton, NJ)
President of National Conference of Democratic Mayors (NCDM)

Eddie Perez, Mayor (Hartford, CT)

Daniel P. Malloy, Mayor (Stamford, CT)

Harvey Johnson, Mayor (City of Jackson, MS)

Roosevelt Dorm, Mayor (City of Inglewood, CA)

Marilyn Murrell, Mayor (Town of Arcadia, OK)

Maurice A. Brown, Mayor (Town of White Castle, LA)

George L. Grace, Sr., Mayor (City of St. Gabriel, LA)

Irene Brodie, Mayor (Village of Robbins, IL)

Edward Harris, Mayor (Town of Richwood, LA)

Milton Tutwiler, Mayor (Town of Winstonville, MS)

Floyd L. Griffin, Jr., Mayor (City of Milledgeville, GA)

John White, Mayor (City of Ames, TX)

July 8, 2004

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Natek Inc., Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002

Re: MB Docket No. 04-207

Dear Chairman Powell and Ms. Dortch:

We understand that Members of Congress have commissioned a report on the potential affects of requiring cable and satellite companies to implement a channel-by-channel, or "a la carte," packaging plan. A close examination of this policy leads to the conclusion that a la carte packaging and pricing of programming would drastically stifle media diversity in America.

Ethnic and minority populations in the U.S. are acutely underserved by television's current offerings. Many opinion leaders have called on media businesses to generate more channels to serve audiences of African-Americans, Hispanics, Asians, and other ethnic groups. While some progress is being made in this area, the imposition of an a la carte pricing model could bring make these efforts obsolete. Many networks that serve diverse, minority, and multilingual interests largely depend on packaged programming for consumers for survival. And many such channels that exist today will not be able to survive with the reduced subscriber base they will face under a la carte.

If cable and satellite companies sell channels a la carte, it would instantly erode potential advertising support, forcing networks to dramatically increase the per-subscriber fee they must charge. Ultimately, subscribers would find themselves paying about the same amount – and possibly more – for just a handful of channels, rather than having the hundreds from which to choose, as they do today.

Various populations rely on cable to provide a window into other cultures, communities, styles and viewpoints. The imposition of a la carte would drastically reduce, if not eliminate that opportunity entirely.

Those who support diversity in today's media marketplace recognize the important role that the current cable system plays in building and expanding cultural diversity in this country. As such, we urge the FCC to strongly consider the full ramifications of a la carte in their report to Congress.

Sincerely,

Mayor Douglas Palmer

OFFICE OF THE MAYOR
550 MAIN STREET
HARTFORD, CONNECTICUT 06103

EDDIE A. PEREZ
MAYOR

Telephone: (860) 543-8500
Fax: (860) 722-6606

Michael K. Powell
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

MB Docket No. 04-207

Dear Chairman Powell:

Recently, Congress proposed an "a la carte" alternative to the current cable system. I am writing to express my concern and the concern of many citizens of Hartford over the "a la carte" alternative. Its enactment would undermine the progress our country has made in diversifying its television programming and would further exclude economically challenged consumers from subscribing to cable services. I am writing to you to urge you to stand against the proposal.

The finest quality of our current cable system is its ever increasing diversity. Over the past twenty years, the number of cable program networks has grown from 28 to 339, with the array of programs offered on existing networks dramatically increasing annually. As programs have diversified, American consumers have benefited from exposure to important channels that support varied voices, such as BET, Telemundo, TV One, ESPN Deportes, C-SPAN and The Learning Channel. Correspondingly, the viewing of cable programming has steadily increased.

As you are aware, the economics of the cable industry are based on licensing agreements between cable programmers and operators, the cost of which are passed onto consumers, and national and local advertising. Advertising earnings are generally based on the number of viewers a channel attracts. If a channel appeals to a specialized audience, under the "a la carte" system, its viewer-ship will decline, as occasional viewers today would no longer subscribe. Loss of these viewers and those who might watch these channels regularly and not when offered "a la carte" will severely reduce advertising revenue and increase the cost of licensing agreements and the costs passed onto consumers.

Further, if channels do not have adequate revenue, the quality and diversification of programming will decrease. Judith McHale, President of Discovery Communications, has argued that "Discovery's award-winning networks will not exist in an *a la carte*

environment and consumers will have lost the channels they regard as the pre-eminent source of high quality, family-friendly programming." Many of these channels will be forced out of business. We will no longer be able to enjoy the diverse programming of today or consumers will be forced to pay a higher price in order to enjoy specialty channels.

Without an adequate number of subscriptions, revenue would decline, the cost of subscription would increase and specialty channels would consequently be put out of business. Thus, the channels that appeal to more specialized audiences, particularly ethnic, foreign-language and niche programming, would have trouble attracting enough subscribers to survive. Ultimately, this situation would result in generic and low quality programming aimed at the majority.

The City of Hartford, like so many of the cities around our nation, is home to a diverse community, both ethnically and economically. I fear that an "a la carte" system would affect residents who enjoy specialty programming aimed at ethnic diversity by making those channels financially inaccessible or by driving those channels from the cable market. In short it would deprive a large portion of our community from taking advantage of diverse programming on cable television.

I implore you to reject the "a la carte" system and help keep diverse and affordable programming on the air. Thank you for your attention to this matter, please do not hesitate to contact me if I may be of assistance.

Sincerely,

Eddie A. Perez
Mayor

MAYOR
DANNEL P. MALLOY

CITY OF STAMFORD
OFFICE OF THE MAYOR

STAMFORD GOVERNMENT CENTER
888 WASHINGTON BOULEVARD
P.O. BOX 10152
STAMFORD, CT 06904-2152

Tel: (203) 977-4150
Fax: (203) 977-5845
Email: dmalloy@cityofstamford.ct.us

Michael K. Powell
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

MB Docket No. 04-207

July 6, 2004

Dear Chairman Powell,

As Mayor of the City of Stamford, Connecticut, I urge you not to support the "a la carte" cable system currently being debated in Congress. This legislation fails to protect the entrepreneurs and consumers who lie at the core of a stable economy.

In the present day, individual networks generate revenue through licensing fees and advertising campaigns. I support the current "bundling" system because it encourages the growth of developing networks by putting them alongside established networks so as to attract viewers and ultimately to win local, regional, and national advertisements. I understand that stations such as The Learning Channel, C-SPAN, and The Discovery Channel might not have succeeded had they not benefited from the exposure afforded them in the "bundling" system. In an age of globalization, we must use television to teach our children about different cultures and traditions.

The "a la carte" system minimizes a developing network's exposure to the viewing public, and, in turn, marginalizes its appeal to advertisers. We cannot ignore the fact that advertisers will demand lower rates to compensate for the decrease in viewers-per-channel. In turn, cable operators will pass the financial burden to consumers as individual networks raise their licensing fees to compensate for the loss in advertising revenue. This is not fair to the viewing public.

From 1980 to 2003, cable television has provided diverse high-quality programming without government regulation. Interestingly, satellite television chose to refrain from implementing an "a la carte system," while it had both the capacity and infrastructure to do so. This proves that "bundling" is the most efficient way to offer diverse programming opportunities.

I urge you not to support this imprudent and shortsighted legislation, which promises to harm the very people we are so privileged to protect.

Sincerely,

Dannel P. Malloy
Mayor

Office of the Mayor
Harvey Johnson, Jr., Mayor

219 South President Street
Post Office Box 17
Jackson, Mississippi 39205-0017
Telephone 601-960-1084
Facsimile 601-960-2192

July 12, 2004

The Honorable Joe Barton
Chairman
Energy and Commerce Committee
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John Dingell
Ranking Member
Energy and Commerce Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman and Mr. Dingell:

I understand that some Members of Congress have suggested requiring cable and satellite companies to sell basic cable networks on a channel-by channel, or "a la carte," basis. On the surface, this idea sounds appealing, but a deeper look can only lead to the conclusion that a la carte packaging and pricing of programming would have a chilling effect on programming diversity in America.

Ethnic and minority populations in the U.S. are acutely underserved by television's current offerings, and many opinions leaders have called on media businesses to generate more channels to serve audiences of African-Americans, Hispanics, Asians, and other ethnic groups. While some progress is being made in this area, the imposition of an a la carte pricing model, I am told, should bring those efforts to a screeching halt. Networks that serve diverse, minority and multilingual interests would never have been launched in an a la carte world.

To reach the audience to which this programming is directed, cable channels need to be part of widely distributed cable or satellite tiers. Securing this kind of carriage – with the potential advertising basis it provides – allows a network to sell national advertising. This ad revenue, along with the reasonable fees our channels must charge cable companies for carriage, allows us to provide high-quality programming.

If cable and satellite companies sell channels a la carte, it would instantly erode potential advertising support, forcing networks that serve minority investments to dramatically increase the per-subscriber fee charged. Ultimately, subscribers would find themselves paying about the same amount – and possibly more – for just a handful of channels, rather than having hundreds from which to choose, as they do today.

In its comprehensive report on cable pricing released last fall, the General Accounting Office concluded: "If cable subscribers were allowed to choose networks on an a la carte basis, the economics of the cable industry could be altered, and if this were to occur, it is possible that cable rates could actually increase for some customers."

One of the great promises of cable is that with its multi-channel universe, subscribers can not only have programming designed for them, but also have the ability to share other cultures, communities, styles and viewpoints. The imposition of a la carte would drastically reduce, if not eliminate entirely, that opportunity.

A la carte is a classic case of a solution far worse than the perceived problem. Those who promote more diversity in today's media marketplace would do it a total disservice by supporting or voting for a la carte requirements.

Sincerely,

Harvey Johnson, Jr.

cc: Members of the House Energy and Commerce Committee

CITY OF INGLEWOOD

OFFICE OF THE MAYOR

Telephone: (310) 412-5300 Fax: (310) 330-5733

Roosevelt F. Dorn
Mayor

July 12, 2004

The Honorable Joe Barton
Chairman
Energy and Commerce Committee
United States House of Representatives
Washington, D.C. 20515

The Honorable John Dingell
Ranking Member
Energy and Commerce Committee
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Barton and Congressmember Dingell:

I understand that some Members of Congress have suggested requiring cable and satellite companies to sell basic cable networks on a channel-by channel, or "a la carte," basis. On the surface, this idea sounds appealing, but a deeper look can only lead to the conclusion that a la carte packaging and pricing of programming would have a chilling effect on programming diversity in America.

Ethnic and minority populations in the U.S. are acutely underserved by television's current offerings, and many opinion leaders have called on media businesses to generate more channels to serve audiences of African-Americans, Hispanics, Asians, and other ethnic groups. While some progress is being made in this area, the imposition of an a la carte pricing model will bring those efforts to a screeching halt. Networks that serve diverse, minority and multilingual interests would never have been launched in an a la carte world.

To reach the audience to which this programming is directed, cable channels need to be part of widely distributed cable or satellite tiers. Securing this kind of carriage with the potential advertising basis it provides – allows a network to sell national advertising. This ad revenue, along with the reasonable fees our channels must charge cable companies for carriage, allows us to provide high-quality programming.

If cable and satellite companies sell channels a la carte, it would instantly erode potential advertising support, forcing minority groups to dramatically increase the per-subscriber fee they must charge. Ultimately, subscribers would find themselves paying about the same amount –

One Manchester Boulevard/P.O. Box 6500/Inglewood, California 90301
EMAIL: MayorDorn@cityofinglewood.org WEBSITE: www.cityofinglewood.org

and possibly more – for just a handful of channels, rather than having hundreds from which to choose, as they do today.

In its comprehensive report on cable pricing released last fall, the General Accounting Office concluded: "If cable subscribers were allowed to choose networks on an a la carte basis, the economics of the cable industry could be altered, and if this were to occur, it is possible that cable rates could actually increase for some customers."

One of the great promises of cable is that with its multi-channel universe, subscribers can not only have programming designed for them, but also have the ability to share other cultures, communities, styles and viewpoints. The imposition of a la carte system would drastically reduce, if not eliminate entirely, that opportunity.

A la carte system is a classic case of a solution far worse than the perceived problem. Those who promote more diversity in today's media marketplace would do a disservice to this concept by supporting or voting for "a la carte" requirements.

Sincerely,

Roosevelt F. Dorn
Mayor

cc: Members of the House Energy and Commerce Committee

TOWN OF ARCADIA
217 N. Main Street - P.O. Box 268
Arcadia, OK 73007

(405) 396-2899 Townhall@TownofArcadia.com FAX (405) 396-2869

Marilyn Marvell
Mayor

James Woodward
Vice Mayor

Sherrie L. Jacobs
Trustee

July 12, 2004

The Honorable Joe Barton
Chairman
Energy and Commerce Committee
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John Dingell
Ranking Member
Energy and Commerce Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman and Mr. Dingell:

I understand that some Member of Congress have suggested requiring cable and satellite companies to sell basic cable networks on a channel-by channel, or "a la carte," basis. On the surface, this idea sounds appealing, but a deeper look can only lead to the conclusion that a la carte packaging and pricing of programming would have a chilling effect on programming diversity in America.

Ethnic and minority populations in the U.S. are acutely underserved by television's current offerings, and many opinions leaders have called on media businesses to generate more channels to serve audiences of African-Americans, Hispanics, Asians, and other ethnic groups. While some progress is being made in this area, the imposition of an a la carte pricing model should bring those efforts to a screeching halt. Networks like ours, that serve diverse, minority and multilingual interest, would never have been launched in an a la carte world.

To reach the audience to which this programming is directed, cable channels need to be part of widely distributed cable or satellite tiers. Securing this kind of carriage with e the potential advertising basis it provides – allows a network to s sell national advertising. This ad revenue, along with the reasonable fees our channels must charge cable companies for carriage, allows us to provide high-quality programming.

If cable and satellite companies sell channels a la carte, it would instantly erode potential advertising support, forcing us to dramatically increase the per-subscriber fee we must charge. Ultimately, subscribers would find themselves paying about the same amount – and possibly more – for just a handful of channels, rather than having hundreds from which to choose, as they do today.

We are not the only ones who have recognized this outcome. In its comprehensive report on cable pricing released last fall, the General Accounting Office concluded: "If cable subscribers were allowed to choose networks on an a la carte basis, the economics of the cable industry could be altered, and if this were to occur, it is possible that cable rates could actually increase for some customers."

One of the great promises of cable is that with its multi-channel universe, subscribers can not only have programming designed for them, but also have the ability to share other cultures, communities, styles and viewpoints. The imposition of a la carte would drastically reduce, if not eliminate entirely, that opportunity.

A la carte is a classic case of a solution far worse than the perceived problem. Those who promote more diversity in today's media marketplace would do it a total disservice by supporting or voting for a la carte requirements.

Sincerely,

Marilyn Murrell

Mayor Marilyn Murrell

cc: Members of the House Energy and Commerce Committee

LOUISIANA CHAPTER
NATIONAL CONFERENCE OF BLACK MAYORS

An affiliate of the National Conference of Black Mayors
Maurice A. Brown, President
Dr. Leroy Davis, Vice President
Anna E. Simmons, Secretary
James E. Mayo, Treasurer
Theodore Lewis, Chairman

Post Office Box 488
White Castle, LA 70788
Phone: (225) 545-3012

Michael K. Powell
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

MB Docket No. 04-207

Dear Chairman Powell:

I am writing to urge you to not support the "a la carte" cable system currently being debated in Congress. Its implementation would reduce or eliminate programming aimed at minority groups.

Channels like BET, Telemundo, TV One and ESPN Deportes have succeeded under the current cable system in large part due to the way in which they were introduced: through bundling. When a new network is introduced, it is usually placed in a bundle with existing ad-supported popular channels, such as CNN, ESPN or Nickelodeon, allowing viewers the opportunity to try out the new channel. If consumers find the channels interesting, the channel will gain its own audience and enough advertising revenue to become profitable.

Under the "a la carte" system, where viewers pay separately for each channel, there is little likelihood that consumers will spend their money on channels about which they have little knowledge. A new network will have no opportunity to build an audience and become successful. This will also result in higher expenses for channels that remain.

Thus, the channels that appeal to more specialized audiences, particularly ethnic, foreign-language and niche programming, would have trouble attracting enough

subscribers to survive. Ultimately, this situation would result in generic and low quality programming aimed at the majority. The minority voice would be silenced in the "a la carte" system.

I implore you to reject the "a la carte" system. Help keep diverse programming on the air.

Sincerely,

Maurice A. Brown

Maurice A. Brown, President

CITY OF ST. GABRIEL

Incorporated in 1994 – Team City 1998
City Designation, 2001

George L. Grace, Sr.
Mayor

CITY COUNCIL
Andre L. Jones – Mayor Pro-Tempore
Elton J. Dantzfeld
Freddie "Carl" Frazier
Lionel Johnson, Jr.
Nora D. Taylor

CITY CLERK
Danielle T. Anderson-Mouton

CHIEF OF POLICE
Kevin J. Ambeau, Sr.

Michael K. Powell,
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

MB Docket No. 04-207

Dear Chairman Powell:

I am writing to express concern about the Congressional proposal of an "a la carte" alternative to the current cable system. Its enactment would undermine the progress our country has made in diversifying its television programming.

For far too long, minority groups had little programming that portrayed their communities in a positive light or programming that reflected their life experiences. The recent increases in cable channel capacity have added channels that now more adequately reflect the diversity of America.

These new channels have been able to thrive because of how cable operators introduce them into their program line-up. When a new channel is introduced, it is usually placed in a bundle with existing popular channels, which allows viewers the opportunity to try out the new channel. In an "a la carte world," where viewers pay separately for each channel, they are unlikely to spend their money on a new channel they know little about.

Thus, under an "a la carte system," channels that appeal to more specialized audiences, particularly ethnic, foreign-language and niche programming, such as BET, Telemundo, TV One, ESPN Deportes, C-SPAN and The Learning Channel, would have trouble attracting a substantial number of subscribers. Without an adequate number of subscriptions, revenue would decline, the cost of subscription would increase and specialty channels would consequently be put out of business.

I urge you to not support the enactment of an "a la carte" system.

Sincerely,

George L. Grace

George L. Grace, Sr., Mayor
City of St. Gabriel

P.O. Box 597, 5055 Iberville Street, St. Gabriel, Louisiana 70776 • (225) 642-9600 • FAX (225) 642-9670 • Website: cityofstgabriel.us
An Equal Opportunity Employer

TELEPHONE (708) 385-6990
FAX (708) 385-0542

VILLAGE OF ROBBINS
INCORPORATED DECEMBER 14, 1917

MAYOR IRENE H. BRODIE, Ph.D.

3327 WEST 137TH STREET ROBBINS, ILLINOIS 60472

PALMA L. JAGER
Clerk

TRUSTEES
Willie E. Cooley
Richard Williams
Gregory Wright
Adell F. Sharp
James E. Colley, Sr.
Lynnie D. Johnson

July 12, 2004

The Honorable Joe Barton
Chairman
Energy and Commerce Committee
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John Dingell
Ranking Member
Energy and Commerce Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman and Mr. Dingell:

I understand that some Member of Congress have suggested requiring cable and satellite companies to sell basic cable networks on a channel-by channel, or "a la carte," basis. On the surface, this idea sounds appealing, but a deeper look can only lead to the conclusion that a la carte packaging and pricing of programming would have a chilling effect on programming diversity in America.

Ethnic and minority populations in the U.S. are acutely underserved by television's current offerings, and many opinions leaders have called on media businesses to generate more channels to serve audiences of African-Americans, Hispanics, Asians, and other ethnic groups. While some progress is being made in this area, the imposition of an a la carte pricing model should bring those efforts to a screeching halt. Networks like ours, that serve diverse, minority and multilingual interest, would never have been launched in an a la carte world.

To reach the audience to which this programming is directed, cable channels need to be part of widely distributed cable or satellite tiers. Securing this kind of carriage with e the potential advertising basis it provides – allows a network to s sell national advertising. This ad revenue, along with the reasonable fees our channels must charge cable companies for carriage, allows us to provide high-quality programming.

If cable and satellite companies sell channels a la carte, it would instantly erode potential advertising support, forcing us to dramatically increase the per-subscriber fee we must charge. Ultimately, subscribers would find themselves paying about the same amount -- and possibly more -- for just a handful of channels, rather than having hundreds from which to choose, as they do today.

We are not the only ones who have recognized this outcome. In its comprehensive report on cable pricing released last fall, the General Accounting Office concluded; "If cable subscribers were allowed to choose networks on an a la carte basis, the economics of the cable industry could be altered, and if this were to occur, it is possible that cable rates could actually increase for some customers."

One of the great promises of cable is that with its multi-channel universe, subscribers can not only have programming designed for them, but also have the ability to share other cultures, communities, styles and viewpoints. The imposition of a la carte would drastically reduce, if not eliminate entirely, that opportunity.

A la carte is a classic case of a solution far worse than the perceived problem. Those who promote more diversity in today's media marketplace would do it a total disservice by supporting or voting for a la carte requirements.

Sincerely,

Mayor Irene Brodie

cc: Members of the House Energy and Commerce Committee

TOWN OF RICHWOOD

5130 Brown Road
Richwood Louisiana 71202-7004
Phone: (318) 322-2104
Fax: (318) 323-3254

Edward L. Harris
Mayor

Steve G. Hunter
MAYOR PRO-TEM

Council Members

Strech Pratt
STREET COMMISSIONER

Lowell Keezer

Alvin Jackson

Lee Kelly

Cherisse Holmes
TOWN'S CLERK

Jay Kolan
TOWN'S ATTORNEY

Robert B. Noel, Atty.
TOWN'S MAGISTRATE

Chad Stone
PUBLIC WORKS DIRECTOR
BUILDING INSPECTOR

Shirley Henderson
FISCAL OFFICER

Stephanie McFar
ACCOUNTING CLERK
REVENUE AGENT

July 12, 2004

Michael K. Powell
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

MB. DOCKET NO. 04-207

Dear Chairman Powell:

I am concerned with the "a la carte" cable proposal currently under debate in Congress. Its implementation will result in higher prices and ultimately the demise of ethnic foreign-language and specialty channels that are vital to our cable system and to the American public.

Most basic cable networks rely on advertising for a significant portion of their revenue. Without it, they must rely on licensing agreements as their base for profit. The costs of licensing agreement are generally passed onto customers.

Under the "a la carte system," consumers would be able to choose and pay for only the channels they watch. This idea initially sounds good. However, channels that have more specialized audiences will experience a decline in viewers. A decline in viewers means less money from advertising, decreased diversity and quality of programming and higher costs passed onto consumers.

For too long, African-Americans, Hispanics and other minorities did not have programming that reflected their cultures and life experiences available. The explosion of cable programming over the past 20 years has provided numerous channels that reflect the diversity and experiences of all Americans. The "a la carte" system would destroy all progress we have made in cable programming to date.

Further, these groups will be further marginalized due to the inevitable increase in overall system costs, which would require all consumers to have addressable converters to access "a la carte" programming. Fewer than half of U.S. cable households today subscribe to services requiring such converters. Thus, for the tens of millions of customers who rely on "cable-ready"

television sets, there could potentially be a 30% increase in the cost of the equipment alone in addition to the added costs from the channels fees.

Tell Congress that you do not support the "a la carte" system. Ensure the future of our diverse cable programming line-up.

Sincerely,

Mayor Edward Harris

Post Office Box 451
Winstonville, MS 38781

Town of
Winstonville

662-741-2100
662-741-2107 Facsimile

Honorable Milton D. Totwiler, Mayor
Email: miltontotwiler@hotmail.com

Joyce D. Nelson
Town Clerk
Board of Aldermen:
Addie D. Kelsey
Thelma M. Washington
Pearlene Howard
Edwin Bedford
Dwight Williamson
Henry Perkins, Jr.
Public Works
Superintendent
L.G. Moore
Chief of Police

July 7, 2004

Mr. Michael K. Powell
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

MB Docket No. 04-207

Dear Chairman Powell:

I am writing to urge you to not support the "a la carte" cable system currently being debated in Congress. Its implementation would reduce or eliminate programming aimed at minority groups.

Channels like BET, Telemundo TV One and ESPN Deportes have succeeded under the current cable system in large part due to the way in which they were introduced: through bundling. When a new network is introduced, it is usually placed in a bundle with existing ad-supported popular channels, such as CNN, ESPN or Nickelodeon, allowing viewers the opportunity to try out the new channel. If consumers find the channels interesting, the channel will gain its own audience and enough advertising revenue to become profitable.

Thus, the channels that appeal to more specialized audiences, particularly ethnic, foreign-language and niche programming, would have trouble attracting enough subscribers to survive. Ultimately, this situation would result in generic and low quality programming aimed at the majority. The minority voice would be silenced in the "a la carte" system.

I implore you to reject the "a la carte" system. Help keep diverse programming on the air.

Sincerely,

Milton D. Totwiler

City of Milledgeville, GA

Since 1803

Old Capital City

Mayor
Floyd L. Griffin, Jr.

Mayor Pro-Tem
Ken A. Vance

Council
C. Richard Hudson
Demerce O. Jackson
Richard Mullins, Jr.
Denise R. Shinholster
Jeanette H. Walden

City Manager
Ron H. Raburn

City Attorney
J. W. Morgan

Finance Director
Julie H. Lake

July 12, 2004

The Honorable Joe Barton
Chairman
Energy and Commerce Committee
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John Dingell
Ranking Member
Energy and Commerce Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman and Mr. Dingell:

I understand that some Members of Congress have suggested requiring cable and satellite companies to sell basic cable networks on a channel-by channel, or "a la carte," basis. On the surface, this idea sounds appealing, but a deeper look can only lead to the conclusion that a la carte packaging and pricing of programming would have a chilling effect on programming diversity in America.

Ethnic and minority populations in the U.S. are acutely underserved by television's current offerings, and many opinions leaders have called on media businesses to generate more channels to serve audiences of African-Americans, Hispanics, Asians, and other ethnic groups. While some progress is being made in this area, the imposition of an a la carte pricing model should bring those efforts to a screeching halt. Networks like ours, that serve diverse, minority and multilingual interest, would never have been launched in an a la carte world.

To reach the audience to which this programming is directed, cable channels need to be part of widely distributed cable or satellite tiers. Securing this kind of carriage with the potential advertising basis it provides – allows a network to sell national advertising. This ad revenue, along with the reasonable fees our channels must charge cable companies for carriage, allows us to provide high-quality programming.

If cable and satellite companies sell channels a la carte, it would instantly erode potential advertising support, forcing us to dramatically increase the per-subscriber fee we must charge. Ultimately, subscribers would find themselves

119 East Hancock Street • Post Office Box 1900 • Milledgeville, Georgia 31059-1900
Phone (478) 414-4040 • Fax (478) 414-4011 • www.milledgevillega.us

paying about the same amount – and possibly more – for just a handful of channels, rather than having hundreds from which to choose, as they do today.

We are not the only ones who have recognized this outcome. In its comprehensive report on cable pricing released last fall, the General Accounting Office concluded: "If cable subscribers were allowed to choose networks on an a la carte basis, the economics of the cable industry could be altered, and if this were to occur, it is possible that cable rates could actually increase for some customers."

One of the great promises of cable is that with its multi-channel universe, subscribers can not only have programming designed for them, but also have the ability to share other cultures, communities, styles and viewpoints. The imposition of a la carte would drastically reduce, if not eliminate entirely, that opportunity.

A la carte is a classic case of a solution far worse than the perceived problem. Those who promote more diversity in today's media marketplace would do it a total disservice by supporting or voting for a la carte requirements.

Sincerely,

Floyd L. Griffin, Jr.

Mayor Floyd L. Griffin, Jr.

cc: Members of the House Energy and Commerce Committee

John White
Mayor

City of Ames
Someplace Special

PHONE (936) 336-7278 • FAX (936) 336-8858 • 304 MARTIN ST. • P.O. BOX 8094 • LIBERTY, TX 77575

Michael K. Powell
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

MB Docket No. 04-207

Dear Chairman Powell:

I am writing to express concern about the Congressional proposal of an "a la carte" alternative to the current cable system. Its enactment would undermine the progress our country has made in diversifying its television programming.

For far too long, minority groups had little programming that portrayed their communities in a positive light or programming that reflected their life experiences. The recent increases in cable channel capacity have added channels that now more adequately reflect the diversity of America.

These new channels have been able to thrive because of how cable operators introduce them into their program line-up. When a new channel is introduced, it is usually placed in a bundle with existing popular channels, which allows viewers the opportunity to try out the new channel. In an "a la carte world," where viewers pay separately for each channel, they are unlikely to spend their money on a new channel they know little about.

Thus, under an "a la carte system," channels that appeal to more specialized audiences, particularly ethnic, foreign-language and niche programming, such as BET, Telemundo, TV One, ESPN Deportes, C-SPAN and The Learning Channel, would have trouble attracting a substantial number of subscribers. Without an adequate number of subscriptions, revenue would decline, the cost of subscription would increase and specialty channels would consequently be put out of business.

I urge you to not support the enactment of an "a la carte" system.

Sincerely,

John White
Mayor

Mr. UPTON. Mr. Whitfield?

Mr. WHITFIELD. Mr. Chairman, I am going to waive my opening statement.

Mr. UPTON. Mr. Shimkus. Ms. Wilson.

Mrs. WILSON. Mr. Chairman, I will waive my opening statement.

Mr. UPTON. Mr. Cox.

Mr. COX. Thank you, Mr. Chairman. I look forward to hearing from today's witnesses as we focus on the best way to ensure that the consumer is king when it comes to television programming.

I would also like to take this opportunity, Mr. Chairman, given a looming deadline, to encourage the President to add to his sterling record on behalf of Internet consumers by ensuring that the consumer is king when ordering Internet access service from cable companies. Not for the first time the U.S. Court of Appeals for the 9th Circuit in my home State of California has wrongly decided an important case. This time, however, it is not the Pledge of Allegiance but Internet access delivered via cable that the court is mucking up. Internet-over-cable is not a telecommunications service under Federal law, as the 9th Circuit has ruled. I urge the President and the Solicitor General to seek Supreme Court review of the 9th Circuit's anti-consumer, anti-technology and legally incorrect decision.

Slapping 1930's-era telephone regulation out of the Internet would be highly destructive to the continued deployment of broadband. Those early 20th century regulations were designed to counter the power of a monopoly telephone network in an analog age of communication scarcity. That kind of regulation has nothing to offer today's consumers of high-speed Internet access. Legal analysis that rests on the premise that cable companies are monopoly providers of high-speed Internet access is fundamentally unsound. In fact, it is not even clear that they will serve, that is that cable broadband will serve a majority of this market once the dusts settles.

According to the FCC's latest study of nationwide broadband deployment, DSL services offered by phone companies are growing faster than cable modem services. DSL customer connections rose by a full 47 percent in 2003. And, of course, as we have learned, Mr. Chairman, in a number of this subcommittee's valuable hearings, DSL isn't cables only competitor in this market. There are a variety of terrestrial wireless broadband services, satellite broadband services, the emergent power line broadband service. Any and all of these can be formidable competitors. It is ironic that in California where the 9th Circuit decided this case cable isn't even the market leader. According to the FCC, in California, DSL has 300,000 more customer lines in service than cable.

Allowing this ruling to stand and thereby allowing the Internet to be pulled into the maw of traditional State and Federal telephone regulation would be an unmitigated disaster to the American consumer. Therefore, I urge the President and the Solicitor General to file a petition for Supreme Court review before the July 29 deadline and to continue the outstanding leadership of the Bush Administration in encouraging the deployment of high-speed, tax-free Internet connections.

With respect to the important topic of a la carte programming, Mr. Chairman, I would just suggest that we try and adhere to the following general principles. First, customers should have maximum choice; second, customers should have the lowest possible prices; third, there should be an opt-in, not an opt-out, system for objectionable programming; fourth, the Federal Government should set rules of the road that promote maximum competition in the marketplace; fifth, and finally, we should take fullest advantage of new technologies that permit more discretion in providing individual choices to consumers based on individual tastes. With that, I yield back.

Mr. UPTON. Mr. Doyle.

Mr. DOYLE. Thank you, Mr. Chairman, and thanks to each of our witnesses for appearing before us today as we discuss some of the important issues affecting the MVPD marketplace.

I have said before that I try to approach the issues this subcommittee considers from a consumer's point of view, and I can't think of many issues that stirs the passions the way the issues related to television programming seem to. In recent years, I have heard with increased frequency from consumers who are not happy with their television options. The biggest complaints seem to be related to objectionable content and the ever-increasing cost of service. Obviously, these are very valid concerns.

So the question that I need to answer for myself and my constituents is would the implementation of a la carte programming address these basic concerns? Would a la carte programming lower prices? Would a la carte programming prevent the delivery of objectionable material into the home? I don't yet know all the answers to these questions, and I hope we will revisit this issue in the future as more information on this subject becomes available. As I understand it, the FCC is currently conducting a study on the feasibility of an a la carte system, and I hope we will review these findings when they become available.

I should mention that I have never been one to embrace a mandated a la carte system of television programming, and in fact I have serious reservations about such a system. Mostly, this is because I am concerned that a la carte programming could raise the rates that most subscribers pay for for the programming package they currently receive in order to give a smaller minority the right to pay for only a few select channels. Philosophically, the right to choose channels you want and only pay for those channels is something I think most people will agree with. However, in reality, I worry that such a system could do more harm than good.

The GAO has reported that some cable networks, especially small and independent networks, would not be able to gain enough subscribers to remain in operation. Additionally, consumers could end up paying the same monthly rate for fewer channels because the most popular channels would have the subscriber following to increase their fees considerably under such a system.

With regards to objectionable programming, I must say that as the father of four children, I am sympathetic to the concerns of parents who want to control the type of material that enters the home. Parenting is an awesome responsibility, and I respect every parent's right to protect their children from material they deem inap-

propriate. Parental control technology that most cable and satellite providers offers accomplishes this goal, although a subscriber is still paying for a network that airs material they deem inappropriate.

The MVPD marketplace is rapidly changing and it is therefore incumbent upon us to make sure that the laws and regulations governing this industry remain effective to promote healthy competition. Competition ultimately benefits the consumer and whatever actions we consider taking should be crafted with the consumer in mind.

I want to thank the witnesses for agreeing to be here today on short notice to discuss these vital issues. I look forward to hearing your testimony. I yield back, Mr. Chairman.

Mr. UPTON. Thank you. Mr. Bilirakis.

Mr. BILIRAKIS. Thank you, Mr. Chairman. I wasn't going to make an opening statement, but I will just go ahead and do one briefly.

Mr. Chairman, we have heard a lot of viewpoints already on this. Unfortunately, we have heard an awful lot of pre-deciding on the part of many members of this committee. I am just not sure why are we holding hearings, which are supposed to be information gathering sessions, if we have already made up our minds on a particular subject. What the heck is the sense of holding a hearing and wasting time?

So I would really plead for an open mind in this and objectivity on the part of all us. This is an important subject, a very important subject, and I think we all should be grateful to Mr. Deal for raising it. He was a voice in the wilderness and maybe in a sense he still is. Actually, when I hear some of these opening statements, he still is a voice in the wilderness. But we ought to be grateful to him for sticking to his guns and at least bringing it up.

But we have heard it is going to increase costs, and I don't doubt that it might increase costs. We have talked about the lack of choice, but that could be looked upon in a number of different ways. I understand in Canada where they have some of this taking place that there is really a true lack of choice and what not.

So, Mr. Chairman, I have said to you in our subcommittee chair meeting the other day that I would hope that we are going to really hear some facts here today to help us make that pretty tough decision. But I just wonder if even with all the facts we might hear here today, when I say facts I mean we are going to hear statements, it seems to me that maybe before we would make such a very important decision that we ought to actually take a look at some facts or possibly maybe some sort of a demonstration project somewhere so we could really see exactly what something like this would do. It may cause more harm than good. I think Mr. Deal would be the first one to admit if that is the case that it would cause more harm than good, but we don't know. I am not sure that we are going to know even after this hearing, although I am sure we will learn a lot, not as much as we would like.

So, Mr. Chairman, again, I plead for open-mindedness and objectivity, and I haven't made a decision on this issue, although unfortunately, many of our members have, and I think that that is probably wrong. Thank you.

Mr. UPTON. Mr. Gonzalez.

Mr. GONZALEZ Thank you very much, Mr. Chairman, and I will be brief. A la carte is an issue that though it is deceptively simple on its face has, in my view, potentially dramatic consequences to the fundamental economics of the cable industry. This may be a good thing, but it must be something that we need to carefully consider, and I thank you for holding these very important hearings.

I would ask unanimous consent to insert for the record statements made by the Hispanic Federation, the National Hispanic Policy Institute and Congresswomen Loretta and Linda Sanchez to the FCC. I believe that these statements should be part of the record in today's hearing.

I further want to commend my colleague, Mr. Deal, for his enthusiasm and dedication to this issue. I have only been here 6 years but yesterday was the first time that I have been here in Congress that someone from the other side of the aisle actually approached me, came over to our side, to tell me of the importance of today's hearing and that we should have an open and free debate. I have not made up my mind. There is no doubt that I am leaning a certain direction based on my region, my constituency and so on. Nevertheless, I will pledge to Mr. Deal and the supporters of this legislation to keep an open mind and to listen to the information and base any decision on the facts. And with that, I yield back.

[The information referred to follows:]

HISPANIC
FEDERATION

June 30, 2004

Chairman Michael Powell
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

RE: MB Docket No. 04-207

Honorable Michael Powell:

The Hispanic Federation is an umbrella organization comprising over 80 member agencies working to meet the growing needs of the Latino community through education, healthcare, voter registration and other forms of assistance. As such, I feel it incumbent upon me to write this Commission concerning the issue of "*a la carte*" cable pricing: a policy that, if enacted, would have adverse effects on those for whom my organization cares the most.

In Docket 04-207, you ask for comments on several issues. I will limit my comments to the matter of *a la carte*'s effects on the diversity of cable programming.

The number of Latino roles on television is alarmingly low – roughly 4% of the characters on TV today. And while the explosion over the past decade or so of new, independent cable networks has helped this situation, more work lays ahead; the number of positive, non-stereotypical roles for Hispanics remain in even shorter supply.

Up and-coming networks like SiTV and [another example in New York] are helping to bridge this gap with original programming aimed not just at the Latino audience but also to viewers at large. The importance of such networks is two-fold: not only can Latinos see reassuring portrayals of their own cultural identity, but non-Latinos will be exposed to images of our communities beyond the stereotypes of mainstream media.

It is for this reason that the Hispanic Federation opposes forcing the *a la carte* option on consumers. Primarily, as experts have publicly agreed, it is less likely that the average non-Latino viewer would select a network billed as "programming for Latinos/Hispanics," which would limit the number of viewers of these positive messages.

130 William Street / 9th Floor / New York, New York 10038 / Telephone: (212) 233-8955 / Fax (212) 233-8996

Further, without guaranteed access to viewers' homes, upstart networks would find it difficult to raise sufficient capital from investors and advertisers to launch in the first place, eliminating, one by one, the number of voices on cable.

This Commission has an opportunity to make sure that this doesn't happen. By raising to Congressional inquirers the *risk a la carte* poses to Latino communities, I believe that the Commission can preserve the cable platform's ability to promote new voices and more positive images for Hispanics – it is in our community's interest and the public's interest to do so.

Sincerely,

Lorraine Cortés-Vazquez
President
Hispanic Federation

Co: Commissioner Kathleen Abernathy
Commissioner Kevin Martin
Commissioner Michael Copps
Commissioner Jonathan Adelstein

National Hispanic Policy Institute, Inc.

Senator Efrain Gonzalez, Jr., NY.
Chairman

June 30, 2004

Michael K. Powell
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

MB Docket No. 04-207

Dear Chairman Powell:

As Chairman of the National Hispanic Policy Institute, I am concerned with the "a la carte" cable proposal currently under debate in Congress. Its implementation will result in higher prices and ultimately the demise of ethnic, foreign-language and specialty channels that are vital to our cable system and to the American public.

Most basic cable networks rely on advertising for a significant portion of their revenue. Without it, they must rely o licensing agreements as their base for profit. The costs of licensing agreements are generally passed onto consumers.

Under the "a la carte" system," consumers would be able to choose and pay for only the channels they watch. This idea initially sound good. However, channels that have more specialized audiences will experience a decline in viewers. A decline in viewers means less money form advertising, decreased diversity and quality of programming, and higher costs passed onto consumers.

For to long, African - Americans, Hispanics and other minorities did not have programming that reflected their cultures and life experiences available. The explosion of cable programming over the past 20 years has provided numerous channels that reflect the diversity and experiences of all Americans. The "a la carte" system would destroy all progress we have made in cable programming to date.

Further, these groups will be further marginalized due to the inevitable increase in overall systems costs, which would require all consumers to have addressable converters to access "a la carte" programming, Fewer than half of U.S. cable households today subscribe to services requiring such converters. Thus, for the ten of millions of customers who rely on "cable-ready" television sets, there could potentially be a 30% increase in the cost of the equipment alone in addition to the added costs from the channel fees.

Tell Congress that you do not support the "a la carte" system. Ensure the future of our diverse cable programming line-up.

Sincerely,

Efrain Gonzalez Jr.

Senator Efrain González, Jr.

Cc: Commissioner Karen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Commissioner Jonathan S. Adelstein

[Sanchez letterhead]

Michael K. Powell
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

MB Docket No. 04-207

Dear Chairman Powell:

I am writing to you today to express my concern about an issue that strikes a particular chord in my district – the current debate over an a la carte cable system. It is my opinion that, while the intentions of many of those supporting a la carte may be admirable, the unintended consequences of such a system would be to eliminate most of the diversity that has flowered on cable in the last few years.

Many of the residents in my district are of Hispanic descent. Many live in homes in which at least one person speaks little to no English. The ability to turn on the television and find programming that incorporates and reflects Hispanic-American culture, both in English and Spanish, is not one we take for granted.

It was not so long ago that the only time one saw Hispanics on television was either in a baseball game or in a movie about gang members. For those searching for Spanish-language programming, they were lucky to find even one station offering such programming.

With the explosion of cable offerings today, Hispanics are much more likely to find programming that truly reflects the Hispanic experience in America. Most popular cable stations offer a separate Spanish-language channel (ESPN Deportes, CNN en Español and Discovery en Español, to name a few) and Hispanics can even tune into programs from Mexico, Central America, South America and the Caribbean.

Perhaps even more importantly, Americans who have little personal contact with Hispanics and Hispanic culture still have the ability to learn about Hispanic life and see accurate portrayals simply with a flip of the dial.

A number of telecommunications and entertainment industry experts have explained that if we were to switch to an a la carte system, many of these Hispanic-oriented stations simply could not survive on the advertising revenues they would get based on a much smaller subscriber base. And many other channels would never even have the opportunity to launch. Finally, most Americans who opt not to pay for such "ethnic" channels would never channel surf their way onto a program where they can learn something about a different culture or way of life.

Americans already tend to live in highly segregated neighborhoods. Must our television viewing be segregated as well?

Please do not support an "a la carte" system that will destroy the diversity on cable television we have all worked so hard to build.

Sincerely,

Loretta Sanchez
Member of Congress

MEMBER:
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, & CLAIMS
COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEES ON NATIONAL SECURITY, EMERGING THREATS & INTERNATIONAL RELATIONS
CRIMINAL JUSTICE, DRUG POLICY & HUMAN RESOURCES
COMMITTEE ON SMALL BUSINESS

Linda T. Sánchez
38TH DISTRICT, CALIFORNIA

Congress of the United States
House of Representatives
Washington, DC 20515

DC OFFICE:
1007 LONGWORTH BUILDING
WASHINGTON, DC 20515
(202) 225-5676

DISTRICT OFFICE:
4007 PARAMOUNT BLVD.
SUITE 108
LAKEWOOD, CA 90712
(562) 429-8469

www.house.gov/lindasanchez

June 30, 2004

Chairman Michael Powell
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

RE: MB Docket No. 04-207

Dear Commissioners:

I am writing to the Commission concerning the issue of "*a la carte*" cable pricing; a policy that, if enacted, could have serious unintended consequences, particularly regarding the variety of programming available today, as well as the cost to consumers of that programming.

Despite all the talk about diversity in America and how television is becoming more reflective of the multicultural nature of our country, the number of Latino roles on television is alarmingly low – roughly 4% of the characters on TV today. And the number of positive roles for Latinos is significantly less. While the explosion over the past decade or so of new, independent cable networks has helped this situation, we still have much work to do.

Mandating an *a la carte* system for cable would represent an enormous step backward in the fight for greater diversity and cross-cultural understanding. Under *a la carte*, many networks with programming geared toward smaller, "ethnic" audiences would fail to generate enough advertising revenue to survive and new channels would have little chance to launch. Further, it is less likely that the average non-Latino viewer would opt to pay for such a network, depriving many non-Latinos of the opportunity to learn and benefit from exposure to other cultures.

It is also my understanding that the imposition of an *a la carte* system would require customers to rent or purchase expensive set-top boxes. This would be a significant additional monthly cost for most families and the exact opposite result of what proponents of *a la carte* intended.

Based on the potential adverse effects of *a la carte* on television diversity and overall cost, I strongly urge the Commission to recommend against its imposition.

Sincerely,

Linda T. Sánchez

Linda Sánchez
Member of Congress

Mr. UPTON. Mr. Walden.

Mr. WALDEN. I am going to waive my opening statement, Mr. Chairman.

Mr. UPTON. Mr. Bass.

Mr. BASS. Thank you, Mr. Chairman. I will ask unanimous consent to put my statement into the record and say that I am also coming to this hearing with an open mind. I appreciate Mr. Deal's efforts here on the a la carte issue and the Chair having this hearing. And I have had the opportunity to hear both sides, opponents saying, as others have said, that consumers will end up—may end up paying more, that small, startups won't be able to occur and so forth; the other side arguing that consumers shouldn't have to pay to have programs available that they are not interested in. And, as some other witnesses have mentioned, there are other alternatives, the iPod example and the recording industry is a good perhaps model to think about.

So this is an informative hearing on a very important issue, but, ultimately, as I said during the SHVIA hearing, it is the consumer that we have to keep in mind, not the contractors or the broadcasters or the cable companies but our consumers, the ones that benefit most from good access to programming that they want to see. And I yield back.

[The prepared statement of Hon. Charles F. Bass follows:]

PREPARED STATEMENT OF HON. CHARLES F. BASS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW HAMPSHIRE

Mr. Chairman, thank you for holding this important hearing.

I am glad we have the opportunity to hear from both sides today and I want to express my gratitude to my colleague Nathan Deal for advocating for this review of the issue.

Because I want to get to the testimony and questions, I will be brief, but I do want to observe that so far, proponents and opponents of an a la carte system or any substantial change in how channels are offered miss the points made by their critics.

One the one side, opponents say that consumers will end up paying no less or perhaps even more for the smaller number of channels they might choose under an a la carte frame work. In addition, they argue that start up and independent channels will disappear because they won't have the initial critical mass advantage of the current system. In effect, that the economies of scale require aggregation.

The other side argues that customers should not be forced to pay for and accept channel "X" in order to get channel "Y". They say consumers might want only a limited range of channels and, as importantly, expressly not want certain other channels.

It seems to me that both points might be right and they are certainly not mutually exclusive in any case. I am not sure we can ever know without trying it. An a la carte system might in fact not lead to any savings for most consumers; some channels without a substantial audience base might disappear; and yet consumers would be able to satisfy their yes to "Y" and no to "X" wishes.

Again, I don't know what would occur, but I might suggest we look at Apple's iPod and recording industry for some evidence. That whole business models is being turned over because of consumer choice. People no longer want to pay $15 for 15 songs on an album, but at $1 a song, they are happy to buy lots of individual songs—and there is some evidence they are willing to spend more in total dollars in this condition. Something to think about.

Mr. UPTON. Mr. Stupak.

Mr. STUPAK. Thank you, Mr. Chairman, and thank you for holding this hearing. Welcome the Reverend Glenn Plummer from Southfield, Michigan; good to see you again.

Cable prices in my district keep going up, and I don't see any change in this upward trend. My district, which comprises half the land mass of Michigan, has both small cable operators and big ones, like Charter and Time Warner. In general, we know that there are two factors in these rising costs: System upgrade and program costs. In my district, cable has invested to give us high-speed Internet.

I know today's discussion will center around the issue between the current bundling system and the idea of allowing consumers more choices in the cable packages they choose. I am not sure there is a right answer or which system would be more economical to Northern Michigan cable consumers, so my questions today will focus on the following. How do we get a handle on the escalating costs of monthly cable service? Do consumers have enough flexibility and choice for cable today? Do consumers actually know what they are paying for, and what I mean is can I call my cable operator and ask, "How much am I paying for ESPN versus the Disney Channel?" Is that a legitimate request, especially if the consumer has no say on what they can receive in their basic package, or is that irrelevant? Does the current system promote diversity? Would a la carte limit diversity or suppress the 1st Amendment or do the opposite? Do rural cable operators under the current system pay more for cable and cable programming than their urban customers for the same service? Would a tiered or a la carte system make this problem better or worse?

Again, I don't have all the answers to these questions. I look forward to our witnesses. And, Mr. Chairman, I will yield back the balance of my time.

Mr. UPTON. Mr. Terry.

Mr. TERRY. Thank you, Mr. Chairman. I have a lengthy opening statement that I will submit and just thank you for holding this hearing and Mr. Deal for urging you holding this hearing so we could vet these issues, and I think the series of questions that the chairman of the full committee, Mr. Barton, displayed in his opening statement mirror many of the questions that I raise in my opening statement. So with that, I will just submit.

[The prepared statement of Hon. Lee Terry follows:]

PREPARED STATEMENT OF HON. LEE TERRY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Thank you Mr. Chairman,

I want to thank you for holding this important hearing today. The issue of a la carte and whether this is the best way to enable consumers to lower their cable TV costs while at the same time being able to customize what they view is important, but it carries with it a lot of underlying issues that affect how companies do business and how the marketplace operates. Whether the idea behind a la carte is a move to allowing consumers to purchase channels on a tiered basis or on an individual level, may actually be detrimental to the cable/satellite consumer.

Moving to an a la carte/tiered system runs the risk of giving consumers a false belief of cheaper cable. Taking a 60,000 foot view of this, I do not see how the marketplace can accomplish this goal. If companies are forced to move to an a la carte/tiered system, they will pass channel programming charges onto the consumer, like they do now, but the difference will be that when consumers choose channels they wish to watch, they will be purchasing them individually (or in a tiered package) and at prices that are most likely higher then what they would get if they were able to buy a larger package. This could mean that by the time the consumer buys all the channels he/she wishes to watch, they might actually be paying more for the same service they get today.

