Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

MB Docket No. 04-207

Comment Requested on a La Carte and	)
Themed Programming and Pricing Options	)
For Programming Distribution on Cable	)
Television and Direct Broadcast Satellite	)
Systems	)

To: The Commission

The Leadership Conference on Civil Rights (LCCR) submits these comments in MB Docket No. 04-207, on the proposed "cable a la carte" or themed tier programming structure for the cable television industry.

As the nation's oldest, largest, and most diverse civil and human rights coalition, LCCR works actively to encourage the enactment and enforcement of effective civil right legislation and policy. LCCR's membership includes over 180 national organizations that represent a wide range of groups, including people of color, women, children, labor unions, individuals with disabilities, older Americans, major religious groups, gays and lesbians, and civil liberties and human rights groups. See, www.civilrights.org for a full list of LCCR member organizations.

The civil rights community has long recognized the important role that media plays in creating a more just and equitable society. Since the early days of the civil rights movement, when the NAACP in Jackson, Mississippi successfully challenged a local station for refusing to broadcast coverage of the local and national civil rights movement, civil rights organizations have worked to ensure an open media environment with a diversity of voices and viewpoints. In recent years, as the media has become more pervasive and influential, media diversity has become a critical component of a civil rights agenda that seeks to ensure equity and democratic participation in areas vital to the health of the nation and our communities, such as education, economic opportunity, the environment, health care and political participation.

Not only does the media play a powerful role in shaping the public's views on civil rights issues, but the media impacts civic participation as well. Minority owned and managed channels not only include considerably more minority content, employ more minority employees, and pay greater attention to the concerns of the minority community, but they encourage participation in community affairs as well.[1]

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[1] Numerous studies submitted to the FCC document both the salutary impact of minority owned and managed channels on minority communities and the discriminatory impact of many industry practices and FCC policies. See for example:
Christine Bechen, Allen Hammond, and Laurie Mason, *Diversity of Programming in the Broadcast Spectrum: Is There a Link Between Owner Race or Ethnicity and News and Public Affairs Programming?* (Dec. 1999)
William H. Bradford, *Discrimination in Capital Markets, Broadcast/ Wireless Spectrum Service Providers and Auction Outcomes* (Dec. 5, 2000)
Ernst & Young LLP, *FCC Econometric Analysis of Potential Discrimination Utilization Ratios for Minority- and Women-Owned Companies in FCC Wireless Spectrum Auctions* (Dec. 5, 2000)
Ivy Planning Group LLC, *Whose Spectrum Is It Anyway? Historical Study of Market Entry Barriers, Discrimination and Changes in Broadcast and Wireless Licensing 1950 to Present* (Dec. 2000); KPMG LLP Economic Consulting Servs., *Study of the Broadcast Licensing Process* (Nov. 2000)
KPMG LLP Economic Consulting Services, *Utilization Rates, Win Rates, and Disparity Ratios for Broadcast Licenses Awarded by the FCC* (Nov. 2000).

In recent years, LCCR has vigorously advocated for increased diversity in ownership, content, and employment in an increasingly complex and hostile regulatory and policy environment. Among other things, the organization has taken a strong and active stance against the FCC's rules permitting increased media consolidation; urged support for policies that would increase minority ownership, such as renewal of the Minority Tax certificate; fought for EEO rules for the broadcast industry; and promoted policies, such as the E-Rate to create digital opportunity and provide equitable access to new media, like the Internet. Notwithstanding these efforts, the current media climate, driven by consolidation and deregulation, is generally hostile to efforts to increase diversity. [2]

It is with this historical perspective in mind that LCCR considers the a la carte cable model. LCCR judges any policy proposal in this area by its direct and affirmative impact on equal opportunity in the cable industry. There is a growing body of evidence that a la carte could diminish what little diversity is currently on cable and put minority and women programmers at risk.

Networks that cater to minorities, women, non-English speakers, and other highly targeted audiences already have a very difficult time getting distribution on cable. Indeed, the record is clear that the current system, which is both concentrated in few hands and vertically integrated, has led to an increasingly closed system that has undermined diversity in general and minority ownership in particular. LCCR believes that the current system should be expanded to include more minority-controlled channels on basic and expanded basic tiers. Without knowing definitively that an a la carte model would improve diversity, these steps

[2] Id.

are preferred to replacing the current system with the unknown a la carte. LCCR supports legislative and regulatory efforts to ensure greater minority inclusion.

The concern with an a la carte model that has been expressed by minority programmers and many LCCR member organizations is straightforward.[3] Niche cable channels depend on tier carriage to attract and grow viewership and advertisers. Under an a la carte regime, there would be no assurance of tier carriage, making it far more difficult to attract advertisers and generate revenue to support network programming.[4] At the same time, in order to generate revenue, those networks may have to increase the fees they charge cable operators to distribute programming, which could further hinder the likelihood of distribution. Unlike large established networks that cater to majority tastes, these niche networks may need to invest additional dollars into advertising in multiple venues in an attempt to remain viable because, unless sufficient cable viewers "choose" the network from the a la carte menu, the channel is unlikely to succeed. But viewed through the lens of diversity, that is precisely the potential danger of the a la carte model. The majority of cable subscribers are unlikely to choose multicultural and niche networks, thus making these networks even less attractive to cable operators and less able to build an audience.

