Before the
Federal Communications Commission
Washington, DC 20554

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

COMMENTS OF CHARTER COMMUNICATIONS, INC.

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SUMMARY

Despite the superficial appeal of providing consumers with more choice, a federally-mandated a la carte regime would be bad for broadband communications providers, video programmers, and MVPD consumers. Charter's own experience with cable programming confirms that this is one area where "the whole is more valuable than the sum of its parts." Packaging a variety of programming channels together makes economic good sense. It maximizes product appeal while minimizing costs and operational burdens.

The irony in this proceeding is that the competitive MVPD marketplace today is already serving consumers well. The cable industry collectively has expanded the quantity, quality, and diversity of video programming, and it has upgraded its infrastructure to provide an ever-expanding array of broadband services. For its part, Charter is offering consumers more purchasing options than ever before, and these offerings will continue to evolve in response to competition and consumer demands.

An a la carte regime would undermine the MVPD marketplace by rejecting its successful business model. It is widely agreed that existing tiering practices benefit nascent programmers by affording them immediate exposure to an established audience. The resulting distribution maximizes potential licensing and advertising revenue for cable programmers, thereby minimizing per subscriber costs. Broad distribution of cable networks also benefits cable operators (and cable customers) by facilitating the efficient use of costly distribution plant.

A mandatory al la carte regime would create far more problems than it would solve. From an operations standpoint, it would require a dramatic increase in the deployment of costly addressable set-top boxes, and it would greatly complicate customer service.

Charter believes that the a la carte exercise ultimately would frustrate and disappoint the typical cable customer. The burdens on the customer would increase, and the potential for appreciable rate relief is small.

However well-intentioned, a la carte legislation would have unintended adverse consequences. Even a requirement that programmers simply provide cable operators with a voluntary a la carte option would disrupt the marketplace, trigger unreasonable consumer expectations, and likely lead to extensive and complex regulation.

Finally, an a la carte mandate is far too blunt a tool to efficiently address concerns about the unwarranted reception of “objectionable” video programming. Those concerns can be much better addressed through other means.

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COMMENTS OF CHARTER COMMUNICATIONS, INC.

Charter Communications, Inc. ("Charter" or the "Company"), by its attorneys, hereby submits these Comments in the above-referenced proceeding. Charter is a broadband communications company, with no significant video programming ownership. Its interest in this proceeding is solely as an owner and operator of cable systems, not as an owner of cable networks.

Charter currently provides cable programming to more than 6 million households. Both Charter and its customers would be directly, immediately, and substantially harmed by the imposition of a mandatory "a la carte" regime. Even a law encouraging optional "mini-tiers" (ostensibly strengthening Charter's negotiation position with third party programmers) could adversely affect the Company's product, operations, and viability.

Charter fears that this entire inquiry is premised on a series of erroneous assumptions regarding the operation of the multi-channel video programming distribution ("MVPD") industry. These errors now threaten to destroy the business model that has served the nation's video marketplace so well.

Any inquiry into cable programming practices must recognize that the cable industry has been an extraordinary American success story. It has expanded the quantity, quality and diversity of video programming available to the American public. At the same time, the industry has upgraded its plant, so that cable systems today are providing not only traditional video services, but also an ever-expanding array of broadband services.

Charter, in particular, has made dramatic investments in bringing the "wired world" into reality. The Company has invested billions of dollars over the past several years to rebuild and upgrade nearly ninety percent of its existing systems, and it is continuing the technological development of these systems. This enhanced infrastructure, and that created by other cable operators, affords tremendous public benefit. Significantly, Charter and the rest of the industry completed these valuable upgrades using their own financial resources and ingenuity, without government subsidy and without any guaranteed rate of return on the investment. Charter and the other cable operators reasonably expected, however, to have the opportunity to deploy the resulting infrastructure in a prudent and efficient manner, free from government intervention in core marketing decisions. These companies cannot afford for the government to "get it wrong" by imposing an unworkable and uneconomic a la carte regime on the provision of television programming.

A dozen years ago, Congress intervened in cable's basic business operations and imposed extensive rate regulation. The experience was far from ideal. Industry investment languished, programming stagnated, and cable customers suffered. That experience prompted repeated regulatory modifications by the FCC in an earnest effort to accommodate cable development. Fortunately, Congress eventually recognized the underlying problem, reversed course, and deregulated rates for all but "lifeline" service. Charter submits that a federally-mandated a la carte regime today would be even more detrimental to the cable industry's ongoing operations than the experience with cable rate regulation in the 1990s.