Furthermore, the issues of moving to an a la carte/tiered system could mean the elimination of quality channels that only receive a minimum amount of viewers. I'll give you a perfect example. My wife loves to watch SoapNet. SoapNet is a new and emerging channel that doesn't have the viewer-ship of a channel like the History Channel, and frankly, it might never reach that lever. In an a la carte/tiered system, I would be forced to purchase this channel at an elevated price because the marketplace would force the programmer to make up its costs on those that watch this channel. However, should the programmer realize that they can not make up its costs on charges the consumer is forced to pay, they would stop programming and turn off this channel—this is simple economics. Whether it be GAO, Booz Allen or someone else who does an economic analysis on what impact a la carte/tiered pricing system would have on a cable network's revenues as well as their marketing and production budgets, I see that prices rise and consumer choice goes down. If this is the case, and we move to an a la carte/tiered system are we then going to hear the call for rate regulation when prices rise out of control?

It is my understanding that when Congress imposed cable rate regulation in 1992 to 1996, the cable companies made very limited investment in capital improvements and virtually no investment in new programming. I want to hear what theses rate regulations did to companies from 1992-96. Why there was limited capital investment and virtually no investment in new programming and what companies have done since the lifting of these regulations.

Channels like Oxygen, Lifetime, National Geographic, Discovery, Animal Planet, Food Network, the Speed Channel and Noggin all exist because of the current way programmers are allowed to bring new channels to market. By moving to an a la carte/tiered system it is conceivable that a number of these great channels will be lost because consumers will not be willing to pay individually for them. And if we move into a strict tiered system so these channels would not be lost, would I have to purchase the speed channel to watch baseball? And would WGN be included in this Sports tier because they cover the Cubs? It sees to me that in the end the consumers are the ones hurt because they would lose a channel that many people may watch if they only knew it existed, or they deemed it affordable and important enough to purchase.

I understand that there is an argument that this a la carte/tiered system will allow parents to pick and choose what channels they want their families to watch and that by allowing a move to this a la carte/tiered system would lessen the amount of violence and foul language our children may be subjected to. As a parent, I desire this outcome as well. I may not want my kids to watch MTV, but I can call my cable provider and have them block that channel, and if I have a digital cable box I can block it myself. Yes, I am paying for something that I choose not to receive—but I am getting additional channels I want for prices less than I would pay for under an a la carte/tiered system.

Thank you again Mr. Chairman, and I yield back the remainder of my time.

Mr. UPTON. Mr. Towns.

Mr. TOWNS. Thank you very much, Mr. Chairman. Let me also thank you for holding this hearing on the current state of competition and consumer choice in the video programming distribution market.

Let me pause at this point and thank the witnesses for appearing as well. Competition in the marketplace is increasing and will likely continue to do so as new technologies develop and are adopted. As the General Accounting Office noted, competition between cable operators and direct broadcast satellite operators, which did not exist a decade ago, has emerged and grown rapidly in the recent years. Consumer choice has increased as well. Whereas consumers used to have access to 30 or 40 channels, they now can view hundreds. This does not even include video services now available through high-speed Internet.

Some have argued that consumers do not want all of these channels and would prefer the Canadians so-called a la carte system. However, the largest Canadian cable provider that operates in markets closely resembling those of the United States offers service that is nearly identical to cable service offered here. Consumers

must first purchase an expanded basic package before getting access to niche channels, and most Americans receive for free as part of a digital tier, like ESPN Classic, the Animal Planet or the Game Show Network.

While one provider offers theme packages, this is only the French Canadian market, which is not like ours and was done without programmers' permission. More importantly, the revenue generated in such markets are supplemental revenue. If such a model were employed in the United States, channels would disappear, as they would be located on fewer systems and be unable to generate the advertising revenue needed for survival. Programmers continuing their service would be forced to raise rates to make up the difference. Niche channels, such as Oxygen and women-focused programs or TV One, a cable network for African-Americans, could never be launched without access to the millions of households that subscribe to an expanded basic tier. In the end, consumers would likely pay more but receive fewer channels.

This does not seem to be a better deal for consumers. For those who are offended by certain programs, cable operators already provide technological tools to block those channels. Finally, Mr. Chairman, I have several letters from elected officials from New York and around and also from New York-based Hispanic groups that I would like to submit for the record.

Mr. UPTON. Without objection.

Mr. TOWNS. Therefore, Mr. Chairman, on that note, I will yield back and say again thank you so much for having this hearing and of course say to Mr. Deal and to Mr. Bilirakis who said about people have made up their mind already, but if you hear convincing testimony, maybe you might change it again.

[The information referred to follows:]

KEVIN S. PARKER
SENATOR, 21ST DISTRICT

RANKING MINORITY MEMBER
ENERGY & TELECOMMUNICATIONS

COMMITTEES
AGRICULTURE
ALCOHOLISM & DRUG ABUSE
COMMERCE, ECONOMIC DEVELOPMENT & SMALL BUSINESS
CORPORATIONS, AUTHORITIES & COMMISSIONS
FINANCE
HIGHER EDUCATION
VETERANS, HOMELAND SECURITY & MILITARY AFFAIRS

MINORITY CHAIRMAN
NEW AMERICANS TASK FORCE

THE SENATE
STATE OF NEW YORK

ALBANY OFFICE:
ROOM 517
LEGISLATIVE OFFICE BUILDING
ALBANY, NEW YORK 12247
PHONE: 518-455-2120
FAX: 718-416-6545

DISTRICT OFFICE:
4310 AVENUE D
BROOKLYN, NEW YORK 11203
PHONE: 718-629-6401
FAX: 718-629-6419

e-mail:
parker@senate.state.ny.us

July 1, 2004

Michael K. Powell
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

MB Docket No. 04-207

Dear Chairman Powell:

I am writing to urge you to not support the "a la carte" cable system currently being debated in Congress. Its implementation would reduce or eliminate programming aimed at minority groups.

Channels like BET, Telemundo TV One and ESPN Deportes have succeeded under the current cable system in large part due to the way in which they were introduced: through bundling. When a new network is introduced, it is usually placed in a bundle with existing ad-supported popular channels, such as CNN, ESPN or Nickelodeon, allowing viewers the opportunity to try out the new channel. If consumers find the channels interesting, the channel will gain its own audience and enough advertising revenue to become profitable.

Under the "a la carte" system, where viewers pay separately for each channel, there is little likelihood that consumers will spend their money on channels about which they have little knowledge. A new network will have no opportunity to build an audience and become successful. This will also result in higher expenses for channels that remain.

Thus, the channels that appeal to more specialized audiences, particularly ethnic, foreign-language and niche programming, would have trouble attracting enough subscribers to survive. Ultimately, this situation would result in generic and low quality programming aimed at the majority. The minority voice would be silenced in the "a la carte" system.

I implore you to reject the "a la carte" system. Help keep diverse programming on the air. If you have any questions, please do not hesitate to contact my office at 718-629-6401.

Sincerely,

Kevin Parker

KEVIN PARKER

CARL ANDREWS
SENATOR, 20TH DISTRICT
MINORITY WHIP
LEGISLATIVE OFFICE BUILDING
ROOM 413
ALBANY, NEW YORK 12247
(518) 455-2431
FAX: (518) 426-6856
DISTRICT OFFICE
572 FLATBUSH AVENUE
BROOKLYN, NEW YORK 11225
(718) 284-4700
FAX: (718) 282-9585

THE SENATE
STATE OF NEW YORK

RANKING MINORITY MEMBER
CIVIL SERVICE & PENSIONS
COMMITTEES:
COMMERCE, ECONOMIC DEVELOPMENT & SMALL BUSINESS
ENERGY & TELECOMMUNICATIONS
HEALTH
INSURANCE
JUDICIARY
MENTAL HEALTH & DEVELOPMENTAL DISABILITIES
RACING, GAMING & WAGERING

July 1, 2004

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
C/O Natek Inc., Inc.
236 Massachusetts Avenue, NE
Suite 110
Washington, DC 20002

Dear Secretary Dortch:

I am writing to express my concern over the Congressional proposal for an "a la carte" alternative to the current cable system. If passed, this proposal would undermine the progress that our country has made in its television programming diversity.

The current cable television system enables smaller channels to have a larger potential viewing base because they are bundled with larger packages of channels. When bundled, smaller channels offering diverse programming such as foreign language or minority-targeted shows are able to boost their advertising sales and stay afloat in an extremely competitive industry.

The introduction of channels like these is important in that they offer specialized alternatives to major networks. These alternative networks offer programming that breaks the mold of traditional networks and offer programming that targets minority viewers. Alone, these networks would be unlikely to sustain the viewer numbers they currently have, potentially forcing them off the air. Without enough viewers revenue will decline, the cost of subscription will increase and these channels will not remain on the air.

I hope you will join me in not supporting the "a la carte" system, but supporting the continued growth of diverse programming on American cable television networks.

If you would like to discuss this matter in further detail, please feel free to contact me at my office at (718) 284-4700.

Sincerely,

Carl Andrews
New York State Senator

HON. GUILLERMO LINARES

June 29, 2004

Michael K. Powell
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
MB Docket No. 04-207

Dear Chairman Powell:

I am writing in opposition to the proposed "a la carte" cable system being considered in Congress, as it does not benefit consumers.

The finest quality of our current cable system is its ever increasing diversity. Over the past twenty years, the number of cable program networks has grown from 28 to 339, with the array of programs offered on existing networks dramatically increasing annually. With the improved diversification of programming, American consumers have benefited from exposure to important channels that support varied voices, such as BET, Telemundo, TV One, ESPN Deportes, C-SPAN and The Learning Channel. Correspondingly, the viewing of cable programming has steadily increased.

The economics of the cable industry are based on licensing agreements between cable programmers and operators, the cost of which are passed onto consumers, and national and local advertising. Advertising earnings are generally based on the number of viewers a channel attracts. If a channel appeals to a specialized audience, under the "a la carte" system, its viewership will decline, as occasional viewers today would no longer subscribe. Loss of these viewers and those who might watch these channels regularly and not when offered "a la carte" will severely reduce advertising revenue and increase the cost of licensing agreements and the costs passed onto consumers.

Further, if channels do not have adequate revenue, the quality and diversification of programming will decrease. Judith McHale, President of Discovery Communications, has argued that "Discovery's award-winning networks will not exist in an *a la carte* environment and consumers will have lost the channels they regard as the pre-eminent source of high quality, family-friendly programming." Many of these channels will be forced out of business. We will no longer be able to enjoy the diverse programming of today.

An impressive and vibrant cable programming industry has developed without the need of government regulation. Cable offers consumers an incredible entertainment and educational value. Please help sustain this system. Do not support the "a la carte" proposal.

Sincerely yours,

Guillermo Linares
Former New York City Council Member

26 VAN CORLEAR PLACE, BRONX, N.Y. 10463 * TEL. (718) 563-6916 * E-MAIL:GLINARES33@EARTHLINK.NET

Mr. UPTON. Mr. Pickering.

Mr. PICKERING. Mr. Chairman, I will waive my right and take my time with the panel. I will look forward to hearing from them today, and thank you for this hearing.

Mr. UPTON. Mr. Stearns.

Mr. STEARNS. Good morning and thank you, Mr. Chairman. The issue before us is a difficult one: The ability to choose what programs a consumer wants to pay for and whether the market can bear that type of business model for multichannel video programming distributors, MVPD, like cable and satellite. Joshua Hammond wrote a book called, "The Seven Cultural Forces that Shape America," and one of them, in fact the No. 1 cultural force was choice. Americans desire as many alternatives that the market can provide to suit their daily lives. The MVPD has provided numerous valuable programming choices every year and continues to add new programming in its quality.

At stake is whether the consumer should have the choice to pick only those programs he or she would like to pay for, like you would on an a la carte restaurant menu. Sure, the prices may be higher, but that is a consumer's choice. Now, this idea seems simple, I tell my colleagues, and has garnered some support from constituents in my district. In fact, the Orlando Sentinel just did an editorial today endorsing Mr. Deal's bill. But I also point out to you religious and minority programs have benefited from two specific areas in the MVPD market: Must-carry and the use of bundling services and programs. At the very least, my colleagues, the use of a la carte could interfere with the mandatory carriage obligation and in fact possibly reduce diversity in programming.

I raise these questions. I am concerned they are attempting to impose a particular business model into Federal legislation. I understand that the proposal offered by my friend from Georgia is not mandatory but a voluntary one, but even under a voluntary program, a Federal a la carte provision can cause problems with existing contracts and obligations.

Now, having said that, I don't think anybody on this committee would object to a demonstration model, as my colleague, Mr. Bilirakis, mentioned. So why doesn't the industry, just as a group, small cable systems or operators get together, take on an additional near-term cost to determine if an a la carte system can work in certain markets, just to try it. I mean that is the spontaneity of American enterprise. It is not uncommon in this country for a group to glean success from an idea that a majority of industry dismisses as unworkable, but I say to the industry, why not follow up and have a demonstration model? That, my colleagues, is another form of choice which you as an industry can make.

So I applaud you for this hearing, Mr. Chairman, and I look forward to hearing from the witnesses.

Mr. UPTON. Mr. Rush.

Mr. RUSH. Thank you, Mr. Chairman, and I also want to commend you for holding this hearing today, and I want to thank my colleague from Georgia, Mr. Deal, for his interest in this particular area and for his work that he has done on it. And, Mr. Chairman, I hope that this will be the first of many hearings to come. Today's hearing provides us with an unprecedented opportunity to learn

more about a la carte pricing or theme-based tier pricing programming.

Mr. Chairman, consumers, particularly the ones in my district, are continuously complaining about the rising costs in their cable rates. The average monthly cable bill is approximately $50 and is steadily climbing. It has been argued the if consumers have more choice and flexibility in programming, that their cable rates would decrease. The rationale is that consumers would have to control over what comes into their homes without having to pay for channels that they do not watch, especially indecent programming. However, a recent GAO report recognized that adopting an a la carte approach could require additional technology and impose additional costs on both cable operators and subscribers, thereby increasing cable rates for the consumer. Apparently, consumers who rely on cable-ready TV sets will still have to lease or buy the addressable set-top boxes to purchase channels on an a la carte basis, which is estimated to be $4.39 per box.

On the issue of diversity, I am deeply concerned that an a la carte pricing scheme would have the unintended consequence in hurting minority and niche programming. I know that I raised this very issue during recent hearings and markups of the satellite television reauthorization legislation, but I want to remind my colleagues that it is the GAO that reported that programming diversity will suffer in an a la carte world because, quote, "Some cable networks, especially small and independent networks, would not be able to gain enough subscribers to support the network," end of quote. In addition, the GAO report further stated that an a la carte pricing system would undermine the prospects of new cable networks that are attempting to launch. Accordingly, there may be fewer diversity of voices and choices on the airwaves.

Mr. Chairman, I want to welcome all the panelists who are here, particularly Mr. Liggins and others, and I also want to say a special hello to my friend from Chicago for a long time, Mr. Jonathan Rogers who is also present here representing TV One. I would like to submit, Mr. Chairman, finally, various letters into the record from various organizations from across the Nation who are really concerned about this issue, from the NAACP to the National Urban League, to the National Council of Negro Women, Rainbow PUSH Coalition, the National Congress of Black Women, of course the Congressional Black Caucus and the National Black MBA Association. And thank you, I yield back the balance of my time.

Mr. UPTON. Without objection.

[The information referred to follows:]

Jun-03-04 03:11pm From-NAACP T-030 P.01/02 F-709

WASHINGTON BUREAU
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
1025 VERMONT AVENUE, N.W. • SUITE 1120 • WASHINGTON, D.C. 20005
(202) 638-2269 FAX (202) 638-5936

May 17, 2004

Representative Solomon P. Ortiz
United States House of Representatives
Washington, DC 20515

Re: "A la Carte" Distribution of Program Services Proposal

Dear Representative Ortiz:

I am writing to express my concerns regarding a legislative proposal that would require the cable and satellite industries to implement so-called "a la carte" channel offerings. With more than 500,000 card-carrying members within our association of more than 2,200 membership units covering all 50 states, the District of Columbia, Japan, Korea, Italy and Germany-- the NAACP's principal objective is to ensure the political, educational, social and economic equality for racial and ethnic minority groups of United States and to eliminate race prejudice.

It is quite troubling to find that this benign sounding measure may well have the unintended consequence of dramatically reducing the diversity of cable and satellite programs targeting racial and ethnic minority audiences, while increasing subscription costs to consumers. The "A la Carte" Distribution of Program Services proposal, now being considered on Capital Hill, would require programming channels aimed at small but significant minority segments of the population to be sold on a channel-by-channel basis, a radical departure from program packaging system utilized by cable and satellite companies now. As Alfred Liggins, Chairman of the newly launched "TV One" (a cable network which targets African-American adults and others) noted in the April 12, 2004 edition of the Washington Times Newspaper, "Forcing cable and satellite companies to sell channels a la carte would instantly erode [TV One's] potential advertising support, causing dramatic increases in the per-subscriber fee [it] must charge."

If an "a la carte" requirement is enacted, programming channels aimed at small but significant minority segments of the population would be threatened. This is especially true of programming intended for racial and ethnic minority or foreign-language audiences such as BET, Univision, TVOne, and SiTV, among others. Having to market each individual channel to each individual consumer would add huge costs. Smaller potential audiences will mean fewer advertising dollars, so these networks would be required to raise fees dramatically to cable and satellite operators. Not only would minority and ethnic programming be threatened, but other niche channels aimed at women (Lifetime Entertainment), science fiction, history or food enthusiasts (Sci-Fi Channel, History Channel and Food Channel), would not able to draw sufficient advertising dollars to help keep cable and satellite television subscription services accessible to consumers.

As such, I strongly urge the U.S. Congress to carefully examine alternatives that would spur greater diversity in ownership as well as content in the emerging digital cable, broadcasting, and satellite markets, rather than create a problem in search of solution as this a la carte proposal seems to be.

If there is anything I can do to help advance this process, I can be reached by telephone at (202) 638-2269.

Sincerely,

Hilary O. Shelton
Director

NATIONAL URBAN LEAGUE

The nation's oldest and largest community-based movement empowering African Americans to enter the economic and social mainstream.

July 7, 2004

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Natek Inc., Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002

Re: MB Docket No. 04-207

Dear Chairman Powell and Ms. Dortch:

We would like to voice our concerns about the potential affects of requiring cable and satellite companies to sell basic cable networks on a channel-by-channel, or "a la carte," basis. On the surface, this idea sounds appealing, but a deeper look can only lead to the conclusion that a la carte packaging would have a chilling effect on programming diversity in America.

While we are encouraged by the networks efforts to expand diverse programming in recent years, ethnic and minority populations in the U.S. are still acutely underserved by television's current offerings. As a result, many opinion leaders have called on media businesses to generate more channels to serve audiences of African-Americans, Hispanics, Asians, and other ethnic groups. The imposition of an a la carte pricing model could bring these efforts to a screeching halt. Many of the channels that exist today will not be able to survive with the reduced subscriber base they will face under a la carte.

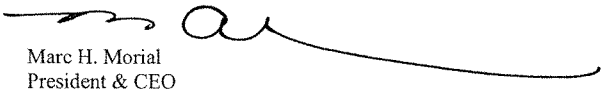
If cable and satellite companies sell channels a la carte, it would force networks to dramatically increase the per-subscriber fee they must charge. Ultimately, subscribers would find themselves paying about the same amount – and possibly more – for just a handful of channels, rather than having the hundreds from which to choose, as they do today.

120 WALL STREET, NEW YORK, NY 10005 (212) 558-5300 FAX: (212) 344-5332 www.nul.org

With its multi-channel universe, cable provides a wealth of diverse resources allowing viewers the ability to share other cultures, communities, styles and viewpoints. The imposition of a la carte would drastically reduce, if not eliminate entirely, that opportunity.

A la carte directly challenges years of growth and expansion of diverse programming in today's media marketplace. As such, we urge the FCC to strongly consider the full ramifications of a la carte in their report to Congress.

Sincerely,



Marc H. Morial
President & CEO
National Urban League

cc: Michele Moore, SVP, Marketing & Communications, National Urban League
William Spriggs, Executive Director, IOE, National Urban League
Suzanne Bergeron, Manager for Legislative Affairs, IOE, National Urban League

NATIONAL COUNCIL OF NEGRO WOMEN, INC.

NATIONAL HEADQUARTERS:
633 PENNSYLVANIA AVENUE, NW • WASHINGTON, DC 20004
TELEPHONE: (202) 737-0120 FAX: (202) 737-0476

July 12, 2004

The Honorable Joe Barton
Chairman
Energy and Commerce Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable John Dingell
Ranking Member
Energy and Commerce Committee
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman and Congressman Dingell:

The National Council of Negro Women is deeply concerned about the proposal for "a la carte" distribution of program services on direct broadcast satellite service. We know first hand that for years African Americans and other minorities have turned on our television to find little or no programming that reflected our life experiences or portrayed our communities in an accurate light. The tremendous explosion of cable has provided numerous channels that reflect the diversity of America. It is not in the interest of our country to lose positive programming serving widely diverse communities with a la carte.

Since its founding in 1935 the National Council of Negro Women has been a major force in community and national life. It is comprised of 38 national organizations and 240 community and college based sections with an outreach to four million women. We have found the special channels especially important in reaching our members and their families on issues dealing with health, women's concerns, and African American history and life.

Ethnic and minority populations in the U.S. are acutely underserved by television's current offerings, and many opinion leaders have called on media businesses to generate more channels to serve audiences of African-Americans, Hispanics, Asians and other ethnic groups. While some progress is being made in this area, the imposition of an a la carte pricing model could bring those efforts to a screeching halt. Networks like ours, that serve diverse, minority and multilingual interest, would never have been launched in an a la carte world.

Founder: Mary McLeod Bethune Chair and President Emerita: Dorothy I. Height Executive Director: Cheryl R. Cooper

Affiliated with: National Council of Women of the United States
International Council of Women/National Assembly for Social Policy & Development
Contributions are deductible for income tax purposes.

One of the great promises of cable is that with its multi-channel universe, subscribers cannot only have programming designed for them, but also have the ability to share other cultures, communities, styles and viewpoints. The imposition of a la carte would drastically reduce, if not eliminate entirely, that opportunity.

A la carte is a classic case of a solution far worse than the perceived problem. Those who promote more diversity in today's media marketplace would do it a fatal disservice by supporting or voting for a la carte requirements.

Sincerely,

Dorothy I. Height
Chair/President Emerita

NATIONAL HEADQUARTERS
930 East 50th Street
Chicago, Illinois 60615
Phone: (773) 373-3366 * Fax: (773) 373-3571

LaSalle Street Project
Located within the
National Office in Chicago, IL

Telecommunications Project
1131 6th Street, N.E.
Washington, D.C. 20002
Phone: (202) 547-3215
Fax: (202) 547-7397

Wall Street Project
Empire State Building
350 5th Avenue, Suite 2701
New York, NY 10118
Phone: (212) 425-7874
Fax: (212) 868-1412

Entertainment Project
1968 West Adams Boulevard
Los Angeles, CA 90018
Phone: (323) 634-6300
Fax: (323) 634-6302

Silicon Valley Project
2180 Bupile Avenue
East Palo Alto, CA 94303
Phone: (650) 323-7937
Fax: (650) 323-7939

Peachtree Project
Hamilton Plaza
100 Auburn Avenue
Suite 101
Atlanta, GA 30303
Phone: (404) 525-5883 or 3698
Fax: (404) 525-5203

Automotive Project
First National Building
660 Woodward Avenue
Suite 1435
Detroit, MI 48226
Phone: (313) 963-9005
Fax: (313) 963-0012

Energy Project
1800 Smith Street
Suite 3757
Houston, TX 77002
Phone: (713) 571-0851
Fax: (713) 571-0889

July 9, 2004

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Natek Inc., Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002

Re: MB Docket No. 04-207

Dear Chairman Powell and Ms. Dortch:

We would like to voice our concerns about the potential effects of requiring cable and satellite companies to sell basic cable networks on a channel-by-channel, or "a la carte," basis. On the surface, this idea sounds appealing, but a deeper look can only lead to the conclusion that a la carte packaging would have a chilling effect on programming diversity in America.

While we are encouraged by the networks efforts to expand diverse programming in recent years, ethnic and minority populations in the U.S. are still acutely underserved by television's current offerings. As a result, many opinion leaders have called on media businesses to generate more channels to serve audiences of African-Americans, Hispanics, Asians, and other ethnic groups. The imposition of an a la carte pricing model could bring these efforts to a screeching halt. Many of the channels that exist today will not be able to survive with the reduced subscriber base they will face under a la carte.

Rev. Jesse L. Jackson, Sr., *Founder & President*
Martin L. King, *Chairman*
www.rainbowpush.org

Ultimately, subscribers would find themselves paying about the same amount – and possibly more – for just a handful of channels, rather than having the hundreds from which to choose, as they do today.

With its multi-channel universe, cable provides a wealth of diverse resources allowing viewers the ability to share other cultures, communities, styles and viewpoints. The imposition of a la carte would drastically reduce, if not eliminate entirely, that opportunity.

A la carte directly challenges years of growth and expansion of diverse programming in today's media marketplace. As such, we urge the FCC to strongly consider the full ramifications of a la carte in their report to Congress.

Sincerely,

Reverend Willie Barrow

NATIONAL CONGRESS OF BLACK WOMEN, INC.

8484 Georgia Avenue, Suite 420 ♀ Silver Spring, MD 20910-3363 ♀ 301-562-8000 ♀ Fax 301-562-8303

NATIONAL OFFICERS

Hon. C. DeLores Tucker
NATIONAL CHAIR
Trish Morris-Yamba
FIRST VICE CHAIR
Yvette Taylor-Hachoose, Esq.
SECOND VICE CHAIR
Ramona Wright
THIRD VICE CHAIR
Ophelia Averitt
CORRESPONDING SECRETARY
Mary H. Starkey
RECORDING SECRETARY
Dr. Jacquelyn Jordan
TREASURER

BOARD OF DIRECTORS
Glinda Anderson *(MD)*
Sandra Ballard *(DE)*
Geraldine Boykin *(DC)*
Marilyn Blakely *(VA)*
Isabell Correll *(TX)*
Dr. Faleese Jenkins *(FL)*
Joyce Jones *(CT)*
Cynthia McCoy *(IL)*
Hon. Alicia Reece *(OH)*
Bev Smith *(PA)*
Doris Spencer *(VA)*
Hon. Connie Stokes *(GA)*

FOUNDING MEMBERS
Hon. C. DeLores Tucker, *Convening Founder*
Hon. Shirley Chisholm, *Chair Emeritus*
Rev. Willie Barrow
Leah Baskerville, Esq.
Dr. Mary Berry
Hon. Cardiss Collins
Dr. Dorothy I. Height
Hon. Alexis Herman
Hon. Charlene Drew Jarvis
Mrs. Coretta Scott King
Hon. Gloria Lawkh
Hon. Hilda Mason
Ms. Jewell Jackson McCabe
Hon. Eleanor Holmes Norton
Hon. Wilhelmina J. Rolark, Esq.
Hon. Mary Terrell, Esq.
Ms. Pat Tyson
Hon. Shirley Wilcher
Hon. Nadine Winter
Rev. Addie Wyatt

Visit our website at:
http://www.nationalcongressblackwomen.org
Email: info@nationalcongressblackwomen.org

Toll Free Number:
1-877-274-1198

June 28, 2004

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
C/O Natek Inc., Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002

Re: MB Docket No. 04-207

Dear Chairman Powell and Ms. Dortch:

We would like to voice our concerns about the potential affects of requiring cable and satellite companies to sell basic cable networks on a channel-by-channel, or "a la carte," basis. On the surface, this idea sounds appealing, but a deeper look can only lead to the conclusion that a la carte packaging would have a chilling effect on programming diversity in America.

While we are encouraged by the networks efforts to expand diverse programming in recent years, ethnic and minority populations in the U.S. are still acutely underserved by television's current offerings. As a result, many opinion leaders have called on media businesses to generate more channels to serve audiences of African-Americans, Hispanics, Asians, and other ethnic groups. The imposition of an a la carte pricing model could bring these efforts to a screeching halt. Many of the channels that exist today will not be able to survive with the reduced subscriber base they will face under a la carte.

If cable and satellite companies sell channels a la carte, it would force networks to dramatically increase the per-subscriber fee they must charge. Ultimately, subscribers would find themselves paying about the same amount – and possibly more – for just a handful of channels, rather than having the hundreds from which to choose, as they do today.

With its multi-channel universe, cable provides a wealth of diverse resources allowing viewers the ability to share other cultures, communities, styles and viewpoints. The imposition of a la carte would drastically reduce, if not eliminate entirely, that opportunity.

A la carte directly challenges years of growth and expansion of diverse programming in today's media marketplace. As such, we urge the FCC to strongly consider the full ramifications of a la carte in their report to Congress.

Sincerely,

Dr. C. DeLores Tucker
National Chair

Congress of the United States
Washington, DC 20515

May 12, 2004

The Honorable Joe Barton
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable John D. Dingell
Ranking Member
Committee on Energy and Commerce
2322 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Barton and Ranking Member Dingell:

As members of the Congressional Black Caucus we are extremely concerned about Congressman Nathan Deal's proposal for "a la carte" distribution of program services on direct broadcast satellite services. The adoption of this amendment to the reauthorization of the Satellite Home Viewer Improvement Act (SHVIA) is likely to have the effect of reducing diversity of programming on satellite services while at the same time increasing costs to the consumer.

In January of this year both TV One, a new cable network for African Americans and ESPN Deportes, a Spanish language sports network, were launched with great fanfare. We believe in an "a la carte " world it would have been extremely difficult if not impossible for these channels to have been developed. Furthermore, if an "a la carte" system were to become reality today these channels and many others that offer diversity to the viewing public would be in great jeopardy.

The reason is one of simple economics. These channels cannot survive with only the subscription fees they charge to cable companies. Revenue from a national advertising base is essential. If the "Deal Amendment" were to prevail the potential advertising base for niche channels would be severely eroded. In turn, this would lead to less advertising dollars for the programmer, an increase in licensing fees and ultimately an increase in consumer costs. In the end this would translate into fewer choices for consumers and less diversification of programming.

As Alfred Liggins from TV One stated in a recent Washington Times Op Ed "One of the great promises of cable is that with its multi-channel universe we subscribers would not only have programming designed for us, but we also would have the ability to share other cultures, communities, styles and viewpoints". We agree with Mr. Liggins vision, however, its unlikely this can be accomplished if Congressman Deal's amendment becomes law.

PRINTED ON RECYCLED PAPER

The Honorable Joe Barton
The Honorable John D. Dingell
Page 2

Again, we urge you to seriously consider this matter as you undertake the reauthorization of the Satellite Home Viewer Improvement Act (SHVIA). Please feel free to contact us if you should have any questions or comments.

Sincerely,

The Honorable Joe Barton
The Honorable John D. Dingell
Page 3

Corrine Brown

Chaka Fattah

Maxine Waters

David Scott

Kendrick B. Meek

cc: Members of the House Energy and Commerce Committee

Changing The Course of Your Future

July 9, 2004

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
C/o Natek Inc., Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002

Re: MB Docket No: 04- 207

Dear Chairman Powell and Mrs. Dortch:

We understand that Members of Congress have commissioned a report on the potential affects of requiring cable and satellite companies to implement a channel-by-channel, or "a la carte," packaging and pricing plan. A close examination of this policy leads to the conclusion that a la carte packaging and pricing of programming would drastically stifle the media diversity in America.

Ethnic and minority populations in the U.S. are acutely underserved by television's current offerings. Many opinions leaders have called on media business to generate more channels to serve audiences of African-Americans, Hispanics, Asians, and other ethnic groups. While some progress is being made in this area, the imposition of an a la carte pricing model could make these efforts obsolete. Many networks that serve diverse, minority, and multilingual interests largely depend on packaged programming for consumers for survival. And many such channels that exist today will not be able to survive with the reduced subscriber base they will face under a la carte.

If cable and satellite companies sell channels a la carte, it would instantly erode potential advertising support, forcing networks to dramatically increase the per-subscriber fee they must charge. Ultimately, subscribers would find themselves paying about the same amount – and possibly more – for just a handful of channels, rather than having the hundreds from which to choose, as they do today.

Various populations rely on cable to provide a window into other cultures, communities, styles, and viewpoints. The imposition of a la carte would drastically reduce, if not eliminate that opportunity entirely.

Those who support diversity in today's media marketplace recognize the important role that the current cable system plays in building and expanding cultural diversity in this country. As such, we urge the FCC to strongly consider the full ramifications of a la carte in their report to Congress.

Sincerely,

Alvin Brown
Chairman of National Black MBA Association

EDOLPHUS "ED" TOWNS
MEMBER OF CONGRESS
10TH DISTRICT, NEW YORK

ENERGY AND COMMERCE
HEALTH
TELECOMMUNICATIONS AND THE INTERNET
COMMERCE, TRADE, AND CONSUMER PROTECTION

GOVERNMENT REFORM
GOVERNMENT EFFICIENCY AND FINANCIAL MANAGEMENT
RANKING MEMBER

Congress of the United States
House of Representatives
Washington, DC 20515–3210

WASHINGTON OFFICE:
SUITE 2232
RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-5936

BROOKLYN OFFICES:
26 COURT ST., SUITE 1510
BROOKLYN, NY 11242
(718) 852-8016

1110 PENNSYLVANIA AVENUE
STORE 5
BROOKLYN, NY 11207
(718) 272-1173

1670 FULTON STREET
BROOKLYN, NY 11213
(718) 774-8082

2294 NOSTRAND AVENUE
BROOKLYN, NY 11203
(718) 434-7931

July 8, 2004

Michael K. Powell
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

MB Docket No. 04-207

Dear Chairman Powell:

I am writing to urge you to not support the "a la carte" cable system currently being debated in Congress. Its implementation would reduce or eliminate programming aimed at minority groups.

Channels like BET, Telemundo, TV One and ESPN Deportes have succeeded under the current cable system in large part due to the way in which they were introduced: through bundling. When a new network is introduced, it is usually placed in a bundle with existing ad-supported popular channels, such as CNN, ESPN or Nickelodeon, allowing viewers the opportunity to try out the new channel. If consumers find the channels interesting, the channel will gain its own audience and enough advertising revenue to become profitable.

Under the "a la carte" system, where viewers pay separately for each channel, there is little likelihood that consumers will spend their money on channels about which they have little knowledge. A new network will have no opportunity to build an audience and become successful. This will also result in higher expenses for channels that remain.

Thus, the channels that appeal to more specialized audiences, particularly ethnic, foreign-language and niche programming, would have trouble attracting enough subscribers to survive. Ultimately, this situation would result in generic and low quality programming aimed at the majority. The minority voice would be silenced in the "a la carte" system.

As a senior member of the Hose Committee on Energy and Commerce, I implore you to reject the "a la carte" system and urge you to keep diverse programming on the air.

With warmest wishes, I remain

Sincerely yours,

Edolphus "Ed" Towns
Member of Congress

Mr. UPTON. Mr. Gillmor.

Mr. GILLMOR. I will simply enter my statement in the record. Thank you, Mr. Chairman.

[The prepared statement of Hon. Paul E. Gillmor follows:]

PREPARED STATEMENT OF HON. PAUL E. GILLMOR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Thank you, Mr. Chairman, for this opportunity to address cable and satellite-related marketplace issues.

In particular, I look forward to learning more about consumer choice proposals such as A La Carte and Themed-Tiered Offerings. It was not long ago that our panel first touched upon such concepts. Since then, a number of entities, many represented on the witness panel today, have weighed-in with a number of arguments, both for and against as to whether cable or satellite operators should be required to offer an a la carte or themed-tiered service, or permitted to do so voluntarily. Thus far, many of the arguments sound enticing, but today, I believe, we will break the surface.

Again, I thank the Chairman and yield back the remainder of my time.

Mr. UPTON. Mr. Buyer.

Mr. BUYER. I will waive my opening statement.

Mr. UPTON. That concludes the opening statements. I will make a motion that all members not present will have an opportunity to enter an opening statement as part of the record.

[Additional statements submitted for the record follow:]

PREPARED STATEMENT OF HON. BARBARA CUBIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

Thank you, Mr. Chairman.

I look forward to our hearing today, which is effectively an extension of a discussion that started earlier this year. During our hearings on indecency and the satellite bill, the idea of A La Carte programming was discussed. It was not necessarily germane in those hearings, so today's hearing will give us a chance to fully vet the issue and determine if there ought to be any Congressional action on this matter.

At issue is whether the current business model for delivering programming is adequate to provide maximum choice and maximum value to consumers. There is no question that folks want to get the most bang for their buck. And while there have been concerns raised about increasing subscription costs, I look at the array of available programming content and advanced services that one can get today from an MVPD—be it satellite or cable—and realize that providers have evolved greatly, through billions of dollars of investment, and this industry is a far cry from the one we deregulated nearly a decade ago.

During this hearing, I look forward to learning from our witnesses how the current business model has contributed to this industry evolution, and how A La Carte would affect future offerings. It seems on the surface that choosing individual channels may be an attractive option, but I am not certain the economics uphold that assumption. In an age where there is a continuing drumbeat of concern about having a panoply of choices and voices in the media, I think Congress needs to ensure any action it takes will not reduce the spectrum of programming available today.

Lastly, we need to ensure that there remains proper incentive for the continued roll out of advanced services in rural America—services that have allowed folks in Wyoming to connect to the economy of the 21st Century.

I yield back the balance of my time.

PREPARED STATEMENT OF HON. VITO J. FOSSELLA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

I want to thank Chairman Upton for holding this hearing today. I would like to recognize Tom Baxter from Time Warner for coming down today and testifying in front of the Subcommittee. Based in New York and serving Staten Island, Time Warner Cable has spent invested billions of dollars since passage of the 1996 Telecom Act. Those dollars are providing families access to digital television, broadband Internet, and Voice-Over-IP. Again, I want to thank Mr. Baxter for coming down and I look forward to hearing his testimony.

As we learned last week, unless you're from the part of Congressman Pickering's district that still uses tin cans and rope for telephones, you have undoubtedly witnessed the expansion and development of the cable industry since Congress passed the 1996 Telecom Act. Within the deregulatory environment that the cable industry enjoys, mutual funds, pensions, hedge funds, individual investors, small businesses and Future 500 corporations have invested billions of dollars to build an information highway into the home. It was these investors that gave fresh ideas an opportunity to become reality in an environment where the risk of government intervention was limited.

As we discuss the idea of government stepping in and creating an "a la carte" environment, whether it be voluntary or mandatory, Congress should remember that the Constitution mentions nothing about the right to cable services. Innovation is only limited when government intervenes in private industry. I don't believe there is lack of competition in television, broadband or telephone services. And with help from the Congress, I believe we can extend a similar deregulatory environment for competitors within these industries to ensure that consumers have a variety of options for television, broadband, and telephone services.

PREPARED STATEMENT OF HON. ELIOT ENGEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Thank you Mr. Chairman:

I appreciate the concerns about that people have about the content of programming coming into their homes. And I have supported rules governing the use of the public airwaves. However, the proponents of Cable A la carte, in an effort to prevent objectionable material coming into a household have chosen a solution that upsets the fundamental economic model of the system. The result will be less diversity and higher costs to consumers.

There has been some discussion of how a la carte has worked in Canada. However, their system is far more regulated and they have far fewer choices than we have here in the U.S.—thus, I do not believe comparisons are applicable.

Now, the question is posed "why should I pay for things I don't want." This comes down to the economic model that we use in the Cable industry. There is probably some fancy economic term, but I will call the "channel surfer" model. In this model, people—mostly men it might be said—are known to surf the channels to see what is on. They may stop and see a commercial on a station they never watch—but that is a hit for the advertiser. They may also stop and start watching a program they have never seen before—that is a hit for the program producers. In an a la carte system, this is not possible.

I have with me a letter from the Bronx Borough President, Adolfo Carrion, Jr. that implores the FCC not to adopt an A la carte system. The letter states, in part, "For too long, Hispanics, African-Americans, and other minorities did not have programming that reflected their cultures and life experiences . . . through a la carte prices will rise, marginalizing minority groups due the inevitable increase in overall system costs . . ." I ask unanimous consent to have this letter added to the subcommittee's hearing record.

A la carte also leaves the question of how to launch a new channel—which is estimated at $130 million. If a person only gets what they pay for—how can he or she see the new channel? And if no one is actually seeing the channel, where will the ad revenues come from?

What about the case when a channel actually pays to be on a cable system. Would the consumer get that channel since it would be free to the consumer? What if the consumer still doesn't want it? Are we back to voluntary blocking technology?

In terms of diversity and channels targeted to certain segments of our population, take BET for example. This channel produces its own programming using revenues generated by advertising. The cost of advertising on BET is based on ratings—some of which are garnered by the channel surfers—even me—I don't make a point of watching every BET Jazz show—but if I am surfing, I know I have stopped to listen to a song or two. If the universe of potential viewers shrinks to a definite number—the flow of advertising dollars will shrink too—probably to the point that original programming will disappear if not the channel altogether.

Finally, the Cable industry can block any channel that a family finds objectionable. I commend the industry for its efforts to educate consumers about the options available to control the programming coming into their homes. I believe that working together we can find common ground and solutions without a wholesale reworking of the underlying economics.

Mr. UPTON. Gentlemen, ladies, thank you for listening and participating. We are pleased to have a distinguished witness panel with us today, and I guess for the purpose of introduction, I want to recognize my colleague, Mr. Hall, for a brief moment. Mr. Hall. You need to hit that button. You need to hit that button, the mic button.

Mr. HALL. I am honored to introduce my friend, Ben Hooks, who is here. He is the chief executive officer of Buford Media Group in Tyler, Texas. And Tyler, for 20 something years was in my district, and thanks to my friend, Tom DeLay, I now have the North Texas district up and down the Red River. So I am losing a very great supporter and a great friend out of my district, but we still have the opportunity to have his input here. They provide cable television and advanced telecommunications services to a lot of the smaller and rural markets in Northeast Texas and in Missouri, Oklahoma and Arkansas.

I just want to say that over the years Ben Hooks has been the recipient of a lot of great awards. They include Technology Innovator of the Year by CableVision, Imagemaker of the Year, Cable Television Pioneer and on and on. I have called on him a lot of times. He has always been very resourceful, told me both sides of the situation, been a dear friend, a good supporter and giving of his time like the other men and women on this panel.

I see the very finest here. I see my friend, Ben Pyne from Disney and ESPN, Reverend Plummer and others that we have worked with through the years. Thank you for the time it takes to prepare for this, the travel time and the testimony time and even the time to listen to tall of our opening statements. Mr. Chairman, thank you, and I yield back my time.

Mr. UPTON. Thank you. Now, first of all, I want to say thank you for submitting your testimony before the hearing so that we had a chance to review it this last evening. Your testimony is made part of the record in its entirety. At this point, we would like you to take no more than 5 minutes in terms of an opening statement.

We are joined by Mr. Gene Kimmelman who is a senior director of Public Policy and Advocacy for the Consumers Union; Mr. Al Liggins, chairman of TV One; Mr. Ben Hooks, CEO of Buford Media Group in Tyler, Texas; Mr. Ben Pyne, executive VP for Disney and ESPN Affiliates, Sales and Marketing; Mr. Glenn Plummer, Reverend Glenn Plummer, chairman of the National Religious Broadcasters; Mr. Tom Baxter, president of Time Warner Cable; Mr. Paul FitzPatrick, COO of Crown Media Holding and Hallmark Channel, Ms. Janet LaRue, chief counsel and legal studies director of the Concerned Women for America.

We thank you all for being here with us this morning, and Mr. Kimmelman, we will start with you.

TESTIMONY OF GENE KIMMELMAN, SENIOR DIRECTOR, PUBLIC POLICY AND ADVOCACY, CONSUMERS UNION; ALFRED LIGGINS, CHAIRMAN, TV ONE; BEN W. HOOKS, CEO, BUFORD MEDIA GROUP; BEN PYNE, EXECUTIVE VP, DISNEY AND ESPN AFFILIATES, SALES AND MARKETING; GLENN PLUMMER, CHAIRMAN, NATIONAL RELIGIOUS BROADCASTERS; THOMAS G. BAXTER, PRESIDENT, TIME WARNER CABLE; PAUL FITZPATRICK, COO, CROWN MEDIA HOLDING AND HALLMARK CHANNEL; AND JANET M. LARUE, CHIEF COUNSEL AND LEGAL STUDIES DIRECTOR, CONCERNED WOMEN FOR AMERICA

Mr. KIMMELMAN. Thank you, Mr. Chairman. On behalf of Consumers Union, the print and online publisher of Consumer Reports, I appreciate the opportunity to testify. I want to start off by thanking Congressman Deal. Boy, you really shook things up. You raised questions about the current system of television programming in America, and I think it is all for the better. We appreciate you starting that process.

I want to follow up on what Mr. Dingell said, do no harm. It reminds me of the model I think that is appropriate for policymakers to look at. Think of the pharmaceutical industry. When there is disease, pharmaceutical companies come in and offer us medicine. Now, we know every medicine is a poison. Every medicine causes harm, by definition. But it is a worthwhile harm because it is going after a disease, to cure a disease. Is there a comparable disease in television in America today?

I think of three questions: Is there enough competition, is there real choice for consumers that they get to be in control of, their choice not someone else's choice, and is there meaningful diversity in the marketplace to reflect America?

Is there enough competition? We have got two satellite companies come in against cable. One is now owned by a TV network, and their CEO says he has no interest in price wars against cable. Cable rates have risen five times faster than inflation over the last 20 years. The other satellite company has to buy all its programming from about a handful of media giants who sell it as a package at a high price. Even though technology costs have come down, equipment costs have come down, you can't make the programming costs go away when they are all bundled together that way. The GAO found in looking at this there is really no price discipline in effect with satellite. Is that enough competition?

Is there really enough choice? Mr. Chairman, you are right, there are more than 330 channels, but are people being forced to pay for channels that they either don't want or are finding distasteful? The average household only watches about 17 channels or fewer. Of the top 15 or 20 channels out there today, they are almost all the same channels in terms of viewership that were popular last year and the year before and 5 years ago and 10 years ago. And every one of them but one is owned by a handful of media giants that control broadcast television and the largest cable distribution systems.

Of the other channels out there, even a fairly highly rated channel, for every one person who is watching that channel, anywhere from 250 to 800 people don't want to watch it, and this is just of the top 50 that Nielsen rates. Of the other almost 300, Nielsen

doesn't rate them because they don't have enough viewership. Do they get ad revenue? I don't believe they get ad revenue. It is a good question to ask. But they are on cable. In an a la carte world where you can have a tier, an a la carte, would they still be on? If they have very few viewers today, why wouldn't they still be on if the cable operator could put them on a tier but also offer them a la carte?

The GAO found that every one of these large media companies that owns channels discriminates in favor of the programming it owns, against the programming it does not own. Is there really diversity? Reverend Plummer's testimony indicates that 10 to 20 percent of TV viewing in America is by African-Americans—330 channels. Mr. Liggins' channel, BET, are run by African-Americans. Is that 10 percent of 330, is that 20 percent of 330? Is there diversity? Is it reflecting the needs of that community? I don't believe so. And each of those channels needed a company like Comcast or another major media giant in order to get on in the first place or to remain on. Is that diversity? Submissions for the record by independent programmers say they cannot get on, and we have example after example in our testimony. Independent programmers can't get on. Is that diversity?

Consumers Union has conducted a survey, others have as well, you hear about, just asking folks what they would like to have. More than two-thirds of consumers say they would like to be able to choose the channels they get on television. More than two-thirds of all ethnic groups, all political orientations, all ideologies, those people want to choose their own channels.

Do no harm. Are there risks? Absolutely, there are risks to changing the system, but is this a marketplace with enough competition, with choice controlled by the consumers, with enough diversity? From a consumer perspective, we don't think so. From a diversity perspective, we don't think so. We have got to be able to do better.

I am pleased to see Congressman Bilirakis and others have wanted to come and listen, ask questions. We believe there is room for looking at a la carte and experimenting, starting with a basic tier that has broadcast channels that must meet the Congress' description of localism needs and public interest needs, public access channels. And on top of that, let cable operators, satellite providers offer any package they want, any and every package. Why not have the opportunity for them to offer channels a la carte, prevent programmers from blocking them from offering them a la carte so consumers would have choice?

I will conclude, Mr. Chairman, by saying that there is a la carte today. You can buy pay channels. There is some a la carte choice on digital. Cable is moving to that model, but it is choice that they control as the entry price for the consumer. It is a $60, $70 price point before you get to pick a lot of what you want. I believe with the technology we have, that price point could be at the $20 or $30 level, and you could have much more choice, much more diversity for consumers for much less money. I urge you to look into experimentation with this approach and others to try to get consumers more competition, better choices and more diversity. Thank you.

[The prepared statement of Gene Kimmelman follows:]

PREPARED STATEMENT OF GENE KIMMELMAN, SENIOR DIRECTOR, PUBLIC POLICY AND ADVOCACY, CONSUMERS UNION

TV viewers today are forced to live in a world of the cable industry's making—extremely limited choice and endlessly spiraling prices. With no meaningful government oversight and virtually no competition, cable providers—with the exception of being required to carry broadcast channels—decide what programming consumers see by controlling both packaging and price. By placing their most popular channels in expensive tiers with other channels most people don't watch or find offensive, the industry forces consumers to pay a special "cable tax" by requiring them to buy bloated packages of channels in order to get the programming they actually do want.

Consumers Union [1] and Consumer Federation of America [2] believe that cable operators get away with this manipulation simply because they can. Competition is virtually non-existent—98 percent of Americans have only one cable provider—and there are only two satellite television companies in the nation, one of which has extensive ties to the cable and broadcast industries. Satellite also must purchase its programming from the same cable and broadcasting giants, leaving satellite customers to buy similarly large tiers of channels. The attached report prepared by Dr. Mark Cooper, Research Director of the Consumer Federation of America (CFA), entitled "Time to Give Consumers Real Choices" provides a comprehensive economic analysis of the cable and satellite programming markets.

The only other market powerhouses are the large broadcast companies that own over-the-air and cable TV channels. Their control of popular network programming enables them to package their entire channel lineup and force these channels onto cable and satellite systems—and ultimately the consumer. This lack of competition has led to staggering price increases. According to the Bureau of Labor Statistics, cable customers have helplessly watched their bills increase by 56 percent since the industry was deregulated in 1996.

Consumers who want choice and value are stuck. And creators of new and diverse programming find themselves in the same situation. The only way to get their programming out to the public is to put it under the control of huge cable companies or broadcast media conglomerates to package with their media giant's programming. This situation stifles diversity of ownership and programming by blocking independent access to cable systems. Indeed, today very few channels are independent or controlled by women and people of color. Those that do exist are under the firm control of the cable barons' or broadcast media giants' control.

We imagine a cable world where choice is allowed and diverse programming encouraged. Cable and satellite would offer both packages of channels and individual channels on an *à la carte* basis Rather than having to dig deeper into their pockets just to get the channels they want, consumers have the option to pick and choose their channels, grouping together those they want, instead of paying for those they don't watch or find offensive. Local broadcast channels that serve community needs and interests would be preserved on a "basic" tier of programming, along with national broadcast networks that meet a "public interest" test by providing diverse viewpoints on matters of national and global importance. And locally oriented public, educational and government (PEG) programming would be adequately funded and preserved in this basic tier. Independently-owned and public interest channels would be promoted alongside those owned by the major media corporations and new and diverse content providers would find an easier path to getting their programming out to the public. This is the world of cable *à la carte* that Consumers Union and CFA believe should be, and will be, the future of cable television.

