

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

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

To: The Commission

**COMMENTS OF UNIVISION COMMUNICATIONS INC.**

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## Summary

Univision Communications Inc. urges the Commission to reject the notion that à la carte distribution of broadcast or cable programming could possibly serve the public interest. As an initial matter, à la carte distribution of must-carry stations is prohibited by law, and the application of à la carte distribution to any local broadcast station would undercut the many public benefits such stations provide. Moreover, the arguments usually cited in favor of à la carte – subscriber cost savings and the ability to exclude indecent programming from one’s home – are inapplicable to carriage of local broadcast stations.

Beyond this, however, the application of à la carte distribution to any programming source, whether broadcast or cable, is harmful to the public. À la carte distribution would effectively halt the development of new networks and stations by rendering it extraordinarily difficult if not impossible for a new network to reach viewers. In addition, à la carte would reduce a channel’s audience to a smaller, core group of loyal viewers, starving the channel of ad revenue and discouraging the production of new and innovative programs. Finally, à la carte distribution would severely threaten the continued viability of independent, specialty, and minority-oriented networks.

As discussed in these comments, à la carte carriage would undermine the three fundamental mandates of the Commission – localism, diversity, and competition – while providing no countervailing public benefit. The Commission should therefore recognize that the claimed benefits of à la carte distribution are illusory and that à la carte distribution itself is contrary to the public interest.

**TABLE OF CONTENTS**

I. THE OFFERING OF LOCAL BROADCAST STATIONS ON AN À LA CARTE BASIS WOULD BE BOTH ILLEGAL AND HARMFUL TO THE PUBLIC ..... 2

    A. SECTION 614 OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED, PROHIBITS CABLE OPERATORS FROM PROVIDING LOCAL TELEVISION STATIONS ON AN À LA CARTE BASIS ..... 2

    B. OFFERING LOCAL BROADCAST STATIONS ON AN À LA CARTE BASIS WOULD BE HARMFUL TO THE PUBLIC ..... 4

    C. EVEN IF THE PROVISION OF LOCAL BROADCAST STATIONS ON AN À LA CARTE BASIS WERE LEGALLY PERMISSIBLE, THE ARGUMENTS IN SUPPORT OF À LA CARTE ARE INAPPLICABLE TO LOCAL BROADCAST STATIONS ..... 8

II. À LA CARTE OR THEMED-TIER DISTRIBUTION WOULD HARM BOTH CABLE AND BROADCAST PROGRAM DIVERSITY ..... 9

    A. DISTRIBUTING PROGRAMMING ON AN À LA CARTE BASIS WOULD REDUCE DIVERSITY BY “STARVING” NON-MAINSTREAM PROGRAM SERVICES ..... 9

    B. OFFERING PROGRAMMING ON AN À LA CARTE BASIS WOULD BE DETRIMENTAL TO THE IMPROVEMENT OR EXPANSION OF PROGRAM OFFERINGS ON EXISTING BROADCAST STATIONS AND CABLE CHANNELS ..... 10

    C. OFFERING PROGRAMMING ON AN À LA CARTE BASIS WOULD PREVENT THE INTRODUCTION OF NEW INDEPENDENT BROADCAST STATIONS AND NETWORKS ..... 12

    D. IN AN À LA CARTE WORLD, CHANNELS OWNED BY OR AFFILIATED WITH THE CABLE OR DBS PROVIDER WOULD SURVIVE, WHILE INDEPENDENT PROGRAMMING PROVIDERS WOULD BE REMOVED FROM THE CHANNEL LINEUP ..... 14

III. À LA CARTE DISTRIBUTION WILL CREATE NO BENEFITS FOR CONSUMERS ..... 15

    A. À LA CARTE SERVICE WILL NOT RESULT IN COST SAVINGS FOR THE CONSUMER.... 15

    B. CONSUMERS ALREADY HAVE THE ABILITY TO BLOCK UNWANTED CHANNELS ..... 16

IV. CONCLUSION ..... 17

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**COMMENTS OF UNIVISION COMMUNICATIONS INC.**

Univision Communications Inc. (“Univision”), by its counsel, hereby submits its Comments in the above-captioned proceeding in response to the Media Bureau’s request for comment. Public Notice, *Comment Requested on À 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 (May 25, 2004). By its Public Notice, the Commission seeks comment on a number of issues regarding à la carte and themed-tier programming, and the impact, effect, and feasibility of requiring cable system operators to offer such programming options to subscribers. As discussed below, à la carte or similar approaches directly conflict with the Commission’s public interest objectives.