I. CHARTER ALREADY DELIVERS A WIDE ARRAY OF PURCHASING OPTIONS.

The first problem with the a la carte concept is its erroneous assumption that cable and its competitors currently provide consumers with inadequate choice. That assumption simply is not true. The fact that no MVPD today makes each and every programming service available on an a la carte basis does **not** mean that MVPD customers are confronted with an "all or nothing" purchasing decision. A Charter customer certainly is not obligated to purchase a singe "platinum package" offering. To the contrary, Charter offers a remarkably wide array of purchasing options, with different service combinations and prices.

Most Charter systems offer their most budget-conscious customers a limited "basic" tier, focusing on the retransmission of local broadcast signals. Charter next offers an "expanded basic" tier, which typically includes the most popular cablecast channels. Even this "expanded basic" tier, however, is far from all-encompassing. Most Charter systems now offer many additional channels on four separate digital tiers (the "Family and Information Tier," the "Movie Tier," the "Sports Tier," and the "Latino Tier"). They also offer subscribers a variety of premium and pay-per-view channels. On most systems, Charter customers have the option of combining this traditional video fare with other Charter-provided products, like high speed Internet access and, increasingly, telephony. This panoply of purchasing options refutes any notion that cable customers lack meaningful choice.

In any event, there is no evidence that program packaging is suddenly becoming more problematic. The cable industry has offered most of its programming services on a "tiered" basis for decades. Although most programmers negotiate hard for favorable tier placement, that certainly is not a new phenomenon. In fact, while the number of channels offered by cable operators has increased dramatically in recent years, the expansion has focused primarily on digital offerings that typically are separate and apart from established analog tiers. **There are more tiers and more a la carte channels available on Charter systems today than ever before**. And cable customers recognize that these new offerings are optional. Charter has been quite successful in introducing digital packages, but less than half of its customers currently subscribe to any digital services. The truth is that Charter customers already exercise meaningful choice in selecting cable programming.

II. COMPETITION PROVIDES THE OPTIMAL DISCIPLINE IN MVPD MARKETING.

Recent calls for federal intervention in MVPD marketing are also undermined by the intense competition that now governs this business sector. Congress has specifically recognized the benefits of allowing the competitive marketplace to dictate cable development. In adopting the Cable Communications Policy Act of 1984, Congress plainly stated its desire to "promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic burden on cable systems."[1] Even when it imposed cable rate regulation in 1992, Congress emphasized its "preference for competition."[2] Under federal law, rate regulation applies only where a particular cable system lacks "effective competition."[3]

"Effective competition" has been statutorily defined as existing wherever a cable operator faces a competing MVPD serving at least 15% of the local MVPD subscriber base. On a national level, DBS penetration now far exceeds that threshold. The Commission's last annual survey reported DBS penetration at more than 20%, and that figure continues to grow. The

[1] 47 U.S.C. § 521(6)
[2] *Id.* at § 543(a)(2).
[3] *Id.* at § 543(l)(1)(B).

reality is that Charter's cable systems today are all engaged in an intense competition with DBS providers. If an a la carte regime truly benefited consumers, competitive pressures would lead to its emergence. It is telling that the DBS industry, despite its different history, technology, and market position, has chosen to package programming in a fashion quite similar to the more established cable industry.

Significantly, MVPD competition is not limited to cable and DBS. Local broadcasters have recently joined forces and begun using their excess digital spectrum to provide subscribers a limited offering of the most popular cable programming services. Programmers themselves now have alternatives to conventional forms of distribution. STARZ, for example, recently announced that it would begin offering its programming directly to consumers via the Internet. As digital technology advances, video streaming over the Internet and other distribution alternatives are likely to become even more competitive.

Competition is no less intense on the programming side of the equation. A host of programmers (ranging from major media conglomerates to small independents) vie with each other for distribution. Given this competitive marketplace, there is no basis whatsoever for governmental intervention in the industry's basic marketing decisions. The simple truth is that government intervention in this dynamic marketplace and would be counterproductive.