---

[1] Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the state of New York to provide consumers with information, education and counsel about goods, services, health and personal finance, and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of Consumer Reports, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* with more than 4 million paid circulation, regularly, carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

[2] The Consumer Federation of America is the nation's largest consumer advocacy group, composed of over 280 state and local affiliates representing consumer, senior, citizen, low-income, labor, farm, public power an cooperative organizations, with more than 50 million individual members.

Cable: A Historically Anti-Consumer Industry

Cable television's upward pricing spiral reflects a major failure of market forces and public oversight since Congress launched cable deregulation in 1996.[3] In that time, cable rates have ballooned nearly three times faster than the rate of inflation. According to the Bureau of Labor Statistics (which even adjusts cable price increases by crediting the industry when it adds channels), rates have shot up a staggering 56 percent since January 1996, while inflation increased by only 21 percent during the same time.[4]

When price increases are not adjusted to give cable "credit" for adding new channels—many of which are barely watched—consumers find themselves paying prices that have risen five times faster than inflation (see attached report, p. 1, 23). It's clear that the hoped-for competition from deregulation has failed to materialize to temper prices.

To justify these skyrocketing prices, cable/satellite operators and programmers have used recent contract negotiations to engage in an unprecedented round of public finger-pointing.[5] Cable operators and satellite providers blame the programmers, saying they charge too much for channels. Programmers blame the cable operators, saying they raise prices under the guise of providing advanced video and non-video services to customers. The finger pointing merely attempts to hide the real issue—facing no competition or oversight, cable companies can jack up their monthly cable rates with impunity.

Part of the problem is clearly related to the special "cable tax" that industry places on consumers by forcing them to buy expensive bundles of channels to receive the programs they actually want. To purchase the channels they most want, consumers must buy large service tiers from cable operators ranging from 40 to 75 channels or more. As the General Accounting Office noted, recent Nielsen Media Research data show the average consumer watches about 12-17 channels regularly,[6] and many of those channels are different for each person and family.

Right now, cable customers must first buy a basic cable tier, as previously provided by Congress, to ensure availability of local broadcast and national network channels. That package is usually kept small and may be price regulated. It is separate from other tiers, and Congress requires that cable operators allow basic service subscribers to buy pay-per-view (PPV) and premium channels like HBO and Showtime individually on an *à la carte* basis.

Beyond the basic package, however, cable operators engage in aggressive anti-consumer bundling of channels. The next tier, expanded basic, has grown steadily in size and cost over the years, increasing about two-and-a-half times as quickly as the basic tier in the past four years. It now contains three times as many channels as the basic tier. Expanded basic is also a required purchase if a consumer wants to buy digital service. A digital package is also large, consisting of roughly 30 channels, and in many markets the digital service alone costs more than the basic service. If consumers want Video on Demand (VOD) services, they also must purchase the digital tier.

As previously mentioned, Nielsen ratings data show that most consumers' viewing are concentrated among a small group of channels. The top 10 cable networks account for 50 percent of all viewing, and the top 20 channels account for 75 percent of all such viewing. Since the GAO reports that the typical household watches only 17 channels, consumers are forced to buy a lot of channels they don't watch in order to get the ones they do want.

Although the bottom 30 channels on the Nielsen scale pass an average of just under 70 million homes, only about a quarter of a million households watch them during any given day. For every one household watching, approximately 250 households who are forced to pay for those channels in the bundle are not. For the bottom two channels, the ratio is 1 to 800. Over 250 additional cable networks do not cap-

---

[3] Public Law 104-104, The Telecommunications Act of 1996.

[4] Bureau of Labor Statistics, Consumer Price Index (March 2004). From 1996 until March 2004, CPI increased 20.6% while cable prices rose 56%, 2.7 times faster than inflation.

[5] Eisenach, Jeffrey A. and Douglas A. Truehart, *Rising Cable Rates: Are Programming Costs the Villain?,* supported by ESPN, Inc., October 23, 2003 (hereafter ESPN); Economists Inc., *Consumer, Operator, and Programmer Benefits from Bundling Cable Networks,* July 2002; Rogerson, William P., *Cable Program Tiering: A Decision Best and Properly Made by Cable System Operators, Not Government Regulators,* November 10, 2003, funded by Cox (hereafter Cox); *Correcting the Errors in the ESPN/CAP Analysis Study on Programming Cost Increases,* November 11, 2003, prepared for Cox Communications (Cox II)

[6] GAO-04-08, Issues Related to Competition and Subscriber Rates in the Cable Television Industry, October 2003.

ture enough viewers to even register on the Nielsen scale.[7] If cable companies can offer distribution to channels with such limited viewership and little or no advertising support today, why would they be any less likely to carry the same channels in a world where cable tiers are accompanied by the offer to purchase individual channels?

Taste and Programming: The Industry is in Charge

The immense public furor generated by January's Super Bowl halftime incident involving entertainer Janet Jackson illustrates the overwhelming desire of American consumers to have some control over the programming that comes into their homes. While technology such as the V-Chip allows consumers to block distasteful programming, many cable TV consumers find themselves paying for the very programming they find offensive or indecent.

Congress attempted to address the decency issue by dramatically hiking fines on broadcasters of indecent content. However, that approach does not apply to cable and satellite programmers, who are not subject to the same public duties as over-the-air broadcasters. And although these fines might help to slightly stem the tide, as *Kansas City Star* television critic Aaron Barnhardt told a reporter from the *Marketplace Morning Report,* "In the time it will take for you to report this story, Viacom (which distributes *The Howard Stern Show*) will make enough profit to pay off all of its FCC fines and then some."[8]

Giving consumers the choice to select only those cable channels they want provides a different solution to the growing public concern about violent and indecent programming. Rather than putting the government in the untenable position of trying to control cable content for taste and decency, consumers could merely choose the programming they want, eliminating from their homes those channels which they find offensive.

Diversity is Not Well-Served by Cable and Media Barons:

The current cable model also shuts out those independent, diverse programmers who would like to offer their content to the public without being beholden to media gatekeepers that own or control a large bundle of channels. Six companies completely dominate the cable programming landscape of the basic and expanded basic tiers, accounting for three-quarters of the programming and writing budgets of the video industry. But these aren't just any six companies. Each of them is also a national network broadcaster, a cable or satellite operator, or has significant ties to both.

Of the 63 channels that reach more than half the cable viewers in the nation, only a half dozen are not owned by one of six dominant firms. According to the FCC's Tenth Annual Cable Report, of the top 20 cable channels measured by subscribers and top 15 cable channels measured by primetime viewership, only one, The Weather Channel, is not owned by a cable operator, a broadcast network or the cable industry.

Consider the dominance these companies have over the broadcast airwaves and cable/satellite viewers:[9]

- **Disney** owns the broadcast network ABC, broadcast stations and cable networks such as ESPN, Lifetime, A&E, History Channel, and SoapNet.
- **Viacom** owns broadcast networks CBS and UPN, local affiliates reaching almost 39 percent of the American television viewing audience, and cable channels including MTV, BET, Comedy Central, Nickelodeon, Showtime, Spike TV, CMT, and VH1.
- **Time Warner** owns the second largest cable company in the country, and owns The WB broadcast network, and cable channels including CNN, Headline News, HBO, Court TV, TBS, TNT, and Cartoon Network.
- **General Electric** owns broadcast network NBC and local broadcast outlets as well as cable networks Bravo, USA, Sci-Fi, Trio, CNBC, and MSNBC.
- **NewsCorp** owns the Fox broadcast network, local affiliates of both Fox and UPN reaching about 39 percent of the American TV viewing audience, national DBS satellite operator DirecTV and cable channels Fox News, FX, National Geographic and more than a dozen Fox Regional Sports networks.

---

[7] The explanations that cable industry executives gave the GAO for the social welfare superiority of bundling assume that advertisers irrationally pay for homes passed, rather than eyeballs watching, and that consumers maximize their welfare by subsidizing their neighbor's viewing habits. (U.S. GAO, 2003, pp. 34-37). Those claims are inconsistent with the data in the attached paper, "Time To Give Consumers Reach Choices: Twenty Years Of Anti-Consumer Bundling And Anticompetitive Gatekeeping."

[8] Marketplace Morning Report, July 1, 2004.

[9] Cooper, p. 36.

- **Liberty Media & Comcast,** the largest single shareholder of NewsCorp, owns a few cable systems and through previous merger transactions, has guaranteed carriage for many of its networks like The Hallmark Channel, Discovery, Animal Planet, QVC, Starz, and TLC on the largest cable operator in the country, Comcast.[10] With 23 million subscribers Comcast also owns a significant stake in channels like TV One, E!, The Golf Channel, Outdoor Life Network, G4 (the successor to TechTV) and regional sports networks serving three of the nation's six largest metropolitan areas—Chicago, Baltimore-Washington, and Philadelphia.

The General Accounting Office found that cable companies discriminate in favor of their own programming: they are much more likely to carry channels that they have an ownership interest in.[11] that leaves independent and small programmers with a simple take it or leave it proposition. They either must acquiesce to the cable operator's demands in order to be included on their lineup, or starve.

Stephen Cunningham, CEO and president of start-up channel JokeVision, summed up his network's fate with a morbid sense of humor: "Have you heard the one about the cable programmer who paid no attention to a Comcast suggestion? He's not around any more."[12]

One programmer that has had some success paying attention to Comcast is TV One, which is significantly owned and controlled by the large cable company. Comcast made it clear during their negotiations with various African-American entrepreneurs including Russell Simmons and Tim Reid that they had to have a stake in whichever channel they might carry.[13]

It's no wonder that network executives say these barriers are high when, "combined with industry consolidation, which has left a handful of powerful MSOs (Multiple System Operators—a cable company) controlling the vast majority of cable subscribers, the current environment is arguably the worst ever to launch a new linear video service."[14]

In a world where big broadcast programmers control much of the cable dial, and cable operators are extracting as much money from independent programmers as possible, it's hard to imagine it could be any more difficult for independent programmers to get on cable systems. As start-up network consultant Cathy Rasenberger notes: "The majority of networks out there have no chance at all. That doesn't mean there isn't opportunity for some new networks. The eye of the needle has become a lot smaller, but if you've got a refined piece of thread you can still get through. You have to match up with the cable operators' objectives—and even if you do, you still may not have an opportunity."[15]

Consider the dearth of programming offered to African-American consumers on expanded basic. There is only one national cable channel (BET—owned by Viacom) that targets African-Americans, and another channel (TV One) mostly available to Comcast subscribers. Most other African-American themed channels are offered only on unnecessarily pricy digital tiers.

But according to the Cable Television Advertising Bureau, "Urban black households are the most television-oriented as compared to all other groups." They go on to say "Premium channel subscription in urban cable homes is greater among black and Hispanic subscribers as compared to white and Asian subscribers."[16]

Now if we had *à la carte*, more African-American themed and owned channels could be created and offered to consumers of color. And if we had à la carte, then African-American consumers, like all consumers, could select and pay for the programming they want without paying for unnecessarily pricy expanded basic tiers and other bundles.

Since *à la carte* encourages consumer choice, cable operators should be encouraged to provide niche and targeted audience markets with two or more channels instead of the one they own. This notion that *à la carte* offerings will prompt more diverse programming is supported by the recent introduction of video-on-demand service.

---

[10] *TV Week,* Diane Mermigas, "Comcast Courting Bornstein," November 18, 2002.

[11] GAO-04-08, p. 1

[12] *Cable World,* "New Networks Face The VOD Taste Test," Andrea Figler, June 30, 2003.

[13] *Multichannel News,* "Comcast's Clout: Giant MSO Flexes its Muscle with Nets," R. Thomas Umstead November 25, 2002.

[14] *Multichannel News,* "New Nets Abundant at National Show; Fledgling Services Find Entry Into Digital-Cable Realm Difficult," R. Thomas Umstead, May 3, 2004.

[15] *Cable World,* "Attention New Networks! Here's everything you need to know about how to get a carriage deal with Comcast . . . step by step from Amy Banse and Matt Bond," Shirley Brady, June 21, 2004.

[16] Cable TV Advertising Bureau: Multicultural Marketing Resource Center. "Psychographics and Cultural Insights," Urban Markets in the US, Horowitz Associates.

Cable operators now offer programmers the opportunity to prove themselves and sell their content on a stand-alone basis as video-on-demand. After the cable operators have collected about $60 per month from subscribers and force-fed them the first 90 plus channels on expanded basic and the digital tier, independent programmers have the opportunity to compete for the discretionary income and viewer attention that might be left. We believe consumers should have the choice to access these new and diverse channels via an *à la carte* option without paying the "cable tax" that the current regimen of bundled channels requires.

À la Carte: A Solution to Cable's Problems

The cable industry's current business model of requiring consumers to purchase two expensive packages of channels just to get the small amount of programming they actually may watch is simply unfair. This model not only sticks consumers with a "cable tax" for these bundles, it puts up unnecessary roadblocks to new and diverse programmers trying to get their content on the cable and satellite systems.

The regulatory intervention we propose to solve this anti-consumer, anti-competitive model is far from intrusive. Rather than try to dictate channel bundles, or ban them, we propose allowing cable operators to continue to offer all the bundles they want, but also make the channels they choose to bundle available on an *à la carte* basis.

Unbundling beyond the basic tier can create new demand among consumers for content not currently carried by their cable operator. Because the cable company won't have to worry about mainstream acceptance of niche and targeted content, and because both cable operator and programmer can earn revenue from selling to consumers as many channels as they want to watch—not just what they can shoehorn into a bundle—cable companies are free to serve those niches with as many channels as a consumer could want.

Consumers Union and Consumer Federation of America would prefer to let competition be the solution to cable rate increases. However, in light of the failure of effective competition to materialize, and given the relentless price increases, the special "cable tax" on consumers due to bundling of channels, the lack of consumer control, the roadblocks that prevent independent programmers from getting cable space, and the abusive practices described in the attached report, we believe it is time for policymakers to release the stranglehold cable and broadcast giants have on the marketplace by encouraging an *à la carte* option.

À la Carte Works: Ask Canadian Consumers

When those in the American cable industry try to raise feasibility arguments about the *à la carte* option, they need only look to their colleagues in Canada to realize their claims are baseless. Nearly all the major Canadian cable operators are offering their bundled programming on an *à la carte* basis, and some cable operators, most notably Vidéotron, offer the kind of system that we envision for the United States.[17]

Consumers in Canada must first subscribe to basic and digital cable and rent or buy a converter box, and then they select their programming in ways American consumers can only dream about. Vidéotron customers, for example, first buy basic Canadian digital cable that includes roughly 20 TV channels (the company offers those, along with 30 music channels, and 14 broadcast radio stations for $8.25).[18] Once a digital converter box is purchased for $45 after a rebate, or rented for $9 per month, the consumer is in control. Vidéotron offers three general bundles, numerous themed bundles, and the option to purchase channels individually—38 channels for $20 per month (the equivalent to the American expanded basic tier), 65 channels for $28 and 106 channels for $40, (their equivalent to various U.S. digital tiers).

But Vidéotron customers' choice doesn't stop there. The cable operator offers bundles of channels with programming focused on news, sports, documentaries, sitcoms, culture, lifestyle and music. It also lets consumers pick a bundle of programming in French or English. And if a consumer wants a channel that isn't part of the bundle they've selected, then most channels will let Vidéotron sell it to their customers individually for $1 per month, a per-channel price that drops if a consumer orders 5, 10 or 20 other channels.

Some Vidéotron programmers don't want their channel offered individually, and demand it only be sold in a bundle with other channels. If that's what a customer

[17] Canada imposes a variety of content regulations that we believe are unnecessary and inappropriate for the US market. We cite the Canada example for the purpose of showing how à la carte can work and what prices it offers in a real-world example.

[18] All conversions from CAD to USD obtained from http://finance.yahoo.com/currency, 07/01/2004.

really wants, then Vidéotron steers them to a bundle of 20 or 30 channels that a consumer selects—a bundle Vidéotron calls "*à la carte*." This is the kind of package that Canadian Cable Association President Mike Hennessey calls a "pick pack." Vidéotron offers 93 channels and allows consumers to select 20 or 30 of them in that bundle. A Vidéotron spokesman told the Orlando Sentinel, "We have noticed that some people prefer to pay for what they want to look [at]." [19]

We believe that cable operators in the United States are prevented from following the *à la carte* options offered by their Canadian counterparts' because of restrictive provisions in programming contracts. We believe that all channels beyond the basic tier should be unbundled, and let cable operators decide in what ways to package and bundle them in addition to offering them on an individual, *à la carte* basis.

Cable À la carte Works in a Digital World

Unfortunately, what little the diversely owned and independent programming that currently exists is only available to consumers if they purchase expensive digital packages. While millions of American homes subscribe to cable, most buy analog cable packages of basic and expanded basic programming that includes channels owned either by cable operators, broadcasters or other media conglomerates, but very little ethnic or independent programming. Seventy percent of cable's customers don't get digital, and therefore don't have access to most of the ethnic, targeted, niche or independent programming cable does offer. We believe that unbundling cable channels will encourage the transition to digital cable.

Although the large majority of cable households purchase analog, it might not be economically feasible in the next few years to offer *à la carte* to those consumers. Sending a cable technician to an analog customer's home each time a channel is added or removed is not cost-efficient. But cable operators have moved to, and are aggressively promoting digital, a technology that not only offers them more channel capacity but also the technical feasibility to unbundle content in new ways.

Currently, there are 23 million digital cable subscribers and 20 million Direct Broadcast Satellite (DBS) subscribers who receive digital service—which means 40 percent [20] of U.S. households are instantly capable of accessing *à la carte*, or unbundled content. The advent of inexpensive digital converter boxes and the increasing availability of digital cable-ready television are helping bridge the gap between digital and analog cable. But policymakers must also prevent the growth of a digital divide, where low-income consumers cannot afford the digital entry price to receive *à la carte* options. To achieve this, digital set-top boxes should be made affordable to all consumers in an *à la carte* environment.

Consumers Want À la carte

Recent nationwide surveys conducted by Consumers Union and the Concerned Women for America demonstrate that consumers want increased choice and more control over their cable programming, and their cable bills.

According to the CWfA poll, conducted by Wirthlin in April 2004,[21] more than two-thirds of cable customers would prefer to choose the channels in their cable packages, and less than a third are satisfied with the channel bundles they're currently offered. And approximately the same percentage of Latinos and African-Americans would prefer to choose their own channels. The poll found among non-cable subscribers, 66 percent would be more likely to subscribe to cable if they had control over their programming.

Consumers Union found similar sentiments in our national survey of cable subscribers conducted in May 2004 [22]. We found that 66 percent of subscribers would prefer the option to pick only those cable channels they want to watch or have included in their service plan. We also asked consumers about possible drawbacks of unbundling cable content, including channel selection and price. Of those surveyed, 59 percent would pick fewer channels than they currently must buy in their cable package. And 29 percent would *still* choose fewer channels even if their cable bill didn't decline proportionally.

Steps for the Commission

Congress has appropriately directed the FCC to investigate the central policy questions affecting the adoption of *à la carte* by beginning the inquiry with questions about revenue generation. In order to answer these questions, it is essential

---

[19] Orlando Sentinel, "à la carte Cable Could Redefine Pay-Per-View," Susan Strother Clarke, June 6, 2004.

[20] U.S. Census Bureau, USA Quick Facts, 2004.

[21] Wirthlin Worldwide, April 22, 2004, National Quorum for Concerned Women for America.

[22] Consumers Union, May 25, 2004, Cable TV Issues Survey.

for the Commission to obtain access to the contracts between cable operators and programmers.

As the attached study from Dr. Mark Cooper explains, these contracts determine the pricing of channels, lineup placement, bundling provisions and more.[23] The Commission should examine the language programmers use for big cable conglomerates and smaller, independent cable operators, and satellite providers. It should open these contracts for the public to evaluate who has the balance of power in these negotiations and if industry is preventing the choices that consumers deserve.

Policymakers should focus their analysis on what is known as mixed bundling—the offer to consumers of channel choices in both packages and on a stand-alone basis. Pure bundling, in which channels are offered only in packages, and pure component selling, in which packages are outlawed, have consistently been found in the economic literature to be inferior. The policy question is, why has the cable industry resisted mixed bundling so fiercely? We believe the answer is that its reliance on pure bundling within tiers is anticompetitive and anti-consumer, and a detailed examination of those practices would reveal consumers are stuck with the industry's special cable tax.

In our view, the current rate structure reflects the exercise of substantial market power by the cable operators who engage in bundling to extract monopoly profits and control the flow of content. Under these circumstances, if consumers were offered the opportunity to choose between bundles and an *à la carte* menu of the same programs, it is likely that the total rate paid by consumers for the channels they would choose to purchase will be reduced and consumer satisfaction would increase.

Large cable operators, mega-broadcast programmers and advertisers have become comfortable with the current system because the inefficiencies and excess profits of the system are shifted onto the backs of consumers. As consumers pay more than their fare share to get the channels they want, cable operators and powerful programmers engage in minor skirmishes over the division of monopolistic profits, and put up roadblocks to unaffiliated programmers. The cable operators collect the tax, pay excessive amounts to large broadcasters in the form of high fees for some channels and guaranteed carriage for others, and dictate which programs the public can view, while forcing them to pay for large numbers of channels they do not watch.

If the FCC can force manufacturers to rebuild entire classes of technology to fight piracy and adhere to Plug and Play specifications, and if the FCC can plant a Broadcast Flag in its goal to expedite the transition to digital television, surely policymakers can also give consumers more choice in cable programming. It is time for Congress and the FCC to put consumers' interest on equal footing with industry goals and let market forces begin to provide much needed discipline on exorbitant cable rates. And it is also time for policymakers to empower consumers to keep distasteful programming out of their homes.

We urge policymakers to note what the industry itself said about *à la carte* pricing little more than a year ago. In testimony before the Senate Commerce Committee in March 2003, cable operators big and small endorsed pricing cable channels *à la carte.*

James Gleason, president and chief operating officer of CableDirect, a cable operator serving 20,000 customers in the Midwest said, "To give customers choice and allow the market to determine what gets on TV, programmers should be required to make their services available as part of a separate programming tier. One solution might be to offer the expensive programming in tiers or *à la carte*."[24]

Charles Dolan, chairman of Cablevision, one of the largest cable operators with over 4 million homes in the northeast, told the Senate Commerce Committee: "Cablevision, as a policy, wants its customers to be able to pick and choose among its services, selecting what appeals to them, rejecting what does not, determining for themselves how much they will spend, just as they do every day in the supermarket or shopping mall."[25] He continued with an analogy repeated since, "To help the dairy industry, I ask, would the government insist that all customers be required to buy a dozen eggs and a quart of milk before they can purchase their bread?"

In short, Congress and the FCC should abolish the "cable tax" the industry collects by forcing consumers to take tiers of programming that grow larger and more expensive each year. It should take the most prudent First Amendment approach to dealing with offensive programming by giving consumers the option not to have

---

[23] Time To Give Consumers Reach Choices: Twenty Years Of Anti-Consumer Bundling And Anticompetitive Gatekeeping, Dr. Mark Cooper, Consumer Federation of America, p. 1, 23.

[24] James Gleason, Testimony before Senate Commerce Committee, "Media Ownership (Video Markets)," May 6, 2003.

[25] Charles, Dolan, Testimony before Senate Commerce Committee, "Media Ownership (Video Markets)," May 6, 2003.

that programming come into their homes. And it should break the monopolistic power cable operators and large programmers have over what is offered to viewers over cable lines and satellite. By allowing the *à la carte* option, these important policy matters can be achieved with little to no government intervention.

Mr. UPTON. Mr. Liggins.

TESTIMONY OF ALFRED LIGGINS

Mr. LIGGINS. Good morning, Mr. Chairman. I am Alfred Liggins, president and CEO of Radio One, the largest company primarily targeting African-American and urban radio listeners. And I am also chairman of TV One.

Six months ago, on Martin Luther King's birthday, we and our partners launched TV One, a cable network featuring a broad range of lifestyle and entertainment programming designed to entertain, inform and inspire a diverse audience of African-American adults. While the cable universe contains scores of channels designed to appeal to a wide variety of audiences, we launched TV One because we recognized a void in programming specifically oriented toward African-American adults.

As chairman of TV One, I am in a unique position to speak on how a la carte or theme-tier mandates would affect startup networks, networks catering to minority audiences and program diversity in general. In short, I feel it would have a devastating effect. I would be a death knell for many new service offerings. TV One's business plan is based on a number of critical assumptions regarding programming costs, license fees, marketing costs, advertising revenues and most importantly distribution on cable and satellite systems. The bottom line for each of the other elements in the business plan depends heavily on our ability to gain commitments from cable and satellite operators for the broadest possible amount of carriage.

For example, while TV One has been positively received by many in the advertising community, some advertisers have told us not to even come see them until the network is in 20 million households. This is particularly challenging because advertising makes up the bulk of the revenue for new networks like TV One. Fortunately, new networks factor that into our business plans since we know it may take a couple of years or more to hit 20 million households, but in an a la carte world where we have to sign consumers up individually, many minority-targeted networks might never reach the 20 million subscriber threshold, cutting off a critical source of revenue.

As a data point, there are roughly 13.5 million African-American TV households. In an a la carte world, if we got 100 percent of those households, which will be impossible, that is a failed network, and we would have to also compete against other networks like Lifetime that have 80 million households. Less distribution not only means less revenue from subscription fees and advertising, it means less money we can invest in programming. Without the ability to invest in quality programming, networks aimed at minority audiences will undoubtedly be much less attractive to viewers.

One of the most troubling aspects of an a la carte mandate for new networks is that unlike Discovery, ESPN and Lifetime, we are just beginning to build our brands to make our target audiences

aware that we exist. Because our marketing budgets are limited, many of our viewers find TV One by channel surfing or by word of mouth from regular viewers. If we cannot TV One packaged in a widely available basic tier, we will need to incur enormous consumer marketing costs, once again, to the detriment of our programming investments.

I also want to point out that like many minority-oriented channels, we are a stand-alone service, meaning we can't leverage our infrastructure for activities like affiliate sales, ad sales and technical operations across multiple networks, as can many of the big cable programming families, like Viacom, Discovery, Disney and NBC Universal. We also must devote a substantial portion of our budget to original programming and don't have a library of existing product from which to draw as many of the big companies do.

For the reasons I have described, a mandated a la carte scheme would put TV One's cost of doing business at even a more disadvantage to our established competitors and could turn what most agree would be a good bet at TV One into a highly risky proposition. At best, we would have to drastically increase what we charge on a per subscriber basis, much like pay networks such as HBO and Showtime do, resulting in much higher costs for consumers if indeed we could create an attractively priced product at all.

I want to stress that mandated themed tiers pose also the same issues that mandatory a la carte presents. If a cable or satellite operator creates a family friendly tier and excludes TV One, does that make our quality network family unfriendly, and what kind of themed tier would the government say that TV One, a network targeted toward African-Americans, should be on? I think that any time the government starts trying to draw lines like this, terrible consequences follow.

Finally, we created TV One because we believe that African-American adults were underserved in the television marketplace, and we are targeting our programming accordingly. But we also expect that by TV One being available to a wide selection of cable viewers, non-African-Americans will tune in occasionally and learn something about the breadth and the depth of our culture. Throughout the years, television has allowed Americans to share ideas, thoughts, cultures and politics. Mandatory a la carte would lead to less choice, dwindling programming options, higher prices and in fact a trifecta of failure. It would have a chilling effect on programming diversity, as citizens would have the right to segregate themselves and their intellect. While that is probably not what the proponents of a la carte intend, I believe it is the likely result.

Thank you for the opportunity to testify before you today.

[The prepared statement of Alfred Liggins follows:]

PREPARED STATEMENT OF ALFRED LIGGINS, PRESIDENT AND CEO, RADIO ONE

Good morning, Mr. Chairman. I am Alfred Liggins, president and CEO of Radio One, the largest radio company that primarily targets African American and urban listeners, and chairman of TV One. Six months ago, on the Martin Luther King holiday, we and our partners launched TV One, a cable network featuring a broad range of lifestyle and entertainment programming designed primarily to entertain, inform and inspire a diverse audience of African American adults.

While the cable universe contains dozens of channels designed to appeal to a wide variety of audiences, we launched TV One because we recognized a void in programming specifically oriented toward African American adults.

As chairman of TV One, I am in a unique position to speak to how an a la carte or "themed tier" mandate would affect startup networks, networks catering to minority audiences and program diversity in general.

In short, it would have a devastating effect. It would be a death knell for many new service offerings.

TV One's business plan is based on a number of critical assumptions regarding programming costs, license fees, marketing costs, advertising revenues—and, most importantly, distribution on cable and satellite systems.

The bottom line for each of the other elements in the business plan depends heavily on our ability to gain commitments from cable and satellite operators for the broadest amount of carriage possible.

For example, while TV One has been positively received by many in the advertising community, some advertisers have told us not even to come to see them until the network is in 20 million households. This is particularly challenging because advertising makes up the bulk of the revenue for new networks like TV One, especially in the early years.

Fortunately, new networks factor that into our business plans, since we know it may take a couple of years or more to hit 20 million households. But, in an a la carte world where we have to sign consumers up individually, many minority-targeted networks might never reach 20 million subscribers, cutting off a critical source of revenue.

Less distribution not only means less revenue from subscription fees and advertising, it means less money we can invest in programming. Without the ability to invest in quality programming, networks aimed at a minority audience will undoubtedly be much less attractive to viewers.One of the most troubling aspects of an a la carte regime for new networks is that, unlike Discovery, ESPN and Lifetime, we are just beginning to build our brands to make our target audiences aware that we exist. Because our marketing budgets are limited, many of our viewers find TV One by channel surfing or by word-of-mouth from other regular viewers.

If we cannot get TV One packaged in a widely available basic tier, we will need to incur enormous consumer marketing costs, once again to the detriment of our programming investments.

I also want to point out that, like many minority-oriented channels, we are a "stand alone" service, meaning we can't leverage our infrastructure for activities like affiliate sales, ad sales and technical operations across multiple networks as can many of the big cable programming families like Viacom/MTV, Discovery, Disney/ABC and NBC/Universal. We also must devote a substantial portion of our budget to original programming and don't have a library of existing product from which to draw as many of the big companies do.

For the reasons I have described, a mandated a la carte scheme would put TV One's cost of doing business at even more of a disadvantage to our established competitors and could turn what nearly everyone has agreed is a "good bet" into a highly risky proposition. At best, we would have to increase drastically what we charge on a per-subscriber basis, much like pay networks such as HBO and Showtime do, resulting in much higher costs for consumers—if, indeed, we could individually price it at a level that even allows us to offer cable and satellite operators, and viewers, an attractive product.

I want to stress that mandated "themed tiers" pose all of the same issues that mandatory a la carte presents. If a cable or satellite operator creates a "family-friendly" tier and excludes TV One, does that make our quality network "family-unfriendly?" And what kind of "themed tier" would the government say that TV One, a network targeted to African Americans, should be on? I think that any time the government starts trying to draw lines like this, terrible consequences follow.

Finally, we created TV One because we believed that African American adults were underserved in the television marketplace, and we are targeting our programming accordingly. But we also expect and hope that, by TV One being available to a wide selection of cable viewers, non-African Americans will tune in occasionally and learn something about the breadth and depth of our culture.

Throughout the years, television has allowed Americans to share ideas, thoughts, cultures and politics. Mandatory a la carte would lead to less choice, dwindling program options, and higher prices—a trifecta of failure. It would have a chilling effect on programming diversity as citizens would have the "right" to segregate themselves and their intellect. While that is probably not what proponents of a la carte intend, it is the likely result.

Thank you for the opportunity to testify before you today..

Mr. UPTON. Mr. Hooks.

TESTIMONY OF BEN W. HOOKS

Mr. HOOKS. Thank you, Mr. Chairman and members of the subcommittee. My name is Ben Hooks. I am the CEO of Buford Media Group, an independent cable business currently serving 56,000 customers in 6 States, including Texas, Mississippi and Missouri. I want to commend you for holding this hearing and trust that it will be the first of many investigations into how wholesale programming practices affect customers.

What I want to highlight for you are the bigger policy concerns in the television programming market. What I mean are the growing concerns about choice, cost and content. You all hear a lot about that from your constituents. We hear the same from our customers. So what are the specific trouble spots that I see in today's market as I try to build systems and serve rural customers? While there are numerous issues I need to raise, I will focus my comments here to four specific items due to our time constraints.

No. 1 is retransmission consent. Network owners and major affiliate groups have used retransmission consent to compel me to carry affiliated programming such as Fx, MTV2, SoapNet and others that I know the majority of my viewers do not want. This misuse of the law intended to assist the goal of localism is actually the center of the storm and must be reviewed. Forced bundling must be eliminated if choice is ever to be granted to consumers.

No. 2, so how can the programmers get away with this? Most of my programming contracts are subject to strict confidentiality and non-disclosure obligations. If you were to ask me today what my company pays a certain programmer, like the one on this panel, I couldn't tell you without risking legal action. Programmers could agree to waive non-disclosure for purposes of this hearing or even in our contracts, but they haven't. You can ask them today.

Furthermore, Congress and the FCC should be able to obtain specific programming contracts and rate information directly from the programmers so that someone can monitor whether the market is healthy and functioning properly. In short, without disclosure, there is no accountability. If you do nothing else, I believe Congress must pull back the curtain that is hidden the Wizard from all of Oz so that informed decisions by customers, legislators and regulators can be made.

No. 3, we need more flexibility in how we can tailor programming to our local markets. Many American Cable Association members that I am here to represent as well today would like to move high-cost sports channels, certain music video channels and racier entertainment channels, both containing profanity and sexually suggestive content, to tiers. Breaking the bundling practices of programmers would allow operators to relieve consumers of the current dilemma whereby they have effectively one choice: Basic or expanded basic, take it or leave it.

That decision forces a majority of my consumers to pay for channels they don't want, don't like and shouldn't have to view. For example, in order to carry family programming, such as Nickelodeon's Spongebob, I must also carry more suggestive and sexually explicit

programming like MTV's Undressed or Spike TV's Stripperella. Who can really defend that logic to a family?

No. 4, to make all this worse, media conglomerates charge smaller cable companies and their customers much more than their larger urban counterparts. ACA members have reported programming price differences of up to 30 percent and in one case 5 percent. Programming rates should be the same for all providers unless the differences are truly cost-based.

Finally, I want to make one other point perfectly clear: The American Cable Association does not support mandated a la carte. For our companies, it simply costs too much. Attempts by many of our critics to make this the sole issue of today's hearing is simply an attempt to deflect scrutiny of their current business practices. I am here today to raise awareness that the way programming is currently owned, packaged, priced and bundled by the five media conglomerates is reducing choice, increasing costs and threatens our ability to bridge the digital divide in rural America. Simply put, American Cable Association members are not part of the problem, but we, along with our consumers, are most certainly a victim of it.

In conclusion, the key question I believe everyone should be asking themselves is this: If you think rising programming prices are fine, if you like the channels being forced on your by the media giants, if you believe consumers have enough choice over what they view and have sufficient knowledge and control over what they pay for, then do nothing, but if you worry that consumers and providers are forced to take and carry programming channels they find indecent, unwanted or too expensive with no recourse, then please continue this line of inquiry.

Again, I greatly appreciate the time to present some of my views and appreciate your time and interest in these matters.

[The prepared statement of Ben W. Hooks follows:]

PREPARED STATEMENT OF BEN W. HOOKS, JR., PRESIDENT AND CEO—BUFORD MEDIA GROUP, ALLEGIANCE COMMUNICATIONS, ALLIANCE COMMUNICATIONS

I. INTRODUCTION

Thank you, Mr. Chairman and members of the subcommittee.

My name is Ben Hooks, and I am president and CEO of Buford Media Group, an independent cable business currently serving 56,000 customers in Texas, Arkansas, Oklahoma and Kansas. My company provides cable television, digital cable, high-speed internet and other advanced services in 78 smaller systems and rural areas throughout the central United States.

I am also the past chairman of the American Cable Association. ACA represents nearly 1,100 independent cable businesses. Collectively, ACA members serve more than 8 million customers, mostly in smaller markets and rural areas. ACA's constituency is truly national; our members serve customers in every state and in nearly every congressional district, particularly those of this Committee.

To begin, I want to commend you for holding this hearing, and I trust that it will simply be the first of many investigations into how programmers and multi-video programming distributors inter-relate. I have been hoping that this type of hearing and line of inquiry would occur so that sunshine can finally be shed on a process that fails to provide consumers and operators with any sense of control over content, channels and price. I am grateful for your work here today and urge you to continue this effort with additional hearings to discuss how to best serve the market.

I have been in the cable business for more than 35 years, starting at the bottom and working step-by-step to the top of my company and with others before it. I have seen firsthand the harmful effects growing media consolidation, rising programming increases, forced tying and bundling of channels, and retransmission consent have

had on my company and, most importantly, on our customers who are your constituents.

I hope my testimony will provide you with unique insight into the issues raised in this hearing. My company and other ACA members are fundamentally different than the major programming and broadcasting conglomerates, some of which are here today. Foremost, ACA members are independent businesses that are not controlled by vertically integrated media conglomerates, nor do we own programming channels. We strictly provide cable and advanced services to your communities. ACA members focus on serving modest customer bases in smaller markets that are often too small, too costly, or just too remote to interest the larger providers.

And our companies are doing a great job. ACA members are leading the industry in responding to Congress' call to "bridge the Digital Divide" by delivering advanced services like digital cable and broadband Internet access. Because we live and work in these small "pockets" and rural communities, we know how important it is to have advanced communications services available, and our members are working hard to deliver the promise of broadband to smaller markets.

As a result, when the Committee focuses on programming increases, media consolidation, lack of programming choice, indecency and other important policy matters, my company and ACA members are *not* part of the problem. When the Committee is concerned about localism, broadband deployment and the economic health of rural America, ACA members are an important part of the solution.

These companies are great examples of what entrepreneurial spirit and hard work can accomplish.

At the same time, my small company, ACA members and our customers are increasingly threatened by the onerous pricing and practices of the major media programming giants, such as Disney, Viacom, Fox, and General Electric. These global media companies are controlling what channels are seen in rural America, how they are packaged, and how much they cost, without regard to input from providers like me, who must take these channels, and my customers, who must pay for them.

Let me be clear. While the public and some policymakers believe we are in the driver's seat, in reality, we don't control the content, we don't control the price, we don't control the packaging, and we don't control whatever standards the media giants think are "decent," regardless of what my customers think.

It is not an exaggeration to say that the telecommunications future of rural America hangs in the balance on whether Congress continues to examine these important issues and decides to take action to ensure that local providers, like me, and my customers have economic input and choice in what channels are carried in our markets and how much they cost. Without more flexibility and choice in local markets, the media giants will create a new "digital divide" by killing the small provider, who is also often the only source of advanced services in the community.

This is why I am honored on behalf of my company and ACA to be here today to tell you the truth about what is happening to local providers and customers in our rural marketplaces. I encourage you to dig deep in your Committee's search for answers, seeking disclosure of information the programming giants would rather go unnoticed.

I think you will see that five specific steps must occur before rural customers and local providers can have any hope of restraining the ever-accumulating power of the media giants:

1. **Local providers and customers must have more choice and flexibility** in how programming channels are priced and packaged, including the ability to sell the highest-priced programming channels as a single channel, or on a theme-based tier if necessary;
2. **The programming pricing gap between the biggest and smallest providers must be closed** to ensure that customers and local providers in smaller markets are not subsidizing large companies and subscribers in urban America;
3. **Tying and bundling of programming channels by the media giants must end,** where customers are no longer forced to receive and pay for many channels in order to receive the single channel they really want,;
4. **Further tying through retransmission consent must end,** preventing the media giants from holding local broadcast signals hostage for more carriage of affiliated media-giant programming, which was never the intention of Congress when granting this power; and,
5. **The programming media giants must disclose what they are charging local providers and customers,** ending the strict confidentiality and non-disclosure dictated by the media giants. Confidentiality and non-disclosure mean lack of accountability of the media giants.

I hope my testimony today will help show that more work and scrutiny by the Committee is needed as it prepares to rewrite the nation's telecommunications laws beginning next year.

II. PROBLEMS AND SOLUTIONS

This hearing provides an unprecedented opportunity for the Committee to gain deep insight into the current state of wholesale and retail distribution of programming. This insight will help the Committee better understand how developments in the wholesale programming market affect the important policy concerns of consumer choice, localism and cost.

My independent company and ACA member companies must purchase most of their satellite programming wholesale from five media conglomerates, referred to here as the "Big Five"—Disney, Viacom, Fox, General Electric and Time Warner/Turner. In dealing with the Big Five, all ACA members continually face contractual restrictions that eliminate our flexibility to determine how local cable systems can package and distribute programming, instead placing programming cartels, headquartered thousands of miles away, in charge of what my community deems as "decent" content, pricing and value. ACA members have intimate knowledge of the wholesale practices of the Big Five and how those practices can restrict choice and increase costs in smaller markets.

A. Core Problem—*Media Conglomerates Force Channels and Cost Onto All Customers*

i. Forced Cost and Channels

For nearly all of the 50 most distributed channels (see Exhibit 1), the Big Five contractually obligate my company and all ACA members to distribute the programming to all basic or expanded basic customers regardless of whether we think that makes sense for our community. These same contracts also mandate carriage of less desirable channels in exchange for the rights to distribute desirable programming.

A small cable company that violated these carriage requirements would be subject to legal action by the media conglomerates, and for ACA's members, this is a very real threat.

These carriage restrictions prohibit ACA members from offering more customized tiers and channel offerings that may reflect the interests and values of our specific community. Quite simply, there is no choice now.

ii. More Forced Cost and Channels Through Retransmission Consent

Retransmission consent has morphed from its original intent to provide another means to impose additional cost and channel carriage obligations. As a result, nearly all customers have to purchase basic or expanded basic packages filled with channels owned by the Big Five (See Exhibit 2).

Network owners and major programming affiliate groups have used retransmission consent to obtain carriage of affiliated programming on smaller cable systems. In this way, network owners have turned retransmission consent into another means to load affiliated programming and cost on smaller cable companies' basic or expanded basic tiers.

In short, media conglomerates that control networks and broadcast licenses are exploiting current laws and regulations to actually reduce consumer choice and to increase costs, all for their own benefit.

iii. Forced Carriage Eliminates Diverse Programming Channels

The programming practices of certain Big Five members have also restricted the ability of some ACA members to launch and continue to carry independent, niche, religious and ethnic programming. The main problem: requirements to carry Big Five affiliated programming on expanded basic eliminate "shelf space" where the cable provider could offer independent programming.

It is purely a matter of fact that ACA member systems have been unable to launch or continue to carry independent channels like the Outdoor Channel, certain religious channels, and Spanish-language channels. In fact, my local marketplaces are growing in Hispanic populations, but my cable systems have little, if any, shelf space to add independent, Spanish-language channels, because of the channels dictated to me by the media giants.

iv. Local Choice and Flexibility is Needed

In order to give consumers more choice and better value, changes in current wholesale programming practices and market conditions are needed. Specifically, my company and ACA members must be given more flexibility to tailor channel offerings that work best in our local marketplaces.

As I have stated, the Big Five condition access to popular programming on a range of distribution obligations and additional carriage requirements. These restrictions and obligations eliminate flexibility to offer more customized channel packages in local markets.

My company and ACA members would prefer mutually beneficial carriage arrangements with programmers. For this to occur, certain media conglomerates would need to temper economic self-interest with a heightened concern for the public interest in localism, consumer choice, and reasonable cable rates. However, I am wary that without congressional or regulatory involvement, corporate America is not ready to accept those altruistic values.

With more flexibility, ACA members could offer a variety of options to their customers, including sports tiers, family-friendly tiers, contemporary adult tiers, children's tiers, and a la carte access to a few of the highest cost channels.

For instance, many ACA members report they would like to move high-cost sports channels to a tier. The ability to move high-cost sports channels to a tier would allow those consumers who want the ever-escalating high-cost sports programming to have it, without forcing the majority of viewers to pay for prime programming that they do not want.

Is that not what an effective market should allow for? Those who want a Lexus with every option should have one, but the rules of the market should not dictate that everyone has to pay the Lexus price for the more simple, stripped down Hyundai model they can pay for or want. Such a change would still allow programmers to price the channels to generate the same license fee revenue as currently.

The key difference—*consumers would have more choice.*

The same analysis applies to other types of services that some ACA members would like to move off the expanded basic tier—certain music video channels and "racier" entertainment channels—those that contain profanity, partial nudity and sexually suggestive content. In some markets, pervasive concern exists about this content on basic or expanded basic.

It's important to point out that neither my company nor any ACA member controls the content that's on these channels. That content—decent or not—is controlled by the media conglomerates that contractually and legally prevent us from changing or preempting any questionable or indecent content.

However, if my company and other ACA members could tier these services it would allow ACA members the flexibility to address indecency concerns with the involvement of the consumer.

For example, in many markets today a cable or satellite provider that wants to carry family programming, such as Nickelodeon, must also carry much more suggestive and sexually explicit programming on MTV and SpikeTV. Essentially, to get *Spongebob Squarepants,* a well-known children's program, cable and satellite providers and their customers have to also take *Undressed* or *Stripperella,* two highly sexual, adult programs. Here's what MTV's website says about its program, *Undressed*: "Not getting enough action before you go to bed? *Undressed* will definitely be changing that! This season is sure to titillate your senses—so tune in!"

B. Core Problem—*Media Conglomerate Price Discrimination Against Smaller Companies and Customers in Rural America*

i. Price discrimination against smaller cable companies makes matters worse.

The wholesale price differentials between what a smaller cable company pays in rural America compared to larger cable operators in urban America have little to do with differences in cost, and much to do with disparities in market power. These differences are not economically cost-justified.

For instance, ACA members have reported wholesale programming price differentials between smaller companies and major cable companies of up to 30%, and in one case, 55%. In this way, smaller cable systems and their customers actually subsidize the programming costs of larger urban distributors and consumers! We even end up with worse pricing than satellite companies DirecTV and EchoStar, who are the main competitors to our rural cable systems.

Price discrimination against smaller cable companies and their customers is clearly anti-competitive conduct on the part of the Big Five—they offer a lower price to one competitor and force another other competitor to pay a 30-55% higher price FOR THE SAME PROGRAMMING. The effect of these practices by the Big Five is that the three MVPDs in the same town have to pay wildly different rates for the same product that each is distributing in that town.

ii. Price Discrimination Must End.

In order to give consumers in smaller markets and rural areas more choice and better value, media conglomerates must be required to eliminate non-cost-based price discrimination against smaller cable operators and customers in rural America.

This means that the net effective rates charged by the media conglomerates for their programming channels should be the same for all MVPDs, regardless of distribution technology, size or market characteristics, unless the differentials are truly cost-based.

With less wholesale price discrimination, ACA members could offer their customers better value and stop subsidizing programming costs of large distributors.

These two changes would go far in addressing the concerns of Congress, consumer interests, and many of the 8 million customers served by ACA members.

C. Pure Mandated A la Carte Is Not The Answer.

Once again, to be clear, for ACA members these changes do not mean a mandated, regulated a la carte regime. Current technology costs make mandated a la carte a financial impossibility for ACA member systems. Moreover, ACA members report that most customers prefer a basic or expanded basic package and specialty tiers containing a variety of channels at a reasonable price.

D. Basis For Legislative and Regulatory Action

Congress has the legal and constitutional foundation to impose content neutral regulation on wholesale programming transactions. The program access laws provide the model and the vehicle, and those laws have withstood First Amendment scrutiny. This hearing provides the Committee with a key opportunity to help determine the important governmental interests that are being harmed by current programming practices.

Furthermore, based in large part on the FCC's actions in the DirecTV-News Corp. merger, there is precedent for Congress and the FCC to address the legal and policy concerns raised by the current programming and retransmission consent practices of the media conglomerates. The FCC's analysis and conclusions in the News Corp. Order persuasively establish the market power wielded by owners of "must have" satellite programming and broadcast channels, and how that market power can be used to harm consumers. That analysis applies with equal force to other media conglomerates besides News Corp.

E. Pierce the Programming Veil of Secrecy—End Non-Disclosure and Confidentiality.

Most programming contracts are subject to strict confidentiality and nondisclosure obligations, and my company and ACA members are very concerned about retaliation by certain Big Five programmers. For instance, if you ask me today what my company pays a certain programmer, I could not tell you without fearing legal action against my company by the media giant. Programmers could agree to waive nondisclosure for purposes of this hearing or even in our contracts, but they never do. Ask them today, and I'd be shocked if they would disclose specific terms and conditions. Ask them why this confidentiality and non-disclosure exists. Who does it benefit? Consumers, Congress, the FCC? I don't think so. Why is this information so secret when much of the infrastructure the media giants benefit from derives from licenses and frequencies granted by the government?

Congress should obtain specific programming contracts and rate information directly from the programmers, either by agreement or under the Committee's subpoena power. Moreover, Congress should ensure that programmers must disclose the true and effective prices they charge to providers and consumers. Without disclosure, there is no accountability.

III. CONCLUSION

The American Cable Association and its members are committed to working with the Committee to solve these important issues.

The key questions I believe everyone should be asking themselves are the following:

- If you think rising programming prices are fine, you like all of the channels being forced on you by the media giants, and consumers have enough choice over what they view and have sufficient knowledge and control over what they pay for their programming, then do nothing.
- But if you worry that consumers and providers are forced to take and carry programming channels they find indecent, unwanted, or too expensive, yet they—along with their local providers, like my company—have no recourse, then please continue this line of inquiry. There are solutions out there that can help

your constituents and my customers achieve a better viewing experience, and we must be bold enough to look everywhere for answers.

My company and the more than 1,000 like it stand ready to be the advanced guard in providing new telecommunications and video services to customers in rural America and in smaller markets. But we won't be able to do it if the practices and price increases of the programming giants remain unchecked. As a result, for customers in smaller markets and rural areas to benefit from the advanced services my company can offer, the following must happen:

1. *Local providers and customers must have more choice and flexibility in how programming channels are priced and packaged;*
2. *The programming pricing gap between the biggest and smallest providers must be closed;*
3. *Tying and bundling of programming channels by the media giants must end;*
4. *Further tying through retransmission consent must be eliminated; and,*
5. *The programming media giants must disclose what they are charging local providers and customers.*

I would like to sincerely thank the Committee again for allowing me to speak before you today.