In the Commission’s recent Notice of Inquiry regarding localism, Chairman Powell noted that “[f]ostering localism is one of this Commission’s core missions and one of three policy goals, along with diversity and competition, which have driven much of our radio and television

broadcast regulation during the last 70 years.”<sup>1</sup> Rather than support these bedrock Commission principles, however, à la carte would result in a loss of service from local broadcast stations, as well as a reduction in both diversity of programming sources and competition among video programming providers. À la carte distribution of programming would hurt both national and local programming diversity by threatening the continued viability of local broadcast stations and national cable channels alike. As discussed in detail below, offering channels on an à la carte basis would necessarily reduce the available audience to those “core” viewers willing to pay a separate fee to receive that particular station. By limiting the audience, à la carte also limits the advertising revenue available to operate a local broadcast station or cable channel, threatening its ability to offer quality local or other programming, as well as its ultimate economic viability. While this may be a hypothetical debate for many broadcast stations, since it is currently unlawful to provide must-carry broadcast stations on an à la carte basis on cable, the impact upon cable networks, particularly minority-oriented ones, would be immediate and destructive.

**I. THE OFFERING OF LOCAL BROADCAST STATIONS ON AN À LA CARTE BASIS WOULD BE BOTH ILLEGAL AND HARMFUL TO THE PUBLIC**

**A. Section 614 of the Communications Act of 1934, as Amended, Prohibits Cable Operators From Providing Local Television Stations on an À La Carte Basis**

The law currently requires that a cable subscriber have access to all local commercial television stations electing must-carry, regardless of any other cable programming services the subscriber may purchase. Section 614 of the Communications Act of 1934, as amended, states that “[s]ignals carried in fulfillment of the requirements of this section shall be provided to *every*

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<sup>1</sup> Statement of Chairman Michael K. Powell, In the Matter of Broadcast Localism, Notice of Inquiry, MB Docket No. 04-233, FCC 04-129 (released July 1, 2003).

*subscriber* of a cable system. Such signals shall be viewable via cable on *all* television receivers of a subscriber which are connected to a cable system by a cable operator or for which a cable operator provides a connection.”<sup>2</sup> Based upon the clear language of the statute, the Commission lacks the authority to permit cable systems to offer such broadcast stations on an à la carte basis.<sup>3</sup> Accordingly, if cable systems are ultimately permitted, or required, to offer à la carte or themed-tier programming, such an approach should be applied only to cable programming channels, with subscribers continuing to receive a basic programming tier consisting of the signals of all local broadcast stations in their market.

Univision notes that while advocates of à la carte frequently point to the use of à la carte programming distribution in Canada, the Canadian approach is entirely consistent with the FCC’s current carriage rules. As in the U.S., Canada requires that subscribers first buy a basic level of service before the subscriber is able to purchase additional program channels on an à la carte basis. The required basic service provides subscribers with all local and/or regional television signals, as well as all local radio stations.<sup>4</sup> As Canadian law recognizes, it is inappropriate to apply à la carte requirements to local broadcast stations and thereby undercut the local community benefits they provide.

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<sup>2</sup> 47 U.S.C. § 534(b)(7) (emphasis added); *see also* 47 C.F.R. § 76.56(d)(1).

<sup>3</sup> *See Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 US 837, 842-43 (1984) (if the language of a statute is unambiguous and clear on its face, an agency must give effect to the clear congressional intent).

<sup>4</sup> *See, e.g.*, June 30, 2004, *ex parte* letter of National Cable & Telecommunications Association, MB Docket No. 04-207 (submitting remarks of Michael Hennessey of the Canadian Cable & Television Association).

**B. Offering Local Broadcast Stations on an À La Carte Basis Would Be Harmful to the Public**

Even if à la carte treatment of local broadcast stations was not illegal, it would certainly be poor public policy. While certain members of Congress have only recently begun to explore the concept of à la carte and themed-tier programming offerings by cable system operators – most notably through a recent request for information resulting in these comments – the full Congress has already spoken clearly of the need to preserve free local over-the-air broadcast stations through its enactment of cable must-carry rights and satellite “carry-one, carry-all” requirements for local stations.<sup>5</sup> One of the most fundamental goals of Congress in promulgating laws requiring cable systems and satellite providers to carry the signals of local broadcast stations has been to preserve the ready availability of local broadcast television stations for both over-the-air and MVPD viewers.<sup>6</sup> Congress recognized that viewers rely on local broadcast stations, especially for emergency news and information, and that preservation of local stations is therefore in the public interest. Indeed, the main goal in adopting the must-carry provisions of

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<sup>5</sup> See, e.g., S. Rep. No. 104-23, 104th Cong. 1st Sess. at 69 (1995) (“Local television stations provide vitally important services in our communities. Because local programming informs our citizens . . . and provides other community-building benefits, we cannot afford to undermine this valuable resource.” (Additional views of Senator Hollings)).