An October 2003 report released by the U.S. General Accounting Office supports this concern, "Any movement of networks from the most widely distributed tiers to an *a la carte* format could result in a reduced amount that advertisers are willing to pay for advertising

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[3] See for example the letter sent on May 12, 2004 to the House Energy and Commerce Committee signed by the chief executives of BET Holdings, TV One, the International Channel, and Sí TV.

[4] Discrimination in the advertising industry against minority-owned and formatted stations is well documented in the broadcast industry. *Civil Rights Forum on Communications Policy, When Being No. 1 is not Enough: The Impact of Advertising Practice on Minority-Owned and Minority-Formatted Broadcast Stations* (1999).

time…some cable networks, especially small and independent networks would not be able to gain enough subscribers to support the network."[5] As Alfred Liggins, chairman of the newly launched cable network for African Americans, TV One, put it, "[H]ow many of those 80 million homes would be likely to elect our service having never seen it?…Probably only a small fraction would."[6]

Indeed, we believe that the well documented difficulties that minority channels now have in obtaining distribution in the first instance could be exacerbated under an a la carte system, thereby "locking in" the dominant media and "locking out" competitors. According to the Minority Media and Telecommunications Council, there are "fifteen new multicultural channels—most minority controlled—… in various stages of development or distribution…The financial impossibility of sustaining a new channel while few people are watching would effectively shut out new entrants."[7] In recent letters to Congress, minority programmers and civil rights advocates echoed that concern. For example, the chief executives of four multicultural channels argued, "Networks like ours, that serve diverse, minority and multilingual interests, would never have been launched in an a la carte world."[8] The National Asian Pacific American Legal Consortium stated, "[A la carte] would adversely affect the ability of our community to freely express themselves through valuable cultural

[5] Report to the Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate: "Issues Related to Competition and Subscriber Rates in the Cable Television Industry." United States General Accounting Office. Report 04-8: October 2003.
[6] Alfred Liggins, "Destroying Diversity: The Perils of 'A la Carte' Pricing on TV", *Washington Times*, 12 April 2004.
[7] Letter sent on May 12, 2004 to the House Energy and Commerce Committee by MMTC's Executive Director, David Honig.
[8] Letter sent on May 12, 2004 to the House Energy and Commerce Committee signed by the chief executives of BET Holdings, TV One, the International Channel, and Sí TV.

programs that draw on our collective heritage."[9] The NAACP and the National Urban League - among others - have expressed similar concerns.[10]

The question that the FCC must carefully examine is this: Would cable a la carte serve the goal of media diversity? Would it open up new opportunities for minority ownership, content, and employment in cable? Or, as some evidence suggests, could it result in less diversity and fewer multicultural channels with cable reflecting only majority tastes and preferences? LCCR believes that the troubling impact on diversity must move to the center of the commission's analysis of cable a la carte and that it must therefore caution Congress regarding its impact on diversity as it considers its adoption.

Also, LCCR understands and shares the alarm of consumers about escalating cable costs; many of LCCR's member organizations represent low income and underserved Americans who are hardest hit by the escalating costs of cable programming. The impact of an a la carte model on cable prices is the subject of much debate. While at this time it appears there may be no evidence that a la carte will bring about lower cable prices, the commission should carefully examine the record to determine whether cable a la carte could produce this consumer benefit.

Finally, we note that the comments submitted by LCCR pursuant to this filing should not be construed or interpreted in any way to endorse any employment practices or policies of the

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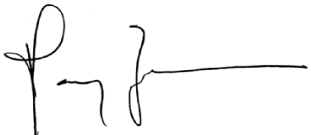
[9] Letter sent on May 11, 2004 from the National Asian Pacific American Legal Consortium's Karen Narasaki to the House Energy and Commerce Committee.
[10] NAACP's Hilary Shelton sent a letter on May 17, 2004 to Representative Solomon Ortiz. Urban League filed comments pursuant to this FCC proceeding on July 7th.

cable industry. LCCR supports workers' rights to organize within the communications industry. In particular, we strongly disapprove of the unfair labor practices of several companies in the cable industry, a sampling of which is included in the attached report, *No Bargain: Comcast and the Future of Workers' Rights in Telecommunications.*[11]

LCCR appreciates having the opportunity to express our views on cable a la carte and hope that the FCC will refrain from changing the current system until the impact on media diversity has been thoroughly examined. Should you have any questions, please contact Nancy Zirkin at (202) 263-2880.

Respectfully submitted,

Wade Henderson
Executive Director



Nancy Zirkin
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[11] *See* Julie Martinez Ortega, American Rights at Work, *No Bargain: Comcast and the Future of Workers' Rights in Telecommunications,* June 2004.