EXHIBIT 1—Ownership of the Top 50 Programming Channels

Channel	Ownership
BET	Viacom/CBS
CMT	Viacom/CBS
MTV	Viacom/CBS
Nickelodeon	Viacom/CBS
Spike	Viacom/CBS
TV Land	Viacom/CBS
VH1	Viacom/CBS
Comedy Central	Viacom/CBS
ABC Family	Walt Disney Co./ABC
Disney	Walt Disney Co./ABC
ESPN	Walt Disney Co./ABC
ESPN2	Walt Disney Co./ABC
Lifetime	Walt Disney Co./Hearst
A&E	Hearst/ABC/NBC
History	Hearst/ABC/NBC
CNBC	GE/NBC
MSNBC	GE/NBC
Sci-fi	GE/NBC
USA	GE/NBC
Bravo	GE/NBC
Shop NBC	GE/NBC
Fox News	News Corp.
Fox Sports	News Corp.
FX	News Corp.
Speed	News Corp.
TV Guide	News Corp.
CNN	Time Warner/Turner
Headline News	Time Warner/Turner
TBS	Time Warner/Turner
TCM	Time Warner/Turner
TNT	Time Warner/Turner
TOON	Time Warner/Turner
Court TV	Time Warner/Liberty Group
Animal Planet	Liberty Media
Discovery	Liberty Media
Travel	Liberty Media
TLC	Liberty Media
Golf	Comcast Corp.
Outdoor Life	Comcast Corp.
E!	Comcast Corp.
QVC	Comcast Corp.
HGTV	Scripps Company
Food	Scripps Company
AMC	Rainbow/Cablevision Systems
C-Span	National Cable Satellite Corp.

EXHIBIT 1—Ownership of the Top 50 Programming Channels—Continued

Channel	Ownership
C-Span II	National Cable Satellite Corp.
WGN	Tribune Company
Hallmark	Crown Media Holdings
Weather	Landmark Communications
HSN	IAC/InterActiveCorp.

EXHIBIT 2—Channels Carried Through Retransmission Consent

Program Service	Ownership
FX	News Corp.
Fox News	News Corp.
Speed	News Corp.
National Geographic	News Corp.
Fox Movie Network	News Corp.
Fox Sports World	News Corp.
Fuel	News Corp.
ESPN2	Walt Disney Co./ABC
ESPN Classic	Walt Disney Co./ABC
ESPNews	Walt Disney Co./ABC
Disney from premium to basic	Walt Disney Co./ABC
Toon Disney	Walt Disney Co./ABC
SoapNet	Walt Disney Co./ABC
Lifetime Movie Network	Walt Disney Co./Hearst
Lifetime Real Women	Walt Disney Co./Hearst
MSNBC	GE/NBC
CNBC	GE/NBC
Shop NBC	GE/NBC
Olympic Surcharges for MSNBC/CNBC	GE/NBC
Comedy Central	Viacom/CBS
MTV Espanol	Viacom/CBS
MTV Hits	Viacom/CBS
MTV2	Viacom/CBS
Nick GAS	Viacom/CBS
Nicktoons	Viacom/CBS
Noggin	Viacom/CBS
VH1 Classic	Viacom/CBS
VH1 Country	Viacom/CBS

Comparing this with the Top Fifty Channels in Exhibit 1 demonstrates how certain members of the Big Five have used retransmission consent to gain a significant portion of analog and digital channel capacity.

Mr. UPTON. Mr. Pyne, thank you.

TESTIMONY OF BEN PYNE

Mr. PYNE. Thank you and good morning. Thank you, Chairman Upton, Ranking Member Markey and the rest of the distinguished subcommittee, for inviting me to today. One of my principal responsibilities is working with the 10 ABC-owned television stations to negotiate retransmission agreements with cable and satellite operators. Since the topic of retransmission consent has arisen during the debate on a la carte programming, I would like to address the continued importance of the concept and put to rest any misunderstanding about its application in the marketplace.

Before discussing retransmission consent, I would be remiss if I didn't state for the record that government action to require or facilitate a la carte or tiered subscription television offerings would result in consumers paying more and receiving less. A la carte or tiering would drain advertising revenues from the system and pre-

cipitate increased equipment, marketing and transaction costs. Taken together, these decreased revenues and increased costs would result in sharply higher consumer rates with drastically reduced programming output and programming choices for consumers.

If concerns about indecency are driving a la carte or so-called family tiers, we at Disney believe a better solution would be application of a uniform approach to indecency across broadcast and expanded basic cable platforms. Government-inspired a la carte or tiering will inevitably drag this body into rate and content regulation. This is an unnecessary step since the marketplace is providing consumer choice with an array of packages available with many different pricing options.

The marketplace is also at work in striking in balance between cable and satellite operators' needs for an indispensable broadcast programming and the broadcaster's reasonable demand that it be compensated for the billions of dollars invested in that programming each year. This concept, known as retransmission consent, has worked well since Congress established it in 1992. Unfortunately, some have sought to muddy the debate over a la carte programming by hurling spurious allegations about the use of this process.

In order to put these allegations in proper context, some history may be helpful. Several of you were on this panel and played key roles in authoring the Cable Television Consumer Protection Act of 1992. In passing that legislation, Congress concluded that, quote, "A very substantial portion of the fees which customers pay to cable systems is attributable to the value they receive from watching broadcast signals," end quote. "And public policy should not support a system," quote again, "under which broadcasters, in effect, subsidize the establishment of their chief competitors," end quote.

The 1992 act required the cable systems to attain the consent of and to compensate the owner of a broadcast channel before undertaking to sell that channel to consumers. Thus, retransmission consent is not regulatory intervention into the free market but a congressional recognition of free market principles, namely that broadcasters, like any other business in this country, should be compensated for their product if sold by another entity. Publicly available data from Paul Kagan Associates makes clear that at ABC last year we spent $3.1 billion on programming.

Now, if you listen to those who seek to turn the clock back to the pre-1992 regime, you will hear fanciful tales of defenseless cable or satellite operators being force-fed channels they do not want or lack the capacity to carry. Let me make very clear for the record that we at ABC offer cable operators a stand-alone cash deal for ABC retransmission consent. By that I mean that if the cable operator agrees to pay cash for the carriage of ABC in the 10 markets we own stations and negotiate retransmission consent agreements, then there is no additional obligation to carry any Disney, ABC or ESPN programming. To the extent cable or satellite operators decide not to accept ABC's stand-alone cash offer and instead elect the alternative to carry programming, that decision is made by the

operators, not us. If they so elect, we attempt to work with them to customize a reasonable offer to address their particular needs.

It is important to note that the concept of carriage instead of cash originated with the operators, not the broadcasters. In fact, in the wake of the 1992 act, almost every broadcaster sought cash and nearly cable operator said no. This standoff was resolved when three of the then four major broadcast networks agreed to proposals initiated by cable operators to grant retransmission consents for network-owned stations in return for cable carriage of and payment for new network-owned cable channels.

The American Cable Association, which is represented here today, has termed our approximately 70 to 80 cent offer as a sham. Nothing could be further from the truth. ACA's petition to the FCC makes clear that its objection is not that the cash option isn't offered to small operators, it is just that they don't want to pay it or anything for broadcast programming. With your permission, Mr. Chairman, I would like the retransmission consent economic analysis, prepared by Economists, Inc. entered into the record. Their analysis makes it clear that our offer is not only reasonable but the fair market value is easily in the range of $1.42 to $2.09 per subscriber per month.

We offer flexibility in striking these retransmission consent agreements with our rural cable partners. This is reflected by the volume discount deals that ESPN has reached with the National Cable Television Cooperative. ABC will continue to work in good faith to accommodate the needs of smaller cable systems. With the growing success of satellite competition, we recognize the pressure some rural and small operators are under. The vast number of retransmission consent negotiations never become acrimonious or spill onto the headlines. In fact, Congress got it right in 1992 when it decided to embrace the marketplace as the proper venue for these deals to be hammered out.

Thank you, and I am happy to answer any questions.

[The prepared statement of Ben Pyne follows:]

PREPARED STATEMENT OF BEN PYNE, EXECUTIVE VICE PRESIDENT, DISNEY AND ESPN NETWORKS AFFILIATE SALES AND MARKETING

Good Morning. My name is Ben Pyne. I'm Executive Vice President, Disney and ESPN Networks Affiliated Sales and Marketing. Thank you Chairman Upton, Ranking Member Markey and the rest of the distinguished subcommittee for inviting me to testify today.

The topic before the Committee is one of vital interest to The Walt Disney Company. In my position, I have the pleasure of working with ABC and all of the cable networks under the Disney umbrella. One of my principle responsibilities is working with the ten ABC Owned Television Stations to negotiate retransmission agreements with cable and satellite operators.

Since the topic of retransmission consent has arisen during the debate on a la carte programming, I would like to address the continued importance of the concept and put to rest any misunderstanding about its application in the marketplace.

Before discussing retransmission consent, I would be remiss if I didn't state for the record that government action to require or facilitate a la carte or tiered subscription television offerings would result in consumers paying more and receiving less. A la carte or tiering would drain advertising revenues from the system and precipitate increased equipment, marketing and transaction costs. Taken together, these decreased revenues and increased costs would result in sharply higher consumer rates with drastically reduced programming output and programming choices for consumers.

If concerns about indecency are driving a la carte or so-called family tiers, we at Disney believe a better solution would be application of a uniform approach to indecency across broadcast and expanded basic cable platforms.

Government-inspired a la carte or tiering will inevitably drag this body into rate and content regulation. This is an unnecessary step since the marketplace is providing consumer choice, with an array of packages available with many different pricing options.

The marketplace is also at work in striking a balance between cable or satellite operators need for indispensable broadcast programming and the broadcaster's reasonable demand that it be compensated for the billions of dollars invested in that programming.

This concept, known as retransmission consent, has worked well since Congress established it in 1992.

Unfortunately, some have sought to muddy the debate over a la carte programming by hurling spurious allegations about the use of this process.

In order to put these allegations in proper context, some history may be helpful. Several of you were on this panel and played key roles in authoring The Cable Television Consumer Protection Act of 1992. In passing that legislation, Congress concluded that "a very substantial portion of the fees which customers pay to cable systems is attributable to the value they receive from watching broadcast signals" and public policy should not support a system "under which broadcasters in effect subsidize the establishment of their chief competitors."

The '92 Act required the cable systems to obtain the consent of, and to compensate the owner of, a broadcast channel before undertaking to sell that channel to consumers. Thus, retransmission consent is not regulatory intervention into the free market, but a Congressional recognition of free market principles, namely that broadcasters—like any other business-should be compensated for their product if sold by another entity.

Publicly available data from Paul Kagan Associates makes clear that at ABC last year we spent $3.1 billion on programming. Even in Washington that's real money!

Now if you listen to those who seek to turn the clock back to the pre-1992 regime, you will hear fanciful tales of defenseless cable or satellite operators being force fed channels they do not want or lack the capacity to carry.

Let me make very clear for the record that an intial offer from our Company is a cash stand-alone deal.

By that I mean that if the cable operator agrees to pay cash for the carriage of ABC in the ten markets we own stations and negotiate retransmission consent agreements, then there is no additional obligation to carry any Disney/ABC/ESPN programming.

To the extent cable or satellite operators decide not to accept ABC's stand-alone cash offer, and instead elect the alternative to carry programming, that decision is made by the operators, not us. If they so elect, we attempt to work with them to customize a reasonable offer to address their particular needs.

It is important to note that the concept of carriage instead of cash originated with the operators not the broadcasters. In fact in the wake of the 1992 Act, almost every broadcaster sought cash and nearly every cable operator said no. This standoff was resolved when three of the then four major broadcast networks agreed to proposals initiated by cable operators to grant retransmission consent for network-owned stations in return for cable carriage of, and payment for, new network-owned cable channels.

The American Cable Association, which is represented here today, has termed our approximately $.70 to $.80 offer as a "sham." Nothing could be further from the truth. ACA's petition to the FCC makes clear that it's objection is not that the cash option isn't offered to small operators, it's just that they don't want to pay it or anything for broadcast programming.

With your permission Mr. Chairman, I would like a Retransmission Consent Economic Analysis prepared by Economists Inc., entered into the Record. Their analysis makes it clear that our offer is not only reasonable, but the fair market value is easily in the range of $1.42 to $2.09 per subscriber per month.

We offer flexibility in striking these retransmission consent agreements with our rural cable partners. This is reflected by the volume discounts deals that ESPN has reached with the National Cable Television Cooperative. If some small cable operators refuse to pay cash for carriage and also have capacity constraints to carry other channels, we work with them to find capacity on other systems they might operate.

ABC will continue to work in good faith to accommodate the needs of smaller cable system operators. With the growing success of satellite competition, we recognize the pressure some rural and small operators are under.

The vast number of retransmission consent negotiations never become acrimonious or spill onto the headlines. In fact, Congress got it right in 1992 when it decided to embrace the marketplace as the proper venue for these deals to be hammered out. We believe the marketplace is serving consumers and that the legacy of government regulation of cable prices and packages has been counterproductive. Thank you and I'm happy to answer any questions.

Mr. UPTON. Thank you. Without objection, it will be entered into the record.

[The economic analysis follows:]

THE FAIR MARKET VALUE

OF LOCAL CABLE RETRANSMISSION RIGHTS

FOR SELECTED ABC OWNED STATIONS

BY

MICHAEL G. BAUMANN

AND

KENT W. MIKKELSEN

JULY 15, 2004

ECONOMISTS INCORPORATED

WASHINGTON DC

EXECUTIVE SUMMARY

The analysis examines the fair market value of local cable retransmission rights for ABC owned broadcast television station signals in three DMAs—Philadelphia, Flint, and Toledo.[1] (These stations will be referred to individually as an "ABC Owned Station" and collectively as the "ABC Owned Stations.") The analysis is based on three benchmarks. The first benchmark begins with an estimate of the retail price charged for the ABC Owned Station signals by DirecTV and DISH Network and works back to a corresponding license fee. The second benchmark begins with an estimate of what a local cable operator in each area charges its subscribers for the ABC Owned Station signal, and works back to a corresponding license fee. The third benchmark starts with an econometric analysis of the relationship between the license fees of basic cable networks and what those networks spend on programming, and then estimates the license fees that the ABC Owned Station signals would have commanded, given ABC's expenditures on programming, had they been basic cable networks. Using the average of the estimates produced by the benchmarks in each market, the fair market value of the retransmission right for the ABC Owned Station signals in the markets considered ranges from $2.00 to $2.09 per subscriber per month.

[1] These markets were selected for analysis by ABC. The three markets include one large market, Philadelphia, and the two smallest markets in which ABC owns stations.

INTRODUCTION

Local broadcast stations, especially network affiliates, are an important part of the services provided by cable systems. Indeed, cable television got its start more than 50 years ago by offering improved reception of local broadcast station signals. Although cable systems now offer many other services, local broadcast station signals remain a key source of consumer demand for cable. This is not surprising. Local broadcast stations carry popular local news, weather and sports programming. Also, the national network entertainment, news and sports programming carried by network affiliates remains among the most popular programming on television. Actual and potential cable subscribers place a high value on this programming.

Cable carriage of local broadcast station signals produces revenues for cable operators. A cable operator may charge a higher subscription price for a package of programming networks if local broadcast station signals are included in the package. Alternatively, at any given subscription price, there will be more subscribers and more subscription revenue if local broadcast station signals are carried. Further, having more subscribers means that the cable operator can generate more revenue from the sale of local advertising and other services. In these respects, local broadcast station signals play a role similar to popular cable networks and other sources of cable content.

In order to generate subscriber and advertiser revenues, cable operators distribute cable networks, such as A&E, CNN, and Discovery, to their subscribers and pay monthly per subscriber fees to cable networks for such rights. Most cable networks sell advertising spots to national advertisers, and some also provide local ad availabilities to cable operators who in turn sell such local advertising spots to local advertisers.

Federal law establishes two methods by which cable systems carry local broadcast station signals—must carry and retransmission consent. Under must carry, cable systems are not required to pay local broadcast stations for the right to distribute the local broadcast station signals that they are required by federal law to carry. However, a local broadcast station may elect instead to exercise its right to grant retransmission consent. Under retransmission consent, cable systems are not required to carry the local broadcast

station's signal, but must negotiate with the local broadcast station if they decide to carry the broadcast station's signal.

Broadcasters and cable operators negotiate retransmission consent agreements under rules established by the FCC. The outcome of such bargaining may result in a complex agreement. Cable operators often choose to provide alternative consideration such as carriage of cable networks that are affiliated with the broadcaster in lieu of cash payment. Because the details of each negotiation vary from one cable operator to another, and because the specific details of these agreements are generally confidential, a market price for retransmission consent rights is not transparent.

The Walt Disney Company requested us to examine two related questions arising from these circumstances. First, what is the relationship between a cash payment that a cable operator might pay for retransmission consent rights and the terms of alternative arrangements to which a local broadcast station owner and a cable operator might agree? As the next section explains, there are several ways that a local broadcast station owner that is affiliated with a cable network or cable networks can be compensated for retransmission consent rights. Second, since the market price for retransmission consent rights is not transparent, what is the estimated fair market price for the retransmission consent rights of the ABC Owned Station signals? By fair market price we simply mean the price that would be observed if retransmission consent rights were traded in cash-only transactions. Using only public or third-party data, we take three approaches:

- First, we observe the retail prices currently charged by DirecTV and DISH Network, two leading satellite operators, for their packages of local broadcast signals in each market, and we work backwards to estimate a license fee for the ABC Owned Station signal that is part of that package. Estimates range from $0.97 to $1.23 per subscriber per month.

- Second, we observe the retail price currently charged by a local cable operator in each of the markets for the tier of programming that includes local broadcast station signals, and we again work backwards to estimate a license

fee for the applicable ABC Owned Station signal, which is part of that tier. This estimate ranges from $1.90 to $3.06 per subscriber per month.

- Third, we observe the relationship between what cable operators in general pay in monthly per subscriber license fees for basic cable networks and the value of basic cable networks as measured by what each spends on programming. After adjusting for the ability of the cable operator to generate revenues from local ad availabilities on certain cable networks, we use the license fee/program cost relationship to estimate what the license fee would have been for the selected ABC Owned Station signals in 2003 if they were basic cable networks. That estimate is $2.27 per subscriber per month.

Taking an average of the benchmark estimates for each market yields a fair market valuation of the retransmission rights for the selected ABC Owned Station signals ranging from $2.00 to $2.09 per subscriber per month.

CASH OR CARRIAGE?

Under the retransmission consent rules, cable operators and direct broadcast satellite distributors (collectively, multichannel video programming distributors or "MVPDs") and local broadcast television stations negotiate the terms under which MVPDs will retransmit the applicable television station(s)'s signal(s). Congress created retransmission consent rights as part of the Cable Television Consumer Protection and Competition Act of 1992. When the first transactions concerning these rights were negotiated, leading cable operators insisted that they would make no cash payments to broadcasters and subsequently initiated discussions related to launching new cable networks as possible consideration for retransmission consent rights in lieu of cash payments. Eventually, agreements were reached between the broadcast networks and the major cable operators that provided for the cable operators to carry various new broadcast network-owned cable programming services in return for retransmission consent rights to local broadcast station signals. Today, cable operators carrying cable networks as consideration for retransmission consent rights is a common practice. The FCC noted this practice in a 2000 order, and also observed that the practice is presumptively lawful.[2]

According to ABC officials, ABC offers cable systems the right to retransmit the signals of its owned stations for approximately $0.70 to $0.80 per subscriber per month. Cable operators usually decline ABC's cash offer and instead negotiate a customized deal that compensates ABC while meeting the operators' particular needs. We understand that ABC is open to any options that provide ABC with fair consideration for its owned station signals, and ABC works with cable operators to determine what form that consideration may take if the cash option is not accepted by the cable operators.

To illustrate, the following are some of the alternatives ABC has used in order to address the particular circumstances of individual operators: (a) a cable operator may

---

2 FCC, First Report and Order, In the Matter of Implementation of the Satellite Home Viewer Improvement Act of 1999 and Retransmission Consent Issues: Good Faith Negotiation and Exclusivity, CS Docket No. 99-363, released March 16, 2000, ¶ 56, point 3.

agree to launch or reposition a cable network to reach more subscribers; (b) a cable operator could extend the term of an existing cable network distribution agreement; and (c) if a cable operator faces capacity constraints in a cable system within an ABC Owned Station's DMA, the operator may agree to launch a cable network outside of the applicable DMA. From an economic perspective, the opportunity to transact in a variety of "currencies" may increase the potential gains to the two parties from a transaction, but it does not alter the parties' respective shares of the gains. Under the various options that ABC offers to cable operators, ABC simply attempts to obtain consideration comparable to the cash option.

ESTIMATED FAIR MARKET PRICE

Using DirecTV and DISH Network prices as a benchmark

DirecTV and DISH Network are the two major direct broadcast satellite (DBS) providers in the United States, with a current combined total of over twenty million subscribers. Legislation enacted in 1999 gave DirecTV and DISH Network the right to carry local broadcast stations. Both companies compete with cable television operators for subscribers, and both carry many of the same networks as cable systems. We therefore assume that DirecTV and DISH Network subscribers are representative of cable subscribers in their valuation of local broadcast signals, and that the relationship between wholesale and retail prices for such programming on DirecTV and DISH Network is indicative of the corresponding relationship for cable systems, and vice versa.

Any subscriber to DirecTV in a market where DirecTV provides local signals can add a package of local broadcast channels for $6.00 per month.[3] DirecTV currently offers such local programming in Philadelphia and Flint.[4] A subscriber to DISH Network in those markets with a local signal package can add the package for $5.99 per month. DISH Network also currently offers a local programming package in Philadelphia and Flint. Given the competitive importance to DBS services of offering local channels, DBS providers may provide these packages at reduced rates to spur subscribership.[5] If so, our estimates based on this benchmark will understate the fair market value of retransmission rights.

---

3 Beginning in March 2004, if a subscriber purchases a DirecTV package with local channels, the subscriber gets a $3 bundling discount. But if the subscriber only had Select Choice or some kind of special package or a complimentary package, and wanted to add the local channels, then the additional cost would be $6. See copy of a June 2004 DirecTV monthly statement attached as Appendix A.

4 DirecTV plans to begin offering local signals in Toledo in 2004.

5 The FCC noted that the growth in DBS subscribers is, in part, attributable to the authority granted to them to distribute local broadcast television stations. FCC, *Tenth Annual Report: Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket 03-172, ¶¶8, 65.

In each market, both the DirecTV and DISH Network packages include programming from several local stations. It is unlikely, however, that the signals have equal value, either to subscribers or to DirecTV or DISH Network in attracting subscribers. For purposes of our analysis we assume that the value of the stations included in either the DirecTV or DISH Network local package is proportional to the stations' shares of local audience.[6] Using data from the May 2004 sweeps, we determine the total day viewing share of each programming service included in each market's local channel package.[7] We then compute each ABC Owned Station signal's share of viewing relative to all services in the package.

We attribute to each ABC Owned Station signal a percentage of the retail value of the local channel package based on its relative share of viewing of services in the package. The results are presented in Table 1. The implied retail value for an ABC Owned Station signal ranges from $1.64 to $2.08 based on the DISH Network price and from $1.65 to $2.09 based on the DirecTV price.

Table 1: Estimated retail value of ABC Owned Station signals based on DBS fees

	DISH Network ($5.99/mo.)		**DirecTV ($6.00/mo.)**	
Market	ABC Owned Station Viewing Share	Attributed Value	ABC Owned Station Viewing Share	Attributed Value
Flint	34.8%	$2.08	34.8%	$2.09
Philadelphia	27.5%	$1.64	27.5%	$1.65
Toledo	n.a.	n.a.	n.a.	n.a.

To derive an estimate of market value for local broadcast retransmission rights, we need to translate this retail value into a corresponding wholesale value or license fee.

---

6 Viewers' demand or willingness to pay for programming is not the same as ratings or viewing shares. In theory, programming with a relatively small audience that is intensely interested may command higher revenue than programming that attracts a larger but less interested audience. Lacking direct measures of viewer willingness to pay for individual broadcast networks, we use ratings and viewing shares as an approximation.

7 Underlying data are from Nielsen.

To do this, we make use of the relationship between wholesale license fees and subscriber prices observed for other programming. In 2002, wholesale revenue for premium services was about 59 percent of retail revenue for such services.[8] Applying this percentage implies that the wholesale value to ABC Owned Station signals would range from $0.97 to $1.23, based on both the DISH Network prices and the DirecTV prices. See Table 2. This percentage is equivalent to a retail markup over wholesale of about 70 percent. Since DBS providers would likely apply a very low or no markup to the license fee given the competitive importance of local signals to DBS services, as noted above, the actual retail markup may well be lower than 70 percent and therefore the wholesale values are likely to be higher than estimated here.

Table 2: Estimated wholesale value of ABC Owned Station signals based on DBS fees

Market	DISH Network	DirecTV
Flint	$1.23	$1.23
Philadelphia	$0.97	$0.97
Toledo	n.a.	n.a.

Using the local cable operator's basic tier price as a benchmark

Our second approach to estimating a fair market value for retransmission of the ABC Owned Station signals is to look at the retail price a local cable operator charges for the service tier that includes the ABC broadcast station and then work backwards to an implied wholesale value.[9]

Most cable operators provide a Basic Service Tier that functions primarily as a "reception" package. The tier is typically composed of local broadcast television stations and government access channels. Most likely, as with the satellite local signal packages, this price is below fair market value. Although some cable television prices have recently

---

8 Kagan World Media, *The Pay TV Newsletter*, July 31, 2002, p. 3. Kagan estimated that the wholesale percentage of retail revenue was 59.1 percent in 2002 and would be about 59.5 percent in 2004.

9 The cable operators selected were identified as serving the named city.

been deregulated at the federal level, basic tier prices remain regulated by state and local authorities. Such tiers are often offered at a discount for regulatory or public relations reasons, to satisfy agreements with local agencies or to improve relations with the FCC or franchise authorities. Historically, few cable subscribers have opted for only this basic service. Therefore, cable operators lose little by offering a low price. Nevertheless, we assume that the Basic Service Tier price reflects market value. If the retail price is below fair market value, our estimate of the corresponding wholesale price again understates the fair market value of retransmission rights.

We again assume that the value attributable to an individual channel on this tier is proportional to its ratings relative to all the channels on the tier.[10] See Table 3.

Table 3: Estimated value of ABC Owned Station signals based on cable operator fees

Market	Operator	Rate	Number of Channels	ABC Owned Station Viewing Share	Attributed Retail Value	Estimated Wholesale Value
Flint	Comcast	$12.75	19	33.3%	$4.25	$2.51
Philadelphia (19132)	Comcast	$15.60	32	27.5%	$4.28	$2.53
Philadelphia (19102)	Comcast	$20.00	34	25.9%	$5.19	$3.06
Toledo	Buckeye	$12.15	19	26.5%	$3.22	$1.90

Based on the relative share of viewing in each market, approximately 20 percent to 30 percent of the value of the basic service tier is attributable to the ABC Owned Station signal. The retail value attributed to the ABC Owned Station signals ranges from $3.22 to $5.19. We again assume that the wholesale value is 59 percent of the retail value. This implies a wholesale value, or retransmission license fee, ranging from $1.90 to $3.06 for the ABC Owned Station signals.

---

[10] See note 6. Many services on the basic service tier have no ratings reported by Nielsen. The absence of ratings data generally implies that the audiences are too small to be measured accurately. We assumed that these services had a zero share.

Using cable network license fees as a benchmark

Our third approach to the question of estimating the fair market value of local cable retransmission rights to the ABC Owned Station signals relies on what cable operators pay for various cable networks. The economic foundation of basic cable networks is the cable operators' ability to distribute cable networks to viewers for monthly subscription fees as well as to deliver audiences to advertisers. Cable operators pay license fees to distribute cable networks, such as ESPN or CNN. These license fees (wholesale prices) are determined by free market competition.

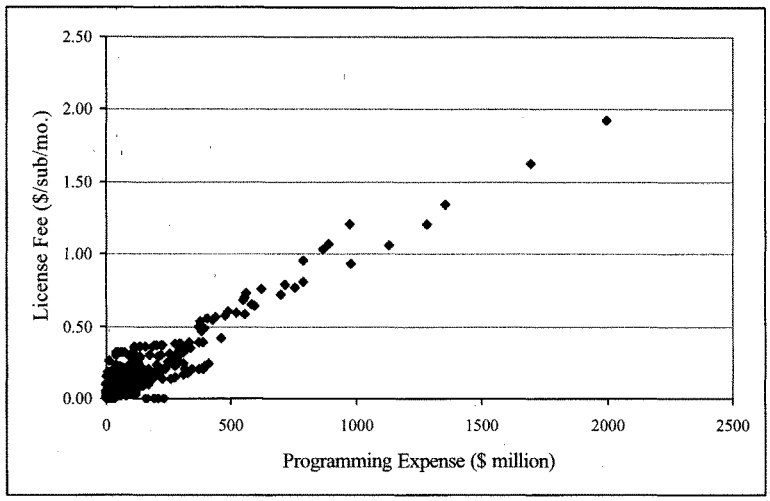
There is a strong correlation between the license fees paid by cable operators to cable networks and the level of programming expenditure by those cable networks. See Figure 1.[11] It is not surprising to find that more popular, expensively-produced cable networks have higher license fees than do less popular cable networks. We rely on this relationship between cable network programming expense and cable network license fees to project the value of broadcast station signal retransmission consent rights based on broadcast network programming expenses.[12]

---

11 Data from Kagan Research, *Economics of Basic Cable Networks 2005: Key Spreadsheets*, June 2004. Programming expenses and license fees expressed in real 2003 dollars using the GDP implicit price deflator.

12 The fee cable operators (and ultimately, viewers) are willing to pay for a program service depends on the quality or attractiveness of the programming provided. Higher perceived programming quality, in turn, is directly related to programming expense. This is so because competition among distributors drives up the prices of the most attractive program services. Therefore, one would expect that license fees per subscriber would increase as programming expenditures increase, other things equal. See B. Owen and S. Wildman, *Video Economics*, 144-150 (1992); B. Litman, *Predicting Success of Theatrical Movies: An Empirical Study,* 16 Journal of Popular Culture 159 (1983); and M. Blumenthal, *Auctions with Constrained Information: Blind Bidding for Motion Pictures*, 70 Review of Economics and Statistics 191 (1988).

Figure 1: Cable network license fees versus programming expenses, 1992-2003
(in real 2003 dollars)



Although very important, program expense is not the only factor that explains the license fees commanded by cable networks. Many cable networks receive not just license fees from cable operators but also advertising revenues from national advertisers. Each cable network must decide how to trade off these two sources of revenue. Other things being equal, if a cable network's per subscriber wholesale license fee is lower, cable operators will provide it to more subscribers than more expensive cable networks. Such more widely distributed cable networks will accordingly be more attractive to advertisers and could result in greater advertising revenue. This tradeoff has become more important as the cable advertising marketplace has grown in the last decade. Our analysis takes this tradeoff into account.

A related issue in understanding cable network license fees is the availability of local advertising spots. A cable operator will be willing to pay more, other things being equal, for a cable network that provides opportunities for the cable operator to sell local advertising spots. In doing this, of course, the cable network gives up the opportunity to

sell such spots to national advertisers. Because local cable advertising has grown in importance, this effect must now also be taken into account for purposes of estimating the fair market value of broadcast retransmission rights.

Kagan Research's publication *Economics of Basic Cable Networks 2005* provides data regarding basic cable networks.[13] For purposes of our analysis, we use data on 94 cable networks for 12 years (not all cable networks were in operation in every year), as depicted in Figure 1.[14] We adjust these data for inflation and then use an econometric technique (regression analysis) to estimate the overall average relationship between license fees and programming expenditures. See Appendix B. We apply the resulting relationship to programming expenditures by the ABC network in 2003 as reported by Kagan Research.[15] The result is an imputed monthly license fee that the ABC network could command as a basic cable network.[16] That number is $3.00 per subscriber per month.

As indicated above, economic analysis of the cable industry suggests that we should also take into account the growing importance of cable advertising revenue. In theory, this should tend to reduce license fees. We account for this by including for each cable network an estimate of its advertising revenue in each year. The result is that the imputed monthly license fee for the ABC network drops to $2.81 for the year 2003.

---

13 The FCC regularly relies on the industry statistics and projections by Kagan Research in its rulemaking decisions and analyses of the video industry. See, e.g., FCC, *Tenth Annual Report*, Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, MB-Docket 03-172.

14 The *Economics of Basic Cable Networks 2005* lists subscriber, license fee and programming expense data for 120 cable networks. For various reasons, 26 networks were excluded from the analysis—8 had data starting only in 2004; 9 had only one year of usable data; 3 were premium networks for part of the time period; 5 were Spanish language; and 1 was a delayed feed of another.

15 Kagan Research, "Broadcast Network Economics, 2001-2003," *TV Program Investor*, May 27, 2004.

16 The prediction relates to the average fee paid by all cable operators. To apply this methodology to an individual cable operator we would need to know that operator's license fees for the cable networks it carries and that operator's local advertising revenues per network.

As explained above, cable operators derive local advertising revenue from some cable networks. Broadcast station signals do not afford such an opportunity, and other things being equal this reduces the value of broadcast station signals to cable operators relative to cable networks that offer local advertising availabilities. To account for the value of local advertising availabilities to cable operators, we include a variable that measures the value of local cable advertising attributable to each cable network. The effect of this adjustment is to reduce the imputed value of the ABC network monthly license fee to $2.27 per subscriber.

The preceding analysis may understate the value of the ABC Owned Station signals because it does not take into account the value of local and other non-network programming. Our evaluation of the ABC network if it were a basic cable channel omits any consideration of the local content of the ABC stations' signals. The cable networks used to estimate the value of ABC retransmission rights generally do not offer local content. If it were possible to take this into account it would likely increase the license fee that an ABC Owned Station signal could command above the value associated with the ABC network programming.

CONCLUSION

Table 4 summarizes the estimated values of the ABC Owned Station signals from each of the three methods.

Table 4: Summary of retransmission value estimates

Market	DBS	Cable	Regression	Average
Flint	$1.23, $1.23	$2.51	$2.27	$2.00
Philadelphia	$0.97, $0.97	$2.53, $3.06	$2.27	$2.01
Toledo	n.a.	$1.90	$2.27	$2.09

If we give the average value of each method's estimate obtained within a market equal weight, we obtain the average valuation reported in the last column of Table 4. Using these averages, the fair market value of the retransmission right for the ABC Owned Station signals in the markets considered ranges from $2.00 to $2.09 per subscriber per month.

Appendix A: Sample DirecTV Monthly Statement

View Statements
Payment History

Customer Profile
Payment Profile
Terms and Conditions
Logout

Monthly Statement

Billing Address
[redacted]
N
HERMOSA BEACH, CA
90254[redacted]
[redacted]

Service Address:
[redacted]
HERMOSA BEACH, CA
90254[redacted]

Date Due	Account Number	Amount Due
Not Due	613937664	No payment due

Account Summary

Bill Statement Date	Previous Balance	0.00
06/09/2004	(-) Payments and credits	15.98
	(+) Current charges and taxes	15.98
	= AMOUNT DUE	$0.00

Current Activity

Access Card	Start	End	Description	Amount
			Previous Balance	0.00
	06/09/04		Payment - Thank You - VISA	- 15.98
1405-353192			***Subscriptions***	
	06/08/04	07/07/04	Premier Bonus: You Save $4.99 DIRECTV DVR	0.00
	06/08/04	07/07/04	Complimentary TOTAL CHOICE PREMIER	0.00
	06/08/04	07/07/04	Monthly Your Local Channels	6.00
1382-142063			***Subscriptions***	
	06/09/04		Additional Receiver	4.99
1390-093225			***Subscriptions***	
	06/09/04		Additional Receiver	4.99
			AMOUNT DUE	**$0.00**

Appendix B: A statistical model of television network license fees

The fees MVPDs (and ultimately, viewers) are willing to pay for programs depend on the quality of the programs provided. Higher perceived program quality, in turn, is directly related to program expense. Therefore, one would expect that license fees per subscriber would increase as program expenditure increases.[17]

An appropriate statistical model relates cable network license fees to their main determinants, program expenditures and network advertising revenues. Once this relationship is estimated, the estimated model predicts a fair market value fee for the broadcast networks. The general form of the statistical model is as follows:

$$\text{Fee}_{it} = \beta_0 + \beta_1 \bullet \text{Program Expense}_{it} + \beta_2 \bullet \text{Advertising Revenue}_{it} + \beta_t \bullet \text{Year Dummy} + \varepsilon_{it}$$

where Fee is the average per-subscriber per-month licensing fee, Program Expense is the annual program expenditure, Advertising Revenue is the annual net advertising revenue, ε is a statistical error term, subscript i indicates network i, and subscript t indicates year t. The model allows for individual year-specific effects, β_t.

Two changes were made to this general form for the final version of the regression. First, since the license fee may depend on the ability of the cable operator to insert local advertising, a variable was included to account for local cable advertising revenue attributable to each network.[18] In addition, the intercept term, β_0, is allowed to

---

17 Data on license fees, program expenditures and the number of subscribers for 94 basic cable networks are obtained from Kagan Research, *Economics of Basic Cable Networks 2005: Key Spreadsheets*, June 2004. While Kagan provides data for 120 cable networks, 26 networks were excluded from the analysis. See footnote 13.

18 Total local cable advertising revenue is from Paul Kagan Associates, *The Kagan Media Index*, September 30, 2000, and *Kagan Media Money*, August 29, 2003. The percentage of local ad revenue attributable to each cable network is from "Average Share of Local Cable Ad Revenue by Network," Paul Kagan Associates, *Broadband Advertising*, December 13, 2001. Data on the share of local cable ad revenue were available only through 2000. Shares for 2001, 2002, and 2003 are assumed to be the same as in 2000.

vary by network, using the assumption that the intercept will be a function of the average program expenditure of the network over the observed period.

The equation estimated is

$$\text{Fee}_{it} = \beta_0 \bullet \text{Average Program Expense}_i + \beta_1 \bullet \text{Program Expense}_{it}$$
$$+ \beta_2 \bullet \text{Advertising Revenue}_{it} + \beta_3 \bullet \text{Local Advertising Revenue}_{it}$$
$$+ \beta_t \bullet \text{Year Dummy} + \varepsilon_{it}$$

where Average Program Expense is the average program expense over the period for which there exist data for the network and Local Advertising Revenue is the average per-subscriber per-month local advertising revenue.

All variables are expressed in real 2003 dollars, using the GDP implicit price deflator. Standard (OLS) estimation of the model produces the following results:[19]

Model estimation results

F: 431.4		Pr > F: <.0001		
R^2: 0.9007		Root MSE: 0.0574		
Parameter	Estimate	T-value for H_0:Parameter=0	Pr > |T|	Std. Error of Estimate
β_0	0.0001765	4.74	<.0001	0.0000372
β_1	0.0009072	26.55	<.0001	0.0000342
β_2	–0.0003077	–12.35	<.0001	0.0000249
β_3	0.3718	8.57	<.0001	0.04341
β_{2003}	0.05161	8.34	<.0001	0.00619

19 The last term in the model is an error term, which is the difference between the predicted results and the actual observation. OLS, ordinary least squares, is a procedure that minimizes the sum of the squares of the error terms—hence, the phrase "least squares." The OLS estimator is a standard statistical procedure that gives the best, straight-line, unbiased estimate of the relationship between the variables.

From the model results, it is possible to construct an equation that estimates the free market value of retransmission of the ABC Owned Station signals. For the program expense of the ABC Owned Stations we use the program expense of the ABC network. This is conservative since it ignores both expenditures on and the nature of local news, local sports, other locally originated programming and syndicated programming on the stations. ABC's programming expenditure for 2003 was $3,010 million and its net advertising revenue in 2003 was $3,169 million.[20] ABC's average annual real programming expenditure from 1992 through 2003 was $2,624.9 million.[21] Using these values gives an estimated license fee of $2.27 per subscriber per month.[22]

---

20 "Broadcast Network Economics, 2001-2003," Kagan Research, *TV Program Investor*, May 27, 2004.

21 "Broadcast Network Economics, 1991-1993," Paul Kagan Associates, *TV Program Investor*, February 28, 1994; "Broadcast Network Economics, 1993-1998," Paul Kagan Associates, *TV Program Investor*, April 15, 1999; "Broadcast Network Economics, 1997-1999," Paul Kagan Associates, *TV Program Investor*, April 20, 2000; "Broadcast Network Economics, 2000-2002," Kagan World Media, *TV Program Investor*, June 26, 2003; "Broadcast Network Economics, 2001-2003," Kagan Research, *TV Program Investor*, May 27, 2004.

22 The 95 percent confidence interval on this estimate is plus or minus 19¢.

Mr. UPTON. Reverend Plummer.

TESTIMONY OF GLENN PLUMMER

Mr. PLUMMER. Thank you, Mr. Chairman. I also would like to thank Mr. Deal for raising this entire discussion. The National Religious Broadcasters is an international association of Christian communicators with over 1,700 member organizations. Our members reach millions of listeners, viewers and readers through television, radio, Internet and film. Recent research has confirmed the strength of our broadcast platform. More than 141 million Americans listen to or watch religious programming at least once each month. I currently serve as chairman and CEO of our association.

Second, I am here as a broadcaster. I am personally a broadcaster. I own two television stations, one in Detroit and one in New Orleans, Louisiana, free over-the-air FCC-licensed television stations. And so I represent really the interests of two distinct constituencies, broadcast and programmers, religious and African-American, with my comments. I have prepared a written statement for you, and I have provided that for you, and so if I may, Mr. Chairman, I would just like to say some things that are not here and really speak from my heart, if I may.

Twenty-two years ago, I was 27 years old, I began the Christian Television Network. I did not own a VCR at the time, but I believed the American dream, that in fact I could enter into this industry. At the time, there were three religious broadcasters that were just being carried by cable that was in its infancy as well. Pat Robertson had the Family Channel that he founded, who is a member of the board that I Chair. Jim Bakker had PTL, and Paul Crouch had TBN. These were the three sole religious broadcasters that were carried and given full access on cable as they were developing and maintained that full access throughout the development of cable—22 years ago. Also Bob Johnson, founder of BET, just about at the same time, as an African-American communicator, received access as well.

Over these 22 years that I have gone from a father of 5 children, I have developed now, as they say, a couple of TV stations that I own, I am on satellite as well, being carried by a tier of the EchoStar system, I have seen a phenomenon take place. There has not been one religious broadcaster in 20 years that has been given full carriage on cable, any cable system, in the 20 years since these three original Christian broadcasters began, nor has there been one African-American broadcaster or programmer network that has been given full carriage in 20 years on cable television.

Now, what happened to those four, Pat Robertson, Jim Bakker, Bob Johnson and Paul Crouch? Some would argue that there is little value to religious broadcasting. Well, Rupert Murdoch bought Pat's network for $2 billion. Pat sold it. Jim Bakker, as we know, went to prison. Bob Johnson sold his for $3 billion to Viacom. It left one of the original four, TBN, which is the only religious broadcaster still given full carriage on cable in America. Our industry has developed about 40 full 24-hour television networks, none of which are granted full access. African-American communicators, there are over 10 to 15, TV One on the platform is one. They are

not given full access. In fact, Time Warner, as I understand, still doesn't give TV One access.

Now, I was reticent to share my personal story for fear of retribution but I will, and that is I was approached by Comcast. We discussed carriage. And as we went through the process, what I learned was if I was willing to give ownership and equity in our network, then there would be carriage granted. Our network is 100 percent African-American owned. We chose not to do that. They took us, hand walked us to Goldman Sachs, and we shared with them, "We don't need the money. We are on satellite. We don't need staff, we don't need programming. We just need access." It was not granted, and so I propose to you that cable is conflicted in that it is incestuous.

I am not suggesting that carriage is not being granted to African-American or religious broadcasters for any cynical reason other than they don't own these networks. And so I would appeal to you to give consideration for access. That is the core fundamental, foundational issue that underlines the discussion we are having on a la carte.

With that, Mr. Chairman, I thank you for the opportunity to comment.

[The prepared statement of Glenn Plummer follows:]

PREPARED STATEMENT OF GLENN R. PLUMMER, CHAIRMAN & CEO OF NATIONAL RELIGIOUS BROADCASTERS, CHAIRMAN & CEO OF CHRISTIAN TELEVISION NETWORK

The National Religious Broadcasters is an international association of Christian communicators with over 1,700 member organizations. Our members reach millions of listeners, viewers and readers through Television, Radio, Internet, and Film. Recent research has confirmed the strength of our broadcast platform. More than 141 million Americans listen to religious programming at least once a month. I currently serve as Chairman and CEO of our Association.

I also currently serve as Chairman and CEO of Christian Television Network, a 24-hour per day TV network carried on cable and satellite. In addition, my wife, Karin, and I are the sole FCC licensees of two over-the-air TV stations—WLPC TV-26 Detroit, Michigan, and WLPN TV-61 New Orleans, Louisiana.

Let me begin by commending the members of this sub-committee for the important work you do and for the largely non-partisan way in which you approach that work. As a nation, we owe you a debt of gratitude for helping shepherd us through what has become an astonishing period of technological change in electronic media. Seemingly, every decision you make is scrutinized and criticized. Your willingness to examine the cable industries business model and it's potential restructuring is certainly a volatile issue. It is an almost impossible task and I commend you for giving it your best efforts.

The proposal for *A La Carte* channel choice on cable television has a number of excellent benefits and a variety of things that commend it. Chief among them is the choice of channel selection provided to the consumer, and the associated price options it should also provide the subscriber. An *A La Carte* system is also much more consistent with a *market-driven* economy than one that has semblances or likenesses of a monopoly.

Cable television has evolved into a form of natural monopoly today. Although satellite DBS service, such as DirecTV and Echostar, is providing some competition today, almost everyone agrees that "Cable is King." As an illustration, cable offers a form of A La Carte service now—Video on Demand or VOD. VOD allows subscribers to watch "what they want to watch, when they want to watch it" without the need to record it. On the VOD platform, if I want to watch "*60 Minutes*," I would not have to watch it at 7:00pm ET on Sundays, when CBS offers it, I can watch it at any time without recording it. Without the use of TIVO, or any other recording device, it would be available to me at any time, and I would have full VCR capabilities, including rewind, pause and fast-forward. This *A La Carte* type television service is *ONLY* available on cable—not satellite, and not free over-the-air broadcasting.

It therefore seems odd, and somewhat disingenuous, for cable MSO's to fight so vehemently against a consumer choice service like *A La Carte,* especially when they

are investing very significant resources (billions of dollars) into an *A La Carte* type product called Video on Demand (VOD).

I sincerely believe that *A La Carte* can provide tremendous benefits for our country, and therefore I would be inclined to recommend support for it, but in my opinion, it also suffers from some very serious defects. At least as *A La Carte* was originally proposed. Chief among these defects are the uncertainties that *A La Carte* would create for "Must Carry" stations.

The Supreme Court of the United States has upheld an important governmental interest in preserving the benefits of free over-the-air local broadcast television. With the dramatic increase in cable and satellite penetration of U.S. households, free over-the-air broadcasters are dependent, now more than ever, on the Must Carry provisions of federal law. This is equally true of religious broadcasters. When our members purchase airtime on local broadcast affiliates, their potential viewing audience could be marginal without Must Carry. Without the presence of some basic tier, which must include all free over-the-air broadcasters, religious broadcasters would be irreparably harmed and an important voice in our cultural dialogue would be silenced. Practically speaking, it only makes sense to offer subscribers an initial basic tier of programming. In short, while *A La Carte* would ostensibly offer consumers more freedom to choose, in the end their choices could be reduced if the economic model that supports many broadcasters is damaged or destroyed. I am suggesting *A La Carte* to be over and above a basic tier.

Let me emphasize that National Religious Broadcasters has not yet taken a position to support or oppose *A La Carte* outright. We believe, however, that there may be some compromise language that would be acceptable to our members. While I have not come today to offer the specifics of that compromise language, let me offer a description of what I believe it must include. First, for NRB to support *A La Carte,* it *must* include specific language that preserves the existing Must Carry provisions of federal law. In addition to the Must Carry tier of broadcast programs, another important class of programming must also be protected. These are the networks that secure cable carriage through fees paid to cable operators. A significant number of our religious programmers secure carriage on cable television in that manner.

In light of this full discussion, a very significant point needs to be made at this point. In the current cable structure, high priority is not given to religious or minority programs. I can only speculate as to why there has been such a resistance to carrying religious and minority programming networks. The fact remains that religious broadcasters and minority broadcasters have consistently experienced great difficulty in gaining access onto cable television. Because of the resistance of cable operators to carry religious networks in particular, Must Carry became absolutely critical for many broadcasters. Beyond Must Carry, however, and in an *A La Carte* environment, I honestly believe religious and ethnic programming would fair excellently, but the bigger issue for us remains ACCESS. If we still do not have access in an A La Carte environment, this entire discussion remains fruitless.

In the current issue of CableFAX's CableWorld magazine (a cable industry publication for July 5-18) the cover story feature's MSO cable executives positively affirming the benefits of VOD and other *A La Carte* style offerings that are targeting ethnic markets.

Because cable executives, generally speaking, have not given fair carriage to religious and minority networks, *A La Carte* could be the answer! A recent survey discovered that over 80% of the African American community supports black media, if it's available to them. The African American community makes up 12% of the US population, but almost double the percentage (23%) of cable viewership. BET (Black Entertainment Television) is still the only black TV network on cable with full nationwide carriage. They have segmented themselves in to one basic subculture—Hip Hop/Urban programming. The problem is that much of BET's programming, targeted toward black America, does not meet decency standards. I do not mean to sound judgmental or callous, but a large percentage of their programming is considered offensive, indecent, and in some cases plain filthy. There is a tremendous need in our country to raise children in a morally clean atmosphere. Some of what BET does is excellent, but there is a tremendous need for wholesome family-oriented programming targeting the inner city. All we need is a chance to have access. All we want is a chance.

If an A La Carte platform will give other religious and minority networks greater access, then that's what we need. The article I mentioned earlier in CableWorld, illustrated this fact with Hispanic or Latino networks. *A La Carte* actually seems to be *most* beneficial to an ethnic or minority market.

In conclusion, whether an A La Carte system is made available or not, what is absolutely necessary, is the need to review the current cable TV structure. Giving

consumers a broader and better choice makes a lot of sense. Giving a larger number of broadcasters and a broader range of other programmers a greater opportunity for access and carriage contributes to a healthier culture.

Mr. Chairman, I would like to thank the entire committee for the opportunity and privilege to address this extremely important issue.

Mr. UPTON. Thank you. Mr. Baxter.

TESTIMONY OF THOMAS G. BAXTER

Mr. BAXTER. Good morning, Mr. Chairman, Congressman Markey and members of the committee. My name is Tom Baxter, and I am president of Time Warner Cable. Thank you for the opportunity to participate in today's hearing.

I have been in this industry for more than 25 years, and there has never been a more exciting time. This country has developed the best, most advanced television system anywhere. We are the envy of the world. A key reason we have gotten to this point is the ability of cable operators and programmers to work together to create and offer new and innovative products and services.