III. THERE IS NOTHING INHERENTLY NEFARIOUS ABOUT BUNDLING

The a la carte chimera is further flawed by the implicit assumption that there is something nefarious in cable and DBS companies "bundling" together programming services into different programming tiers. The bundling concept is, of course, manifest across virtually every business sector today, because it makes economic good sense. Indeed, our modern economy would quickly grind to a halt if every product and service were offered on a piece-by-piece basis and all volume discounts were prohibited.[4]

A variety of factors – including the need to foster nascent programming services, simplify customer interaction and billing, and minimize costly converter deployment – led the cable industry to bundle services into broad tiers and minimize a la carte offerings. Charter continues to believe that this marketing approach is the only sensible one.

The benefits of bundling are perhaps best illustrated by considering the daily newspaper. A modern newspaper combines a collection of individual articles on a variety of topics. Of course, not every article appeals to every subscriber. One individual is likely to ignore the "sports" section, and another is likely to ignore the "lifestyle" section. Even if two individuals both read the same section, they are likely to focus on different features and articles. It is very possible that they will each find particular parts of the paper (perhaps a particular columnist or cartoon) objectionable.

Despite this fact, Congress is not calling for the nation's newspapers to offer their components on an a la carte basis. Leaving aside obvious First Amendment concerns relevant to both industries, Congress rightly assumes that economic considerations will lead newspaper publishers to make rational business decisions about their product. The same result should apply here.

IV. BUNDLING IS PARTICULARY COMPELLING IN THE PROGRAMMING MARKETPLACE

In evaluating bundling practices, it is critical to recognize that the interests of consumers generally align with the interests of cable programmers and cable operators. As the Government

[4] Consumers understand and accept that they can yet obtain most products at a much lower price by purchasing them in bulk.

Accounting Office concluded last year, "A move to an a la carte approach . . . might result in higher per-channel rates and less diversity in program choice."[5] That result hardly would be welcomed by the nation's television audience.

A. <u>Tiering Makes Sense for Programmers.</u>

It is indisputable that tiering facilitates the launch of new networks, because it provides fledgling services with immediate exposure to an established audience. "Channel surfing" effectively encourages cable customers to sample new networks that they otherwise might not affirmatively seek out.

Being part of a programming bundle allows nascent networks to build on the existing package's popularity, enabling them to attract the necessary viewership to gain advertising support and justify higher licensing fees. This economic model has helped create the most dynamic programming marketplace in the world, and any dismantling of that model is extremely problematic. The GAO has acknowledged that introduction of an a la carte regime might cause "certain niche networks [to] cease to exist."[6]

It is equally clear that tiering helps hold down programming costs. Most programmers rely on a dual revenue stream of licensing and advertising fees. The broader their distribution, the easier it is to maximize both revenue sources.

The per subscriber licensing fee necessary to cover a particular network's programming costs necessarily declines as subscribership increases. This critical inverse relationship arises because the cost of producing cable programming does **not** vary based on audience size. Once the production costs are incurred, the programmer faces no additional costs to serve more

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[5] U.S. General Accounting Office: *Telecommunications: Issues Related to Competition and Subscriber Rates in the Cable Television Industry* 30 (Oct. 2003) ("GAO Report").
[6] *Id.*

customers. This simple fact encourages the broadest possible distribution of cable programming. It explains why consumers benefit as a network's viewership expands.

The benefits of broad distribution are even more pronounced in the context of advertising fees. Advertisers obviously pay more as the potential audience for their spots increases. This relationship is further heightened by the need for most advertisers to simplify their promotional campaigns. Advertisers typically pay a premium for broadcast network distribution, because it allows a single purchase to provide nearly ubiquitous coverage. These same advertisers generally are willing to consider placement on well-penetrated cable networks. They often shy away from cable networks with more restricted distribution, however, because of the perceived inefficiencies involved in selecting, evaluating, and utilizing networks with varied and limited distribution.

The key point here is that the industry's historic reliance on broadbased tiering is a rational economic approach that benefits cable customers as a whole, by maximizing programming delivery and minimizing per subscriber licensing fees.

Charter's extensive experience with a wide array of cable programmers confirms that they view inclusion on a well-penetrated tier as critical. Among the host of business terms that they must negotiate, programmers typically rank tier placement among the most important. The more popular networks usually reject sub-optimal tiering. Even those programmers willing to accept reduced subscriber penetration invariably impose substantial economic penalties on operators selecting that distribution option.

