Before the
Federal Communications Commission
Washington, D.C 20554

In the Matter of	)	
	)	
	)	
A La Carte and Themed Tier Programming and	)	
Pricing Options for Programming Distribution	)	MB Docket No. 04-207
On Cable Television and	)	
Direct Broadcast Satellite Systems	)	
	)	
	)	

COMMENTS OF THE NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

The National Telecommunications Cooperative Association (NTCA)[1] submits these comments in response to the FCC's (Commission's) May 25, 2004 Public Notice seeking comment on factual questions regarding the provision of *a la carte* and "themed tier" services on cable television and direct broadcast satellite systems.[2]

A large number of NTCA's member companies offer video service to rural America. Currently, 216 NTCA member companies provide cable television service, and 79 member companies offer direct broadcast satellite (DBS). These companies serve the most rural segments of this country, where the cost and difficulty of providing service is

[1] NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents more than 560 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service incumbent local exchange carriers (ILECs) and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA's members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

[2] Comment Requested on *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, DA 04-1454, (rel. May 25, 2004).

the greatest. In many areas, NTCA member companies are the only providers currently serving these customers.

According to the National Cable Television Association (NCTA), nearly 103 million homes in the U.S. are passed by a local cable system.[3] The vast majority of these are passed by large multiple system operators (MSOs). Small, rural providers serve an extremely small fraction of this total.

SMALL PROVIDERS LACK LEVERAGE IN THEIR NEGOTIATIONS WITH CONTENT PROVIDERS.

Small cable television (CATV) providers and local exchange carriers (LECs) possess far less leverage in dealing with content providers than do the larger MSOs. In general, the larger the number of subscribers, the greater the degree of negotiating power. Providers of programming content make much of their money by selling advertising, and can charge higher rates if they deliver more potential viewers. It is in their best interest, then, to take whatever steps are necessary to insure that their programming is carried by the larger MSOs.

By virtue of their ability to deliver many more customers than small rural providers, the large MSOs are able to negotiate far more favorable terms for programming. Content providers simply cannot afford to have the large MSOs not carry their content. The large MSOs are aware of this fact, and they use it to their own advantage. Consequently, they demand—and receive—more beneficial terms from the content providers than they otherwise might.

[3] NCTA, 2004 Mid-Year Industry Overview, p. 25. Available online at www.ncta.com/pdf_files/Overview.pdf.

Smaller carriers, on the other hand, lack the leverage afforded by a large customer base. They must have access to the programming content that their customers demand in order to remain competitive with the larger MSOs. Content providers are aware of this, and are thus able to take a relatively inflexible position in their negotiations with small carriers. These carriers are not in a position to walk away from the negotiating table, and even if they did, the content providers' bottom line would be largely unaffected. Ultimately, this lack of leverage and negotiating power may lead to higher programming rates for the consumers served by smaller rural carriers, because programming rates are directly passed on to individual consumers.

Virtually all of the contracts negotiated between content providers and large MSOs include non-disclosure agreements. By restricting the flow of information, the content providers make it virtually impossible to establish any semblance of "market rates." Consequently, smaller carriers must enter into their negotiations at a significant disadvantage, as they possess far less information than the party with whom they are negotiating.

EXCLUSIVE DEALING ARRANGEMENTS PUT SMALL CARRIERS AT A FURTHER DISADVANTAGE.

Tying arrangements—whereby a network requires a carrier to take additional networks in order to have access to a flagship network—are rampant. ESPN and FOX are two prime examples of this practice. The end result is that the small carrier must pay a higher price in order to insure access to the desired flagship network. This problem is much more dramatic for a small carrier with limited capital resources than for a large MSO who can afford to pay for the extra networks. In addition, smaller carriers typically lack channel capacity, and these tying arrangements often compel smaller carriers to reposition (or even drop) channels in order to accommodate the additional networks forced on them by the flagship network. This repositioning and dropping of networks in a carrier's channel line-up puts smaller carriers at a competitive disadvantage because it causes confusion and dissatisfaction for their subscribers.

Exclusionary practices put small providers at a further disadvantage. By not allowing small providers access to certain desired networks, content providers can directly influence small carriers' ability to remain competitive. If a carrier is unable to provide all of the programming a customer demands, that customer will likely jump to a competing carrier who can.

SMALL CARRIER ACCESS TO THE SAME PROGRAMMING RATES MADE AVAILABLE TO LARGE MSOs IS ESSENTIAL TO ENSURE RURAL CUSTOMERS' ACCESS TO THE SAME PROGRAMMING AS URBAN CUSTOMERS.

It is important that carriers in rural areas are able to obtain programming content at reasonable rates in order to be able to provide the same service to rural customers that is available in urban markets or in those served by large MSOs. Unless these rural carriers are able to gain access to the programming content that their customers deserve at reasonable rates, their customers will receive higher cost service than their urban counterparts. There is no justifiable reason that certain customers should be penalized for no other reason than that their service provider has fewer customers than a large MSO. Allowing small carriers equal access to programming choices at equivalent prices would go a long way toward insuring equivalent video services in urban and rural America, and between small and large providers.

In addition, carrier access to programming choices at equivalent prices will help speed the goals of Section 7 of the Communications Act of 1936 and Section 706 of the Telecommunications Act of 1996.[4] Section 7 states that it is the policy of the United States to encourage the provision of new technologies and services to the public. NTCA members and other small video programming providers are adapting to the changing environment in the video marketplace by providing new ways to transmit video programming services to the consumer. The Commission should consider the obstacles they encounter in gaining access to programming and adopt remedies to remove those obstacles. Section 706 permits the Commission to consider appropriate regulating methods to remove barriers to investing in advanced telecommunications capabilities. Unreasonable rates, exclusive dealing arrangements and tying practices are barriers to investment as they limit full utilization of small carriers' broadband facilities. Removal of these barriers will further the goals of Section 706.

A LA CARTE PROGRAMMING WOULD REDUCE THE NEGATIVE IMPACT OF SMALL CARRIERS' LACK OF LEVERAGE AND WOULD MEET CONSUMER DEMANDS FOR UNBUNDLED OFFERINGS.

Allowing rural providers the ability to purchase *a la carte* programming would be an important step toward reducing the negative impact of the small companies' lack of leverage. Smaller carriers would be able to focus their limited programming budgets and channel capacity toward those networks that most interest their customer base.

Allowing for *a la carte* purchasing of programming would also satisfy customer demands for unbundled programming. Customers today are faced with unprecedented

[4] 47 U.S.C. Section 157 and 157 nt.

choice in viewing options. While choice is generally a good thing, being forced to take and pay for programming options for which a customer has little or no interest is hardly beneficial. Allowing for *a la carte* programming would provide rural customers with meaningful choices.

CONCLUSION

For the above-noted reasons, the FCC should allow for the provision of *a la carte* services on cable television and direct broadcast satellite systems. In addition, the Commission should carefully consider additional ways in which it can encourage the deployment of new technologies and investment in broadband by adopting policies or regulating methods that help small carriers overcome their lack of leverage in dealing with large content providers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, RITA H. BOLDEN, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in MB Docket No. 04-207, DA 04-1454 was served on this 15th day of July 2004 by first-class, U.S. Mail, postage prepaid, to the following persons listed below:

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