As a result of the policies adopted by this committee in 1996, the cable industry did invest nearly $85 billion in private risk capital to rebuild and upgrade its facilities. As a result, Time Warner Cable and other cable companies are able to provide consumers with more choice and control over their video programming.

Now, the concept of a la carte and theme-tiered mandates may seem seductive, but going down that path is unnecessary and will ultimately lead to higher prices for consumers. As the Nation's second largest cable operator, serving 11 million video customers in 27 States, Time Warner Cable must provide our customers the broadest possible choice of high quality programming at attractive prices or risk losing customers to our competitors. Today, more than one out of four subscribers obtain video programming from a company other than their local cable operator. We ignore the consumer at our peril, and we are listening hard to make sure we get it right.

Our experience with the vast majority of customers tells us that we best meet their needs today with a mix of bundled program packages, but our video offerings also go beyond bundles. For example, Time Warner Cable offers certain programming on a per-program basis, and in some cases, viewers can pick from individual programs on a subscription basis. Our mix of products and services is not written in stone. It remains fluid and it evolves in response to market conditions and ever-changing consumer preferences.

A la carte or theme-tier requirements, whether mandated or voluntary, will increase costs to consumers. To make this happen, cable operators will have to scramble every channel and provide every subscriber with a set-top box for every television in their home that does not yet have one. This could come down to a cost of more $4 per box. For the average cable household with three TV sets, that could add up to $150 a year. Today, in Time Warner Cable service areas, fewer than half our customers have a box capable of doing this.

Cable operators will have to also create marketing infrastructures that allow individual subscribers to select unique combinations of channels. We need to create new billing systems to address the many possible permutations of subscriber options. In addition, cable operators will have to devote bandwidth to duplicating exist-

ing programming rather than offer increased high definition and other advance services. Government requirements that programmers make these services available a la carte will increase the cost of these programming services themselves.

Finally, we share the committee's concern about indecency and violence on television, and I am pleased to say that the cable industry has been at the forefront of efforts to provide parents with tools to control and manage content that comes into their homes. For example, most advanced analog set-top boxes have the ability to block specific channels. If the consumer does not have that box, cable operators will provide one at no cost to the consumer upon request. Our digital boxes provide consumers with even greater flexibility and control, allowing parents to block specific programs based on TV and movie ratings.

Now, to ensure that everyone knows about these tools, the cable industry has also recently launched a comprehensive new consumer outreach program. As part of that program, Time Warner Cable has run more than 31,000 public service announcements in the past few months. We have sent educational mailers to more than 4 million customers, educators and local community leaders. We remain committed to ensuring that our subscribers, your constituents, are not knowledgeable about the tools available to them.

Mr. Chairman and committee members, we are bringing consumers an expanding array of video entertainment in new and innovative ways. A regulatory environment that allows us to respond to consumers and stay competitive best serves the public. I thank you again for the opportunity to appear, discuss this important issue, and I look forward to your questions.

[The prepared statement of Thomas G. Baxter follows:]

PREPARED STATEMENT OF THOMAS G. BAXTER, PRESIDENT, TIME WARNER CABLE

Good morning Mr. Chairman, Congressman Markey, and members of the Committee. My name is Tom Baxter, and I am President of Time Warner Cable. I would like to thank you for the opportunity to participate in today's hearing. This is an exciting time to be in the cable industry. Since 1996, the cable industry as a whole has invested nearly $85 billion in private risk capital to rebuild and upgrade its facilities, including $10.6 billion in 2003 alone.

Fueled by this significant investment and driven by technological advancements, Time Warner Cable and our industry colleagues are now able to offer American consumers a vast array of entertainment and communications services over integrated state-of-the-art networks. No longer just a one-way means of delivering a pre-set menu of programming, video technology today empowers consumers by giving them control, convenience and choice. New enhanced digital products such as Video on Demand, Subscription Video on Demand, and Digital Video Recorders have made video a two-way interactive experience.

Given the choices available to cable consumers today, the cable industry is particularly interested in this hearing on the appropriateness of government mandates related to "a la carte" or "themed-tier" offerings. While such mandates may have some superficial appeal as a panacea for addressing concerns ranging from consumer choice to rates to indecent or violent programming, we believe the imposition of these mandates is unwarranted and in many important respects would be counter-productive. I've already described the choice that we provide consumers today, rendering it unnecessary for the government to dictate the nature of program offerings. In addition, mandated *a la carte* or theme-tiered requirements would increase costs to consumers and reduce program diversity. Finally, the cable industry not only recognizes, but has taken concrete measures to address concerns related to indecent and violent programming. In my time this morning, I would like to explore each of these areas.

CABLE OPERATORS PROVIDE CONSUMERS UNPRECEDENTED CHOICE, CONVENIENCE AND VALUE IN A HIGHLY COMPETITIVE ENVIRONMENT

As the nation's second largest MSO, serving nearly 11 million video subscribers in 27 states, Time Warner Cable offers subscribers a wide array of entertainment and communications services. And we do so in a highly competitive environment. Today, the American television consumer can choose from a variety of multichannel video providers, including satellite providers such as DirecTV and EchoStar, and alternate broadband providers like RCN/Starpower. In fact, more than one out of four subscribers now obtains multichannel video programming from a company other than their local cable operator. To be successful, cable operators must provide customers the broadest possible choice of high-quality programming or risk losing customers to our competitors. Satellite and other providers are working hard to lure them away. And the Internet is poised to affect video distribution in unimaginable ways. We want to give consumers the choices and offerings they desire. We ignore the customer at our peril, and we are listening hard to make sure we're getting it right.

Our experience with the vast majority of our customers tells us that we meet their needs best today with a mix of "bundled" program packages and expanded viewing options. Bundling lowers costs and enhances the efficiency of distributing video to the home, and customers appreciate the convenience and value inherent in this basic approach. The fact that all other competing multichannel video programming providers offer service in a similar fashion confirms our view.

Nevertheless, our video offerings, which include basic and expanded basic packages, digital cable, video on demand, subscription-based video on demand, High Definition Television (HDTV), and Digital Video Recording (DVR) functionality, go beyond bundles. For example, in addition to our traditional basic and expanded basic packages, Time Warner Cable offers certain video programming on a per channel basis (HBO, Showtime, Starz), on a per program basis (VOD) and, in some cases, viewers can pick from individual programs on a subscription basis (SVOD). The mix of products and services offered is not written in stone, but remains fluid and evolves in response to market conditions and changing consumer preferences.

Of course, it is in Time Warner's interest to figure out what customers want beyond what they are getting and make it available to them quicker and better than our competitors. As technology and consumer preferences continually evolve, we need to remain sensitive to the changing possibilities and the evolving needs of our customers. VOD and SVOD are the two most recent examples of how technology and consumer preferences have evolved to help launch new offerings.

With customers demanding and getting more choice and more control, there is no justification for government intervention in this dynamic marketplace. Government mandates that interfere with this process pose a dangerous risk, as attempts to write inflexible rules to substitute for dynamic marketplace forces would inevitably be a "cure worse than the disease."

In addition a government mandate is unlikely to keep pace with rapidly evolving technology or consumer preferences in relation to that technology. Today's mandate may look "cutting edge," but tomorrow it may look, feel and (in fact) be hopelessly out of date. That is, today's definition of "choice" may not be consistent with what consumers want—or what technology can deliver—tomorrow. It may end up locking consumers into outdated choices. A mandate might in fact supplant more responsive options for consumers in the future.

Finally, there is no logical "end point" to such mandatory unbundling. Today, it may be program tiers. Tomorrow, it may be particular shows. There are serious First Amendment concerns raised by a government mandate that tells cable operators what programming should be selected for presentation to customers and how to present it. Inevitably, there will be pressure to regulate the retail price of individual channels, which in turn will lead to scrutiny of wholesale pricing and programming costs and the imposition of related accounting and auditing rules reminiscent of old-style utility regulation that is wholly inappropriate for the competitive digital video marketplace.

A LA CARTE WILL INCREASE COSTS TO CONSUMERS

Any *a la carte* requirement would cause three major cost increases. *First,* to ensure that subscribers receive only those channels that they affirmatively choose, cable operators would have to scramble every channel and would have to provide every subscriber with a set-top box for each TV set. That would add more than $4 per box per month to a subscriber's cable bill, an increase of more than 10% over the average cable bill just to support a la carte on a single TV set. For the average

cable household with three TV sets, that would add up to about $150/year—reason enough by itself not to go down the a la carte road.

Second, cable operators would have to create a marketing infrastructure allowing each subscriber to select a unique combination of channels. They would also have to create new billing systems to address the myriad possible permutations of subscriber options. In addition, customer service representatives would have to spend much more time on each call with a customer, which would add to the direct costs imposed on both cable operators and subscribers who would face longer hold times.

Third, and perhaps most importantly, a government requirement that programmers make their services available *a la carte* would increase the cost of video programming services. It would require programmers to embark upon a new marketing task of gigantic proportions: they would have to persuade each individual subscriber to sign up for their specific service. In such circumstances, most if not all video programmers would reach fewer households, leading to a loss of revenue from advertising, which currently accounts for more than half their revenues. Inevitably, video programming services would try to make up the shortfall by raising license fees.

All these additional costs—investment in set-top boxes, investment in an *a la carte* infrastructure, higher license fees for video-programming services—would eventually be passed on to cable subscribers. Subscribers might receive only the channels on which they place the highest value. But they might pay more for those few than they now pay for many. And they would no longer have the option of occasionally watching the channels they lost.

I've already described how we give consumers choice over the services they buy, and we will continue to explore new ways to do so. But whether and when *a la carte* is employed is something that can and should be addressed in the marketplace, not by regulatory fiat.

CABLE IS TAKING STEPS TO ADDRESS CONCERNS ABOUT INDECENT AND VIOLENT PROGRAMMING

The cable industry shares the concerns of many members of this Committee about indecency and violence on television. Cable is the only medium—not broadcast TV, radio or the daily newspaper—that offers its content in a way that permits customers to choose what comes into their home. Cable has been at the forefront of efforts provide parents with the tools to control and manage the content that comes into their homes. For example, most advanced analog set-top boxes have the ability to block specific channels. If a customer does not have such a box, cable operators will provide one, *at no cost to the consumer,* upon request. And our digital boxes provide customers with even greater control, allowing parents to block specific programming based on TV or movie ratings. As such, mandating an *a la carte* or themed-tier regime to address concerns in this area is simply unnecessary.

Taking seriously its responsibility to help protect children from inappropriate programming, the cable industry recently launched a comprehensive new consumer outreach campaign. This campaign, in which Time Warner is actively participating, is designed to increase awareness about the tools and the resources cable provides so that families can control programming that comes into their homes and make educated and responsible decisions about television viewing. From the launch of a new website created by Cable-In-the-Classroom to Public Service Announcements to media literacy workshops conducted in coordination with the National Parent Teachers Association, the cable industry is taking concrete steps to ensure that cable customers are better informed about the options they have to control programming they think is unsuitable for their children.

Time Warner is taking action as well. We have run PSA's educating our customers about parental controls more than 31,000 times in the past few months. We have sent educational mailers to more than four million customers, fifteen hundred educators and more than a thousand local elected officials and community leaders. And our divisions are engaged in a wide range of activities tailored to their local communities, from offering demonstrations of how parental controls work to distributing literature in retail centers and company events to airing information on local access channels. There is no need for regulation in this area.

CONCLUSION

Mr. Chairman and Committee Members, we are bringing consumers an expanding array of video entertainment in new and innovative ways, and we remain committed to responding to customer needs. For the reasons discussed this morning, there is no basis to believe consumers would be better off with more government regulation in this marketplace. A regulatory environment that allows us to respond to consumers and stay competitive best serves the public. I thank you again for the oppor-

tunity to appear to discuss this important issue and I look forward to your questions.

Mr. UPTON. Mr. FitzPatrick.

TESTIMONY OF PAUL FITZPATRICK

Mr. FITZPATRICK. Good morning, Mr. Chairman and——

Mr. UPTON. You have got to hit that mic button.

Mr. FITZPATRICK. Good morning. Can you hear me?

Mr. UPTON. Now we can hear you.

Mr. FITZPATRICK. Good morning, Mr. Chairman and members of the subcommittee. I am Paul FitzPatrick. I serve as executive vice president and chief operating officer of Crown Media. We operate the Hallmark Channel and the Hallmark Movie Channel. These two advertiser and license fee supported programming networks are distributed by cable and DBS systems and other multichannel video programming distributors.

Hallmark Channel and Hallmark Movie Channel offer award-winning family friendly programming, including original movies and miniseries made by Hallmark Entertainment, the world's largest producer of major television movies and miniseries, acquired movies and series such M*A*S*H, Touched by an Angel and later this fall the series JAG. Our channels are also the exclusive home for movies from the Hallmark Hall of Fame collection. We also air the award-winning series on adoption, which is about the compelling process of parents and children in the adoptive mode.

The Hallmark Channel and the vast majority of non-broadcast cable programming services rely principally upon two sources of revenue, as you have heard this morning: License fees paid by the distributor on a per-subscriber, per-month basis and advertising sold on the programming network or networks. Because of the broad appeal of our programming, we launched the Hallmark Channel based upon a business plan of widespread distribution on highly penetrated packages of popular programming services. Broad distribution is essential to maximize both subscription and advertising revenues and to control costs.

Launched just 3½ years ago, in 2001, Hallmark Channel is seen in 62 million homes. It is already a top 10 rated cable network, which is, frankly, quite remarkable since we are competing against 15- to 25-year-old networks. In today's world, services such as ours needs to be distributed in 50 and even 60 million homes to generate truly meaningful advertising revenues. Even at this level advertisers are increasingly interested in such networks only if their distribution is steadily increasing, the programming is meeting viewers' expectations and that network can provide unique promotional benefits that distinguish the Hallmark Channel, for example, from other buying opportunities, and there are many, as you have heard this morning.

A la carte or theme-tiered carriage would change the fundamental economics of the marketplace for non-premium services such as ours. Based upon my 20 years of experience, with programming networks such as the Weather Channel and the Golf Channel, a la carte would result in lost subscribers and substantially reduced licensed fees and advertising revenues. this would be compounded by increased marketing costs. I am convinced that such

regulation would be harmful to consumers and programming diversity.

Consider the revenue impact of only a modest subscriber loss. A typical cable network's annual advertising revenues range from about $1 to $6 per subscriber depending on that network's category or genre, its target audience and its brand identity. If a programming service is 70 million subscribers generating about $3 per subscriber in advertising revenues, lost 20 percent of its subscriber base due to a la carte—I believe the level, frankly, is going to be more in the 50 percent range—that channel, based upon that 20 percent loss, would lose over $40 million in advertising revenue in that first year alone, and that says nothing of the lost license fees. While experiencing these substantial revenue losses, programmers will have to spend significantly more just to market their services to individual subscribers and then to keep them, just as HBO does, for example. The only way to compensate for this phenomenon would be to raise prices, ultimately borne by the consumer.

These revenue and cost effects would trigger other domino-like consequences. One, lower revenues would result in a significant curtailment in programming investment. Existing programmers would be forced to cut programming costs, resulting in unfulfilled consumer expectations. Operating economies of scale, built up under the current marketplace framework, would be lost, making the launch of new networks unlikely. Under this scenario, we could not have launched earlier this year our second linear channel, Hallmark Movie Channel.

Two, as an independent network, Hallmark Channel does not have the same cross-promotional opportunities as programmers that are part of a larger network group with a broadcast network or deeply distributed sibling networks. A la carte distribution likely would lead to increased consolidation, reducing the number of diverse, independent, First Amendment speakers.

Three, subscribers will lose other advances and improvements. We have been able to bring to viewers some of our movies in the enormously compelling high-definition format and through video-on-demand and pay-per-view offerings. A la carte and theme-tiers would undercut the economics that have allowed us to branch out with these additional valuable services.

When we launched Hallmark Channel, we understood the regulatory environment and the additional challenges, such as must-carry and retrans. We built our plan to meet those challenges. A la carte distribution or mini-tiers would undermine what we and other programmers have achieved. Hallmark Channel's experience and the vitality and diversity of programming overall confirm that the marketplace today is working well overall. Viewers are the beneficiaries.

Thank you, Mr. Chairman. I would be happy to talk about experiences such as the one that we have had with family tiering and the actions that we had to take to accelerate our distribution in that kind of environment.

[The prepared statement of Paul FitzPatrick follows:]

PREPARED STATEMENT OF PAUL FITZPATRICK, EXECUTIVE VICE PRESIDENT AND CHIEF OPERATING OFFICER, CROWN MEDIA HOLDINGS, INC.

Mr. Chairman, Congressman Markey, and members of the Subcommittee, I am Paul FitzPatrick and I serve as Executive Vice President and Chief Operating Officer of Crown Media Holdings, Inc. and Crown Media United States, LLC ("Crown Media"), which operates the Hallmark Channel and Hallmark Movie Channel in the United States. These two advertiser and license-fee supported programming networks are distributed by cable and direct broadcast satellite ("DBS") systems and other multichannel video program distributors. Thank you for giving our organization the opportunity to discuss this morning the potential effects of a la carte or "themed-tier" distribution on programming services such as Hallmark Channel.

Government-mandated a la carte or "themed tier" carriage would change the fundamental economics of the marketplace for non-premium programming services like ours. Based upon my 20 years of experience with programming networks and review of the likely financial impacts of a la carte carriage, I am convinced that such regulation would result in higher prices to consumers, lower quality programming, and a reduction in the diversity of programming available to viewers. Further, such regulation would lead to a reduction in "independent" first amendment speakers or content owners and providers. I thought that it would be helpful to take a look at these issues and the basis for my views in the context of the Hallmark Channel.

The Hallmark Channel is an advertiser and license-fee supported programming service that provides award-winning, familyoriented programming, including original movies and series, mini-series and first-run presentations from Hallmark Entertainment and third parties, as well as syndicated programs. For example, Hallmark Channel this year will air 15-18 original movies and mini-series, such as "King Solomon's Mines" and "The Long Shot," starring Marsha Mason. In addition we air "acquired" movies, such as the original and remake of the "Parent Trap," and series, such as "Mash," "Touched by an Angel," "Doctor Quinn Medicine Woman," "The Waltons," classic westerns and comedies, and, later this fall, "JAG." In addition, we produce and air award-winning series such as "Adoption," which tells compelling stories about the adoptive experience and received the National Angel Award from the Congressional Coalition on Adoption Institute. And speaking of award winning programming, Hallmark Channel and Hallmark Movie Channel are the exclusive "home" for movies from the "Hallmark Hall of Fame Collection" after their initial airing on broadcast television. The Hallmark Channel is now distributed to roughly 62 million homes in the United States, primarily through analog cable and highly-penetrated DBS distribution.

The Hallmark Movie Channel, launched earlier this year, features top-rated movies and mini-series, many of which are produced by Hallmark Entertainment, the world's largest producer of made-for-television movies and mini-series. By the way, Hallmark Entertainment movies comprised 12 of the 25 highest-rated movies aired this season by ABC, CBS and NBC.

The Rise of the Hallmark Channel Exemplifies the Expanded Programming Choices Available to Viewers and the Growing Popularity of Advertiser-Supported Non-Broadcast Programming Services.

Cable television and DBS subscribers currently enjoy a wider variety of programming services than ever before. Digital cable upgrades and expanded satellite capacity have enabled the distribution of more programming services and the introduction of new services like HDTV, video on demand and digital video recorders. More and more programmers are developing and promoting original movies and series. As the FCC recently concluded in its tenth annual video competition report, "the vast majority of Americans enjoy more choice, more programming and more services than any time in history" due to improved technology, upgrades in cable distribution plant, and increased investment in programming.

Not only are there a growing number of non-broadcast programming networks, but also their popularity is increasing steadily. There are about 350 national, satellite-delivered, non-broadcast programming networks (compared to about 100 in 1994), more than 80 additional regional programming networks, and at least 60 new networks in various stages of development. The popularity of these services is reflected in their increasing viewership share. The combined audience share of non-broadcast television networks has climbed steadily from a 29 share in 1993 to a 55 share in 2003. This increasing share of viewership reflects not only the sheer number of programming options offered by cable and satellite distributors, but also the fundamentally improved quality and increasing popularity of the available programming.

The Hallmark Channel's own story of subscriber and ratings growth illustrates this phenomenon. The Odyssey Channel, its predecessor, had achieved only limited distribution to 26 million homes by 2000, nearly half of which received the channel on a limited part-time basis. Consequently, it could make only limited investments in programming and marketing. Because of this limited distribution, the prospects for meaningful advertising revenues and revenue growth were equally limited.

In 2001, Crown Media launched Hallmark Channel and redoubled its efforts to expand distribution and to increase consumer awareness of the channel and its programming. For example, Crown Media renegotiated its agreement with DIRECTV to retier Hallmark Channel from DIRECTV's "Family" package to its highly-penetrated "Total Choice" package, which immediately increased its DIRECTV distribution more than ten-fold. We made this effort and substantial investment because, notwithstanding the expected appeal of a smaller tier directed at families, viewership of the Hallmark Channel was low and distribution of the "Family" package remained limited. Likewise, Crown Media was able to negotiate subscriber commitments with a number of major cable operators that yielded many millions of additional subscribers.

This rapid subscriber growth has yielded increased subscriber and advertising revenues which have enabled Hallmark Channel to develop more and better original programming and to pursue more attractive programming acquisitions. The Hallmark Channel has invested over $500 million in programming production and acquisition. The result has been a dramatic improvement in viewership and ratings. For the first half of 2004, Hallmark Channel has ranked consistently among the top ten cable networks in total day household rating—a remarkable achievement when its distribution and tenure are compared with those of the other more widely distributed and established networks in the Top 10. We reached an all-time ratings high and delivered double-digit ratings growth when compared to 2002-03 household ratings for both total day and prime time. These ratings data are consistent with and supported by recent surveys of viewers that yielded similarly compelling results. Ninety-five percent of viewers rated the Hallmark Channel positively ("excellent/very good/good"). More than 8 out of 10 viewers of Hallmark Channel are likely to recommend it to others to watch. Consequently, the Hallmark Channel consistently is among the channels most requested by viewers in systems where it is not currently carried.

Advertiser-Supported Networks Such As Hallmark Channel Depend Upon Broad and Highly-Penetrated Distribution.

In the midst of this burgeoning popularity and viewership endorsement, a move to a la carte distribution would not only impede future growth, but also reverse the progress we've made. Why? The answer is in the economics and the business model upon which we have built the Hallmark Channel.

The Hallmark Channel and the vast majority of non-broadcast cable programming services rely principally upon two sources of revenue: license fees paid by the distributor on a "per subscriber, per month" basis; and advertising sold on the programming network. Broad distribution through carriage in the most popular packages of programming services is essential to maximize revenues and control costs. As a result, Hallmark Channel and most other advertiser supported programming services seek to require distributors to place their networks on widely distributed tiers. Crown Media's affiliation agreements typically require MVPDs to distribute Hallmark Channel on basic or expanded basic or a specific tier such as "Total Choice," to achieve a distributor-wide level of penetration; to provide a specified number of service subscribers; and/or to satisfy some other distribution requirement. Such distribution commitments have been essential to "growing" the channel to where it is and to our prospects for completing the job.

There has been some suggestion by the FCC in the past and perhaps by others that programming services may survive with a subscriber base of 15 to 20 million subscribers,[1] but that is inconsistent with Crown Media's experience in today's marketplace. With nearly 26 million full- and part-time subscribers, the performance of the Hallmark Channel's predecessor was stagnant and its financial prospects were dim. Although Nielsen may rate a programming service with 20 million subscribers, few advertisers will buy advertising and the cost per thousand (CPM) rates gen-

[1] *See, e.g., Implementation of Section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992,* 14 FCC Rcd. 19098 (1999) ("*Horizontal Ownership Limits-Third Report*") at ¶¶ 40-41; *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* 13 FCC Rcd. 24284 (1998) at ¶ 152.

erally are not competitive. Advertisers are interested in such networks only if they are emerging, *i.e.* their distribution is steadily and rapidly increasing.

The Hallmark Channel's experience suggests that the more realistic benchmark for meaningful advertising revenues is now approaching 50 to 60 million subscribers. Subscribers to the Hallmark Channel more than doubled from 2000 to 2003 with distribution topping 56—million in 2003. As a result of that growth, coupled with improved ratings, advertising revenues increased by more than four times, with the largest percentage increase in advertising revenues occurring when distribution approached 56 million and more subscribers. Crown Media is projecting that an approximate increase in subscribers of 20% from 2003 to 2004, coupled with a further improvement in ratings, will yield more than a 70% increase in advertising revenues. In our view, these data support the conclusion that substantially greater advertising revenues are available to programming services with 50 to 60 million subscribers and beyond—a level of subscribership minimally associated with a viable broad-based entertainment programming network in today's competitive marketplace. Our business mandate is for the Hallmark Channel to reach the 70 million subscriber threshold level in the near term.

Even with these levels of national distribution, programming networks which have not achieved full distribution still encounter challenges in local markets. For example, such networks often have difficulty in obtaining program listings and articles in newspapers and specialty publications in markets in which they are not fully distributed. Likewise, television critic reviews of new shows and similar publicity often are unavailable. Unless a programmer has achieved widespread distribution in a market, advertising to develop viewership and brand recognition also is usually cost-prohibitive.

A La Carte Distribution Would Have Stifled Hallmark Channel's Growth and Would Reverse its Successes.

The launch of Hallmark Channel was based upon a business plan of widespread distribution by cable and DBS operators on highly-penetrated packages of popular programming services. Shifting advertiser-supported programming services from such tiers or dismantling those packages to create "mini-tiers" or a la carte carriage would have nullified our business plan. The opportunity to achieve rapidly-increased distribution would not have existed. Instead, Crown Media would have had to convince each cable system to launch Hallmark Channel and then convince individual households to subscribe to it. This kind of broad retail campaign would have been cost-prohibitive, and it would have been virtually impossible to obtain the minimum number of subscribers needed for a viable advertiser-supported service.

As an independent network, the Hallmark Channel does not have the same cross-promotional opportunities as programmers that are part of larger network groups with a broadcast network or deeply distributed "sibling" networks. Moreover, because the Hallmark Channel did not launch until 2001, it has not had the opportunity to build brand awareness or brand "equity" over the past 15 to 25 years as have many of the fully-distributed networks of the media conglomerates. A la carte distribution likely would lead to increased consolidation because only the multichannel media giants would have the financial wherewithal and promotional outlets to pursue the kind of marketing required to convince individual subscribers to make the purchase decisions for their channels.

If the Hallmark Channel were forced into an a la carte or mini-tier world, it likely would lose a substantial number of subscribers—if for no other reason than the difficulty of effectively marketing Hallmark Channel to individual viewers. Our affiliate relations and marketing staffs have a limited budget and are directed at marketing Hallmark Channel to distributors and developing the brand. The extent of such subscriber losses also would depend upon the retail pricing decisions of other programming services, their marketing resources and efforts, and the marketing decisions of cable and DBS operators, which also would have little or no experience with the marketing of dozens of advertiser-supported programming services.

Available marketplace experiences indicate that the Hallmark Channel's loss of distribution likely would exceed 50%. According to Bear Stearns, HBO—which has been marketing a la carte services for decades and has the best known brand name in the business—achieves only "approximately 30% penetration of basic cable subscriptions."[2] Regional sports networks, before they converted from a la carte to basic carriage, routinely achieved less than 10% penetration. Likewise, the nationally-distributed and marketed Golf Channel, for which I served as chief operating officer, originally was launched as an a la carte channel, but it could not achieve a sustain-

[2] *See,* Bear Stearns, "A La Smart?," March 29, 2004, at 4.

able level of distribution. Consequently, it was relaunched as an advertiser and license-fee supported network. The channel is a wonderful success today.

As I noted above, a 20% increase in Hallmark Channel's subscribership and improved ratings are likely to yield more than a 70% increase in advertising revenues. Thus, although we believe that subscriber losses would be very substantial in an a la carte world, even a modest decrease in subscribers would cause a much larger percentage decrease in advertising revenues. Consider the following example of this potential impact. Typically, annual advertising revenues range from $1.00 to $6.00 per subscriber for programming services, depending upon programming genre, target audience, and brand identity. If a programming service with 70—million subscribers and generating $3.00 per subscriber in advertising revenues lost only 20% of its subscriber base due to a la carte (and I expect the loss would be greater), it would lose $42 million in advertising revenues in the first year alone. A greater initial subscriber loss or subsequent erosion of subscribers would only make the revenue picture bleaker. Of course, these lost advertising revenues are only part of the picture; there also would be lost subscriber revenues unless license fees were increased.

Further, in addition to these kinds of numerical projections, a la carte distribution will introduce another layer of uncertainty, which is likely to affect adversely the advertising market and revenues. For example, advertiser-supported services such as the Hallmark Channel have no experience with the level of churn to be expected in an a la carte world. Consequently, in addition to the uncertainty and variability inherent in ratings, programmers will have month-to-month variations in subscribership—in contrast to their broadcast network competitors, which will have government-mandated universal distribution. Thus, as one example, the level of predictability necessary for the "up front" advertising market will be difficult if not impossible to achieve.

Government Mandated A La Carte Distribution or Mini-Tiers Will Increase Costs to Consumers and Decrease Diversity.

There is no doubt that moving programming from, or dismantling, highly penetrated programming packages such as the traditional expanded basic tier would adversely affect subscriber and advertising revenues. Many programming services, whose business plans were built upon the current statutory and regulatory scheme, would cease to exist. Certainly, the scores of planned programming services would be foreclosed from ever entering the market.

If a programmer could reinvent itself in this environment and survive, it would have to compensate for the lost subscriber and advertising revenues in two ways—by increasing subscriber fees and reducing costs. However, that same programmer would have to increase its marketing budget exponentially because it is now selling to the more than 90 million households subscribing to cable and DBS television rather than to its distributors. Consequently, this substantial increase in marketing cost would make it that much more difficult to reduce costs, and any such reductions necessarily would involve programming expenditures.

For a programming service such as the Hallmark Channel, which has a modest monthly license fee and relies heavily on advertising revenues, this increase in license fee would be substantial—some multiple of its existing fee. Cable operators would be unlikely to absorb the increase in license fees for all of the programmers being shifted to mini-tiers or a la carte carriage, and they would certainly pass some or all of the license fee increases through to the subscriber. There can be no doubt that the price of the Hallmark Channel to viewers would increase by several orders of magnitude.

Programming diversity would be adversely affected in at least four ways. First, as noted above, it is highly unlikely that new program networks would be launched. The economies of scale that we have achieved have enabled us to bring our second linear channel, Hallmark Movie Channel, to the marketplace. Second, existing programmers would be forced to cut programming costs. Again, our experience with the Hallmark Channel is instructive. As the channel's subscriber and advertising revenues have increased, Crown Media has substantially increased its programming budget and pursued original programming initiatives. If its subscriber and advertising revenues were reduced, we would have to reduce its programming expense substantially. Third, some (probably many) networks simply would not survive a move to a la carte carriage, particularly new programming networks and those targeted toward niche markets. And fourth, a la carte or themed tiers would lead to a reduction of diverse "independent" content providers because the economic burdens would be so great that only the large media companies with substantial operating economies would be left to compete. And even they would not be guaranteed success.

Finally, subscribers would lose still other advances and improvements. We have also been able to bring to viewers some of our movies in the enormously compelling High Definition format and through Video on Demand and Pay per View offerings. A la carte and themed tiers will undercut the economics that have allowed us to branch out with these additional valuable services.

In short, cable subscribers would pay more and receive less. Because the economics of the programming industry would be altered significantly by an a la carte approach, there can be no guarantee that monthly cable bills would be less under an a la carte system. In fact, I would expect the opposite—cable rate increases for many consumers with diminishing numbers of programming services from which to choose over the long term and declining quality of programming produced by the surviving networks.

CONCLUSION

When we launched Hallmark Channel, we understood the regulatory environment and the additional challenges, such as must-carry and retransmission consent, that the channel faced. We built our business plan to meet those challenges, and we are naturally pleased that our distribution, ratings, advertising and consumer acceptance have increased dramatically each year. Mandated a la carte distribution or mini-tiers would undermine what we and other programmers have achieved. Further, if broadcasters were still accorded must-carry or retransmission consent rights to the basic tier, the imbalance would become greater and the competitive picture worse. They would continue to enjoy universal distribution with a powerful cross-promotional engine for their other programming services.

The cost of mandatory mini-tiers and a la carte distribution would be reflected not only in increased subscriber bills, but also in reduced programming choices and quality. The Hallmark Channel's experience and the vitality and diversity of programming overall confirm that the current marketplace is working well. Viewers are the beneficiaries.

Again, I appreciate having this opportunity to discuss these important issues with the members of the Subcommittee.

Mr. UPTON. Ms. LaRue.

TESTIMONY OF JANET M. LaRUE

Ms. LARUE. Mr. Chairman, thank you. Members of the committee, good morning. My name is Janet LaRue. I am Chief Counsel for Concerned Women for America in—here in Washington, DC. Thank you for the invitation to participate this morning.

I can tell you that of our half-million members across the country in every state, this is a very important issue—consumer choice in subscription television. Our constituents would like to know why it is that they have to pay for TV programming they do not want to watch in order to see programming they do want, because we don't have to pay for food we don't intend to eat, we don't pay for trips we don't intend to take, and we don't pay for magazines we don't intend to read.

As has been made clear this morning, subscription television is pervasive. We know that, based on the FCC and other estimates, even from the industry, that the number of MVPD subscriber homes now accounts for 88 percent of all television households. And so most subscribers do not want to pay for unwanted or offensive programming, and that is what our concern is.

In the current system, MVPDs offer subscribers three tiers of programming before they may subscribe to other channels. Federal law requires that all subscribers must buy the first tier, which has to include the local broadcast channels and community access channels. The second tier is a package of channels selected by the industry that requires subscribers to buy channels they do not want in order to buy channels they do want.

For example, my son sent me an e-mail yesterday when he learned that I would be speaking here saying, "I pay $49. I get 98 channels. I watch 15. I only want 15. I only want to pay for them. And I don't want my young daughters having access to Spike TV when they are looking for a decent cartoon."

Within that second tier package, there are several channels that include sexually explicit programming, which is a major complaint of most subscribers, and certainly our constituents who object to paying for programming they do not intend to watch. As Mr. Deal pointed out, the American people would like to hold the keys to the gate of their home.

CWA commissioned a Wirthlin Poll this past April of 1,000 respondents on the subject of cable television, which revealed the following. Of 1,000 respondents, 62 percent subscribe to cable television. Sixty-six percent prefer to choose for themselves the programming for which they pay. Sixty-six percent of non-cable subscribers said that they were more likely to subscribe if they could choose what is included in their basic package. This means more customers for the industry.

Eighty percent said subscribers should not have to pay for a package of programming that might include channels they do not want to view. Seventy-three percent said that cable providers should voluntarily enforce decency standards in that basic package, which would screen out sexually explicit or violent programming if subscribers have no control over which channels are included in their basic cable package.

The Supreme Court has referred to cable TV as, "pervasive," and includes patently offensive programming. The court has made it clear that restrictions on cable TV indecency can be justified, because cable TV is now as pervasive as broadcast television. A la carte pricing or tiering, we believe, is a free market solution, and it would give consumers complete control over what comes into their homes and would help them control their cable bills.

We believe that Congress should act if the industries remain unresponsive to consumers. The FCC's ninth annual report on cable/satellite/video competition reveals that many hold monopoly power within their region. Only 10 percent of cable franchise territories face head-to-head competition from another cable company.

Consumer choice will not necessarily cost more. In Canada, there is a la carte channel selection offered on several of the largest cable systems, and subscribers save about 30 percent compared to subscribers who select the average number of channels Americans tend to watch. Cable choice and a la carte pricing would require cable channels to be more responsive to their target audience, if they wish to survive, improve the programming of niche channels, and encourage cable channels to serve the public.

I grew up hearing that in a free market economy, if you build a better mousetrap, the public will beat a path to your door. We don't believe that consumers should have to subsidize bad mousetraps. CWA is urging the industries to voluntarily provide consumer choice in the second tier, expanded basic package, or at least self-imposed decency standards in that package.

Last week the Seattle office of Cable Communications filed comments with the FCC stating, "Because cable operators have not

been responsive to the demand for customized programming, the FCC should establish regulations that facilitate consumers' choice, whether this is accomplished by requiring cable companies to offer a la carte programs, theme-tiered programs, or some other options."

If the industries remain unresponsive, CWA urges Congress to act in the public interest and mandate either consumer choice or impose decency standards within that basic package. A free market flourishes with competition and consumer choice.

And, in closing, may I suggest to the members, if you haven't already done so, that you speak to your constituents when you are back in your home districts. Most of what has been shared here this morning is by representatives who represent an industry. And with all due respect, I have heard comments today that are pretty patronizing of the American people.

I hear concerns about increased costs and decreased choices. Let us let the American people decide if they are willing, if necessary, to pay a little more for the programs they want rather than paying the higher and higher cable bills they are paying for programming, most of which they don't want. And so let us let the American people make that choice.

Thank you.

[The prepared statement of Janet M. LaRue follows:]

PREPARED STATEMENT OF JANET M. LARUE, CHIEF LEGAL COUNSEL, CONCERNED WOMEN FOR AMERICA

Mr. Chairman and Members of the Committee, good morning. My name is Janet M. LaRue. I am chief counsel for Concerned Women for America (CWA) in Washington, D.C. Thank you for inviting me to speak today on the important issue of consumer choice with respect to subscription television.

More than 94 million homes subscribe to multichannel video programming distributors (MVPDs), according to a Federal Communications Commission (FCC) report. Of those, about 66 million subscribe to cable while the remainder subscribes to direct broadcast satellite (DBS). The number of MVPD subscriber homes accounts for 88.29 percent of all television households.[1]

In the current system, cable TV operators offer subscribers three tiers of programming. Before they may subscribe to other channels, federal law requires that all subscribers "must buy" the first level, which has to include local broadcast channels and community-access channels.

The second tier is a package of channels selected by the MVPDs that requires subscribers to buy channels they do not want in order to buy channels they do want.[2]

The average cable customer watches only 12 to15 channels on a regular basis, but cable companies bundle 50 to 75 channels in the expanded basic package, and upwards of 200 in digital cable packages. That is like going to the store for a dozen eggs and being told you must buy at least six dozen, which is more than you can consume, including many that are cracked and rotten.

My comments will focus on this second tier "expanded basic" package. Within that second tier package there are several channels that include sexually explicit programming, which is a major complaint of most cable subscribers who object to paying for offensive and indecent programming they do not want in their homes.

This forced consumption of channels increases the cost to consumers. A recent report of the Federal Communications Commission (FCC) concludes that cable subscription prices have increased five times faster than the rate of inflation.

---

[1] Kleder, Martha, "The Case for A La Carte Cable Pricing: Don't Want Their MTV? Let the Free Market Work Its Magic," available at: http://www.cwfa.org/articles/5468/CFI/family/index.htm.

[2] Kleder, Martha, "Give Us Cable Choice for Decency's Sake!" available at: http://www.cwfa.org/articledisplay.asp?id=5175&department=CFI&categoryid=papers.

Under the cable bundling system, even nonsports fans are forced to pay for very costly programming such as ESPN. Sports fans, too, face higher cable bills because of channel bundling.

In response to our constituents' concerns and requests for help, CWA commissioned a Wirthlin poll on April 16-19, 2004, with 1,000 respondents, on the subject of cable TV. The poll results clearly show that a large majority of American cable TV subscribers are dissatisfied with their current "no-choice cable service":

1. Of 1,000 respondents, 62 percent subscribe to cable television.
2. Current cable subscribers (619) were asked: "As a cable customer, would you prefer to choose for yourself the programming to be included in your basic cable subscription or is the cable company's pre-arranged basic package satisfactory?" Sixty-six percent said they would prefer to choose for themselves.
3. Noncable subscribers (381) were asked: "Would you be more or less likely to subscribe to cable television if you were able to choose the programming to be included in your basic cable package?" Sixty-six percent responded that they were more likely to subscribe, with 39 percent of them indicating that they were much more likely to subscribe.

That means more customers for cable and satellite TV companies if they will allow their customers to choose the programs they want.

4. When asked: "Do you think that cable customers should be required to pay for a basic package of programming that might include channels that they don't want to view?" Eighty percent of the respondents answered "No."

The poll results are undeniable. Americans are dissatisfied with paying for somebody else's choice. They want to choose what they pay for and nothing else.

Telling consumers to block-out unwanted programming they are forced to pay for is no choice—it is unreasonable and insulting. We do not pay for food we do not want to eat. We do not pay for magazines we do not want to read. We do not pay for trips we do not want to take. And we are tired of paying for programs we do not want to watch, many of which offend our morals and religious values.

The First Amendment, especially with respect to regulations on sexually explicit and pornographic material, has been my area of expertise for many years. I have lectured on the subject in numerous law enforcement conferences across the country, testified on pornography legislation before Congress, state and local legislatures, and authored numerous *amicus curiae* briefs that have been filed in the U.S. Supreme Court, federal circuit courts of appeal, and state appellate courts. The protection of children, families, and society in general from the serious harms resulting from exposure to sexually explicit and indecent material is a top priority of CWA and my department, in particular.

The Supreme Court has repeatedly recognized the harm to children from exposure to pornography and the right and need of government to assist parents to protect their minor children from exposure. The Court has characterized protecting children from exposure to pornography as a "transcendent interest" of government because it concerns "the health, safety, welfare and morals of its community by barring the distribution to children of books recognized to be suitable for adults."[3]

The Court has referred to cable TV as "pervasive" and includes "patently offensive programming":

> Cable television broadcasting, including access channel broadcasting, is as "accessible to children" as over-the-air broadcasting, if not more so . . . ([C]hildren spend more time watching television and view more channels than do their parents, whether their household subscribes to cable or receives television over the air). Cable television systems, including access channels, "have established a uniquely pervasive presence in the lives of all Americans." . . . ([C]able households spend more of their day, on average, watching television, and will watch more channels, than households without cable service). "Patently offensive" material from these stations can "confront the citizen" in the "privacy of the home," *FCC v. Pacifica Foundation,* 438 U.S. 726 (1978), supra, at 748, with little or no prior warning."[4]

In a more recent case addressing cable TV, the Court made clear that restrictions on cable TV indecency can be justified:

> Cable television, like broadcast media, presents unique problems, which inform our assessment of the interests at stake, and which may justify restrictions that

[3] *Ginsberg v. New York* 390 U.S. 629, 636 (1968). *See U.S. v. Playboy Entertainment Group, Inc.,* 529 U.S. 803 (2000); *Sable Communications of Cal., Inc., v. FCC,* 492 U.S. 115 (1989); *Ashcroft v. ACLU,* 535 U.S. 564 (2002); *U.S. v. American Library Association,* 539 U.S. 194 (2003); *Ashcroft v. ACLU,* 2004 U.S. LEXIS 4762 (June 29, 2004).

[4] *Denver Area Educational Telecommunications Consortium, Inc., v. FCC,* 518 U.S. 727, 744-45 (1996).

> would be unacceptable in other contexts . . . No one suggests the Government must be indifferent to unwanted, indecent speech that comes into the home without parental consent.[5]

While government-imposed content-based regulations on speech are presumptively unconstitutional and, therefore, subject to the highest level of scrutiny by the courts, content-neutral regulations are not. Regulations that would require cable and satellite choice for consumers in the second-tier, expanded basic package of programming would be content-neutral because they would apply to all programming.

Although subscribers are primarily concerned with indecent and offensive programming, they want choice with respect to all types of programming, whether it is a sports channel, gardening, cooking or MTV. "A la carte" pricing, the free market solution, would give consumers complete control over what comes into their homes and would help them control their cable bills.

It is disturbing enough that broadcast radio and TV brings offensive programming into American homes, even though it is without charge to the viewer. It is unthinkable that cable and satellite companies are permitted to force subscribers to pay for indecent and offensive programming over their objections.

A second, but less effective solution than consumer choice, is for the industry to apply the same decency standards that are applicable to broadcast TV and radio. Our last polling question asked respondents if they agree or disagree with the following statement:

> "When cable customers have no control over which channels are included in their basic cable package, the cable providers should voluntarily enforce decency standards in that basic package, which would screen out sexually explicit or graphically violent material."
>
> Seventy-three percent of respondents said that they agree, with 55 percent strongly agreeing.

A 2004 report, by the First Amendment Center in collaboration with *American Journalism Review* magazine, released June 28, found that 55 percent of respondents agreed with the following statement: "Government officials should have the power to regulate during the morning, afternoon and early evening hours those cable television programs that contain references to sexual activity."[6]

While there are about a dozen major cable companies nationwide, those companies act as monopolies in their local communities by county charter.

Satellite systems, while starting to nibble at cable's customer base, are not yet a true competitor, and thus have no direct impact on cable prices. As Gene Kimmelman of Consumer Union notes, the cable industry is 3.5 times larger than dish systems, many DBS customers live where cable is not available, and dish placement restrictions prevent many customers from choosing that system over cable.

Cry as they do about price gouging from program producers, cable companies are in their own consolidation race, and often hold monopolies in some communities, thanks to community charters barring competition.

While the cable industry comprises about 11 equal-sized competitors, according to the FCC's ninth annual report on cable/satellite video competition, many hold monopoly power within their region. That point-of-sale monopoly, called clustering, has increased 75 percent since 1994. Only 10 percent of cable franchise territories face head-to-head competition from another cable company.[7]

Kimmelman maintains that satellite video distribution systems do not compete directly with cable, and therefore have had no impact on cable costs. He notes that the cable industry is 3.5 times larger than satellite and that many satellite customers live in areas not served by cable.[8]

That lack of competition makes it easy for cable companies to simply pass the added costs on to their customers. It also makes them reluctant to embrace reform ideas such as a la carte pricing, where customers pay only for the channels they wish to receive. Such pricing strategies in the current media environment would reduce the number of households reached by many cable channels, and would in turn reduce the amount the cable companies can charge for advertising.

Subscribers do not accept the industry's claim that consumer choice will necessarily cost more. That is not the case in Canada.

---

[5] *U.S. v. Playboy Entertainment Group, Inc.,* 529 U.S. 803, 813 (2000).

[6] Available August 1, 2004, at: http://www.ajr.org.

[7] Federal Communications Commission, Ninth Annual Report, "In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming," MB docket No. 02-145, 31 December 2002.

[8] Kimmelman, Gene, Testimony before the Senate Commerce, Science and Transportation Committee, 6 May 2003.

There, "a la carte" channel selection is offered on several of Canada's largest cable systems. Subscribers save about 30 percent compared to subscribers who select the average number of channels Americans tend to watch. Canadian subscribers receive a basic tier with approximately 30 channels, and may then pick one, five, 10, 20 or 30 additional channels "a la carte" for a price per channel that drops as subscribers purchase more channels. Canadian viewers who select the average number of channels that U.S. consumers tend to watch pay about 30 percent less than the cost of typical digital cable services in the U.S.[9]

Even if it were true that consumer choice would cost subscribers more, many would rather pay more for programming they want than to pay for dozens of channels they do not want.

Currently, our nation has 10 major cable companies, but none of them competes with each other. That head-to-head competition between wired cable services within a community is called "overbuilding" and it occurs in only 2 percent of the nation's markets. Where it does occur, cable bills decrease sharply.[10]

Cable choice/a la carte pricing would require cable channels to be more responsive to their target audience if they wish to survive. A la carte pricing would improve the programming of niche channels, and encourage cable channels to serve their public.

A la carte pricing would give the consumer leverage against channels that push the envelope of decency and routinely violate community standards. For example, FX, a cable channel that now forces itself into every cable-subscribing home through its placement on the expanded basic-cable tier, would either have to tame shows like *Nip/Tuck* that push the boundaries of common decency, or become a niche channel through loss of subscribers.[11] The MTV channel, targeted at children, would have to do the same with its programs.[12]

CWA is urging the subscription TV industries to voluntarily provide consumer choice in the second-tier, expanded-basic package, or at least impose decency standards in the expanded basic package. Thus far, the industry has shown little response to what the majority of their customers want.

If the subscription television industries continue to ignore the very people from whom they extract billions of dollars, Congress should act to re-balance the national media toward the public interest in the wake of a decade of media consolidation, and require multi-billion dollar industries to provide consumer choice. Deregulation, done in the name of a free market, was justified. Yet, a market is not truly free when customers have their choices and purchases dictated by others.

Thank you.

Mr. UPTON. Thank you all for your testimony.

At this point, we will begin the questions of the members on the subcommittee.

Mr. Kimmelman, appreciated your testimony, and I just have to go back to the basic question. What if with a la carte—let us say it happens, and what is channel, let us say, ABC decides that they are going to ask for $10 a subscriber to carry the channel on a stand-alone basis. It sounds a little outrageous in terms of higher cost to me. I am sure that it would sound outrageous to you as well.

Who is going to—what if that—if that cable operator is forced to pass that along to the consumer, that doesn't sound to me like a system that is going to provide consumers with more choices at a

---

[9] Kimmelman, Gene and Cooper, Mark, Consumer's Union letter to House of Representatives, 27 April 2004.

[10] Kleder, Martha, "Monopoly is More Than a Game: U.S. Senate Hearing on Cable Hears Calls for Competition and Choice," (citing Federal Communications Commission (FCC), *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Ninth Annual Report,* FCC 02-338, December 31, 2002, available at: http://www.cwfa.org/articles/5702/CFI/papers/index.htm).

[11] Kleder, Martha, "Give Us Cable Choice for Decency's Sake!"

[12] Examples of graphic sexuality in programming included in the expanded basic cable tier are available for Nip/Tuck at: http://www.parentstv.org/ptc/niptuck/main.asp. For MTV's *Wild Boyz, 24 Hour Spring Break, Full Body Search: Miami, Real World: Las Vegas, MTV Video Music Awards, Real World/Road Rules: Battle of the Sexes, Real World/Road Rules: The Gauntlet, Real World/Road Rules: Inferno, Real World: San Diego, Newlyweds: Nick and Jessica, The Osbournes,* at: http://www.parentstv.org/ptc/publications/email/plain.asp.

cheaper rate. And, therefore, wouldn't Congress need to then regulate retail and wholesale prices to make it work? Is that not the basis/thesis of that argument, which then reverses——

Mr. KIMMELMAN. Mr. Chairman, in an unregulated market, ABC could try to charge anything it wants to, and it could shoot itself in the foot. And its friends in the cable industry could go along and increase the amount of damage it does by just raising prices that way, if that is what they wanted to do. I believe what they would do——

Mr. UPTON. But isn't it the same with a la carte? Isn't it exactly the same argument? Isn't it going to bring—reregulate the whole system?

Mr. KIMMELMAN. We are suggesting that you keep a basic tier, so that broadcast channels wouldn't be affected by that. But even assume for a minute that ABC owns a channel, and it wants to charge $10 for a la carte, I believe ABC has gone out of its way to talk about how reasonably priced ESPN is as the most expensive channel at no more than $2.50 a subscriber.