<sup>6</sup> See Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 102-385, 106 Stat. 1460 (“1992 Cable Act”); Turner Broadcasting System, Inc. v. FCC, 520 U.S. 180 (1997) (upholding must-carry provisions of 1992 Cable Act); Joint Explanatory Statement of the Committee of Conference, 145 Cong. Rec. S14708, 14711 (November 17, 1999); Satellite Broadcasting and Communications Ass’n v. FCC, 275 F.3d 337 (4<sup>th</sup> Cir. 2002) (upholding carry one, carry all provisions of SHVIA).

the 1992 Cable Act was to ensure the survival of local television.<sup>7</sup> As the Supreme Court noted in Turner I,

Congress concluded that unless cable operators are required to carry local broadcast stations, “there is a substantial likelihood that . . . additional local broadcast signals will be deleted, repositioned, or not carried,” § 2(a)(15); the “marked shift in market share” from broadcast to cable will continue to erode the advertising revenue base which sustains free local broadcast television, §§ 2(a)(13)-(14); and that, as a consequence, “the economic viability of free local broadcast television and its ability to originate quality local programming will be seriously jeopardized,” § 2(a)(16).<sup>8</sup>

The rationale that motivated the 1992 Cable Act – that, absent cable carriage, broadcasters face financial uncertainties sufficient to threaten their economic viability and the local service they provide – continues to exist today.

Congress reiterated the need to preserve local broadcast television when it enacted the carry-one, carry-all provisions found in the Satellite Home Viewer Improvement Act of 1999 (“SHVIA”).<sup>9</sup> The Court of Appeals for the Fourth Circuit subsequently upheld the carry-one, carry-all provisions and affirmed the congressional goal of protecting “independent broadcasters from the harmful effects of satellite cherry picking” in order to preserve a “multiplicity of local

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<sup>7</sup> “Congress declared that the must-carry provisions serve three interrelated interests: (1) preserving the benefits of free, over-the-air local broadcast television, (2) promoting the widespread dissemination of information from a multiplicity of sources, and (3) promoting fair competition in the market for television programming.” Turner Broadcasting System, Inc. v. FCC, 512 US 622, 662 (1994) (*citing* S. Rep. No. 102-92, p.58, (1991); H. R. Rep. No. 102-628, p.63 (1992); U.S. Code Cong. & Admin. News 1992, p.1191; §§ 2(a)(8), (9), and (10) of the 1992 Cable Act).

<sup>8</sup> Turner I, 512 U.S. at 634.

<sup>9</sup> Congress was “concerned that, absent must-carry obligations, satellite carriers would carry the major network affiliates and few other signals,” and that its “interest in maintaining free over-the-air television will be undermined if local broadcasters are prevented from reaching viewers either by cable or satellite distribution systems.” Conference Report at S14711.

broadcast outlets.”<sup>10</sup> Through these rules, Congress sought to protect the ability of *all* local broadcasters to compete and thereby “preserve free television for those not served by satellite or cable and to promote widespread dissemination of information from a multiplicity of sources.”<sup>11</sup>

Congress’s legislative actions and statements reflect a recognition of the significant and irreplaceable service that local television stations provide to their communities *because* of their ability to be seen on every TV in every home, particularly during emergencies. The Commission has also acknowledged the importance of local broadcast stations,<sup>12</sup> and worked to ensure that all local viewers retain the ability to view their local stations, whether by cable, satellite, or over-the-air. A move to à la carte distribution would conflict severely with those efforts.

In emergencies, people invariably turn on the television and rely on their local broadcast stations for instant, on-going, and in-depth coverage presented both graphically and aurally. Local broadcast stations offer viewers critical, and potentially live-saving, information in cases of severe weather, national security crises, or breaking news events – information and detail that is rarely available so easily from any other source. National cable news channels may provide information for events that are national in scope, but there is no replacement for the local and regional coverage provided by the broadcast stations located in a viewer’s community. In

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<sup>10</sup> Satellite Broadcasting and Communications Ass’n v. FCC, 275 F.3d 337, 356 (4<sup>th</sup> Cir. 2002).