I would be hard-pressed to see them justify in the marketplace those kind of prices. I can't imagine cable operators would be willing to pay that. I can't imagine they wouldn't be willing to discuss that with their own customers and that there would be a lot of marketplace pressure for those prices to actually go down.

I believe what would happen with an a la carte option is you would get a lot of transparency and opening to a lot of secret negotiations now that have been characterized as onerous, in some cases coercive, and those practices would probably not be able to be sustained with that kind of public visibility.

Mr. UPTON. Mr. FitzPatrick, you think about your testimony there, underscore your testimony. I think in essence you said with a la carte that in all likelihood Hallmark would not make the list. Is that your thought?

Mr. FITZPATRICK. Well, I was referring specifically, Mr. Chairman, to the recently launched earlier this year Hallmark movie channel. Basically, I think when you are building a business, a cable network business, and your objective is to build scale and build audience, which we have been able to do over the last 3 years, you are able to eventually reach a point where, as a result of marketplace research, talking to customers, talking to consumers, ascertaining what other needs and wants are, in this particular instance we ascertained that there was a great interest in a movie channel built around the Hallmark brand and the Hallmark library.

But in order for us to move forward into the marketplace with a viable second linear service, I believe that the a la carte environment would preclude, had it existed a year ago, would have precluded us from launching the service just because the path to getting to that kind of distribution scale would have made that absolutely impossible to accomplish.

Mr. UPTON. Mr. Pyne, as I listened to Ms. LaRue talk about Canada, which I guess does have I guess, based on your testimony, some type of a la carte system, how does that—how do you see rates and access to channels as you relate to the channels that you provide to Canada versus the United States?

Mr. PYNE. With respect to our company or——

Mr. UPTON. Right.

Mr. PYNE. I would like to point out just as part of our testimony that we will be filing with the FCC, simultaneously with testimony for this, we actually have detailed information about the situation in Canada. My understanding of Canada is that, in fact, as Congressman Towns pointed out, the structure of the market is very similar to what we have here in the United States, in that there is a regulated broadcast of the most popular channels.

In fact, in Canada, for those channels that do have the broadest distribution, in fact they are required to be in that basic bundle, similar to the situation here in the United States. ESPN has a 30 percent investment in an ESPN classic type service in Canada, which is a very different service than ESPN. And, in fact, in that case, it is offered as part of a digital tier. But, quite frankly, its penetration is less than 5 percent. It is about—it has 485,000 customers, and it has lost money every year that it began since 2001.

So while Canada does offer some a la carte opportunities, it is for niche services, and it is not—it is only after Canadians have an opportunity or are required to buy a bundle of other services that are much more broadly distributed, similar to here in the United States.

Mr. UPTON. Maybe we can get into that—into a second round, because my time has expired.

Let me go with Mr. Wynn.

Mr. WYNN. Thank you, Mr. Chairman.

Mr. Kimmelman, I applaud your good intentions on behalf of the consumer, but I am concerned that you have not really laid out how a la carte addresses some of the concerns. For example, I believe as Reverend Plummer was saying that he had not been able to get on for a variety of reasons, as well as many other niche programmers.

Two basic questions. How do they get on in an a la carte system? And, two, how do they sustain themselves if they have relatively lower viewerships, which I think was an argument that was raised by Mr. Liggins in terms of emerging companies. Why are they better served if they have lower revenues, lower viewership, and lower capitalization? How do they survive?

I hate run-on questions, but I am going to include this. Would they not ultimately, if they survive, be absorbed by larger media conglomerates, thereby losing the diversity that we debated at length in this committee on the subject of media ownership? Same basic concept.

Sorry about the length of the question.

Mr. KIMMELMAN. And I appreciate it, Mr. Wynn. That is a very important question. Let me start off by saying I don't believe a la carte is a panacea to solve every problem out there. I have been doing this for a long time and talked about a lot of different things that need to be done about discrimination.

Let me suggest a way in which I think a la carte can work. We are, first off, saying there ought to be a basic tier with local programming, so that broadcasters have their right to get the—meet the local needs of the community in a basic tier with public access channels. We are also suggesting that every cable operator, every

satellite provider, can offer the packages that include TV One today, that include BET today.

They still can package it that way. And if there is a small viewership, or for whatever reason they put it in a package today, my question is, in a world where you can put it in a package tomorrow, but it also could be available as an individual channel, why in the world wouldn't they keep putting it in the package? What would change? Some people may want to pick a channel a la carte.

Mr. WYNN. That is what I am saying. If they put it in a package, then we haven't changed anything. It is not a la carte if it is in a package, big package, small package. It is a package, and there are economies of scale associated with the package. When you pull it out and say, "This is A, this is B, this is C," etcetera, "pick what you want," how does that small station make it? I just don't—I don't see that.

Mr. KIMMELMAN. A small station that is available——

Mr. WYNN. Not a small station, but you——

Mr. KIMMELMAN. A small station that is available in a package, and then also available a la carte, would it be able to attract a niche market audience? There are a lot of minority programmers who are suggesting that they think they would at least have some chance, who today are blocked by the gatekeeper. The gatekeeper Mr. Deal referred to is one of four or five media giants who either has an affiliate it wants to favor and will put on somebody else, or just doesn't want to put that programming on.

Mr. WYNN. How do you address the advertising argument? That is——

Mr. KIMMELMAN. Oh, I would love to address the advertising argument. What I suggested was, out of 330 channels, most of them aren't getting advertising revenue. They are getting some license fees, or they are going on for free and they are desperate to get capital to get on. And if they don't make it in 4 or 5 years, like Mr. Liggins said, they probably get dropped. Hundreds of them have been in that situation.

Most people are watching the top 20 channels. That is where the real advertising revenue is. But if you have something that is attractive to a niche audience, and you can—and I understand there is marketing costs. None of this is simple. But if you can draw advertisers into a small, focused, target market, you have a better chance of surviving possibly than most of these people who are not even getting on today.

But most of them who are on, I am suggesting, sir, are not getting advertising revenue. I mean, let me give——

Mr. WYNN. Well——

Mr. KIMMELMAN. Let me just give you an example. If you are Ford Motor Company——

Mr. WYNN. My time is running, because I am watching the clock. If they can't—if their niche is so narrow that they can't attract advertisers, how do they get on?

Mr. KIMMELMAN. Advertisers pay for eyeballs. If you are—I am——

Mr. WYNN. But you don't have many eyeballs if you don't have that viewership. That is the whole thrust of this.

Mr. KIMMELMAN. Well, yes.

Mr. WYNN. Without a package, you don't have the eyeballs. Without the eyeballs, you don't have the advertising.

Mr. KIMMELMAN. Two hundred fifty out of—275 out of 330 channels aren't even getting a quarter of a million eyeballs, so I am just suggesting that——

Mr. WYNN. But they are in a package.

Mr. KIMMELMAN. [continuing] with due respect you can be—if you are in front of 60 million households, it is most likely because you do have eyeballs. But I will guarantee you no advertiser is going to pay for its company's ads to go in front of 60 million people who never turn it on. The bottom line is you ultimately need people to watch.

A la carte, in conjunction with a package, may provide a new avenue for some people to get their first step to get on and demonstrate that they have got quality programming. You have got a lot of programmers out there who say, "We have got quality. We have got financing. They won't let us on." Why not give them a chance in the marketplace to show they can?

Mr. WYNN. Why wouldn't their costs—their rates be high? If they are not using advertising revenue, what——

Mr. KIMMELMAN. For the very same reason that some of them aren't charging cable operators today. They are desperate to get out there and get distribution. They will take a hit up front to try to get on. They can't survive long that way. But if somebody wants to watch it, they will finally get viewership.

A lot of these channels are not getting ad revenue. A lot of them are not in a position to charge cable operators even a penny to get on. They are desperate to try to get out. If the cable—my question is simple. If the cable operator will take it for free today and put it on expanded basic tier, why won't they do that tomorrow just because somebody could also get that channel a la carte?

The point is, if nobody will pick it a la carte, then it is in the tier. And it is just the way these folks want to have it, and they can keep doing their business the way they want to. If some people pick it a la carte, they may actually expand their audience base, and advertisers may see there is a greater potential to support that programming.

Mr. WYNN. Thank you, Mr. Chairman.

Mr. UPTON. Mr. Deal?

Mr. DEAL. Thank you, Mr. Chairman. I want to thank my colleagues for their kind comments and for their attendance at this hearing. I do think it is an important issue and one that I don't think will go away.

First of all, I thank the panelists, too. But, you know, I have heard from two of the big six conglomerates here today, and with the business philosophy that you gentlemen have espoused, we would all be driving Edsalls, simply because Ford thought it was a good idea. The public didn't. The public doesn't agree with you on this issue as well.

Mr. Hooks, let me ask you—you are a small—you represent the small cable independent operators in this country. Is that correct?

Mr. HOOKS. Yes, sir.

Mr. DEAL. Do you all own the programming that produces these programs?

Mr. HOOKS. No, sir, I do not.

Mr. DEAL. All right. You have told us the problems that you have about your constituency objecting to, I believe, Undressed and Striperella when they are trying to get the cartoons. Are you free to discuss with me today in this meeting or afterwards the terms and conditions that are dictated to you by the big guys who are selling that programming as to why you can't break it up, how much you're charging the customers? Are you free to tell me that?

Mr. HOOKS. No, sir.

Mr. DEAL. Why not?

Mr. HOOKS. Contractually, I am disallowed to do so.

Mr. DEAL. Mr. Baxter here got a contract keeps you from doing that?

Mr. HOOKS. Yes, sir.

Mr. DEAL. Mr. Baxter, will you waive that today?

Mr. BAXTER. Congressman, I am not in the programming business. I am in the cable television——

Mr. DEAL. I think the answer is no?

Mr. BAXTER. There is a different part of Time Warner that distributes programming.

Mr. DEAL. Okay. We have heard that answer, too.

Mr. BAXTER. Yes, sir. I am——

Mr. DEAL. Mr. Pyne, will you waive it?

Mr. PYNE. We are currently—we have programming obligations to——

Mr. DEAL. That is somebody else's job, too? Okay.

Mr. PYNE. No, no, no. No. I am the one responsible for negotiating the contracts, but we have contractual obligations that——

Mr. DEAL. Those are contractual obligations you dictate, right?

Mr. PYNE. [continuing] going both ways.

Mr. DEAL. That is contractual obligations you dictate, that you will not reveal the terms and conditions and you will not let any of your folks who buy your programming reveal it either, is that right?

Mr. PYNE. They are, in fact, mutual between—I mean, we can't talk to——

Mr. DEAL. Mr. Hooks is willing to waive it. Will you waive it?

Mr. PYNE. I am actually not in a position to——

Mr. DEAL. I think the answer is no. It is obvious this whole process is surrounded in secrecy. This committee has written a letter to the FCC asking them to investigate it. I want to guarantee the members of this committee the FCC is going to come back and tell us, "We can't get the information, because the big guys have sealed the lips of the people they do business with, and they won't tell us either." Mr. FitzPatrick, I thank you for being here. Let me tell you, I like your programming, and I want to tell you I don't think there's a person in this room that objects to the Hallmark channel being on an expanded basic tier. But, you know, sometimes we tell a lot by not who is here to testify but those who are not here to testify.

Now, you are on expanded basic tier, is that right?

Mr. FITZPATRICK. We are overwhelmingly——

Mr. DEAL. All right.

Mr. FITZPATRICK. [continuing] on the most highly penetrated, but not in all cases.

Mr. DEAL. All right. You may be on basic in some cases.

Mr. FITZPATRICK. No. In some cases, we are, for example, on—on the EchoStar platform, we are on a tier that penetrates roughly about 30 percent of their entire universe.

Mr. DEAL. All right. But in that expanded——

Mr. FITZPATRICK. Much to my chagrin.

Mr. DEAL. But in that expanded basic, are such things as the programs we have heard about, the FXs who are not here, the Spike TV who is not here, the Undressed, the Striperella who are not here, they are in that same advanced package with you, is that right?

Mr. FITZPATRICK. I believe that is the case, depending upon the——

Mr. DEAL. Do you need their listeners and their watchers and their viewers and the revenue that they produce to justify your existence in the expanded basic package?

Mr. FITZPATRICK. I am sorry, Congressman. I——

Mr. DEAL. Do you need the revenue from these somewhat questionable, racy programs to justify your existence on the expanded basic package?

Mr. FITZPATRICK. I don't know if it is so much—I don't think it is a case of, do we need the revenue from them, if I understand your question. I think what we need is to be in a neighborhood in which the variety of services are available to a great majority of subscribers on that system.

And as a result of the way we watch as human beings, as we watch television, with that remote most of the time, that surfing experience that people have—I mean, I have heard this morning this discussion about the number of channels that people watch on average being 15, 16, 17. That may be a statistic that is true, if you measure it by time spent—an hour or 2 a week or whatever the metric is—but I think that there are many, many more channels—in fact, our experience and our——

Mr. DEAL. I hate to interrupt you, but my time is about to expire. You are the poster boy for independents here in this testimony today. You are not attempting to justify these others who are in the same tier packages as you, because their programming and the audience they target is different from yours, is that not right?

Mr. FITZPATRICK. It is different.

Mr. DEAL. All right. Now, since you are the poster boy for the independents, are you truly independent? You know, we have talked about the five big conglomerates, and we had two—that Liberty Media. Is not Liberty Media one of your major stockholders?

Mr. FITZPATRICK. They are a stockholder. They are not a major stockholder. They hold less than 10 percent of our company, and they have absolutely no control over our operating strategies or our operating——

Mr. DEAL. But they are one of the big six.

Mr. FITZPATRICK. Well, Mr. Chairman, they are not a cable operator in this country.

Mr. DEAL. Mr. Liggins, you are the poster boy for the minority contractors and the minority broadcasters in this hearing here today. Let me ask you, though, your target is African-American targets, but you are not owned by African-American stockholders, are you? In fact, you are—one of your biggest owners at 39 percent is Comcast, is it not?

Mr. LIGGINS. That is correct. But my company, which is owned by my mother and myself and is a public company—we control it—owns 40 percent of the network. And when we actually buy our investors out, we will own 51 percent of the network. But most importantly, we put up $74 million of the entire $130 million.

So as far as I am—and we control the Board. And so as far as I am concerned, it is more our network than anybody else, since we put most of——

Mr. DEAL. Well, just answer the question Reverend Plummer posed. Are you carried fully by Time Warner?

Mr. LIGGINS. We do not have a deal with Time Warner as of yet, but we are working on it diligently.

Mr. DEAL. Mr. Chairman, I appreciate your indulgence. I hope you will have a chance to ask extra questions.

Mr. UPTON. Mr. Doyle?

Mr. DOYLE. Thank you, Mr. Chairman. This has been a most interesting hearing.

I hear a lot of different dynamics as I have listened to the testimony today. And I think we all know what consumers want. They would love to just pick only the channels they want to watch and pay nothing for it. I mean, that is—I have been in politics long enough to know that.

I just had a conversation with USAirways this morning in Pittsburgh, and, you know, the head of USAirways complained that people get on the internet today and, you know, they want to be able to fly from here to California, not have to have any layovers on the way, and they want to pay $120 for it. And that is why the airline industry is going bankrupt.

Now, is that reality? I guess that is the question we are asking ourselves. You know, can that system really work? And then, I hear the access challenges here, too, how a company like Mr. Liggins, how does he get access to a network, if he has to do it person by person? If you have to go up there and sign up subscribers, how do you get to that magic, whatever that number is, 20 million, so that you can justify being on their—or Reverend Plummer also?

You know, how do you make sure that, if we are going to have diversity, how does that happen? And then, the small operators that don't like the idea that they have to pretty much take what is given to them by the big guys that own a lot of the programming—I mean, we have a lot of different dynamics that take place.

I went to Penn State University. The football team took all the revenue in, and they basically paid for all—the paid for the wrestling team and the volleyball team, and everything in between. If we didn't have a football program at Penn State, we wouldn't have any other sport at Penn State either.

So I guess, you know, the question we have as we look at this issue is, you know, how do we put a system forth that is—where there is competition and where consumers benefit?

And I just—Mr. FitzPatrick, maybe I will ask you the first question. Your station seems to offer programming that would be considered, if there were a family friendly tier, you would probably fit into that kind of tier program. Would you agree with that hallmark?

Mr. FITZPATRICK. Well, I do generally speaking. But, again, like everything else, it is in the eyes of the beholder. I mean, we make—we don't make movies that typically you might find, for example, on Mr. Pyne's service, the Disney Channel—that is, all PG-13 or PG. We make movies based upon classic literature with very compelling stories about the human experience that might, in the eyes of a viewer, feel that that is not particularly suitable to a 13-year-old or to an 11-year-old, but is to a teen in the household.

I mean, generally speaking, I would answer the question yes. But if I could just for a minute——

Mr. DOYLE. But you disagree with a government-mandated family friendly tier. Is that your testimony?

Mr. FITZPATRICK. I do.

Mr. DOYLE. You do.

Mr. FITZPATRICK. I disagree with a mandated family tier or any other kind of tier.

Mr. DOYLE. And why is that?

Mr. FITZPATRICK. For all of the reasons that we have indicated—I have indicated in my testimony this morning—the marketplace, let the marketplace work. We think that, generally speaking, it does work well—I mean, to the point that it is taking Mr. Liggins time to get distribution for his new channel. I can tell you as an entrepreneur I have been involved in starting up two cable networks, including one against the retransmission consent network.

The marketplace and the competitive marketplace allowed us, with that particular service, to eventually meet that retransmission consent channel. It takes take. When you go knocking on a cable operator's door, whether you are trying to get bundled in a highly penetrated package or some other kind of tier, as Mr. Baxter and Mr. Hooks will tell you, it takes time to make that capacity available. I mean——

Mr. DOYLE. Do you think that——

Mr. FITZPATRICK. [continuing] these folks have spent $85 billion upgrading plant. It is not all for linear channels. Thirty percent of their bandwidth is being put aside for video on demand, for internet protocol telephone service, for high-speed access. There are all kinds of competing requirements and interest for that bandwidth, and it takes time. If you have patience, if you have a good product——

Mr. DOYLE. Let me just ask a question, since my—do you think that you could break into a market with a channel like yours if it weren't for guaranteed carriage in a—on an expanded basic tier? Would you have been able to do this if—just if it were a la cart?

Mr. FITZPATRICK. Well, Mr. Congressman, the guaranteed carriage is a result of: 1) Do we have a compelling vision? 2) Do we have a brand? 3) Do we have a negotiation over terms and conditions that are beneficial ultimately to the consumer based upon value and price? That is how we were able to drive our distribution to 62 million homes today, not because somebody immediately said

we are going to guarantee you getting into every single home. And it also took time to do that. So——

Mr. DOYLE. Do you think you could have done it under an a la carte system, though?

Mr. FITZPATRICK. We could not do it under an a la carte system. Absolutely not. And more——

Mr. DOYLE. If I could just—if I could borrow some time here, there were some very compelling arguments or statements this morning about viewership, number of channels watched, 300 channels. You need—this business needs a foundation of networks that number somewhere in the 60, 70 range, that drive that basic advertising revenue model.

Once a network has economies of scale, then you can go out and you can launch additional service, in which the requisite requirements for advertising dollars is not as great as the mother load, as the mother ship. That is how a lot of services were able to be launched. And as far as the 339 national networks that are out in the marketplace today on—not including the 84 regional networks that are sports and regional news services, out of that 339 a lot of those are pay services.

They are, if you will, services that do not require the kind of advertising scale that the mother ship requires. And so, ultimately, it gets down to the question of whether or not the American public is watching cable programming, and the answer is a resounding yes. The viewer shares today, both in prime time and certainly in total day, from where this business was 10 years ago, 5 years ago, 3 years ago, cable shares, multi-channel shares of viewing, exceed now the broadcast networks.

There is a reason for that. The consumer is voting with a strong affirmative, "We like generally what you are giving us." Do they have particular issues as we have heard this morning about particular services? Of course. But does that mean we throw the baby out with the bath water because we have got a problem? I would suggest to the committee that that is the wrong approach.

Thank you, Mr. Chairman.

Mr. UPTON. Mr. Whitfield?

Mr. WHITFIELD. Thank you, Mr. Chairman. And I also want to thank the committee staff for arranging this hearing, and Mr. Deal for pushing the issue, and the panel for taking time to be here with us.

I might say that, as this hearing has emerged—and I came here with a rather open mind—I found myself more interested I think in the state of the wholesale and retail distribution of the programming than I have the a la carte side of the issue. And I know that, Reverend Plummer, you—when you were speaking from the heart—you made a comment about your efforts to have your programming fully carried.

And you made a comment that you had a fear of retribution at some point. I was wondering if you would elaborate on that a little bit.

Rev. PLUMMER. There is a comment in the industry, "Cable is king." When it appears as though, as is the case here for me, I am not standing against a la carte. In fact, because of the condition of the cable industry right now where there is an access problem, we

have been told as religious broadcasters for years, "Be patient. Be patient. Just wait."

Because we have such ability to mobilize many people in communities throughout America, the cable industry has interpreted that as being adversarial, and has warned us time and time again, "If you go out and stir up the community, if you go out and do this, we will never give you carriage." And so to go out and make the cable industry look as though they are doing something unkind to religious broadcasters does not fare well with them.

And so we have been told time and time again, "Don't do that. Don't make noise." And so for me to make comment now that I personally was approached and went into, you know, great detailed discussions about equity in our own network, and when I did not choose to do that, I still have not been given access. And so for me to stand publicly and make that statement alone is a potential for retribution for me that you will never get on now, you will never get access.

Mr. WHITFIELD. And which company was trying to obtain equity in your company?

Rev. PLUMMER. It was Comcast.

Mr. WHITFIELD. Comcast. Okay.

Now, Mr. Hooks, you have discussed a lot about the practice of wholesale and retail distribution, the way it is being conducted today. And your primary complaint is—or concern for your viewers is—that in order to get a program you have to take the entire package, is that correct?

Mr. HOOKS. Yes. If I could expand on that—and my environment is probably a little different. Smaller market environments are struggling a little more with bandwidth. And if you looked at my bandwidth, it is all used up by the big five through retransmission and bundling requirements. So products like yours, and some of these niche programs, I have got a real problem. I don't have any channel space.

In fact, in my markets, we have got a real dilemma. We have got a high growth of Spanish-speaking people, and I don't have Spanish-speaking programming. And I don't know how to get it, because they are independent and they are not part—I mean, it seems to me unless you get part of the big five, that is the way you force your way in and it eats up all our bandwidth.

Mr. WHITFIELD. So you don't have any shelf space?

Mr. HOOKS. In other words, I could make better choices for my community if I had some flexibility.

Mr. WHITFIELD. Now, Nickelodeon is a popular channel or program.

Mr. HOOKS. Yes, sir.

Mr. WHITFIELD. But in order to get Nickelodeon you have to have MTV, and you have to take Spike, is that correct?

Mr. HOOKS. Yes, sir.

Mr. WHITFIELD. Now, our friend from Pennsylvania mentioned that Penn State Football carries the entire program, the athletic program. Nickelodeon is the most popular program of the ones that you have through Viacom. So what would be the rationale that Viacom would require you to take Spike?

Mr. HOOKS. Well, they package them up, and you are incented contractually to take the whole package. Otherwise, you pay damages for not doing it. So there is some flexibility not to do it, if you are willing to pay the difference.

Mr. WHITFIELD. So if you don't do it, you pay damages?

Mr. HOOKS. Well, I call it damages. The pricing all changes. It is kind of like if someone was going to sell you three cars, and they will sell you each of them for half price, but if you buy one, I will charge you——

Mr. WHITFIELD. And, contractually, you cannot talk about the pricing, is that correct?

Mr. HOOKS. No, sir.

Mr. WHITFIELD. Okay. Well, Mr. Chairman, this has been an interesting hearing. I do hope that we have an opportunity to get more into the wholesale and retail programming in this——

Mr. UPTON. Would you yield just for a followup question——

Mr. WHITFIELD. Yes.

Mr. UPTON. [continuing] I might ask Mr. Plummer as it related to your question.

Mr. WHITFIELD. I would be happy to yield, and then I would yield the balance of my time to Mr. Deal.

Mr. UPTON. Okay. Let me just ask a followup question. You know, I was one, Reverend Plummer, that supported must carry back—way back when.

Rev. PLUMMER. Yes.

Mr. UPTON. If for some reason we didn't have must carry, would you support a la carte?

Rev. PLUMMER. Well, first of all, the Supreme Court of the United States, as you know, has upheld——

Mr. UPTON. I know. But let us say we did away with it. They affirmed—I think the Court said that we were proper in insisting on must carry. But let us say we did away with it. We passed a law and said you didn't have to have it, and it is out there for the consumers to decide, do you really want to carry your local broadcast station? I presume—I am not from Southfield, but I presume you are broadcast as well, right?

Let us say that I live in Southfield. Would your network survive if you had a la carte and you didn't have must carry?

Rev. PLUMMER. Personally, I—you are asking me personally? I will answer two ways. First of all, let me answer it as it relates to our industry. Must carry has been vital for the carriage——

Mr. UPTON. No, I know that, and I support it.

Rev. PLUMMER. All right.

Mr. UPTON. That is not the argument. I supported must carry. Some on this committee, by the way, didn't and still don't.

Rev. PLUMMER. All right.

Mr. UPTON. That will be in debate another day.

Rev. PLUMMER. I believe—first of all, there was a study done by the Black Enterprise Group that said 80 percent of African-Americans support black media, whether print, radio, or television. In the markets that my networks are in, we are a household name. People actually send us hundreds of thousands of dollars over and above their cable fees. That is consistent throughout America when it comes to religious broadcasters specifically.

There has been billions of dollars that Americans have sent to ministries, have sent to religious broadcasters, over and above their cable fee, in order to get that programming or at least keep it on the air, whether they buy programming from a network or whether they actually have access through must carry. I personally believe that religious networks, minority networks, could survive in a properly designed a la carte system.

And so I think that we are using some loose definition of what a la carte system means. Whether it is pure or, you know, a mandated type of a system, I think that if there was indeed a basic tier, which I think everyone understands that that makes sense, over and above that, yes, I do believe that there would be networks like mine and others who would survive.

Mr. UPTON. Mr. Deal's time is rapidly expiring.

It was the answer, not the question.

We will have another—a second round.

Let us see, Mr. Stupak?

Mr. STUPAK. Thank you, Mr. Chairman.

Let me ask this question of everyone on the panel. And if you would, just give me a yes or no answer, so we can get a couple questions in during my 5 minutes.

Should consumers be allowed to know how much they pay for each channel, like the cost of ESPN versus the cost of Disney or the Comedy Channel? Let us start with Mr. Kimmelman.

Mr. KIMMELMAN. Absolutely.

Mr. LIGGINS. I don't think so.

Mr. STUPAK. You don't think so?

Mr. LIGGINS. No.

Mr. STUPAK. Okay.

Mr. HOOKS. Okay.

Mr. PYNE. No.

Mr. STUPAK. No?

Rev. PLUMMER. Yes.

Mr. BAXTER. No.

Mr. FITZPATRICK. No.

Ms. LARUE. Absolutely.

Mr. STUPAK. I guess it is a tie vote.

Those who said no, why shouldn't consumers have right to know? Mr. Liggins?

Mr. LIGGINS. I personally think that the commercial terms between entities, whether they be companies or employees, are—should have some strict confidentiality, unless, of course, there is some, you know, sort of, you know, public good to it. But what I pay my secretary is nobody's business and——

Mr. STUPAK. Well, we are not asking what you pay your secretary. But if ESPN is costing me two bucks, and Disney is costing me a buck——

Mr. LIGGINS. I understand. But at the end of the day, what a cable operator pays my company to provide programming, I don't want my competitor to know that. I don't want anybody to know that. I have to negotiate.

Let us say I have a better deal with one cable operator than the other. I certainly wouldn't want that out in the open, so they could negotiate against me. I wouldn't want, you know, the terms of a

contract that I have with a high profile personality, so my competitor can come and offer them more money. You know, so that stuff actually, I believe, makes cost of—the cost of doing business go considerably higher, which will always ultimately get passed on to the consumer.

Mr. STUPAK. Well, wouldn't the cost of business be how many subscribers you have versus non-subscribers?

Mr. LIGGINS. I am sorry?

Mr. STUPAK. I mean, isn't the cost that you charge people, isn't that based upon how many subscribers you have?

Mr. LIGGINS. No. Well, a couple things. One, the cost of doing business—what we charge a subscriber, what we charge a cable operator has everything to do with what it costs us to run our business. We have to pay for programming, and one of the things I——

Mr. STUPAK. So whatever it costs to run your business, you have got to pass that on to the consumer, don't you?

Mr. LIGGINS. Well, Mr. Baxter is trying to keep, you know, rates down to consumers, so his job is to get the lowest possible rate for me. My job is to try to get the best possible rate from him. He usually wins, you know, and so——

Mr. STUPAK. Sure.

Mr. LIGGINS. [continuing] you know, that——

Mr. STUPAK. But in the ultimate plan, it is the consumer that pays, no matter who wins or loses. The consumer has to pay for that, whatever service they have, right?

Mr. LIGGINS. Ultimately, in a free market economy, yes, the consumer—prices that people charge are dictated by the demand that the consumer has in the marketplace.

Mr. STUPAK. Do you believe—I am not picking on you. We are just having——

Mr. LIGGINS. Sure.

Mr. STUPAK. [continuing] a good discussion here. Do you believe the rural areas pay more than urban areas?

Mr. LIGGINS. I don't know the answer to that question. I am not versed enough.

Mr. STUPAK. Does anyone want to try that one? Mr. Hooks?

Mr. HOOKS. Yes, I will tell you they do.

Mr. STUPAK. They do?

Mr. HOOKS. Yes. In fact, rural customers subsidize the customers in the urban areas. It is just a fact.

Mr. STUPAK. Mr. Pyne?

Mr. PYNE. I am sorry. If I may add——

Mr. STUPAK. Sure.

Mr. PYNE. [continuing] I think here within the small—as Mr. Hooks will know, within the small rural—there are a thousand small rural operators around the country, there is something known as the National Cable Television Cooperative. And part of the role of that organization is to represent its membership. I mean, it represents close to 8 million subscribers around the country, and it tries to negotiate deals on par with cable programmers, as with all of the other cable operators.

I would just like to point out that ESPN recently was made public—was released publicly but negotiated a long-term deal with the cooperative. That actually—that contractually obligates ESPN to

provide the same pricing as other cable operators in its size group. And, in fact, to date—I think this—again, public, it was in multichannel news——

Mr. STUPAK. Well——

Mr. PYNE. [continuing] 95 percent of the members have already signed up for——

Mr. STUPAK. If it is the same pricing, why shouldn't consumers then know how much we are paying for ESPN versus Disney?

Mr. PYNE. Well, I think the—just like—in our opinion, just like other commercial relationships, whether it is in the supermarket business or other retail outlets, the commercial negotiations that go on between the entities are generally private. We would like to preserve that privacy.

In addition, I think there are many other factors that go into the pricing, such as local ad sales. All of our networks, except for Disney Channel, which is not ad supported, but our networks offer local time to the cable operators. Depending on the network, that is actually revenue back to the cable operator.

Mr. STUPAK. Mr. Chairman, if I may, can I just ask Mr. Kimmelman—mention why consumers should know the price, since he represents the consumers here, and then finish it up with that. Thanks.

Mr. KIMMELMAN. Well, thank you, sir. We are being told, "Trust us. We package the programming for you. We help you with the choice." I am just now being told cable operators try to keep prices down for consumers. I haven't seen that with them skyrocketing five times inflation.

If we are not going to regulate, the least we need is some transparency in the marketplace, so there can be marketplace pressures among the players. How much more value is there in ESPN programming versus network programming versus TV One? I mean, these are things—people aren't being given the option of picking the individual channel. Maybe they should know something about what the component parts are and why.

And out of the $75 billion invested, how much is being paid for by their $50 a month cable modem service on top of their $50 a month expanded basic fee, etcetera, etcetera? It is not like Penn State Football, because there it is football fans who decide they want to go to the games. And there is some governance board for Penn State University that hopefully has some openness.

This is people who don't want to watch football having to pay for it, or people who don't want to watch offensive programming having to pay for it. That is the difference.

Mr. STUPAK. Well, I can't figure out why anyone would want to watch Penn State Football anyway, so——

Mr. UPTON. As a Wolverine fan, we are looking forward to watching Penn State Football.

And next year, too.

Mr. Shimkus?

Mr. SHIMKUS. Thank you, Mr. Chairman. This is a very interesting hearing, and I appreciate your calling it. I do appreciate my friend Nathan for pushing this issue.

I want to read a couple of companies here. We have got TV One, Radio One, TBS, Cartoon Network, CNN, Time for Kids, Looney

Tunes, Kids WB, Hanna-Barbera, Touchstone Pictures, NASCAR, ESPN, Hallmark, Disney. A lot of this issue deals with smut and pornography and issues that, you know, we are—just kind of have concerns with.

I would like for you all—and, really, I think there is three of you represented in this whole list. Today we rolled out kids.us again. All of you ought to have a site on the kids.us website. There is no reason CNN should not have a CNN.kids.us. There is no reason that Touchstone Pictures should not have touchstonepictures.kids.us. Likewise, ESPN. Come talk to me. We need to make this happen.

I do—Viacom has been the whipping boy in this committee for a long time, and I have been one of the ones doing the whipping. But I have to tell you that today they have put up on the kids.us site nickjr.kids.us and nick.kids.us. That joins abc.kids.us, that joins smithsonian.kids.us, and the like. So if you want a child-safe site for kids on the internet with no hyperlinks, no instant messaging, no chat rooms, no hyperlinks, which are all the things that we know that are being used to go after our young children, the kids.us site is the place to be.

And I am the unofficial spokesman and marketeer for them, and I am doing that job. Yes, sir.

Mr. BAXTER. Congressman, speaking for Time Warner, we will look into that. It sounds like a very good idea. And I just want to make a—just a quick statement to kind of respond to Congressman Deal.

We are all parents here, you know, and there are things on television I don't like either. But, you know, what I do is I block out the channels or I block out the programming. And the cable industry has made it very clear, has advertised the heck out of the idea, we will give you a box, we will give you all the tools you need today to block out programming that you find offensive.

And we think that is a good idea. We are not doing this as a PR gesture, because, you know, for the 28,000 people that work for Time Warner Cable in 27 states, we are all parents. We feel the same way you do. We share your concerns, and we are doing everything we can today to make sure that parents have those tools.

Mr. SHIMKUS. If I can reclaim my time—and I think—let me ask just two—this revolves around a couple basic questions, because most of us—this is a pretty good hearing, because everyone is sitting around listening to your testimony, and we are listening to the questions and answers. And that is not always normal in Congressional hearings.

Can an individual today, an individual in their home, block out channels that they don't want to receive on their cable TV system? And let us—yes or no, if you can. Mr. Kimmelman?

Mr. KIMMELMAN. With great difficulty, if the cable company will cooperate, and you still have to pay for the programming that you didn't want to get.

Mr. SHIMKUS. Yes. But that makes an assumption, and I am going to get to the second question. And I will—so the answer is yes.

Mr. KIMMELMAN. It is not clearly yes, sir, because I cannot go to a cable company in an analog cable system and know that they will do everything——

Mr. SHIMKUS. Okay. I am running out of time.

Mr. KIMMELMAN. [continuing] are suggesting.

Mr. SHIMKUS. Mr. Liggins?

Mr. LIGGINS. From what I understand in the industry, the industry offers that. I have never tried it.

Mr. SHIMKUS. Okay. Let us try it, and we will find out.

Mr. Hooks?

Mr. HOOKS. Yes.

Mr. SHIMKUS. Thank you.

Mr. Pyne?

Mr. PYNE. Yes.

Mr. SHIMKUS. Mr. Plummer?

Rev. PLUMMER. Only if they know how to.

Mr. SHIMKUS. Who?

Rev. PLUMMER. The consumer.

Mr. SHIMKUS. Yes. I mean, I think there is——

Rev. PLUMMER. But yes. Technically, yes.

Mr. SHIMKUS. Okay. Thank you.

Mr. Baxter?

Mr. BAXTER. Absolutely.

Mr. SHIMKUS. Mr. FitzPatrick?

Mr. FITZPATRICK. Absolutely. And I would also say, Congressman, that with respect to this issue of educating parents and kids, we are supporting this initiative of the industry. We run spots on the Hallmark Channel, but we also have established a link to Hallmark.com.

Mr. SHIMKUS. Okay. I am running out of time. Kids.us, remember that, Hallmark.kids.us.

Mr. FITZPATRICK. Yes, Hallmark.com.

Mr. SHIMKUS. Ms. LaRue?

Ms. LARUE. Yes, thank you. I would love to respond to that. And I would analogize to this——

Mr. SHIMKUS. Don't analogize. Yes or no.

Ms. LARUE. Well, I am not a provider. I can't tell you whether they are blocking something.

Mr. SHIMKUS. Well, you have just heard 1, 2, 3, 4, 5, 6, 7 people who are experts in the industry say yes.

Ms. LARUE. That they can block it.

Mr. SHIMKUS. That the individuals can block their channels.

Ms. LARUE. My response is this. If I go into a restaurant this afternoon, and my meal is unacceptable and I complain, and they tell me, "Well, we will bring you a trash can with your bill"——

Mr. SHIMKUS. Well, no, wait.

Ms. LARUE. [continuing] I wouldn't find that——

Mr. SHIMKUS. That is not the question.

Ms. LARUE. Wait, wait. I wouldn't find that acceptable.

Mr. SHIMKUS. I am on your side.

Ms. LARUE. And——

Mr. SHIMKUS. I have got a good record with you all. I am a——

Ms. LARUE. One more——

Mr. SHIMKUS. I am a religious——

Ms. LARUE. One more.

Mr. SHIMKUS. But you just heard all these people say that the individual consumer can block out a channel if they don't want——

Ms. LARUE. And consumers aren't satisfied with that. That is my point.

Mr. SHIMKUS. Wait, wait, wait. That is not the question. The question is: can the consumer block out the signal on the cable system in their home?

Ms. LARUE. Even if they can, they are not satisfied with that.

Mr. SHIMKUS. The other question, Mr. Chairman, that I would like to ask—I don't have time—is, we are making the assumption that if the—if a la carte goes through, that it is going to be cheaper to receive the channels that you want. That is the assumption that I think I hear. I don't have enough time. Maybe someone else can ask that.

Mr. Chairman, thank you for the time.

Mr. UPTON. Mr. Rush?

Mr. RUSH. Thank you, Mr. Chairman.

I want to ask Mr. Liggins and also Reverend Plummer this question. I am going to be pretty clear here. I am one member of this committee. All right? And when I got on this committee, I got on for the purpose of increasing ownership, telecommunications ownership, for minorities, and also to provide better and more quality, family oriented programming for minorities.

And my question simply is: will a la carte help me or hinder me in this pursuit? You know, and that is my question.

Mr. LIGGINS. I would like to answer that. And the answer is no, and the reason is pretty simple. Hallmark Channel has 62 million homes today. They get paid for those 62 million homes. I have got 4 million homes today. However, if I go to buy programming from a Hollywood studio, or if I go to producers or writers to produce it, they don't distinguish between what they charge Hallmark at 62 million households or TV One at 4 million households.

It costs the same amount of money whether my audience is larger or whether it is smaller. And for us, we launched TV One because African-Americans, basically 13 percent of the U.S. population, has had basically one channel for 25 years, which we thought was a crime.

But they don't just need a second channel. They need a second channel of high quality content that serves a segment of that audience that isn't being served, and for us that is the over 30 African-American audience. And we are going to—we skew the network female.

So the quality level for us has to be such that people will look at this channel as something that is answering a need that they haven't had before. And if the quality level isn't there, then, you know, people will react negatively to it, and we won't achieve diversity of programming, diversity in zone ownership.

And in a la carte, you just—if you got 100 percent of every African-American television household, that is 13.5 million households, that is a losing network, that is a losing network in—for advertisers, that is a losing network if you actually get paid for every last one of those households, unless you are getting paid 30 cents, 50 cents, a dollar. You know, our channel is probably charging, you

know, 10 cents, because the other homes that aren't African-American are subsidizing it.

Mr. RUSH. Reverend Plummer?

Rev. PLUMMER. Yes, I would respectfully disagree with Mr. Liggins' premise. First of all, the African-American population is about 12 percent of the whole country. And yet blacks make up almost a quarter of the whole cable viewership in America. Twenty-three percent I think is the number.

HBO—African-Americans make up 33 percent of the revenue of HBO, $100 million a month African-Americans are paying HBO. And so I think the discussion of a la carte and the whole issue of, if there were, you know, African-American or family friendly or other type of networks that were available to the African-American community, since that is the focus of your question, I am absolutely convinced that there would—they would be channels of choice. They would be channels of choice for that community. And not only African-Americans, I mean, my network is predominantly—it features predominantly African-Americans.

Cox Cable in Baton Rouge gave us analog channel 20 carriage just recently, which is unusual in the cable industry. I think everybody at the table would agree with that, in this day and age, for a new network to come to fruition.

In Baton Rouge, our viewership among whites are even larger than the viewership among blacks. And yet we feature the largest majority of African-Americans on our network. We have become one of the most popular channels in the whole Baton Rouge DMA—the Cox system. And so I am saying that, if provided a choice, I believe that America would choose some of these other networks.

The challenge for us as programmers is to be compelling, to be relevant in our programming, and so I applaud the committee for continuing this discussion. I at least encourage you to continue the discussion, and don't just throw this away, you know, out of pocket.

Mr. RUSH. Mr. Chairman, if I have got a little time left, I just want to switch to Mr. Hooks.

Mr. Hooks, can you explain to me your relationship with the National Cable Television Cooperative? And just as importantly, can you explain how this cooperative negotiates pricing on your behalf?

Mr. HOOKS. That is correct. I am on the board of the National Cable Television Cooperative as well. Yes, smaller operators—probably 99 percent of all smaller operators with small systems—obtain their programming through the co-op. It is a way to consolidate larger numbers, put them together and get better pricing.

But I want to be clear that, as a co-op and being on the board, we are not satisfied on the total universe that we have equal and fair treatment. And I think we have reasonable evidence of that. I just can't divulge that to you, so—but just in response to Mr. Pyne that that is correct, when he mentioned the end arrangement that we just went through, and we are very thankful for that. But I would ask, is he going to step up on the rest of his programming and divulge how that fits with the rest of the larger operators versus us as well.

Mr. UPTON. Mr. Walden?

Mr. WALDEN. Thank you, Mr. Chairman. I want to thank you for scheduling this hearing as well. I find the issues quite fascinating, and I hope we continue to pursue them.

Mr. Hooks, Mr. Pyne I believe referenced the co-op negotiation that you all belong to and engage in. How many members again are in—how many viewers are in that co-op?

Mr. HOOKS. Yes. Let me explain something to you all, so you understand the infrastructure of the co-op. The co-op allows you to pick and choose what you want to buy, so what happens here, we are not as powerful as one company. And the reason we are not is every company has a little bit of different lineup. So we actually represent 14 million customers.

Mr. WALDEN. Fourteen million.

Mr. HOOKS. Yes. But about 6 million of those customers represent buying one or two products from the co-op. So a lot of times the reason we say 8 million, when you take the top 50 channels, typically we are representing about 8 million customers that are probably buying 75—60, 75 percent of all of the top 50 programs.

Mr. WALDEN. All right. And, Mr. Liggins, didn't you say that a network that has 13 million subscribers couldn't exist today? Basically, financially, it would be very hard?

Mr. LIGGINS. A network—unless it has got an enormous license fee. A network that had 13 million subscribers that, you know, had $2.50—provided their programming costs were reasonable—could survive. A network like ours could not, and most startup networks targeted toward——

Mr. WALDEN. Maybe I am mixing apples and oranges, but it seems to me that on one hand we argue that the co-op has great bargaining power with 6 to 8 million viewers, and that you are arguing 13 million viewers isn't enough to sustain a network. So how much bargaining power do you think that co-op really has, then?

Mr. HOOKS. We question it.

Mr. WALDEN. Not enough, from your perspective.

Mr. HOOKS. No. No, sir.

Mr. WALDEN. I am sure Mr. Pyne probably believes he has had his arm twisted off.

Mr. FITZPATRICK. Could I just maybe help on this?

Mr. WALDEN. Yes.

Mr. FITZPATRICK. I think there is a difference between the number of subscribers that the membership systems have within the NCTC versus the number of viewers that are measured for purposes of ratings in advertising dollars. And so someone might have 13 million members, but you might have a rating point of .1.

Mr. WALDEN. Right.

Mr. FITZPATRICK. Do the math. You don't get many ad dollars.

Mr. WALDEN. Right.

Mr. FITZPATRICK. If that is helpful——

Mr. WALDEN. No. I understand they are a little different equation, but, still, if I am the network negotiating this, I am also looking for eyeballs out there, because that is what my advertisers are looking for. Correct, Mr. Pyne? I mean——

Mr. PYNE. That certainly is correct.

Mr. WALDEN. So, I mean, you must—when you negotiate these agreements with others, what—give me a range of the size of companies you reach agreements with in terms of subscribers.

Mr. PYNE. Well, I mean, we pride ourselves in talking with—or negotiating with companies ranging—in fact, in the last retransmission consent round we had a company that was 20 subscribers all the way up to——

Mr. WALDEN. They had a lot of leverage.

Mr. PYNE. [continuing] all the way up to 22 million, which is the current size of Comcast.

Mr. WALDEN. All right.

Mr. PYNE. So we do—we——

Mr. WALDEN. From 20 to 22 million.

Mr. PYNE. Twenty to 22 million.

Mr. FITZPATRICK. But that doesn't necessarily mean you get all of 22 million.

Mr. WALDEN. I understand.

Mr. PYNE. In the total universe, just to—for reference of this, cable and satellite is 91 million homes in the United States.

Mr. WALDEN. All right. Thank you. That helps.

I guess what I hear about back home is I may like ESPN, but I have to buy all of these other things in the tier. And, you know, it looks like ESPN rates are going up, what, 20 percent a year or something. Is viewership keeping up with that?

Mr. PYNE. Well, in terms of the recent—I mean, over the past years, it has been very public. The rate increases with ESPN have been higher. But interestingly, in the last 6 months, the company has worked with various cable operators, and they include Cox Communications, Charter Communications, Cablevision, and the NCTC, in reaching deals which actually will bring the price increases from the 20 percent that you referred to down to the single digits. And that is our effort to ameliorate the rate increases on the long term and work with our cable——

Mr. WALDEN. How——

Mr. PYNE. The ratings of ESPN have never been stronger. In fact——

Mr. WALDEN. Okay.

Mr. PYNE. [continuing] even though we have just entered into these long-term deals with lower license fees, the—I mean, lower increases, the ratings have never been stronger.

Mr. WALDEN. The ratings have never been stronger. Have your ad rates continued to go up or down, or where are they in this mix? Because that has got to be the other part of your financial equation.

Mr. PYNE. Well, that is absolutely correct. I mean, similar to ESPN is—relies, as do many cable programming networks, on a dual revenue stream.

Mr. WALDEN. Right.

Mr. PYNE. But, clearly, we are—I mean, our—obviously, if ratings go up, the ad—advertisers are willing to pay more. But, clearly, that is a market condition, because in a poor ad market or when the economy is not in great shape, that will—you know, that will have an impact.

Mr. WALDEN. Does ESPN, just itself, not with the other—what else gets packaged with ESPN? Let me ask that first. What do you require one of these folks to take if they get ESPN?

Mr. PYNE. ESPN—if a cable customer—if a cable provider only wants ESPN, they just have to take ESPN. There is that option. Now, there are pricing incentives to——

Mr. WALDEN. To take other programs.

Mr. PYNE. [continuing] a broader package. But—and, in fact, in the other—the entertainment side of the Walt Disney Company today, a cable provider can, in fact, take any one of the networks that it chooses and——

Mr. WALDEN. So an a la carte—you basically have a la carte, then?

Mr. PYNE. No, no, no. In doing a deal——

Mr. WALDEN. At the wholesale level?

Mr. PYNE. At the wholesale level, a company can decide to carry ABC Family——

Mr. WALDEN. Right.

Mr. PYNE. [continuing] and not SoapNet or—and, in fact, if you look at the Nielsen numbers, ABC Family is in 88 million homes across the United States. Disney Channel is only in 84 million homes.

Mr. WALDEN. All right. Mr. Hooks, do you want to comment on, from your perspective, how this works?

Mr. HOOKS. One, I am glad to hear ESPN is doing so well now that they lowered their forecasted increases for the next 5 years. So that is interesting. There seems to be some flexibility and improved viewership by doing it.

You know, I mean, we certainly put pressure on ESPN starting about a year ago on their phenomenal increases, and I appreciate the political environment I think for bringing attention to it. And I appreciate ESPN for addressing it and reanalyzing their business plan and adjusting it accordingly.

But I still stand strong. I mean, the big five have a lot of programs they own. And you have heard some of the niche programming, the way they are getting on is getting through big companies. And I still want to point out that we are trying to provide the most product we can to our consumer, and that typically runs you down the road of falling into the package process. So we don't have much—go ahead. I am sorry.

Mr. WALDEN. I am going to have to cut you off.

Reverend Plummer, I just have one quick question for you. You said Comcast had tried to get an equity interest in your company, and you declined. Have any of the other operators tried to do the same thing?

Rev. PLUMMER. No, I haven't had that discussion. Interesting, what I discovered during those whole discussion periods, which even included this year, I was told—first of all, kind of the platform is that each one of these major cable operators do not compete against each other in the various markets. And so they are really not direct competitors.

And what I was told is that, you know, once there is a relationship with one of the major cable operators that the other cable operators would pretty much fall in line and begin to give carriage.

Now, Mr. Liggins could probably speak more to whether or not that is factual or not, but, you know, what I was told was that once there is an equity relationship with one of the major MSOs, that at that point you are on a different scale and a different level, and your discussions and negotiations with the others are a whole lot easier, and you are a whole lot different.

Mr. WALDEN. I would love to ask Mr. Liggins, but I am out of time.

Mr. UPTON. Mr. Gonzalez?

Mr. GONZALEZ. Thank you very much, Mr. Chairman.

When we started off the discussion, there were some observations, and we always use comparison and analogies. And as we go through this, because I think it is really going to be a matter of philosophies and the proper role of Congress, we talk about regulation, the cable industry, free enterprise, level playing fields, market forces, the reality is we have a whole lot to say where that all goes, and whether there really is a level playing field, whether there is really going to be competition.

We have had people allude to Penn State Football basically subsidizing swimming and everything else. Those big football programs and everything weren't subsidizing boxing, swimming, and everything else. It was women's sports as a result of Title IX, as a result of regulation, as a result of legislation, that recognize the unequal treatment of women in that particular environment.