<sup>11</sup> H.R. Conf. Rep. No. 106-464, at 101 (1999).

<sup>12</sup> *See, e.g., Review of the Commission’s Regulations Governing Television Broadcasting*, Memorandum Opinion and Second Order on Reconsideration, 16 FCC Rcd 1067 (2001) at ¶ 22 (stating “Broadcast TV has the power to influence and persuade unmatched by other media. In terms of our diversity goal, we emphasize that TV is the dominant source of news and information for Americans, and in the world of television, broadcast TV stations are the dominant source of local news and information. Other video programming distributors, such as cable and DBS, typically do not serve as independent sources of local information; most of any local programming they provide is originated by a broadcast station.”).

addition to news, weather, and public affairs programming, local broadcast stations also provide children's programming, community calendars, and community outreach – services that would frequently not be available otherwise.

However, by undercutting the already difficult economic footing of local broadcast stations, offering such stations on an à la carte basis would have a profound negative impact, as local broadcast stations face a number of economic burdens that competing cable programming channels do not share. Nonetheless, these stations would be forced to compete for “shelf space” in a subscriber's home against such national cable networks under an à la carte approach.

First, unlike competing cable channels, local broadcast stations have significant distribution costs associated with continuously operating a high-powered transmitter. In fact, these distribution costs are doubled during the DTV transition as local stations must pay for tower space and electricity for two duplicative facilities. Second, the broadcast station can only serve a limited geographic area, unlike the nationwide footprint of a cable network. Third, the local broadcast station has to survive purely on advertising revenues, whereas a cable network has two revenue streams: advertising and subscription fees. An à la carte approach would further erode the economic base on which every free, over-the-air broadcast station depends in order to survive, as local stations could no longer offer potential advertisers access to all local viewers.

Given these competitive disparities, any attempt to impose à la carte or themed-tier distribution on broadcast stations' cable carriage would undermine these stations, as well as the public and governmental interests they serve. Viewers and their local communities would be harmed if à la carte were allowed to diminish the viability of local stations and deprive viewers of local news, weather warnings, Amber Alerts, government announcements, Emergency Alert

warnings, and other life-saving information that can only be distributed at a local level. The economic failure of these stations deprives *all* local viewers of a source of local information and programming diversity, but more importantly, may eliminate television service entirely to that substantial portion of the population that depends on local broadcast stations for all of its programming needs.

Even if local broadcast stations can economically survive to deliver important local information, the benefits of their public safety efforts are severely limited if not all local residents can be reached by the local stations. It would be a particularly perverse result if a cable subscriber saw dark storm clouds gathering on the horizon but was unable to receive local weather bulletins because six months earlier he instead opted to receive MTV because he liked the Spring Break specials.

**C. Even If the Provision of Local Broadcast Stations on an À La Carte Basis Were Legally Permissible, the Arguments in Support of À La Carte Are Inapplicable to Local Broadcast Stations**

To the extent that à la carte service is being considered as a means of reducing consumers' costs by reducing the programming costs that cable system operators face, offering local broadcast stations on an à la carte basis will not affect the programming fees paid by cable providers. By definition, must-carry stations receive no payment for cable carriage, and even among stations carried pursuant to retransmission agreements, few if any are paid money for permitting carriage.<sup>13</sup> As a result, the cable operator would have no monetary "savings" to pass on to subscribers who decline some or all of their local stations. Application of à la carte to local broadcast stations would therefore accomplish nothing in terms of subscriber savings, but would

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<sup>13</sup> See, e.g., Ted Hearne, Networks: Retransmission Consent Working Well, Multichannel News (Sept. 30, 2003); Linda Moss, Want Cash? Better Cough Up Avails, Multichannel News (Jan. 27, 2003).

instead threaten those subscribers' access to local emergency information and limit local programming diversity.

With regard to the other argument frequently mentioned in support of an à la carte approach, the elimination of unwanted indecency, broadcast stations, unlike cable networks, are already prohibited from airing indecent material. Beyond that, such stations are held to a higher standard when it comes to providing program content in general, being required to offer children's programming and other programming responsive to the community's needs. Thus, offering such stations on an à la carte basis would also not help subscribers eliminate indecent programming from their homes. In short, à la carte distribution of local broadcast stations would deliver no conceivable benefit to the public, while creating great harm.