And then it was because of that regulation, its application, interpretation by the courts, and mandates that resulted in all of that—now, I am not saying that is where we are all heading in this thing. But eventually we will if we don't resolve some of the problems.

We all agree that there is something wrong with the system. The patient is ill. Someone started with let us go ahead with the old axiom in the medical profession, "First, do no harm." The problem with that is, if we are the physicians, we can also do some other things that the medical profession often does. We have found the cure. Unfortunately, it will kill you, and that is what we really need to avoid.

And I sense that—we all say we are going to keep an open mind. My concern is, all right, let us fix the system. Let us make it a more fair system. Let us give consumers choices and such. But at what cost? And my question to all of you all—and it is a simple one—I have three—I will have about 3 minutes that you all can use.

Whatever system we replace what we presently have—and I understand that where you have minority programming, startup programming, new programming, even the system we have that opens the door to that opportunity is not a good one, because the big players all end up owning a big share of it. I am not so sure that is fair. And then, maybe that is the cost of entry, and maybe we can improve on that.

But whatever the substitute is, how does it promote and how does it accommodate new programming? Am I coming strictly from a minority standpoint? You know, Congressman Rush pointed out some real concerns that we share because of the communities that

we represent, because if you put our two communities together here in the United States, it is substantial.

So all I—my simple question to you is: your proposals, does it really promote, accommodate, and make things a lot easier when we are talking about this type of programming that I referred to? And we can start with Mr. Kimmelman.

Mr. KIMMELMAN. I don't think there is any guarantees, Mr. Gonzalez, but I think that when the Reverend Plummer says that there is programming out there, there is audience there, it is not a number—how many people there are just in a population, 13 million African-Americans, it is how many will actually take it. And if 13 million people—if half of 13 million people actually took something, it would be one of the most viewed networks in America.

The door is closed today in the curtain system. You have got to blow it open. A la carte is one way. Changing the mind-set of the advertising community, changing the mind-set of consumers that you could actually pick what you wanted, may create that opening an opportunity for new programmers, diverse sources from diverse communities.

Mr. GONZALEZ. Mr. Liggins?

Mr. LIGGINS. I think that in order to facilitate more new niche programming that it—and for it to be successful, that niche programming has to be offered to the widest possible audience. If I had all 13.5 million African-American households, they are not just going to watch TV One. They are still going to watch ESPN. They are still going to watch Lifetime.

And if I am going to be successful, I also need the non-African-American viewers or households that might tune in to my channel. Probably about 20 to 40 percent of our audience is going to be non-African-American, and that contributes also to the success of the network. And so, therefore, what you can do, what the system can do, is continue to put, you know, pressure on us programmers to provide the programming, distributors to carry it, and make it widely available to people.

Mr. GONZALEZ. Mr. Hooks?

Mr. HOOKS. Yes. Generally, in the rural markets, the biggest problem we still have—and I want to keep emphasizing it—is retransmission and tying programming through the big five. And, consequently, I do not have much shelf space, and I can't always make the best decision because I, nor my customer, have control, really, for what is being delivered to their home.

And, frankly, if I had more control, I wouldn't bundle all of the services I have. I would make available more room that then could open up slots for me to add specialty programming. And in my particular case, I really need to add Spanish programming. I have got a shortage of it. I am booked up with the big five, and it is hard to take things away from the consumer, as you can imagine, that they have already got. And so I just have very little flexibility, and I think it all comes back to retransmission and the tying of programming that they put on us.

Mr. GONZALEZ. And we will continue until the chairman tells me we have run out of time, which I know that we have.

Thank you. I appreciate it. I would like to follow up at a later date one on one on your responses.

Thank you, Mr. Chairman.

Rev. PLUMMER. Mr. Chairman, I know the time is out, but if I may just briefly respond to the point. The cable industry's own CABLE World magazine, in the current issue right now, really affirms the benefits of—it is a whole article about Hispanics and Latino networks that they have bundled, and so this is something that they have voluntarily done. It has not been by regulation.

My request would be, to Mr. Baxter and others, give us a chance. Just give us a chance, just like you are doing with the Hispanic networks. And so regulation wouldn't have to be necessary. Just give us the opportunity is all we are asking.

Mr. UPTON. Mr. Bass?

Mr. BASS. Thank you, Mr. Chairman. I am going to spend 2 minutes questioning, and I am going to yield 3 minutes to Mr. Deal. So I don't want people to go on long.

Mr. Kimmelman—I am going to cut you off. Mr. Kimmelman, can you respond to Mr. FitzPatrick's contention from his testimony that advertising supporting networks such as Hallmark Channel depend on broad and highly penetrated distribution. A la carte distribution would have stifled Hallmark Channel's growth and reversed its successes, and government mandated a la carte distribution, or mini tiers, will increase cost to consumers and decrease diversity.

Mr. KIMMELMAN. I respectfully disagree, because we are talking about a la carte in conjunction with other tiers that are available. So his Hallmark Channel could still be carried on tiers, and some people might want to buy it individually. And distribution is step one. You have to have eyeballs, he said it himself before. And when people watch, whether it is on a la carte or on a tier, advertisers will support it.

Mr. BASS. Mr. Pyne, in your testimony, you note that the retransmission consent economic analysis concluded that your a la carte pricing for retransmission consent carriage of the ABC signal was found to be, in your own words, "reasonable" and within the bounds of the fair market value. If that is indeed the case and your ABC product is fairly priced and widely desired by consumers, why are you so concerned about offering consumers greater freedom in selecting their programs amongst your other products? Forty seconds.

Mr. PYNE. Well, I think as I have stated—if I just may clarify that ABC always makes a stand-alone cash offer. So there is no obligation to have any other programming that we make available. In terms of the other question, as I think I pointed out, I mean, we make available each of the programs to the cable providers on an individual basis to decide. In other words, if someone—and we have one provider out there who only carries ABC Family and SoapNet, and there is nothing that—I mean, that—we allow that to happen.

Clearly, we believe our programming has tremendous value. Certainly, Disney Channel is one of the highest-rated networks out there, and we work very hard to make——

Mr. BASS. So you are saying that stations—that the customers can select from any of your other products?

Mr. PYNE. The cable providers, in terms of the commercial negotiation, can make that determination.

Mr. BASS. I see.

Mr. PYNE. Our goal is certainly to get the broadest distribution possible.

Mr. BASS. Mr. Deal?

Mr. DEAL. Thank you for yielding.

Mr. Chairman, I would, first of all, like to ask unanimous consent to insert in the record a variety of letters and reports, some of which have been referred to by Mr. Markey, some by other members of the committee, and I have them here in a package. I won't try to enumerate them right now.

Mr. UPTON. Without objection.

July 13, 2004

The Honorable Nathan Deal
House of Representatives
Washington, DC 20515

Dear Representative Deal:

I want to applaud you and the other members of the Committee on Energy and Commerce for your leadership in addressing the growing problem of indecent and obscene material on television. I am writing to ask you and the other members of the Committee to urge the cable industry to offer consumers cable subscriptions à la carte. Let consumers choose the channels they want, and pay only for those channels they desire. It is summarily wrong for cable providers to force consumers to pay for a product they not only don't *want*, but which they find morally offensive or even harmful to their children. The cable operators and the cable networks have been carried on the backs of the American public long enough.

As you know, decency standards on television are rapidly deteriorating. Last year the Parents Television Council released a series of studies about the State of the Television Industry on broadcast networks. Those studies showed that sex, foul language, and violence on television are more explicit and more pervasive than ever before. But as bad as broadcast TV has gotten, it's nothing compared with what children consume day and night on basic cable.

Offensive content was more than twice as frequent on original cable programming as on broadcast TV, according to the PTC's last study of basic cable. If we ever hope to address the problem of indecency on broadcast television, we must address indecency on cable as well.

Basic cable has become a kind of Pandora's box for families. Many parents welcome basic cable into their homes because it opens up a whole universe of family-friendly programming. There's the Disney channel, Nickelodeon, ABC Family Channel, the Discovery Channel, and more. But to access these educational and family-friendly networks, they are also forced to pay for channels they don't want and that actually make their job

as a parent much more difficult. Now, in addition to trying to protect their children from the filth on Fox, NBC, UPN, and the other broadcast networks, they also have to try to protect their children from the much more explicit fare on MTV, FX, Comedy Central, and the like.

The cable industry argues that parents have the option of blocking channels they don't want – but what kind of a choice is that, when they still have to pay for those channels? It is wrong to put the burden of blocking those offensive networks on the consumer.

Consumers need to have a better option.

The cable industry knows that there is a strong movement afoot either to give the FCC the authority to regulate content on basic cable, or to give subscribers the option of family-friendly cable tiers or à la carte cable packaging, which would allow consumers to pay for only those channels they actually want. In response to this movement, the cable industry announced that it would provide free equipment to subscribers so they can block unwanted channels.

Why did it take so much public and congressional pressure for the industry to provide this solution? The answer is simple: their monopolistic leverage has provided them immunity from being held accountable. Obviously the cable industry has had the technology and wherewithal to provide consumers the ability to block cable channels they deemed unfit for their children for quite sometime. But instead the industry withheld this technology and even *charged consumers* for its use in an effort to line its pockets without any regard for what was truly best for their customers. The announcement was at best an empty gesture meant to appease angry consumers and lawmakers, and it shows the industry's desperation to maintain the status quo.

Still, we are heartened by the fact that the cable industry is at least willing to acknowledge that a problem exists, and we are heartened that they have proposed a solution. But it is not the right solution because consumers are still paying for those blocked networks.

Why should parents have to subsidize cable channels that undermine their core values and beliefs? Why should a parent who wants their child to benefit from educational programming on the Disney Channel or the Discovery network also have to pay for offensive material like the following, from MTV's *Real World: San Diego*:

> Cameran: "Brad's gonna have to be whacking it the whole time he's here."
> Brad: "Why me?"
> Robin: "Because you've had sex with somebody for five years, constantly on a base, haven't you?"
> Brad: "Yeah."
> Cameran: "This'll be the longest you've gone."
> Robin: "This will be the longest you've gone without sex for 5 years."
> Brad: "Oh, damn."

Robin: "Speaking of masturbation..."
Cameran: "I have my vibrator."

Or stomach-turning jokes about pedophilia, as in the following example from Comedy Central's *South Park:*

TV anchor: "Do you actually believe in heaven?"
Man: "If heaven is an 8-year-old boy, and the ladder is my penis."

Consider this 2004 episode of *FX's The Shield*, a program that airs at 7:00 p.m. on satellite:

> Police Captain David Aceveda has been tied up by a gang member and his friend who, earlier in the episode, were forced to smoke from a bong pipe by one of Aceveda's men, Detective Vic Mackey.
> **Gang member:** You ever suck a dick like a cell bitch, cop man? Huh?"
> The gang member unbuckles his belt and unzips his pants.
> **Gang member:** "It's your turn to gag on something, huh?"
> The gang member holds the barrel of the gun to Aceveda's mouth.
> **Gang member:** "Open up, sweetheart."
> **Gang member:** "Let's see that mouth."
> The gang member's pants appear loose and falling off his waist. Aceveda is on his knees on the ground in front of him, performing forced fellatio. The gang member holds the gun on Aceveda and can be heard making slight grunting noises. Most of Aceveda's head is blocked by a sofa, but a portion of it is visible as the gang member puts one hand on the back of Aceveda's head and moves it back and forth.
> **Gang member:** "Put your groove into it. Suck it!"
> We can see Aceveda from behind as he pulls his head away, coughs, spits and gags.
> **Gang member, laughing:** "A little bigger than you're used to?"
> With his gun on Aceveda's jaw, he directs Aceveda's head back to his penis.
> **Gang member:** "Mmmm...Yeah, just like that."
> Again, his hand is on Aceveda's head, rhythmically directing it back and forth.
> **Gang member, to his friend who is watching the encounter:** "Your phone! I want to get a Kodak of this." To Aceveda, "Yeah, that's the way." He licks his lips, "Mmm. Okay. You ready?"
> The gang member's friend points his camera at the two of them and takes a picture. The gang member yells in triumph as the forced fellatio by Police Captain Aceveda is recorded for "posterity."

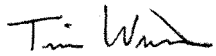
And it's not just that an outraged public is paying for something it doesn't want, it is also – indirectly – footing the bill for offensive material on the public airwaves. In essence, Americans are paying Infinity Radio's broadcast indecency fines through forced subscription fees that are paid back to Viacom's equally-foul cable networks.

Offering parents the ability to choose the channels they want, and to pay only for those channels, puts power back in the hands of the consumer – of parents – and forces the producers of indecent or violent programming to fund their own raunch. Parents are not forced to purchase beer and cigarettes in order to buy milk and eggs, nor should they be forced to pay for objectionable programming in order to receive the Disney channel.

There is no doubt that the industry will vehemently oppose any efforts to change, and you can expect to be inundated with their lobbying efforts. They will assert economic disaster to the industry, technical infeasibility and constitutional violations. But these allegations are false. A PTC review of the economic and technical issues concluded that both assertions are wholly without merit; and we rely on your Committee to draft legislation capable of withstanding constitutional scrutiny.

Cable is now in nearly as many homes as broadcast TV. We can no longer afford to ignore the rising tide of vulgar and violent programming on cable. It is my sincere hope that you and the other members of the Committee on Energy and Commerce will move swiftly to address this problem. It is time to stop the cable industries extortion.

Sincerely,



Tim Winter
Executive Director
Parents Television Council

CC: Committee on Energy and Commerce Members

Attachments:
Parents Television Council Cable Study: *Wired for Raunch.*
http://www.parentstv.org/PTC/publications/reports/cablestudy/main.asp
Parents Television Council Position Paper: *Broadcast Indecency and Cable/Satellite Television*

July 12, 2004

SUMMARY -
RESPONSE OF THE AMERICA CHANNEL
TO PROPOSED A LA CARTE LEGISLATION

The America Channel is an independent, family-friendly, non-fiction network that will tell the ever-unfolding stories of communities, campuses, local heroes and ordinary people throughout the country that help to form the complex tapestry of America and make it great. The America Channel plans an early 2005 launch. For more information on The America Channel, please feel free to visit www.americachannel.us.

The following is excerpted from The America Channel's upcoming response to the FCC's Public Notice on A La Carte (In the Matter of A La Carte and Themed Tier Programming and Pricing Options for Programming Distribution on Cable Television and Direct Broadcast Satellite Systems, MB Docket No. 04-207), and summarizes The America Channel's position on proposed legislation with respect to a la carte.

A la carte attempts to correct significant problems in the television industry, most notably: (a) rising costs to the consumer and payment for networks not wanted by the consumer; and (b) the quality, nature and appropriateness of content that is allowed into our family rooms and the corollary lack of consumer control.

A la carte as currently proposed without modification would render it impossible for The America Channel to secure institutional funding and launch. Having stated that, there are measures which if adopted (with or without a la carte), would provide enormous benefit to the consumer without the side effects of an unmodified a la carte. These suggested measures are:

1. Grace Period of Broad Distribution, Prior to A La Carte

Existing networks have in some cases had the benefit of being in widely distributed packages for up to 25 years. This has enabled them to market their products to the largest number of consumers and form longstanding relationships with those consumers. In a la carte, this history of broad based distribution enjoyed by an established network will result in a significant competitive advantage against a new, independent network with no history on air, since the consumer is not yet familiar with the new network. The consumer is unlikely to select the new network in a la carte, since the consumer is not yet familiar with the new network, and instead will select the legacy network.

In order for the new network to have a fighting chance against the legacy network and have a sustainable model in an a la carte world, it must be given a fair chance to develop familiarity and a relationship with the consumer. Therefore, prior to a la carte, a grace period of five years of widespread distribution on each distribution platform would be necessary, to level the playing field and allow a new network to fairly compete with legacy networks that have been widely distributed in packages, in some cases for decades.

120 INTERNATIONAL PARKWAY, SUITE 220 HEATHROW, FL 32746 P: 407.333.3031 WWW.AMERICACHANNEL.US

2. Free Tier of Widely-Distributed Networks

We support the establishment of a tier of networks that do not charge any fees to distributors, in exchange for securing distribution to a substantial majority of all subscribers. Good products with sound economic models will succeed from advertising dollars alone when they are fully distributed. Within the Free Tier, a process of natural selection occurs where only networks that get ratings commensurate with their cost structure survive – a simple and efficient model. Under this "Free Distribution" model, it is not inconceivable that the consumer would ultimately be availed a suite of 30 or more high-quality ad-supported networks, for no fee other than a nominal administrative charge by the cable company. Indeed, one day, consumers might decide that the Free Tier is all they need -- and that they don't want a la carte channels, for which they have to pay.

A network that is in 75+ million homes and still requires operator license fees to subsidize its business does not have an efficient business model. If free networks are provided carriage and the ability to compete for audience, expensive competitor networks seeking payment in an a la carte world would be forced to lower their rates. The competitive forces would result in more efficient networks that rely on advertising dollars alone, pressure on existing networks to streamline their businesses and become more efficient, and lower fees charged by legacy networks – thus lowering cost to the consumer. Over time, the Free Distribution model, when combined with Delete Rights (see #3 below), would result in a cottage industry where newer and cheaper high-quality networks replace expensive, unpopular legacy nets, passing the cost savings to the consumer. The Free Distribution model could result in a dramatically lower cable bill for the consumer – and have significant positive impact on the industry.

3. Universal, Non-Discriminatory Delete Rights

Several large cable operators are requiring independent networks to accept 30-day delete rights as part of carriage deals. Delete rights are rights of a cable operator to "delete" or drop the independent network and terminate all distribution -- at any time, for any reason. Based on information and belief, networks owned by content conglomerates, and networks owned by cable operators, are not subject to delete rights, and frequently lock in distribution for periods of up to 15 years, even if ratings are abysmal or the content inappropriate. We believe this highly discriminatory and coercive practice is used exclusively against independent networks.

We also believe that the consumer will favor The America Channel over many channels, particularly bundled networks of conglomerates that have marginal value to consumers. We therefore propose that the cable and DBS operators have the right to delete *any* network, or any network that is not generating ratings – and not just independents. If a network is confident in the value of its product, delete rights based on ratings should not be objectionable. This will create more opportunity for deserving, high-quality independent networks, by freeing capacity vacated by underperforming conglomerate-owned bundled networks that secured distribution because of the leverage and strength of their owners (and not their appeal to the consumer). (If preferred, an appropriate criterion other than ratings could be used for deletion – but it must be applied in a nondiscriminatory manner to conglomerate-owned, operator-owned, and independently-owned networks alike.)

Delete rights were created by the cable operators and are used in carriage agreements with independent networks. If applied universally and fairly, they would be good for the consumer.

120 INTERNATIONAL PARKWAY, SUITE 220 HEATHROW, FL 32746 P: 407.333.3031 WWW.AMERICACHANNEL.US

The public has an interest in a check and balance against bundling of unwanted channels that don't add value, don't generate ratings, and increase cost.

4. Prohibition on Bundling

To enable high-quality independent networks to compete in any scenario, including a la carte and Free Distribution, an independent network first has to secure master carriage agreements with the major cable operators. The practice by content conglomerates, of bundling of networks with marginal value, results in reduction of available capacity. This diminished capacity prevents high-quality independent networks from securing carriage agreements. We therefore request a prohibition on bundling, so that all networks are required to compete fairly for the capacity based on their individual merits.

Thank you for your consideration of these matters.

Sincerely,

Doron Gorshein
President and CEO
The America Channel, LLC
120 International Parkway, Suite 220
Heathrow, Florida 32746
tel: 407-333-3031
fax: 801-838-4226
email: doron.gorshein@americachannel.us
web: www.americachannel.us

The Townsend Group
3001 Pleasantree Court
Herndon, VA 20171
703-476-4427
RTown3001@aol.com

July 13, 2004

Congressman Fred Upton
Chairman
House Energy and Commerce Committee,
Subcommittee on Telecommunications
2125 Rayburn House Office Building
Washington, DC 20515

Congressman Edward Markey
Ranking Member
House Energy and Commerce Committee,
Subcommittee on Telecommunications
2125 Rayburn House Office Building
Washington, DC 20515

Re: Telecommunications Subcommittee Hearing on Competition and Consumer Choice in the MVPD marketplace.

Dear Congressmen:

As Congress begins its process of gathering information on various proposals and aspects to enhance consumer choice and minority participation, I want as an African American to offer my experiences as a resource. Although I am not prepared to endorse any particular business model in consumer choice enhancement and minority participation, I am comfortable in lending my voice to efforts to improve upon the current cable and satellite market that makes it all but impossible for minority programmers to access distribution despite the compelling business and economic reasons to do so.

I have been in the cable television business for over 20 years after spending 10 years at Johnson & Johnson where I was a group product director managing such brands as Reach Toothbrush, Shower-to-Shower, Johnson's Dental Floss, among others. When I left J&J I joined The New York Times Company as vice president of sales, marketing and programming of NYT Cable TV; at the time one of the most technically advanced MSO's in the country. When the cable operation was sold to Bruce Llewellyn/Comcast using a "tax certificate", I joined Home Shopping Network (HSN) as a senior vice president of business development where among other things I was responsible for gaining cable distribution and other deal making. I was recruited away from HSN to Bell Atlantic where I worked on their video-on-demand (VOD) initiatives and ultimately served as president of their video operations. When Bell Atlantic merged with NYNEX, now Verizon, I partnered with another African American with DBS experience and Quincy

Jones to develop a cable channel for the urban marketplace. That was 1996 and represents a classic case history of the barriers that confront a new independent business in the cable television industry.

The company had a number of successes but ultimately failed due to insufficient capital, cable and DBS distribution. In March 2000, we were able to secure first round financing of $25 million in cash and in-kind services; we needed an additional $175 million to take our business plan to Cashflow breakeven. We had assembled a stellar group of private equity investors and a skilled management team. There was a well-thought out business plan that everyone who reviewed it believed it would work if we could deliver the distribution and raise the capital to acquire and develop quality programming. We had agreements with Reuters, Sony Studios and Warner Brothers to provide the core programming we needed and was negotiating with a number of independent producers to develop original show ideas. We negotiated carriage agreements with AT&T Broadband (now Comcast), Time Warner Cable, Cox Communications and the National Cable Television Consortium (NCTC); these are generally referred to as "hunting licenses" because there are no definitive subscriber commitments or guarantees.

We built a company of almost 70 people in 90 days and launched the service, New Urban Entertainment Television, NUE-TV, in the summer of 2000. We went into the equity markets in September 2000 to raise another $75 million as a second round—real bad timing because the dot com bubble had burst and the investment markets had dried up. Complicating the matter, we couldn't get institutional nor private equity funds to invest in our business because we lacked definitive distribution commitments and our inability to negotiate any reasonable agreement with Comcast (they wanted 10 years of free service). This included funds like Quetzal/Chase that was setup by the industry to invest in minority media enterprises. Using CS/First Boston as our financial advisor, we must have contacted 100-120 VC's and other funds and made presentations to at least 20 of them. These included funds that were setup to invest in minority enterprises such as the Goldman/Sachs Minority Fund and Quadrangle, a private equity fund composed primarily of cable industry executives for investments in media businesses.

In April 2001, we completely ran out of money. NUE-TV went "dark" at the end of 2002 and into bankruptcy thereafter.

I have an extensive background and understanding of how technology relates to content, distribution and marketing. I have been involved from the beginning in the evolutionary shift from analog to digital technology and have first hand knowledge of digital convergence, the Internet, VOD, min-pay premium services, pay-per-view and interactive television. In this new world of increased bandwidth (more channels) and fragmented audiences, minority programmers should not confine themselves to any one business model as defined by the old analog world. A place in this new digital world must be made for minority players and new business models embraced. I advise several minority content companies and I know there are business models out there that are viable and are looking to be born or are struggling for survival.

Bad timing or not, NUE-TV failed to succeed because we could not raise the necessary capital or demonstrate definitive carriage commitments. What a minority company needs to succeed is direct support from the cable industry in the form of distribution, investment and revenue support (paying for content). As the Subcommittee continues to deliberate on these issues, I urge Members to learn from our story and to ensure that whatever system is put in place enables minority ventures to have access to consumers and that consumers have access to them.

Robert L. Townsend
The Townsend Group

July 12, 2004

The Honorable Nathan Deal
United States House of Representatives
2437 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative Deal:

On behalf of EchoStar Satellite L.L.C., I am pleased to voice our support for your efforts to allow families to choose the channels they want to receive via cable and satellite services. EchoStar has been a leader in the satellite TV industry for more than 20 years and is the parent company of DISH Network, which has more than ten million subscribers nationwide. EchoStar has continually searched for ways to bring greater and more innovative programming choices to television viewers, at competitive prices. For example, DISH Network currently offers the lowest all-digital TV price in America, and EchoStar is working hard to make digital broadcast television available to more and more Americans.

EchoStar's support of a la carte and themed tier programming is in keeping with this long-standing commitment to giving consumers greater choice and a good value. As you have correctly observed, the restrictions programming vendors impose on video distributors like EchoStar ultimately make it more difficult and costly to simply offer consumers the channels they wish to view, which forces many consumers to underwrite programming they find objectionable or undesirable.

We strongly believe that a la carte offers to the consumer are hampered by the increasingly prevalent practice of forced bundling through the use of retransmission consent: A media conglomerate which owns one of the four networks and cable programming will leverage must-have broadcast or cable networks to force the distributor to buy unpopular programming. EchoStar seldom obtains the most popular channels at favorable rates, if at all, unless it also agrees to buy a multiplicity of other programming networks offered by the same media conglomerate. Thus, in order to obtain the programming consumers really want at prices that will be affordable for its subscribers, EchoStar must purchase the package offered by the programming vendor. The end result? A subsidy from consumers to huge programming conglomerates for programs that they do not care to watch.

Where viewers find these unwanted channels offensive, they can indeed request their cable or satellite provider to block the channels. But consumers are still paying for these channels in a sense because they come in the "package" along with the desirable channels, which in turn forms part of the programming package provided by EchoStar. In this situation,

consumers are essentially subsidizing the very programming they have banned from their television screens.

There appears to be little chance that channels will be offered a la carte at fair prices outside of a mandate requiring programming vendors to do so. Programmers have every incentive, and the leverage, to force all of their programming on video distributors and consumers, regardless of whether consumers want it; programmers have no incentive to give consumers a choice at a decent price.

Mandated a la carte requirements may not be the answer. Instead, the Federal Communications Commission should enforce laws already on the books (*i.e.* the requirement to negotiate retransmission agreements in good faith) that prohibit much of the tying conduct that occurs today. In addition to stepping up enforcement, Congress and the Commission should also create incentives to encourage voluntary a la carte offerings. In this way, the Commission can strike at the market power that is at the heart of the market distortions that make a la carte an impossibility, while affording vendors and distributors the flexibility to craft package deals where they make economic sense and offer consumers the best value.

By providing a mechanism for video distributors, and therefore, consumers, to purchase channels a la carte at reasonable prices, will put consumers back in the driver's seat. Consumers that do not wish to purchase channels they find offensive will not be effectively forced to do so by programmers' tying arrangements. Instead, every consumer will be able to purchase, and support, the channels they want to support.

Sincerely,

Charlie Ergen

The following Term Sheet reflects the terms of the arrangement by which COMPANY will receive Retransmission Consent for the CBS and UPN Analog and Digital signals through December 31, 2006:

1. COMPANY agrees to comply with all terms, conditions, and obligations of the NCTC Agreement.

2. In addition to the requirements of the NCTC Agreement, COMPANY agrees to launch the following services on analog by August 1, 2004 to the most widely distributed level of service above limited basic and to maintain such carriage of such service through and including December 31, 2009.

   a. Nicktoons to approximately 197K subscribers across the entire COMPANY MSO
   b. TV Land to approximately 12K subscribers in the ******* systems
   c. CMT to approximately 6K subscribers in the ******** systems

3. COMPANY agrees to pay an incremental license fee for the carriage of Nicktoons on analog. The rates are as follows:

2004	2005	2006	2007	2008	2009
$.064	$070	$.077	$.085	$.093	$.102

   License fees with be paid directly to MTV Networks on a monthly basis.

4. License fees for TV Land and CMT will be paid under the terms of the NCTC Agreement.

5. Additionally, COMPANY agrees to launch LOGO on digital basic in the ******* and ******* systems to approximately 16K subscribers by February 15, 2005 and to maintain such carriage of such service through and including December 31, 2009.

6. COMPANY agrees to pay an incremental license fee for the carriage of LOGO on digital basic. The rates are as follows:

2005	2006	2007	2008	2009
$.10	$.11	$.121	$.133	$.146

   License fees with be paid directly to MTV Networks on a monthly basis.

7. COMPANY agrees to enter into the standard CBS long from retransmission agreement which will include but not be limited to things such as high definition, multicasting and signal fixes.

Copyright 2004 Sentinel Communications Co.
Orlando Sentinel (Florida)

July 14, 2004 Wednesday
FINAL

CABLE CHOICE: THERE'S A CHANGE IN THE AIRWAVES
Evan Weiner, Special to the Sentinel

It has been a good year so far for the cable-television industry. In May, cable operators, sports franchises and cable-news networks along with other cable-channel owners got a huge victory in Congress when Rep. Nathan Deal, R-Ga., conceded he did not have the support from fellow House and Senate members to introduce legislation that would have called for the re-regulation of cable television and given cable customers a choice in what channels they wanted to purchase instead of being forced to buy "bundled" channels.

But the victory may be short-lived, and ultimately there could be some good news for cable-TV subscribers and bad news for sports franchises, cable operators and cable-news networks. On Nov. 18, the Federal Communications Commission will hand in its report to the House Energy and Commerce Committee on cable-television pricing. Already, one of the FCC commissioners, Democrat Michael Copps, is indicating that he may be ready to give cable subscribers a choice.

"It obviously sounds attractive. It gives consumers options. That's always something we ought to be looking at," Copps recently said. "Obviously, consumers don't like to pay for something they don't watch or don't really want."

Should the FCC recommend that cable TV be made available on a per-channel basis to consumers and Congress implements changes, cable subscribers would reap the financial benefits and cable operators, sports and the cable-TV-news industry would be greatly affected. Consumers would pay only for what they want to purchase and not subsidize channels they don't want. Major League sports lives off cable TV money, and teams such as the New York Yankees and the Boston Red Sox have formed cable networks to maximize their cable-TV dollars. Cable TV has created the great money divide between the Yankees and Red Sox and the Tampa Bay Devil Rays and the Florida Marlins.

The Concerned Women for America, along with the Parents Television Council, the Consumers Union and the Consumer Federation of America, petitioned Congress, asking for pro-choice when it comes to cable-television options and threw its weight behind the Video Programming Choice and Decency Act of 2004, which would give all cable subscribers the right to pick and choose what programming they want.

The bill would allow customers to pick what they want instead of having the cable company decide what is best for consumers. Cable operators and networks are dead-set against any kind of cable re-regulation, claiming that some networks would have to charge subscribers more money for their favorite channel and that other channels, which are bundled into one large cable-price group,

would cease to exist because there just aren't enough people watching their programming. According to this view, it's far better to have cable-TV socialism than cable-TV capitalism.

Virtually every one of cable's 76.7 million subscribers get ESPN, but if ESPN were offered on an a la carte menu, just how many people would take the service? Maybe a tenth? Maybe less? It's an answer that the Walt Disney Co. would prefer not to know. How many people would pay a premium for the Fox News Channel, CNN or MSNBC? How many would want the Travel Channel or The Weather Channel? Or the Cartoon Network? It is a question that no one in the cable industry wants answered.

"Basic cable" subscribers are footing the bill for every channel without having any idea that they are paying ESPN $2.61 monthly or CNN about a quarter a month, to name two networks. Bills aren't itemized, and consumers who want "basic" have to take what the cable operator gives them without choice. Cable TV should become like PBS and provide programming that appeals to consumers and get those customers to want to pay monthly programming costs.

The CWA wanted control over what it considers cable-TV indecencies. And by accident, it could have changed how Major-League and big-time college sports along with every other "basic" cable channel is financed in this country. That must have been a chilling thought in cable, news and sports executive boardrooms across the country. But cable-industry executives shouldn't be worrying yet. Congress just doesn't have any appetite to change the way Americans get their cable TV.

Evan Weiner is a commentator on "The Business of Sports" for Westwood One's Metro Networks. He wrote this commentary for the Orlando Sentinel.

CableFAX CableWORLD

Mano a Mano! Cable Takes the Ethnic Fight to the Skies

DBS still has an advantage with ethnic subscribers. But by emphasizing VOD and bundled services, cable is ready to make inroads.

By Simon Applebaum

Cesar Cruz likes to talk. The more you hear Cox's multicultural marketing director on the phone, the more passion erupts off the hook. He is especially loquacious when opining about growing an audience of Latino, Asian and Russian customers for Cox.

The only way to shut Cruz up is to ask him where—exactly—one of Cox's Spanish-language digital network tiers has been able to arrest satellite penetration among Latinos.

"It's too early for us to answer," he says. "Ask me that same question a year or 18 months from now, and we'll make a significant dent with DBS in all our markets with Hispanic product."

Cruz is not alone in this quest. The problem of attracting ethnic subscribers has bedeviled the cable industry for as long as EchoStar and DirecTV have offered specific ethnic programming tiers. Other cable operators have hired people like Cruz to develop campaigns to take the video high ground among ethnic households—the exclusive domain of DBS until 18 months ago.

By all accounts, cable is making inroads. The problem is that MSOs don't have the numbers to back up this claim—or at least they aren't making those numbers public. MSO and satellite companies keep such statistics internal. In the last year, some operators have imposed a policy not to release national or local system statistics for digital, high-speed and other advanced services.

MSO executives acknowledge the head start DBS has had in ethnic markets and are open when talking about satellite's perceived advantage, with its digitized national footprint giving it the bandwidth to rush in with a large programming supply.

"They could launch a Russian channel and every Russian could have the ability to take it," says David Jensen, Comcast's VP of international programming. "We can put on a Russian channel in Boston and Philadelphia, where you have a sizable audience for that, but not in Sacramento, because the demographic was

just too small and didn't make sense to devote precious bandwidth for that."

Satellite providers also scored with their early marketing strategies. With research documenting that Latino citizens do the majority of their shopping five miles or less from home, satellite dealerships fanned out to local groceries, consumer electronics stores and eateries to make their pitch.

"They were in those Radio Shacks and retailers within those five-mile radiuses, working directly through the neighborhood and building trust," says Robert Daleo, regional director for Adelphia's systems in Los Angeles and other parts of Southern California.

What Should Cable Do?

The good news for operators is that capacity isn't an issue anymore, now that systems are deploying digital services. That means cable executives should put more time and effort into programming the channels and marketing the ethnic services, Cruz says.

"It's all about the product," he says. "You must see what's available out there from programmers and whether it's culturally relevant to the audience. Then you have to put a package of marketing or promotion avenues together and market in a mass way. DBS did the legwork, but it all started with a respected product."

In some ways, cable should treat ethnic marketing the same way it handles the marketing of other video services. That means touting their biggest advantages over DBS: VOD and bundling.

When a VOD system introduces ethnic content, operators should be able to follow through with a traditional bundle of high-speed, telephone and other advanced services. At that point cable will usurp satellite from its special audience perch for good, Jensen predicts.

"Take that same Russian channel I talked about earlier, take a core four or six hours of programming from there and distribute it nationwide on your VOD platform. Refresh it daily or every few days. We will not only compete better with DBS, but we have a much more powerful platform for the public," he says.

Beyond VOD, operators also should emphasize their voice/video/data bundles as a hook to leapfrog DBS in ethnic consumer choice. "We have to take that approach and not assume that these households will be late adopters of telecommunications. That's a lot of rubbish," Jensen says. "You can't leave anybody out."

A few weeks ago, Cruz and Cox hired Cultura Advertising out of Dallas to drum up a Latino bundle awareness campaign involving TV, print, radio, direct marketing and grassroots promotion tactics. That effort is expected to begin in most of the MSO's markets this winter.

Immediately, Cruz and Cultura are making over Cox's digital Latino tier, which premiered last spring with little success, having encountered major churn issues because of poor program quality. A new tier will launch in one or two systems this fall and will be more culturally minded, Cruz says.

"The old tier has been put in a drawer and the new tier will address our audience in a quality, value-driven way," Cruz says.

Cable operators also should be developing deeper outreach marketing relationships with Hispanic channels as they look for any advantage they can get to stem or reverse DBS penetration, says Galavision SVP and general manager Joanne Lynch.

"We're laying the groundwork with operators now for more outreach. There's always important values to promote, and we want to work closely with operators who make Latinos a high priority," she says. "On the whole, operators have done a good job marketing our service."

So how will satellite respond to cable's increased focus on ethnic programming? From DirecTV's perch, the answer is to launch more linear services. That's all DirecTV EVP, programming, Stephanie Campbell will spell out now, as the DBS operator's strategy with News Corp. in charge still is under development. "We'll analyze the packages we have to make them stronger," she says. "Other channels will be launched. It's no secret."

Getting With the Program

Most top MSOs have deployed digital Latino tiers in major metropolitan areas since last winter, and several are planning to launch similar ventures for other ethnic audiences.

Cablevision is rolling out subscription video on demand as an option for Latinos in the New York metro area through World Picks, programmed by subsidiary Rainbow Media.

This fall, Comcast should begin breaking ethnic VOD loose on a free or low price per-title basis. Spanish titles will go up first, followed by product in other languages. Comcast's Latino-tier launch helped the MSO double its Hispanic customers over the last 14 months.

So far, cable's ethnic programming counterplays have made small chinks in DBS' armor. But MSO officials approached for this feature unanimously agree that cable is starting to level the ethnic playing field.

"We are playing catch-up. We are the insurgents in this space," Jensen says. "We like prospecting a business proposition from that position, especially when you have a robust digital and VOD platform to work around."

Insight VP, programming Terry Denson agrees.

"We're chasing DBS because they got there first," he says. "This is a textbook example of the right thing to do and executing good business sense for it."

Even the competition is acknowledging that cable has made some inroads in this space. "It seems they are responding to a competitive environment," says Campbell. "They've done what they've done in response to what we've done, and we're happy with the results of what we've done."

The Roads Taken

DirecTV fired the first salvo in the fight for ethnic subscribers in October 1999. That's when it launched Para Todos, its collection of 45 Spanish-language networks. Jade World, a five-channel package, was introduced two years later.

EchoStar joined in the game in 2000 with a 60-channel international offering. It featured programs in more than 25 languages, including 31 Spanish channels. Early last month, EchoStar's Dish Network launched a five-channel "Super Pack" in Mandarin Chinese, arranged by media supplier ETTV.

At first, individual cable systems with spare analog channel capacity reacted to satellite's ethnic blitz by introducing individual basic or premium services, such as Galavision or an International Channel-provided net.

As digital cable spread, CNN, Discovery, ESPN, Trinity Broadcasting Network and other English-language nets introduced Spanish versions. In several markets, Adelphia introduced its "en Español" tier, combining broadcast basic with 12 channels for $25 per month.

By mid-2002—three years after DirecTV's ethnic tier launch—other cable operators began to think of their own such tiers. International Channel, Galavision parent Univision and other multilingual service outlets also considered ways to fill those tiers up.

Time Warner Cable ignited its Latino tier movement in January 2003 with DTV en Español in New York and other markets. Within six months, Comcast went national with its Cable Latino packages, Cablevision Systems introduced iO en Español and other operators whipped up their own ethnic tiers.

Tier programming included fare from packagers Canales ñ (International Channel), OlympuSat and Condista, and new channels such as all-soccer GolTV and kid-vid-centric Sorpresa!

The additional nets "resulted in a more compelling offering for our customers, and given us a significant competitive edge over satellite providers like DirecTV and Dish," states Matthew Weiss, Cablevision's VP of digital product strategy, through a statement released to CableWORLD.

As for Voom, the satellite service launched last fall by Cablevision chairman Chuck Dolan, there's plenty of original HDTV channels to separate it from DirecTV and Dish, but no ethnic packages.

"While we will continue to look at all programming distribution opportunities and certainly have explored ethnic marketing, we have no plans at this time," offered Voom EVP of sales and marketing Bill Casamo.

The Problem With Buy-Through

At first, cable priced Latino tiers with buy-through conditions—subscribers had to take digital or expanded basic along with the tier. The results shouldn't have been all that surprising: Buy rates in targeted markets were underwhelming and churn rates were way too high.

Eventually, most operators moved away from that model for their ethnic packages. One such MSO, Adelphia, introduced additional ethnic alternatives in the Los Angeles area last November.

For Asians, several International Channel-distributed premium nets premiered at $10 to $20 per month, depending on the service. One service aimed at local Filipinos drew an 8% response rate among 59,000 non-subs, Daleo says. Direct mail, ads in Filipino newspapers and event appearances directed at those non-subs promised half off their first monthly cable bill when taking the channel.

With Latinos, Adelphia started Basico, a 12-channel Spanish tier for $5.95 per month, and Especial, offering six different nets for $4. For $8.95, consumers could order both together. Daleo says the system's Latino customer universe has increased substantially since November, but didn't specify how much.

AT&T Broadband's San Francisco system was among the first to market premium channels to Asians in early 2001. Now as Comcast—and inside a cluster of systems reaching 1.6 million Northern and Central California basic customers—19 Asian-language pay channels are available a la carte from $10.95 to $25.99 a month. Last October, eight months before launching Cable Latino, Comcast launched Dragon TV, a bundle of seven Mandarin channels running for $21.99 per month. The system has increased its non-Latino ethnic sub count by 43% in the last 12 months using cross-channel spots, ethnic print ads and plenty of event appearances.

"On results, we're on par with our DBS friends," says Natalie Rouse, the system's ethnic marketing manager. "One advantage we have over satellite is that we're local, with employees in the neighborhood. You must get into as many events and local opportunities as possible, so that you're accepted as part of the culture."

Besides extensive media and event campaigns, Comcast uses a co-branded Spanish website with PlanetaTV.com to sell both Cable Latino and high-speed access. That effort started seven months ago and is contributing to a Latino sub lift, says Leslie Villem, who works in tandem with Rouse on Hispanic marketing. Comcast has pegged her system to be among the first to deploy ethnic VOD.

Insight will begin a company-wide Latino tier rollout later this month. The model for this, Para Ti (For You), was introduced to 75,000 Rockford, Ill., basic subs in February. For less than $30 a month, subs get 25 Spanish-language nets, plus broadcast basic and bilingual mun2Television. Columbus, Ohio, will be next in line for Para Ti, followed by Lexington, Ky., before mid-September. At least three more Insight systems will start the option during the fall.

Insight's Denson is asking networks on the tier to provide resources and talent for events and other community-building avenues comprising the bulk of Para Ti promotion.

"[Religious channel] Enlace will help us reach out in the churches, and ESPN Deportes will bring sports celebrities for personal appearances," he says. "You have to be nontraditional and get out to the people to be effective. Because we're new to the game, it's important to listen into the market and apply that listening to our marketing."

Before the
Federal Communications Commission
Washington, D.C. 20054

In the Matter of:	)	
	)	
Comments requested on A La Carte and	)	MB Docket No. 04-207
Themed Tier Programming Distribution on	)	
Cable Television and Direct Broadcast	)	
Satellite Systems.	)	

COMMENTS OF BROADBAND SERVICE PROVIDERS ASSOCIATION

John D. Goodman
Executive Director
Broadband Service Providers Association
1735 New York Avenue, N.W., Suite 700
Washington, D.C. 20006
(202) 661-3945

William P. Heaston
General Counsel
Prairie Wave Communications
5100 So. Broadband Lane
Sioux Falls, SD 57108
(605) 965-9894

Regulatory Committee Chairman,
Broadband Service Providers Association

Dated: July 13, 2004

TABLE OF CONTENTS

TABLE OF CONTENTS 2

SUMMARY 3

INTRODUCTION AND BACKGROUND 5

DISCUSSION 7

I. THE MVPD INDUSTRY CONTINUES TO HAVE SIGNIFICANT ISSUES WITHOUT SATISFYING ANSWERS. 7

A. Consumers continue to have significant limitations on the choice of content they wish to purchase and MVPDs that compete with each other have significant limitations on their ability to offer content in different packages. 7

B. Cable Rates continue to rise at almost 3 times the rate of inflation while consumers are forced to pay for high cost content they don't want. 7

C. Consumers are forced to accept and pay for content they morally object to. 8

D. A Limited number of powerful media conglomerates are positioned as gatekeepers on new content. 8

E. The frustration and consumer demands for better solutions to these industry issues will not disappear. 9

II. PROPOSED SOLUTIONS THAT WILL NOT WORK 10

III. VOLUNTARY "A LA CARTE" IS A POTENTIAL SOLUTION THAT DESERVES MARKET EVALUATION. 11

IV. WHAT NEAR TERM VOLUNTARY "A LA CARTE" WOULD LOOK LIKE 12

V. WHAT WE DON'T KNOW ABOUT VOLUNTARY "A LA CARTE" THAT A MARKET TEST COULD HELP US BETTER UNDERSTAND. 13

CONCLUSION 17

SUMMARY

The Broadband Service Providers Association ("BSPA") is an organization of a new breed of last-mile service providers – companies that are building new, facilities-based, advanced, last-mile broadband networks for the delivery of compelling bundles of voice, multichannel/on-demand video, and high-speed data/Internet services directly to homes and small businesses across the country.[1] Its mission is to promote and support the development of a competitive, facilities-based, broadband industry which will increase infrastructure investment, create customer choice, lower prices, and provide critical network diversity.

During the past year different forms of A La Carte program structures have been proposed and debated as potential solutions to several ongoing industry issues. It is the position of the BSPA that all discussions regarding A La Carte options need to draw clear distinction between Mandatory A La Carte and Voluntary A La Carte. The BSPA and its individual members oppose all forms of Mandatory A La Carte where regulation mandates specific carriage of individual channels. At the same time, the industry issues related to consumer choice, increasing cable rates, and consumer control of "indecent" content, are very real issues needing new solutions. Maintaining the status quo is simply not acceptable. The industry should take the responsibility to find better solutions to these issues.

Voluntary A La Carte is a solution that should receive further evaluation. Voluntary A La Carte would give the multichannel video program distributor ("MVPD") the freedom to respond to consumer desires and offer new mini-tiers or individual channels of content, along

[1] The current members of BSPA, all of which are last-mile, facilities-based providers, are: Astound Broadband; Black Hills Fibercom; Everest Connections; Gemini Networks; Knology; Prairie Wave Communications; RCN Corp.; Starpower Communications, LLC; Utilicom Networks LLC; and SureWest.

with the current bundles of content offered by all MVPDs. Voluntary A La Carte has significant potential that could be fully realized as the industry continues down its committed path to deployment of full digital systems that do not have the technical limitations of today's analog networks. This option cannot be fully understood, evaluated, or appreciated unless it is subjected to a multi-year market test. BSPA members believe that Voluntary A la Carte could be both pro-consumer and pro-competition. Several BSPA members are therefore willing to bear the cost of implementing a multi-year test of Voluntary A La Carte to more fully determine its benefits and potential issues. Voluntary A La Carte can be evaluated as a potential structure that could become fully available to all MVPDs as we migrate to fully digital system structures. We will therefore seek the full endorsement and support of both the FCC and Congress for a Market Test of Voluntary A La Carte.

Before the
Federal Communications Commission
Washington, D.C. 20054

In the Matter of	)	
	)	
Comments requested on A La Carte and Themed Tier Programming Distribution on Cable Television and Direct Broadcast Satellite Systems.	)	MB Docket No. 04-207

COMMENTS OF BROADBAND SERVICE PROVIDERS ASSOCIATION

The Broadband Service Providers Association ("BSPA") hereby submits these comments in response to the Federal Communications Commission's ("Commission") Notice of Inquiry in the captioned proceeding ("*Notice*").[2] In the *Notice*, the Commission seeks information, comment, and analysis regarding A La Carte and Themed Tier Programming Distribution on Cable Television and Direct Broadcast Satellite Systems.

INTRODUCTION AND BACKGROUND

Through the *Notice*, the Commission has begun the process of preparing its comments in response to a request for information regarding A La Carte from two committees of the United States Congress. Several options of A la Carte programming have been actively discussed in both the House and Senate during the past year. The FCC has been asked to gather both data and comment regarding A La Carte Programming options as additional background for proposed legislation.

[2] *Comments requested on A La Carte and Themed Tier Programming distribution on Cable Television and Direct Broadcast Satellite Systems*, MB Docket No. 04-207, *Public Notice of Inquiry* (rel. May 25, 2004) ("*Notice*").

Today's broadband service providers ("BSPs") are providing state-of-the-art video, voice, and data service over newly deployed advanced local networks in many large cities and rural areas throughout the country. While BSP's still represent a relatively small segment of the total industry, they are leaders in deploying bundled telecommunications services using a business model that many other MVPDs are adopting today. BSPs are leaders in migrating video to the all-digital platform Congress envisioned and the FCC has begun to implement. Many current BSP systems already offer the basis for fully digital capabilities. BSP's therefore offer a unique insight into both the systems and facilities based competition that continues to be the desire of most regulators and legislators.

New infrastructure investments throughout the industry are now focused on next generation systems that host multiple services that include different combinations of multichannel video, high-speed data ("HSD") Internet service (commonly referred to as "broadband access"), and voice telephone services. Continuing technological advancements are converting more and more services to digital formats, with a shift towards bidirectional functionality, allowing greater subscriber interaction with content that has historically been one-way.

The migration of infrastructure to a digital platform has set the stage for the continuing convergence of telecommunications services through all-digital systems. With the support and encouragement of regulators, the industry is making significant investments in the conversion to all-digital systems. This migration to all-digital formats is expected to bring significant benefits in the areas of spectrum recovery and utilization, expanded system capacity versus analog formats, greater two way communication capability, and the increased control, flexibility and consumer choice related to the use of digital content.

An additional benefit of an all-digital world should be the added flexibility of delivering better choice to consumers. Consumers should have a choice in telecommunications provider, a

choice in content, and a choice in new and varied packages that today's analog systems cannot technically or economically handle.

DISCUSSION

I. THE MVPD INDUSTRY CONTINUES TO HAVE SIGNIFICANT ISSUES WITHOUT SATISFYING ANSWERS.

A. Consumers continue to have significant limitations on the choice of content they wish to purchase and MVPDs that compete with each other have significant limitations on their ability to offer content in different packages.

A common complaint of consumers is that in order to receive desired video programming, they are required to purchase a significant amount of programming that they do not want. A typical example is a person who has no interest in sports, who is forced to buy a standard basic cable TV package, including sports, to gain access to other content of interest. This structure exists because industry content distribution contracts mandate bundling less popular content with content that is considered essential, in this case sports programming.

In fact, some programmers have enough market leverage to condition their program contract on a requirement that their network(s) be offered in the "most widely distributed tier" of service. These types of contract tying requirements are common throughout the industry. Moreover, throughout the nation, content packages offered to consumers of cable and satellite service are far more identical than not as a result of "most favored nations" and similar contract terms and conditions used throughout the industry. However, this practice seems limited to the video programming industry--other markets for consumer services do not seem to constrain consumer offerings by requiring consumers to buy significantly more of a particular type of service than the consumer wants.

B. Cable Rates continue to rise at almost 3 times the rate of inflation while consumers are forced to pay for high cost content they don't want.

In addition to consumer choice, the issue of escalating cable rates is a concern. Debates regarding rate increases during the past two years have drawn attention to sports programming as

a major contributing factor to rate increases. Consumers may not be aware that the largest single portion of an expanded basic subscription fee is related to the sports programming. As a result, a consumer that does not desire sports programming is not only forced to receive sports programming but is required to absorb a major portion of the increase in cable rates related to sports programming. Clearly, this uneconomic practice degrades consumer welfare.

C. Consumers are forced to accept and pay for content they morally object to.

Recent indecency issues have taken the issue of consumer choice into a new area. Today's structure not only forces consumers to pay for undesired programming, but additionally requires some consumers to pay for programming that the consumer finds indecent or morally objectionable. Allowing consumers to choose not to pay for this programming is not the equivalent of censorship.

Proposed blocking solutions, which would allow a consumer to block out the objectionable content but still charges consumers for the content, are simply inequitable and not acceptable long-term solutions. That consumers could simply not subscribe to MVPD service is not a rational solution to the problem because consumers rely and use MVPD services for increasing amounts of information, entertainment and related services. Our industries planned conversion to all-digital formats will only increase consumer reliance on these communications channels. This is an issue of providing a structure that allows consumers to have some legitimate control over what is brought into their homes. The emerging digital structures, which will expand the number of channels and services offered to consumers, should be paired with policies that increase consumer choice over programming received.

D. A Limited number of powerful media conglomerates are positioned as gatekeepers on new content.

BSPA members are concerned that today's structure creates an environment that could ultimately lead to more industry consolidation, less diversity, and less opportunity for

independent content producers. These issues are compounded by the vertical integration that exists between content producers and major content distributors. An article in The Wall Street Journal, January 19, 2004, went so far as to declare Comcast, with its current industry position, as the default "gate keeper"[3] for any new content producer that wants to get carriage. This article did not factor in the impact of further consolidation if Comcast had been successful in its bid for Disney.

Commitments to diversity would not be served well if a relatively small number of media conglomerates were able to impose their beliefs, business preferences, and bias into the types of content that become available to the general public. There is a natural bias for a content distributor to favor the introduction of programming in which they have a financial interest. Today's structure allows a content producer to create a new channel and demand carriage by tying it to the carriage of other established or essential content guaranteeing it immediate distribution and revenue regardless of the true consumer demand. The emerging all-digital platforms will either create greater opportunities for expanded diversity, or increase opportunities for the mega conglomerates to use market power to influence the content that consumers are required to purchase.

E. The frustration and consumer demands for better solutions to these industry issues will not disappear.

There are very few sets of issues that have a broader group of advocates for change than those seeking new solutions to these MVPD industry issues. The combination of a desire for better consumer choice, lower cable rates, better consumer control over content deemed indecent, and assuring diversity creates issues that are both bipartisan and consumer driven. We

[3] The Wall Street Journal, Marketplace, January 19, 2004. *"Want to Start a TV Channel? See Amy Banse"*. By

feel the industry needs to accept the compelling reality of these issues and commit itself to finding better solutions before someone else's solutions are imposed on the industry.

II. PROPOSED SOLUTIONS THAT WILL NOT WORK

The BSPA is concerned that the negatives associated with some proposed solutions outweigh their perceived benefits.

Mandatory A La Carte. Historical frustration over these industry issues has created proposals for Mandatory A La Carte. In its most extreme form this would require an MVPD to offer every channel as an independent choice. This structure is neither economically sustainable nor necessary to meet the consumer desire for additional choice and control. The relevant issues go beyond the core network capabilities and customer premise equipment. Billing systems, customer service and numerous other aspects of an MVPD's operation would also be affected. Mandatory A La Carte could force an MVPD to provide service at a loss or create system requirements that would limit desired investments in new facilities based competition when the expansion of facilities based competition is one of the desired solutions to many of today's industry issues.

A La Carte in Analog Tiers. Some proposals that would apply to analog services ignore technical difficulties that would make implementation near impossible. The added cost of any form of analog A La Carte would off set any near term benefits. New solutions need to focus on the digital systems we have committed to support and implement. The industry has already committed itself to eliminating the status quo by migrating to all digital platforms.

Consumer Activated Blocking. As discussed above, proposals for consumer controlled screening or blocking as a permanent solution to indecency issues are not satisfactory, long-term

solutions. These solutions address the indecency issue alone and leave for another day, the issue of cable rates and they continue to force consumers to financially support content they feel is morally objectionable.

Maintaining the status quo is also not an acceptable solution. We believe that the described issues deserve better solutions and that fully digital networks create options that are not functionally available in legacy analog systems. It is time for the industry to explore new options and pursue better solutions to these legitimate issues. The industry has already committed itself to eliminating the status quo by migrating to all digital platforms. The Commission should view this migration as an opportunity to also address the issues of consumer choice, cable rates and indecency instead of focusing on imposing costly policies on outdated technologies.

III. VOLUNTARY "A LA CARTE" IS A POTENTIAL SOLUTION THAT DESERVES MARKET EVALUATION.

Voluntary A La Carte is created when distributors are given the freedom to offer content in a variety of packages or tiers that are different than the content bundles driven by the constraints of "most widely distributed tier" requirements in today's structure. This does not mean that today's standard cable structure is eliminated. It does mean that MVPDs could offer content in additional alternative packages that can address expressed consumer desire for more choice, control and flexibility. These new offerings could include new mini-tiers of content or individual channels. This structure would enhance competition among MVPD distributors by allowing competing distributors the opportunity to define and offer their own solutions to consumer requests for either choice or diversity. It would also provide greater opportunities for consumers to validate the content they really want to support and pay for with a better understanding of the relative costs of different content that is effectively hidden under the umbrella of today's large, contractually-obligated, standard cable packages.

The BSPA proposes that Voluntary A La Carte be evaluated with a multi-year market test, the results of which can be used to assess both the benefits and potential issues presented by this structure. Several BSPA members that have advanced digital systems are willing to be test locations. The option of Voluntary A La Carte would also need to be offered to all other MVPDs that were willing to participate in the test. Testing prior to the complete conversion to all-digital systems is an incremental approach. Without some legitimate market testing there are too many unknowns or projected assumptions to be able to fairly judge the final outcome. It is possible that the benefits of Voluntary A La Carte are such that the opportunity to implement Voluntary A La Carte should be tied to the industry conversion to all digital formats.

IV. WHAT NEAR TERM VOLUNTARY "A LA CARTE" WOULD LOOK LIKE.

Voluntary A La Carte does not mean the elimination of today's bundled content structure. Some packages of delivered content offered today could be maintained. While there are significant implementation issues and details to work through, additional "A La Carte" options for consumers to purchase mini-tiers and/or individual channels would be offered as digital content. It is expected that the "A La Carte" option would come with its own starting package of basic channels that would include the broadcast, PEG, and other channels that the distributor selects for all subscribers. Each MVPD participating in the test would have the freedom to repackage content in structures that address the desires of their consumers that are technically supportable on their systems. This plan may result in individual markets with competing Voluntary A La Carte systems or where Voluntary A La Carte programming competes with a traditional offering. Any and all of these potential market situations can add value to understanding Voluntary A La Carte as a potential new structure.

Many parties have taken the position that any form of A La Carte would be detrimental to independent content producers. This is not the case. Instead, MVPDs will use the added capacity and flexibility of digital systems in new ways to sustain or enhance the options for

independent producers. These opportunities will likely result because digital systems create new lower cost capacity. For instance, one of today's analog channels is the equivalent of anywhere from 2 high definition channels up to 8 standard digital channels. This expands opportunities for Independent producers to either sustain or expand their carriage options.

Voluntary A La Carte is not equivalent to a decrease in independent or otherwise "new" programming. In a Voluntary A La Carte regime, A La Carte MVPDs could continue to have the option of offering new independent channels as part of larger packages, but also offer these channels as either very low cost stand-alone channels or in a distinct mini-tier of lower cost content. Alternatively, digital spectrum could be earmarked for "new" program choices and users of this block could have a limited amount of time to demonstrate consumer demand and economic viability.

A Voluntary A La Carte system could potentially expand subscribership. Independent channels tend to focus on specific segments of the general public. An intuitive consequence of better consumer choice is the appeal to a larger group, which in the cable industry, means increased penetration by MVPD service providers. This anticipated expansion of the MVPD customer base enhances the ability of independent programmers to reach their target audiences.

V. WHAT WE DON'T KNOW ABOUT VOLUNTARY "A LA CARTE" THAT A MARKET TEST COULD HELP US BETTER UNDERSTAND.

Many parties have already rejected all forms of A La Carte. We believe that there are significant unknowns that need further evaluation before any final judgment is made regarding Voluntary A La Carte. Some of these unknowns include the following:

- What number of subscribers would choose the current structure over a Voluntary A La Carte option?

- What level of "A La Carte" will balance the needs of consumers, distributors, and content producers? We don't believe the real need is to offer every individual channel on a pick and choose basis.
- How many new customers will come to MVPD systems when offered better choice?
- What really happens to advertising rates and structures as the true value of different subscriber environments is evaluated over time?
- Which channels or types of content may be receiving unfair subsidies in the current structure?
- Which types of content are not legitimately supported by an audience that is significantly large enough to warrant the current carriage? The solutions may not be that the content is discontinued but that it be repackaged or repositioned into digital structures that are not as costly to sustain.
- The potential financial impact on content producers and distributors?
- As well as many of the questions posed in the May 25, 2004 FCC Comment Requests DA 04-1454

In light of the issues posed herein, positions which reject some or all forms of A La Carte are premature and require validation and are potentially self serving, supporting an objective of maintaining some status quo position. A market test may validate positions that are already being stated or it may suggest different conclusions. A market test of Voluntary A La Carte can only enhance the Commission's ability to come to the best conclusions and better inform the legislative debate in Congress regarding consumer choice, pricing, and indecency issues addressed herein.

VI. VOLUNTARY A LA CARTE MARKET TEST IMPLEMENTATION ISSUES

The most significant issues blocking a proposed market test of a Voluntary A La Carte Structure are the carriage requirements or restrictions of current programming contracts. Current contract constraints that may require relief for the market test include but may not be limited to:

- Must carry
- Retransmission consent
- Tying arrangements
- Eliminate 'most widely distributed tier" requirements
- Channel placement requirements
- Potential interim dual carriage issues, analog and digital
- Potential use of digital equivalent to current analog tiers
- Providing contract transparency of terms and conditions for the purpose of leveling the playing field among MVPDs and competitors

Before an MVPD can offer customers Voluntary A La Carte, it is likely existing contracts will require modification. The required contractual modifications will vary based on market, programming distributor and MVPD. Thus, market test participants should create specific A La Carte proposals for each test market. Contract relief for the test could be requested on an as needed basis.

In addition to carriage issues, Voluntary A La Carte, even on a test basis, implicates programming prices. Different pricing structures could be used to either enhance or destroy the possible success of a Voluntary A La Carte offering. Content contracts would need to allow for the unbundling and repackaging of content at reasonable rates where the content producer and the distributor can share in margins produced by any higher prices for "A La Carte" options.

There are a number of pricing issues that may need to be re-evaluated or renegotiated to implement the test.

- Channel placement discounts
- Multi-service discounts or tying discounts
- Premiums charged for "A La Carte" placement versus "most widely distributed tier" placement.

The best starting point will be open negotiations with the affected content vendors. This approach should be pursued before any alternatives of mandated pricing for the market test. Newly negotiated test contract terms and conditions must be transparent, meaning that all terms and conditions should be disclosed and uniform no matter the MVPD size, type of distribution, ownership or location. Possible interim solutions could include but not be limited to:

- An agreed freeze on current cost structures for the test;
- A maximum cost differential between current structure and alternative A La Carte carriage;
- Potential for shared margin between content producer and distributor on price increases benchmarked to current package pricing; and

Other implementation issues that need to be addressed include the length of the test, along with the process to monitor and report on the results. A multiple year test is required to be able to assess the full consumer response and to be able to understand issues like advertising rates that will develop in response to the demonstrated advertising value of new structures. It may also take a few years for market test participants to both adjust the A La Carte offering to meet consumers' needs and to resolve all of the support issues related to this type of significant change. These related issues will include, but are not limited to, expected technology, billing, customer service, and marketing/advertising implementation.

CONCLUSION

BSPA members believe that there are many industry issues that deserve new and better solutions. The current commitment to migrate to all-digital systems can provide potential solutions that are not possible in today's analog technology. It should first be the responsibility of the industry to find better solutions to the issues of consumer choice, cable rates and indecency. We believe the concept of "Voluntary A La Carte" has enough potential promise and unknown or speculative issues that it deserves a full market test. We therefore ask for the full endorsement and support of the FCC in pursuing this objective of a fair market test for Voluntary A La Carte. We further request that the FCC in its report to Congress recommend this test and ask for the full endorsement and support of Congress as may be needed.

Respectfully submitted,

BROADBAND SERVICE PROVIDERS ASSOCIATION

By: /s/
William P. Heaston
General Counsel
Prairie Wave Communications
5100 So. Broadband Lane
Sioux Falls, SD 57108
(605) 965-9894

Regulatory Committee Chairman,
Broadband Service Providers Association

John D. Goodman
Executive Director
Broadband Service Providers Association
1735 New York Avenue, N.W., Suite 700
Washington, D.C. 20006
(202) 661-3945

Dated: July 13, 2004

Mr. DEAL. Thank you.

Let me tell you something that is coming out in this hearing that causes me grave concern. If we are interested in niche markets, if we are—if we are interested in the issue of availability of new people to get into the system, it appears to me that the comment of incestuous relationships, it should be of major concern.

We have heard the fact that if you are going to get in now, you are going to have to let one of the big boys buy into you. Witness, 39 percent ownership by Comcast in your program, Mr. Liggins.

Let me tell you something that concerns me from an overall statistical standpoint, and this is one of the reports that is in the things I have admitted. The Center for Creative Voices points this out. The five giant media conglomerates, two of whom are here today, control approximately a 75 percent share of broadcast and cable primetime viewing.

Of the 91 major cable television networks, each providing more than 16 million homes, they—on more than 80 percent—are owned or co-owned by just six media glomerates, the same five giant media conglomerates plus Liberty Media, which owns an interest in Mr. FitzPatrick's station.

They then say these five giant media conglomerates also are controlling the new programming that is coming into the system. Of the 40 new series aired in 2002, 77.5 percent were either owned in whole or in part by the same four networks, up from 56.3 percent the prior season, a 37 percent increase in 1 year, and up from just 12.5 percent in 1990, from 12.5 percent in 1990 to 77.5 percent in 2002. We see these big fellows getting more and more control over everything.

Now, the question was asked: do we have to create new laws to solve this problem? I submit we don't. All somebody has to do, either by way of legislation or by court interpretation, is to simply say that television programming is a commodity or a service under the auspices of our current antitrust laws, just like other commodities and services are.

And we would not even be engaged in a debate about trying to prop up things that people don't want, and the reason we are trying to prop them up and make people pay for things they don't want, we won't even tell them how much they are paying for the things they don't want. Now, is the logic and common sense of that?

Mr. Baxter, I appreciate the fact that the cable industry has said, "We will provide you with a box, and we will block the programming you don't want." You know what the irony of that is? And you do it at no cost. The irony of that is your argument for why we couldn't let people select in the first place is because the cost of the box to let them select was prohibitively high.

I have a hard time in common sense saying that it costs too much to let you select on the front end, but we will let you select out on the other end with a box that doesn't cost you anything.

Now, let us go back to one of my other major concerns. And I apologize, it is hard for a southerner to talk this fast, and I don't mean to sound——

I don't mean to sound like I am being inconsiderate or rude to any of you, but time constraints are important.

Let me tell you about one of my other concerns. Mr. Pyne, you suggest to us that, if we really want to deal with this thing, we just need a new definition of indecency. I would ask you, if we had a new definition of indecency, would you include the Gay and Lesbian Channel, Undressed, Striperella, FX, Spike TV, in what would be an expanded basic program channel? Would they meet whatever definition you want to write for an expanded basic channel?

Mr. PYNE. I mean, I am personally not suggesting writing the indecency standards. I mean, currently today the—our Kids Business—and, clearly, Disney and ABC Family has a major interest in quality programming for children—but, in fact, the Kids Business that we have on the cable networks have the exact same standards as the broadcast networks. I mean, that is just a matter of the current FCC——

Mr. DEAL. Wouldn't you——

Mr. PYNE. In addition, if I just may add one thing, I mean, my understanding is for—I mean, Sex and the City was—it was a popular show on HBO. When it is appearing on TBS, there will be a different version of it.

Mr. DEAL. Yes. So you would have a hard time justifying, under any acceptable new standard of the definition of indecency, that those would meet that kind of criteria, and yet they are already in that expanded basic programming. Now, what I find inconsistent is this free market system, this business of choice of people in our society, the best determiners of what is indecent are the people who are having to pay for something.

You know, what you think is indecent and what we may define as indecent may not meet their definition of indecent. We have the opportunity, with just a little bit of tweaking and cooperation from the participants here, to be able to say to the consumer, just like the Supreme Court Justice said when he asked, "What is pornography?" I know it when I see it. Let them decide what they want to see. Let them be the ultimate people who make those choices.

Now, I appreciate the arguments of economy of scale. I think there are legitimate arguments about that. I would simply suggest to the industry, if you don't want something to happen in the nature of across-the-board antitrust constraints, the industry is going to have to do some things. Nobody is objecting. Nobody is saying it is a mandatory a la carte. We are simply saying, "Give better choices out there. If you are going to tier things, make them more friendly and compatible."

You are not going to find anybody coming here and justifying the existence of any of these racier channels. That is why they are not on the panel today. They wouldn't dare darken the door of this committee and try to justify their existence on an expanded basic channel, and they are only there because some of you folks put them there. They hide behind the secrecy of the system, and that is simply not right.

The history of the American public is they will only tolerate that so long. I think we are approaching that point. I hope the industry will respond with some better solutions on its own. We don't need to legislate on this issue. We need for you to help us solve the problem.

And I would simply say one thing. If you want an expanded basic channel, why don't you make it like somebody who orders a combination meal at one of the restaurants around here? He gets to select three out of five choices for his sides. We don't get any choices like that.

If you did that, you would then open up more opportunities for new channels like Reverend Plummer is talking about. You would then open up more opportunities for Hispanic channels, because now they are being denied, because, as Mr. Hooks says, just the space is just simply not there.

Mr. Chairman, you have been most kind——

Mr. UPTON. I have been.

Mr. DEAL. [continuing] and lenient.

And I thank you. And I thank—once again, I thank the members of the panel, and I thank all of my colleagues for their participation.

Mr. UPTON. Mr. Engel?

Mr. ENGEL. Thank you, Mr. Chairman. A lot of the questions have been asked, and I am not sure there are more to be asked. But I want to just throw a few things out, and perhaps some of the panelists can answer.

When I first heard about a la carte, I thought it was a really great idea. You know, I also have experience having—being a consumer, where you hear constituents say to you, you know, there are 80 channels on TV and nothing to watch. People feel that all of these channels are—they are not interested in it, so wouldn't it be great if we could pick and choose and just do that.

But the more I looked into it, I found that it wasn't as easy as that, because people in the industry are saying, I think this is what they are saying, that if we were to go to a la carte people would have less channels, would wind up with less channels, and the cost would be greater.

So, of course, if we ask the public, do you want to pick and choose, everyone will say yes, because it is done on the premise that, well, if I am paying $50 a month for, I don't know, 50 channels, if I only get 20 channels, then I will be paying $20 a month. But, of course, it doesn't work that way. And so, to me, it is really a balancing.

Now, I have a letter here from the borough president of my home county, the Bronx in New York City, where he is—he writes a letter to Chairman Powell against the a la carte system. And what he is saying, essentially, that by bundling the programs you do have lots of channels for minorities, for African-Americans, for Latinos, and that if you had a la carte his big fear is that that would change and you would see a lot of these stations fall off.

[The letter follows:]

OFFICE OF THE BRONX BOROUGH PRESIDENT
THE BRONX COUNTY BUILDING
851 GRAND CONCOURSE
BRONX, NEW YORK 10451

ADOLFO CARRIÓN, JR.
BOROUGH PRESIDENT

TEL. 718-590-3500
FAX: 718-590-3537
E-MAIL: acarrionjr_bxbp@i-2000.com

July 7, 2004

Michael K. Powell
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Powell:

I urge you to not support the "a la carte" cable system currently being debated in Congress. This "a la carte" cable system approach would reduce or eliminate programming aimed at minority groups.

For too long, Hispanics, African-Americans and other minorities did not have programming that reflected their cultures and life experiences available. The explosion of cable programming over the past 20 years has provided numerous channels that reflect the diversity and experiences of all Americans. The "a la carte" system would destroy all progress we have made in cable programming to date.

In fact, channels like Telemundo, ESPN Deportes, BET, and TV One have succeeded under the current cable system primarily because of the way in which they were introduced: through bundling. When a new network is introduced, it is usually placed in a bundle with existing ad-supported popular channels, such as CNN, ESPN or Nickelodeon, allowing viewers the opportunity to try out the new channel. If consumers find the channels interesting, the channel will gain its own audience and enough advertising revenue to become profitable.

But through "a la carte" prices will rise, marginalizing minority groups due to the inevitable increase in overall system costs, which would require all consumers to have addressable converters to access "a la carte" programming. Fewer than half of U.S. cable households today subscribe to services requiring such converters.

PRESIDENT OF THE BOROUGH OF THE BRONX

Page 2
Chairman Powell
July 7, 2004

Thus, for the tens of millions of customers who rely on "cable-ready" television sets, there could potentially be a 30% increase in the cost of the equipment alone in addition to the added costs from the channel fees.

That is why I'm appealing to you, Mr. Chairman, to tell Congress that you do not support the "a la carte" system. I ask that you help ensure the future of our diverse cable programming line-up.

Sincerely,

Adolfo Carrión, Jr

Mr. ENGEL. I know in the testimony that I have heard today you have people who advocate it, say that won't be the—won't happen, and others say it might.

Mr. Liggins, I wanted to ask you, because you have a startup channel and you are in a position, I wanted to ask you about the cost. How much did it cost for your channel to get going? And what have you had to do to get people to be aware of and watch your channel and ask you about profits, if you are making profits, and, if not, now when would you expect to, because I think you are probably someone that the borough president is worried about.

Mr. LIGGINS. We are in a unique situation in that we also own a platform of radio stations, about 13 million listeners. And so we utilize that platform to get people—make people aware of the channel. But even with that formidable marketing machine, we still have to operate the channel economically in a manner that provides acceptable programming quality-wise.

And for us, that is probably about $30 million a year over a 4 or 4½ year period. You know, call it $130 million. And we won't break even until the end of that 4 to 4½ year period. That is when we stop losing money. So hopefully the next 4 to 4½ years is the time period in which we begin making money.

If we had—if we didn't have those radio stations, and we had to market that on our own, you could easily add, I believe, another $10 million a year. So another $40 million a year. So $170 or $180 million for a startup network, which is very, very, very difficult for anybody to pull off, particularly somebody who is a real startup small entrepreneur. And I think in an a la carte world with less subs to go after, it makes it even more difficult, not easier.

Mr. ENGEL. So banding together, you know, to have a marketable package, is something that would help—or that helps, if stations would be alone in a la carte, that would make it more difficult to have startup channels, if these channels wouldn't be distributed.

Mr. LIGGINS. Absolutely. Because hopefully when I cut my deal with Cox Communications, I am not only going to get New Orleans, I am going to get San Diego. San Diego has got an 8-percent African-American population. New Orleans has a 40 percent African-

American population. I will get paid for subs or households in both of those areas, which helps me offset the $130 million.

Mr. ENGEL. Thank you.

Mr. FITZPATRICK. Congressman, could I just give——

Mr. ENGEL. Yes, absolutely.

Mr. FITZPATRICK. [continuing] the committee two quick personal experiences on the a la carte example, one with respect to the Golf Channel and the other with respect to Hallmark. When the Golf Channel was launched, it was launched a la carte. And after 1 year, the channel was in 600,000 homes, going nowhere fast, $135 million investment. We weren't going to make it.

We needed to be bundled in a highly penetrated package or packages. Today the Golf Channel is in 60 million homes, successful.

The Hallmark Channel resided on a family tier on the DirecTV platform, 3½, 4 years ago, 500,000 to 750,000 subscribers, out of then an 8.5 million subscriber base. Dead in the water. The tier comprised eight or nine services, some of which I believe were—comprised Disney services. We were going nowhere. That tier was going nowhere. No one was buying it.

We had a choice: stay dead in the water or enter into a negotiation to get us into a highly penetrated package. We did that, and today we are in 11.5 million DirecTV homes versus 700,000 homes 3½ years ago. The importance of being bundled or being packaged, of being in an environment where people can surf and find you, is absolutely critical.

And the second point is this is not just about getting distribution scale. It is also about seeing your advertising ratings go up. Our ratings are now outpacing our distribution by three to one. Our distribution growth this year will grow 20 percent. Our advertising revenues will grow 75 to 80 percent. That is because we have got scale, and that is because we are able to make investments in programming.

And to the point that Mr. Liggins made earlier, and a darn good one, which is ultimately we are all competing with a limited amount of dollars to get programming or to make programming, but all things in time, he can't go out and acquire the kinds of programming that we can or make programming that we can today at 62 million homes. But we couldn't do that 4 years ago or 3 years ago. We were where he was. We needed scale to be able to get that kind of investment opportunity to go out and get good programming that our subscribers want and that the results are showing.

And the last point, if I could—forgive me. The point about inflation, the prices of cable, I would ask the committee to think about the following. Now back to the newspaper analogy. When you buy the Sunday paper, whether it is The Washington Post, The Detroit News, The Los Angeles Times, The New York Times, Atlanta Constitution, that is more expensive than a daily paper. That might be 25 cents, 30 cents, 50 cents, 75 cents as we just heard about USA Today.

The Sunday papers are much more expensive. Why? Because they are bigger. Sometimes we can pull a muscle in our back picking up that newspaper on Sunday. The newspaper publisher is asking us to pay because they are giving us a lot more product. The cable industry has given the American people hundreds of more

channels, high-speed access, video on demand, telephony, and many, many other services that did not exist 5 years ago. And I would ask the committee to think about that analogy.

Thank you.

Mr. ENGEL. Well, I wanted to just end—my time is up, but I want to just say, Mr. FitzPatrick, I think that you are pointing out that there are two sides to every coin. And I just think that it is not as cut and dry, as far as I am concerned, that a la carte would lower prices, and also, in terms of making it harder to—for new companies or new channels to flourish.

Again, nothing is black and white. I think each panelist has made excellent points. But I think this is something to—that we have to grapple with. And I thank you. I think it has been helpful.

Mr. UPTON. Mrs. Cubin?

Mrs. CUBIN. Thank you, Mr. Chairman. I, too, think that this is something that we have to grapple with. I came into this hearing opposed to a la carte. And I won't say that I have changed my mind, but I certainly have left a door open.

Mr. Deal's questions and explanations have, you know, really caused me to be more or less on alert. I don't for 1 minute think that if we go a la carte that the rates will be cheaper. You know, I think the high-cost channels will be—you know, the way bookkeeping goes, you can expense ESPN or Disney on—you know, on anything you want to.

And so—and I think that is what would happen, because it seems to me that the five—the big five—it is kind of like Burger King advertisement, Have it Your Way. Only the big five is ordering, you know, Have it Your Way for Me, what I have to have. And I think we need to do something about this.

I am going to just ask one question, and I would like any of you who would like to respond to do so, and then I will yield to Mr. Deal. Why is there a difference between the programming cost in large and small markets? Doesn't it cost the same to produce regardless of who views it?

Because I am going to tell you something, this is where I am going to plant my feet and take a stand, because rural residents are always getting the short end of the stick, and they have, until—you know, until more people were elected to this Congress from rural areas than urban areas, and we are not going to stand for it. So anyone who wants to, please answer that question.

Mr. HOOKS. May I make one response? We are a growing company right now, and I am buying small systems from large companies, in the top five or six cable companies. And so the—I mean, it doesn't cost them any more to deliver to me, so, I mean, I am just supporting the fact that I know my prices go up, I know I have less flexibility as far as tying and bundling that the major companies have, because I also have got to change my lineup, stuff like that.

So I am just supporting it is a true fact—and I can witness that—that as I buy, you know, systems from larger companies I am basically facing changes that they are not faced with.

Mr. LIGGINS. I just wanted to—I am not a cable operator, but I think there is a difference between small company and small community, because I know a lot of the large companies, like Cox and

Adelphia, and even some charter systems, they are, you know, three very big MSOs, serve a lot of rural communities. And they actually get very good rates, and I am sure they pass those on to the consumers. So Mr. Hooks has a smaller company, and that is why he probably works with the cooperative versus necessarily small communities.

And, plus, one of the best deals out there for multichannel distribution is in satellite. EchoStar, which competes with the cable operators vigorously, I think offers 60 channels for $29.95, which—again, I am not an operator—but I think it is one of the best deals that I have seen out there. And a lot of their customers are C&D counties and small rural communities.

Mr. HOOKS. May I just finish up by saying—maybe this will add some clarification, and I want to compliment Hallmark Channel for their success, because they got distribution without tying, bundling, and retransmission. My point is, that is the problem. That is where it is—is when you own a network and you start playing games on retransmission consent, and you start doing tying and bundling, that is where we get in trouble.

And it shows proof when you look at Hallmark Channel. It is a very friendly company to the cable industry. They did it without doing all of that. So I still think the system works. There is just this one little glitch we have got.

Mr. BAXTER. I would just echo that, you know, Time Warner has, you know, tons of rural customers. And I think it would be a mistake just to kind of look at a big company. I mean, we operate in 27 states, and we have cable systems that have 1,000 or 2,000 customers in them, and we have, you know, the Manhattan cable, which has over a million.

So we are very diversified and diverse in the kind of communities we serve, so it is not all—even though we are the second largest cable operator, that doesn't mean we don't operate in all parts of the country, in all different parts of the country.

Mrs. CUBIN. Thank you. This is something we need to look further into, but I would like to yield my remaining time to Mr. Deal and ask unanimous consent to give him an extra 2 minutes.

Mr. UPTON. Without objection.

Mr. DEAL. Thank you, Mr. Chairman. Thank the gentlelady for yielding.

First of all, I would like to also ask unanimous consent to include in the material that I previously offered a filing made by the Broadband Service Providers with the FCC, and I thank Mr. Goodman for their willingness to step out and make a proposal.

We have heard comments about, let us give some other things a try. Their proposal is to let us give voluntary a la carte a try. We need a venue in which to experiment with this other approach, and I commend them for their courage and willingness to make this filing. I hope that the big five will cooperate in allowing us to test the market in a voluntary a la carte fashion, and I would like to include that in the material.

And one—promise, final concluding comment—Mr. FitzPatrick, I understand your newspaper analogy. But, you know, we have a saying in Georgia about the Atlanta Journal Constitution and I would suggest to you that if the Atlanta Journal Constitution did

the written media version of Striperella, FX, and all of these others that we have alluded to, we wouldn't even wrap our fish in it anymore.

Thank you, Mr. Chairman. I yield back to the gentlelady.

Mr. FITZPATRICK. Point well taken.

Mr. UPTON. Thank you both. And I think we are just about ready for a series of votes.

Mr. Kimmelman, I have—maybe I will follow up on one question Mrs. Cubin asked, and, Mr. Baxter, I will direct it to you. And that is, she raised the question of setting perhaps higher rates in rural areas than in urban areas. Do you see that? Is that something that——

Mr. BAXTER. Well, I think the question is—I think there is a bandwidth of rates. Again, I am not on the programming side of it.

Mr. UPTON. Is that true? I mean, you said——

Mr. BAXTER. But I think—I mean, I think there are volume discounts. I don't think volume discounts are alien. That happens in this country, and there are volume discounts in other industries. And I think that is probably what is going on here.

Mr. UPTON. Are they significant rates? I mean, I—do you think 30 percent different——

Mr. BAXTER. No. I think the——

Mr. HOOKS. I got those numbers from our group at NCTC, so——

Mr. BAXTER. I would be—I am sure there are better people to comment on the size of the different——

Mr. UPTON. Mr. Pyne, would you be able to comment on that?

Mr. PYNE. Well, I think, as I pointed out earlier, with the recent ESPN deal that was—that I mentioned, I mean, clearly we were taking into account that the National Cable Television Cooperative, which is the—in the sort of top five of cable companies, if you take it as a whole, it was given actually a contractual obligation by us, by our company, that its pricing would be similar to other MSOs of its size. So in that—we were trying to—we were trying to deal with that issue in that negotiation.

Mr. UPTON. Mr. Hooks, did you want to respond to that, too?

Mr. HOOKS. Yes. I would just say we need disclosure on the terms of the contracts, and that would answer all of the questions.

Mr. UPTON. We are having a series of votes. We will be adjourning here momentarily.

Mr. Kimmelman, I want to go back to the a la carte, in terms of how it would work. I think we are all—Mr. Deal I know indicated about the FCC's response. We are all waiting for that response, and I look forward to getting it.

You say that rate regulation would not be necessary. You submit that the programmers would police themselves, not charge unreasonable rates. How is that different than the current system, whereas Mr. Pyne indicated Disney offers ABC for a stand-alone price, but few, if any, cable operators actually choose to take up that single offer? Wouldn't you need rate regulation to make a la carte something different than we already have today in the marketplace? Yes or no.

Mr. KIMMELMAN. Mr. Chairman, I would suggest absolutely not, even though I have recommended regulation at previous times be-

fore this committee. I don't think—absolutely not, because just think about what you have heard this morning and this afternoon. These programmers desperately, desperately want to be in a package, whether they are startup or existing. They desperately want to be there. These cable operators desperately, desperately want to have them in a package.

When one of them comes in with a high price, and the negotiation goes off kilter, right now it is either the consumer pays a big price increase or the screen goes black. And that is not a very good situation. If you had the package, and you had an opportunity for a la carte, the programmers and the operators have to alter their negotiations somewhat.

And I would suggest to you that that is a marketplace where there is a tempering of price increases and a desire, because for whatever reasons—I can't explain them all, but for whatever reasons we have all heard they desperately want to be in that package, and they desperately want the consumer to buy the package. They don't want them to go a la carte.

If you just give the consumer the option, it may be 1 percent, it may be five, it may be nobody. The fact that they can choose it is going to help us in this marketplace.

Mr. UPTON. That is what Mr. FitzPatrick was saying with the Golf Channel. By being part of the package, they have seen their revenues increase, their eyeballs increase, whereas with a la carte they were sinking big time.

Mr. KIMMELMAN. And they may have screwed up by the way they did that, and I am not suggesting that he—the Golf Channel——

Mr. UPTON. It sounds like they did okay.

Mr. KIMMELMAN. You know, the Golf Channel should be in any package they can negotiate it in. But if people want to buy it separately, that would be interesting, too. And it would change the negotiating process.

Mr. UPTON. That was the point was that they were losing as—they probably wouldn't have survived if they had stayed an a la carte. Is that right, Mr. FitzPatrick?

Mr. KIMMELMAN. When the Disney Channel——

Mr. FITZPATRICK. That is correct, Mr. Chairman.

Mr. KIMMELMAN. [continuing] charged $10 a sub for an individual channel, it didn't do that well either. In a package, it does better. Maybe $10 was a little high.

Mr. UPTON. Mr. Liggins?

Mr. LIGGINS. Yes. I just want to make one final comment. I heard a term used earlier when we were talking about TV programming. That term was commodity. Television programming is not oil, it is not wheat. Jerry Seinfeld, Brett Favre, Alex Rodriguez, and Will Smith, these guys don't consider themselves commodities.

And, you know, when we start talking about cable rates and their link to programming, you have to remember that the talent of an athlete or an actor or a singer is actually ultimately what drives the cost of programming, because you have to get them to perform and then show it. And to then try to take that and commoditize it in the cable or satellite rate is very difficult.

Mr. BAXTER. If I could just add on to that, if it is okay, Mr. Chairman, to block something out, we can provide somebody with

a box. If you go a la carte or go to these theme channels, we have to give everybody a box. You know, and we are talking—you know, we have 11 million customers. About half of our customers don't have a box today. That is 5 million customers who have to get a box. They have two sets per household. We are into tens of millions—10 million boxes, huge amounts of money here.

So as you look at a la carte, there are costs that are significant that you just can't overlook or look the other way, that come with this notion of a la carte or themed channels.

Mr. UPTON. Mr. Pyne, you wanted to say something?

Mr. PYNE. Yes, if I just may add one remark with regard to Disney Channel moving from an a la carte to a basic. And I will continue if you want me to. Certainly, when Disney Channel—when it started, it was in the $10 to $16 price range as an a la carte, similar to other pay networks then and today.

And essentially it never got more than 5 million a la carte subscribers. We, in fact, tested the number of approaches—a la carte, we tested tiering, we had tested packaging, but what we found was—and something that I think, as Mr. Baxter pointed out, within the a la carte there is something called churn, and churn is where customers come on and off in a given cycle. And we found—and for pay and tier services, that is generally 5 to 6.5 percent a year—a month, which means that it is somewhere 60 to 78 percent per year.

What we found ourselves as a pay a la carte service is focusing all of our revenues in transactional marketing to keep subscribers versus into programming. Since the conversion from a pay to basic, we have dramatically increased the—two things. One is the programming—original programming has increased over 109 percent over the last 5 years, and that is because of the broader universe.

In addition, we have increased the level—we have actually more than doubled the level of minority viewership by—as opposed to only targeting a certain segment because that is—those are the—those may be able to purchase, we are actually representing the broad diversity of our audience and of the American public.

Mr. UPTON. I appreciate all of your comments. And I must confess that we don't have a lot of time left on this series of votes, so we look forward to the FCC response, and additional questions may be coming your way. Appreciate your time this morning and this afternoon.

Thank you.

[Whereupon, at 1:44 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

PREPARED STATEMENT OF THE GROCERY MANUFACTURERS OF AMERICA

The Grocery Manufacturers of America (GMA) appreciates the opportunity to provide the food, beverage and consumer product manufacturers' perspective on the use of Radio Frequency Identification (RFID) technology. GMA and its member companies believe this technology offers benefits for consumers and acknowledge and share concerns regarding consumers' privacy as it relates to the use of this emerging technology. We are committed to working with the technology providers, consumers, the Administration and the Congress as RFID technology is implemented and more widely adopted.

GMA is the world's largest association of food, beverage, and consumer product companies. With U.S. sales of more than $500 billion, GMA members employ more than 2.5 million workers in all 50 states. The organization applies legal, scientific,

and political expertise from its member companies to vital food, nutrition, and public policy issues affecting the industry. Led by a Board of 42 Chief Executive Officers, GMA speaks for food, beverage and consumer product manufacturers at the state, federal and international levels on legislative and regulatory issues.

THE TECHNOLOGY

For more than four years, the Auto-ID Center at Massachusetts Institute of Technology (MIT) has been developing supply chain applications for RFID technology that promise to deliver significant benefits to the economy and consumers. RFID has been around since WWII and is already used in many applications from the Speed Pass at the gas station to EZ pass at toll booths. RFID is the name given to the technology that involves tags that emit radio signals and devices called readers that pick up the signal. The electronic product code or EPC establishes a standards-based approach to using RFID technology to uniquely identify an entity or object that has an EPC tag attached to it. The EPC is essentially a radio enabled bar code, which can be read wirelessly. Other pieces of the EPC network enable the information from the tag to be analyzed and shared between supply chain partners.

The Auto-ID Center's work on the development of the EPC stands out as one example of how public, private, and academic interests can unite to support research and development, and help move technology forward to benefit society. The Auto-ID Center (now known as the Auto-ID Labs) is supported by many of the world's leading companies and organizations including many in the food, beverage and consumer products industry. EPCglobal, a joint venture between EAN International and the Uniform Code Council, was chartered last September to develop open, global standards for use of the EPC Network and currently has a subscriber base of more than 200 companies representing a cross section of major industries around the world. EPCglobal is responsible for the orderly adoption and implementation of the EPC system worldwide.

Similar to the license plate on a car, an Electronic Product Code (EPC) is a way to uniquely identify a pallet, case or individual product. It is the next generation of today's Universal Product Code (UPC), known commonly as the "bar code." Instead of the familiar printed strip, a tiny silicon chip holds a unique number that identifies a product. The tag, like today's barcode, cannot be read and understood without passing by a reader that is connected to a data infrastructure. The major improvement of EPC over the barcode is that it does not need "line of sight" to be read, but instead uses radio waves which makes the reading of transactions much faster.

Connected to a network, EPC technology will allow companies for the first time to manage their global supply chain in real time, at any time—offering never before available benefits. Some of those benefits include:

- Streamlining inventory control on a global scale;
- Deterring theft and counterfeiting;
- Keeping shelves stocked with products desired by consumers;
- Speeding the placement of new products; and
- Easing removal of expired products.

Though much of the research is focused on business and supply chain applications of the technology, the EPC ultimately promises consumer benefits as well. Consumers may see improved checkout procedures and customer service. Other benefits could include:

- Better availability of products; and
- Swifter and more effective food and product safety recalls.

It is also important to note that EPC technology can offer solutions to government, such as:

- Improved customs handling and border controls;
- Enhanced Department of Defense (DoD) logistics management; and
- Better security for moving luggage through airport terminals.

Within the food, beverage, and consumer products industry, RFID is a part of a broad range of e-commerce activities designed to make the supply chain more effective and efficient. From a manufacturer's perspective, some of the benefits of EPC/RFID include the elimination of manual counting and recounting of products in distribution. Warehouses, trucks, backrooms, and shelves will contain readers that will automatically and continually track products and maintain perpetual and accurate inventory data. Out-of-stocks—a problem which plagues the consumer packaged goods industry—could be virtually eliminated through preset triggers which would automatically call for replenishment. This would also allow for theft to be measured and controlled in real time, and will increase the ability to identify counterfeit products. Additionally, product recalls will be conducted in a much more efficient and

effective manner through continuous monitoring of products throughout the supply chain.

STATUS OF EPC/RFID IMPLEMENTATION

Currently, manufacturers are conducting pilot studies on the use of EPC/RFID in select warehouses, backrooms, trucks and manufacturing plants. While it is clear that broad implementation of EPC/RFID on individual items tracked to the store level is still years away, many retailers are eager to adopt case and pallet level tagging to enhance supply chain efficiencies. In addition, several manufacturers have been leading initiatives to use EPC/RFID to reduce theft in the supply chain, especially for high value goods, and look forward to realizing benefits from the day-to-day use of the technology.

As with any new technology, many hurdles stand between current capabilities and ultimate implementation. These include:

- Difficulty in reading radio frequencies through metals and liquids.
- Upgrading chip quality and consistency to improve read rates.
- Avoiding interference with other radio frequency technologies, such as those used in warehouses, manufacturing plants, stores, etc.
- Developing software to help sort vast amounts of data into meaningful information.
- Improving the ability to read all cases on a pallet.
- Making RFID affordable for many consumer product manufacturers.

These issues must first be addressed in a reliable and cost-efficient manner before we are likely to see widespread adoption of EPC/RFID.

PUBLIC POLICY ISSUES

While EPC/RFID can produce major benefits, the technology also raises public policy issues that must be addressed in a proactive and responsible way. Chief among those issues are concerns about consumer privacy, which some legislators and advocacy groups are already trying to address by proposing legislation that specifically regulates RFID. GMA believes RFID-specific legislation is unnecessary because the existing legal framework, industry self-regulation, and market forces provide consumers ample protection against potential abuses of the technology. In addition, premature legislation could also inadvertently stifle many of the beneficial uses of this technology (food security, bioterrorism) as well as technological solutions to public policy concerns.

Under Section 5 of the Federal Trade Commission Act, the FTC has authority to regulate unfair or deceptive practices in and affecting commerce. In recent years, the Commission has used this authority to develop a substantial body of law regulating the manner in which businesses collect and use consumers' personal information, particularly online. In addition, the Commission enforces specific privacy laws such as the Children's Online Privacy Protection Act, the Fair Credit Reporting Act, and the Gramm-Leach-Bliley Act. This body of law is readily applicable to consumer privacy concerns about potentially unfair or deceptive uses of RFID technology.

The protections of Section 5 of the FTC Act and other statutes enforced by the Commission are not technology-specific. Section 5 was not amended with the advent of radio or television, nor during the emergence of concerns about online consumer privacy. While there have been some laws enacted to deal with certain aspects of emerging technologies, FTC consumer protection enforcement, including enforcement of general consumer privacy protections, stems primarily from existing prohibitions against deception and unfairness. Specifically, the FTC has brought several consumer privacy cases on the theory that a company's failure to abide by its stated privacy policies constitutes a deceptive practice under the Act.

In conjunction with its enforcement activities, the FTC has long encouraged companies to make privacy policies available to consumers. Many of the retailers and manufacturers, who are at the forefront of implementing EPC/RFID, already publish and abide by privacy policies that provide consumers protection against misuse of their personal information. Retailers and manufacturers know that consumers, as well as the FTC, hold them to the promises made in their privacy policies. They recognize that it will be necessary to update these policies to notify consumers when EPC/RFID technology is in use, how they collect and use information from EPC tags, and any choices consumers have. Given that consumer trust is paramount in the branded consumer products business, it is very much in the manufacturers' interest to ensure that consumers are comfortable with this new technology and fully understand the privacy policies by which they abide.

State law enforcers and the plaintiffs' bar have also been active in the consumer privacy arena. Their cases, while arising from consumer protection principles simi-

lar to those found in Section 5, have often focused on violations of unstated policies, for example, the failure to disclose that consumer personal information has been shared with another company.

These precedents demonstrate that basic consumer protection principles such as deception and failure to disclose were able to evolve to protect privacy in the online context. With the framework already in place, these principles are readily applicable in the context of RFID. There is no reason to believe, even in the absence of a law that specifically mentions "radio frequency identification," that the Commission, state law enforcers, and the plaintiffs' bar will stand by in the face of abuses of RFID technology. Like the internet, RFID is simply another method by which consumers and businesses can share information. Any privacy concerns it raises are virtually identical to those raised by information collection on the internet, and the same solution should apply; market forces and government encourage businesses to provide privacy policies, and the promises contained in those policies are enforced.

Self-regulation has an important role in encouraging responsible use of EPC/RFID. In January 2004, the GMA Board of Directors formally adopted privacy guidelines established by EPCglobal. They are available at www.epcglobalinc.org. The guidelines will continue to evolve as technological applications and consumer opinions develop, but they already address important aspects of a sound privacy policy—consumer notice, choice, and education, as well as records use, retention and security. Specifically, the guidelines focus on the need for consumer notification and choice when RFID tags are present in or on products available for purchase. In addition, they affirm companies' commitment to use, maintain, and protect records generated though EPC/RFID in compliance with all applicable laws, including privacy laws.

Of course, even in the absence of legal and self-regulatory incentives, retailers and manufacturers have ample incentives to deal fairly with their customers. Retailers and manufacturers of brands rely on repeat business. Repeat business depends on consumer confidence in the seller. Thus, when a shopper goes into a supermarket for a favorite brand of food, the whole supply chain recognizes that the shopper's trust in the businesses that brought that brand to the market is critical to his or her decision to return again and again. In addition, manufacturers have invested hundreds of millions of dollars to create consumer confidence, trust and loyalty to their brands. It is, therefore, in the industry's interest to act responsibly when implementing this new technology in order to maintain that trust.

Some believe that we need new laws to address RFID. Enacting laws and promulgating regulations now would likely do more harm than good. New laws specifically regulating RFID could stifle development of the technology before its benefits are fully recognized. Since the currently-known benefits of the technology arise in interstate commerce, a patchwork of state regulations of RFID would be particularly problematic. The appropriate approach is to monitor the situation and assess whether there are privacy concerns that legitimately arise as this technology develops and then ask whether they are concerns that cannot be addressed through industry self-regulation and the application of the unfairness and deception principles of the FTC Act.

Thank you for the opportunity to provide our perspective on this emerging technology. As the industry adopts EPC/RFID, we are committed to doing so in a way that protects consumer privacy and offers consumer benefits. We look forward to working with the Committee on this and other important issues in the future.

515 WEST 207 STREET
NEW YORK, NY 10034
tel. 212.544.2400
fax 212.544.0248
www.audubonpartnership.org

July 1, 2004

Chairman Michael Powell
Commissioner Kathleen Abernathy
Commissioner Kevin Martin
Commissioner Michael Copps
Commissioner Jonathan Adelstein
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Dear Commissioners:

RE: MB Docket No. 04-207

Each day I have the opportunity to see some of the very best and brightest stars in the Dominican community – they approach my organization with dreams of business ownership and the resolve to see them through. However, these powerful role models are not typically the portraits of Latinos I see when I return home to watch TV.

That is why I write to express my concern regarding the issue of *a la carte* pricing for cable television, which would most certainly reduce, rather than expand, the diversity of programming on cable television.

As the Commission noted when it opened the above-referenced docket, an *a la carte* pricing scheme could have unintended negative consequences for cable programming diversity. Despite the growing number of cable networks and programs embracing Latino characters and issues, positive, realistic images remain rare exceptions to the rule. Clearly there is a need for more – not less – programming aimed at Latinos as well as an environment in which struggling networks that provide quality programming can find a voice.

Any move to implement *a la carte* pricing, now more than ever, would be a mistake. As you undoubtedly are aware, a recent pilot of Nielsen Media Research's "Local People Meter" dramatically reduced the ratings calculations for minority broadcasts across the board, notably Spanish language networks like Telemundo and Univisión – the two highest-rated channels in their market. A number of voices here in New York, myself included, called this undercounting a "disenfranchisement of viewers on a massive scale."

If ratings for Latino-oriented programs are perceived as declining, a network's ability to raise advertisement revenue would naturally diminish, potentially spurring on the death of the programs popular in our communities.

The same is true in the *a la carte* setting. Advertisers will spend fewer dollars on *niche* networks when there is a decline in viewership, which is precisely what will occur if viewers chose only a small handful of the most popular channels. Once advertisers reign in their spending, smaller networks will not survive, stripping the cable medium of valuable minority voices.

As someone who represents the interest of Latino small businesses, I have an additional concern not directly mentioned in your inquiry. I fear that as Latino-focused networks struggle to survive under any *a la carte* law, the many small businesses who support these networks -- studios, talent agencies, crews and the like -- will suffer, potentially eliminating jobs in the Latino community.

I hope the Commission will consider my comments and protect the growing diversity of voices on television. In doing so, you will also protect the entrepreneurial spirit that thrives on cable.

Sincerely,

Walther Delgado
Executive Director