## **II. À LA CARTE OR THEMED-TIER DISTRIBUTION WOULD HARM BOTH CABLE AND BROADCAST PROGRAM DIVERSITY**

### **A. Distributing Programming on an À La Carte Basis Would Reduce Diversity by “Starving” Non-Mainstream Program Services**

Providing service on an à la carte or themed-tier basis would invariably lead to a reduction in the number of viewers, and thus revenue, that a particular station or channel could attract. À la carte service would cause viewers to subscribe solely to their most-viewed channels, leaving the more lightly viewed stations by the wayside. Accordingly, local news channels might be pushed aside for CNN or MSNBC; specialty programming would lose out to programming with mass appeal; and a selection of local public broadcasting stations would likely be reduced to a single channel, if that. These decisions would result in consumers dropping those program services that they only watch occasionally, leaving behind just the dedicated core viewers (i.e., the history buffs who retain the History Channel at all costs). When enough of these “occasional viewers” lose access to a channel because it did not make it on their top ten list, the economic foundation of that service will be damaged. If the damage is light

enough, only the channel's ability to fund new or better programming will be threatened. Where the damage is more severe, the service will not survive, depriving *all* viewers, even those who did purchase the service on an à la carte basis, of another source of diverse programming. The end result will be the loss of smaller, independent, niche, specialty, and minority-oriented programming channels and broadcast stations, as only the larger mainstream channels and network affiliates will be able to attract a large enough à la carte audience to survive.

**B. Offering Programming on an À La Carte Basis Would Be Detrimental to the Improvement or Expansion of Program Offerings on Existing Broadcast Stations and Cable Channels**

As discussed above, à la carte distribution necessarily would deprive local stations and cable channels of casual viewers, thereby reducing their audience to a smaller, core group of loyal viewers. This forced selection by consumers would threaten the continued success of many local stations and cable channels, despite the fact that consumers may have watched and enjoyed the programming from those channels, even if they later do not recall having done so or are otherwise unwilling to pay for those channels individually.

À la carte distribution would also deprive program services of the ability to attract new viewers who happen by the channel and like what they see, or who see an interesting program listed in the TV Guide and want to watch it that night. Consumer frustration will only increase as potential viewers are unable to change their à la carte lineup instantaneously in order to watch the baseball game that has been switched from the Fox affiliate (to which they subscribe) to the UPN affiliate (to which they do not subscribe). This becomes particularly significant, and potentially harmful, when local stations or cable channels spend large sums of money developing a movie, mini-series, sporting event, or special episode that can only be financially viable if it attracts a larger than normal audience. Viewers that did not sign up for that particular channel, and who would have otherwise tuned in for this special programming, are unlikely to even know

about it, and certainly will not be able to watch it should they actually learn of it. On a broader level, consumers will not go through the hassle of calling their cable operator, adding a single channel, and paying whatever the fee may be for that additional channel just to see if they like a new program.

Thus, once a station or cable channel's viewership is reduced to its smaller, core audience, it will face increasing financial insecurity. The initial result will be a reduction in diverse, innovative programming, as programmers will have a difficult time broadening their audience with such programming, since there is no way for a broader audience to sample this programming, nor will the reduced audience and revenues imposed by à la carte allow the funding of programming aimed at anything but the programmer's core (paying) audience. Faced with the prospect of potentially alienating its core viewers and never being able to recover that viewership or replace it with new viewers, a program service will be unlikely to try new and innovative programming or to make any significant changes in its offerings.

At a time when many are complaining that Americans have become polarized in their views, supporting a cable distribution model that effectively encourages subscribers to pre-select only the programming they are willing to pay for (i.e., programming which is "comfortable" and supports their views) is harmful to the public. It undercuts the programming diversity and program "sampling" necessary to support a balanced perspective, and thereby undermines the very notion of First Amendment dialogue. Like eating at a smorgasbord, current program distribution methods encourage consumers to take small bites of a healthy diversity of entrées, rather than "pigging out" on their one favorite item when they are forced to select and pay for each individual entrée in advance. Just because a consumer does not eat every item offered at the smorgasbord on a particular day does not mean that he or she does not receive the benefit of

the broad selection, or that the consumer has somehow overpaid for the meal. Advocates of à la carte overlook this fact.

**C. Offering Programming on an À La Carte Basis Would Prevent the Introduction of New Independent Broadcast Stations and Networks**

In addition to harming existing outlets of independent and niche programming, distributing local broadcast stations and cable channels on an à la carte basis would effectively prevent new, independent, niche, or minority-oriented programming services from being launched. Without the ability to flip past a channel and see that a new program service has been added to the lineup, viewers are unlikely to even be aware that a new broadcast station or cable network is available.

Similarly, if a subscriber has chosen not to purchase a particular local station on an à la carte basis because he does not enjoy that station's programming, he would have no way of knowing that the station has changed its network affiliation or otherwise improved its programming. Where some subscribers do learn that a new local station is available or that an existing station has changed its affiliation, they are unlikely to overcome inertia and go to the trouble to have that station added to their channel lineup, or pay for the addition of the station when it is an unknown and untested product. Even if subscribers do eventually sign up, the delay in becoming available to such viewers increases the financial resources necessary to support the channel until it can become economically self-sustaining, decreasing the number of new services that can be launched, while also decreasing the likelihood that they can survive. Thus, providing channels on an à la carte basis would effectively doom new program services by cutting off access to those viewers in the market that subscribe to cable or satellite.

Because of this, offering broadcast stations on an à la carte basis is antithetical to the Commission's well-established goals of encouraging new networks and encouraging diversity of

programming, including that available to minority viewers.<sup>14</sup> À la carte distribution of local stations would prevent the introduction of new, different, and potentially beneficial programming to the market, or any attempt to create new broadcast networks. This is not a hypothetical point. Several years ago, Univision purchased a group of full-power television stations that were airing home shopping programming. Overnight, it converted these home shopping stations to a Spanish language format and used them to launch a new national Hispanic network, Telefutura. In an à la carte world, this would not have been economically viable, as it is unlikely that many subscribers would have been willing to pay to receive a home shopping station, and the new network might not have survived while waiting for cable subscribers to (1) realize that the stations had completely changed formats; (2) contact their cable system operator to have the local station added to their à la carte list; and (3) pay for receiving the new station, even though they had not yet had an opportunity to sample its new programming.

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<sup>14</sup> The Commission has an “oft stated public interest objective of encouraging new national networks.” Fox Broadcasting Company, 5 FCC Rcd 3211, 3211 (1990), *citing* Network Inquiry Special Staff, New Television Networks: Entry, Jurisdiction, Ownership and Regulation (Vol. 1, Oct. 1980); Competition and Responsibility in Network Television Broadcasting, 25 FCC 2d 318, 333 (1970) (Encouragement of the development of additional networks to supplement or compete with existing networks is a desirable objective and has long been the policy of the Commission). Promoting the establishment of new networks has been a “consistent interest of the FCC for many years” because “new networks . . . provide an increase in the amount and the diversity of prime time entertainment programming that will ultimately benefit the public . . .” and preserve outlet diversity. Evaluation of the Syndication and Financial Interest Rules, 6 FCC Rcd 3094, 3147 (1991).

Similarly, one of the Commission’s main objectives is “to promote diverse programming – programming that airs different points of view and reflects the needs and interests of all sectors of the community, including minorities and women.” Review of the Commission’s Broadcast and Cable Equal Employment Opportunity Rules and Policies, 15 FCC Rcd 2329 at ¶ 49 (2000).

It is already a daunting task to launch a new network – few have successfully made it. Implementation of à la carte distribution would place an immense obstacle at the threshold of an already difficult path. In addition to the Telefutura network, several new broadcast networks have been launched in recent years, including the WB, UPN, and PaxTV, each increasing the diversity of programming available to consumers via broadcast television. À la carte distribution would make new networks unlikely, creating a return to the 1980s when a handful of networks dominated the television landscape, and little, if any, independent, minority, or specialty programming was available.

**D. In an À La Carte World, Channels Owned by or Affiliated with the Cable or DBS Provider Would Survive, While Independent Programming Providers Would Be Removed from the Channel Lineup**

While à la carte would be detrimental to programming diversity by threatening existing broadcast stations and cable channels, as well as hindering the introduction of new programming networks, it would also have a disproportionately severe impact upon independent program services that are not owned by or affiliated with cable or satellite operators. As the Commission is aware, large cable system operators hold substantial interests in numerous cable networks, and it is these affiliated channels that will likely survive if à la carte is implemented. Protected by the cable system owner from ever being deleted from the lineup, even if relatively few subscribers sign up for them at first, these services will have the staying power and time to develop and build an audience, while independent channels, particularly new networks, will likely be the first deleted for low à la carte subscription rates. According to report prepared by the GAO in 2003, “A cable operator is 64 percent more likely to carry a cable network it owns than to carry a network with

any other ownership affiliation.”<sup>15</sup> This number will only increase as cable operators keep poor-performing, co-owned cable networks in their lineup as they work to develop those networks’ audiences through cross-promotion with other co-owned cable channels, while they axe independent channels that are struggling to attract à la carte subscriptions.

This vicious cycle will make it that much more difficult to have diverse programming sources available to the public, while diminishing effective competition against the operator-affiliated cable channels. The end result will be a distillation of programming sources leaving only the large broadcast network affiliates, large cable networks, and co-owned cable channels, at the expense of independent, specialty, and minority-oriented channels, all to the detriment of the viewing public.

### **III. À LA CARTE DISTRIBUTION WILL CREATE NO BENEFITS FOR CONSUMERS**

#### **A. À La Carte Service Will Not Result in Cost Savings for the Consumer**

Ultimately, cable and DBS providers, as well as cable and broadcast networks, face mostly fixed costs associated with the provision of their respective services, and it is unrealistic to believe that these costs will drop substantially if subscribers are allowed to pick and choose individual channels of programming. For example, a cable system must still cover the costs of building and maintaining transmission lines to every household; the electricity to run the system; the lease for the buildings, towers, and rights of way; and the staff to handle billing and service requests. Thus, if this basic operating cost works out to \$30 per subscriber given the current subscriber base, having those subscribers elect to receive only half as many channels just means

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<sup>15</sup> Issues Related to Competition and Subscriber Rates in the Cable Television Industry, Government Accounting Office Report to the Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, GAO 04-8 (October 2003) at 30.

that the cost per channel will have to go up substantially to cover those fixed costs. In this example, the cable operator must still charge \$30 per subscriber to recoup its expenses even if a subscriber selects only five or ten channels. As a result of this economic reality, requiring cable system operators to offer service on an à la carte basis is unlikely to reduce consumers' monthly cable bills.

Similarly, program providers have fixed costs to recover in order to survive, and if the number of subscribers drops significantly because of à la carte distribution, a program provider will have to increase its per subscriber charge to the cable system in order to meet its costs. Once again, the cost to the cable subscriber ends up being basically the same, while the number of channels that subscriber receives may drop significantly. Thus, any economic benefit to consumers from an à la carte approach is largely illusory.

#### **B. Consumers Already Have the Ability to Block Unwanted Channels**

Finally, with regard to the argument that subscribers can use an à la carte approach to avoid indecent programming, cable subscribers are already afforded various means of blocking unwanted programming. In particular, current technology offers options such as cable lock-boxes and the V-Chip for preventing access to unwanted channels. As the Commission has previously stated,

The [Communications] Act provides several legal remedies, working in tandem with available technology, for those who object to certain content made available over a cable system. First, as Section 640 requires, a cable operator must block programming, using any means, if such a request is made by a particular subscriber. Second, a cable subscriber may obtain a lock-box from the local cable operator if he or she wants to selectively block unwanted material. Finally, subscribers may purchase television sets equipped with V-Chips that enable

individuals to block television programs, including sexually explicit content, assigned a particular rating by the video programmer.<sup>16</sup>

Thus, while the offering of service on an à la carte basis will result in numerous harms to the public, including a reduction in programming diversity, there are no counterbalancing benefits to be gained. The notion of à la carte programming requirements should therefore be promptly discarded.

#### **IV. CONCLUSION**

For the reasons discussed above, à la carte or similar approaches to cable programming are in direct conflict with the Commission's public interest objectives and obligations. Offering local broadcast stations on an à la carte basis is both prohibited by statute and harmful to the public. An à la carte approach to cable networks would disparately impact independent and specialty programming channels and reduce programming diversity, while resulting in no attendant benefit to the public. Accordingly, the Commission should reject any notion of à la carte distribution being in the public interest.

Respectfully submitted,

**UNIVISION COMMUNICATIONS INC.**

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<sup>16</sup> Implementation of Section 505 of the Telecommunications Act of 1996, Scrambling of Sexually Explicit Adult Video Service Programming, Repeal of Section 76.227, 16 FCC Rcd 20915 (2001) at ¶ 9.