Attachment A shows the rates charged by five (5) representative networks that afford Charter flexibility in tier placement. The per subscriber fee charged by each of these networks increases markedly as overall penetration decreases. Indeed, the per subscriber licensing fee associated with very limited penetration is several times higher than the fee associated with broad distribution. Under each of these representative programming contracts, a vicious cycle easily could be triggered, as each penetration decrease triggers a further rate increase, potentially prompting additional subscriber defections. If Charter does not actively manage subscription levels through its tiering practices, the likely result is less programming offered at higher prices.

B. <u>Tiering Makes Sense for MVPDs.</u>

Extensive reliance on program packaging not only benefits cable programmers, it also benefits programming distributors. The better the cable product, the more satisfied the consumer. Satisfied consumers are obviously more willing to pay more for their subscription.

A critical challenge faced by cable companies, like Charter, is the recovery of their substantial investment in distribution plant. Having spent billions of dollars on infrastructure, Charter has a *bona fide* incentive to deploy the resulting plant in the most efficient manner possible. The more extensively the plant is used, the easier it is for the Company to recover its fixed costs.

If relatively few customers subscribe to relatively few cable services, the delivery plant is under-utilized. As a result, average fixed costs per unit of channel delivery is relatively high. In contrast, if many customers subscribe to large numbers of cable services, the average fixed costs per unit of channel delivery is relatively low. As the price per unit of channel delivery declines, the customer benefits, because a greater percentage of the customer's subscription fees is available for programming.

All this is not to say that MVPDs, left to their own devices, would require all subscribers to purchase all programming services. Cable operators have long recognized that tiering has its own market constraints. Not every potential customer is either willing or able to purchase every potential cable service. Providing consumers with some product choices allows market segmentation and maximizes revenue potential. Premium services, for example, provide for higher per channel charges, albeit with lower penetration rates. It is clear that the MVPDs are best situated to evaluate the economic balancing that underlies these core marketing decisions.

V. AN A LA CARTE REGIME WOULD NOT BE CONSUMER FRIENDLY.

A la carte advocates further err in assuming that an a la carte regime would be "pro-consumer." A host of operational factors ensure quite the opposite. The additional "choice" that an a la carte regime would afford consumers would come only at an unacceptably high cost.

A. Technical Complications

The first operational obstacle to accommodating an a la carte regime is a technical one. The only practical way to truly customize channel delivery is by encrypting all the cable channels and then deploying addressable converters, which enable operators to activate particular channels depending on subscriber selection.[7] This equipment deployment is problematic. History shows that increased reliance on set-top boxes would be met with consumer and political resistance. It also would require a substantial capital investment.

Given these constraints, Charter historically made marketing and security decisions to minimize set-top box deployment. Charter customers with only the "basic" and "expanded basic" subscriptions typically do not need set-top boxes. Accordingly, the Company estimates that only about half of its subscribing households currently have set-top boxes, and many of these households use the set-top box only to receive special programming features on a "primary" television set. These customers often have additional television sets in the home that

[7] Trapping – which blocks otherwise unscrambled signals at the customer premises -- is not technically or operationally feasible in an a la carte environment.

are not equipped with set-top boxes. Charter estimates that it would need to more than triple its current set-top box deployment to provide full a la carte capability.

Using the GAO's figure of $4.39 for the average consumer charge for a set-top box and an estimated 2.5 television sets per household, a cable customer without any set-top box today would face a new equipment charge of almost $11.00 to accommodate an a la carte regime. For the typical customer, who is satisfied with the current product mix, the immediate impact of this change simply would be to increase the costs associated with being a cable customer.

With that said, Charter appreciates that a digital-only operation would provide potential benefits other than simply accommodating an a la carte regime. The Company is, in fact, in the early stages of an all-digital option in one of its systems (Long Beach, CA), which leaves it all the more concerned that federal intervention might complicate, rather than facilitate, the migration to digital. Even in Long Beach, where Charter is now digitally simulcasting its analog services, the Company is not yet prepared to terminate analog service and require universal set-top box deployment. That step still requires careful consideration. In any event, the results of the Long Beach trial, which is only one of Charter's more than 700 systems, will not be known for some time, and there is no reason to expect that those results will support an a la carte regime.

This is, of course, a particularly awkward juncture for the government to impose a new digital set top box mandate on the cable industry, as the "plug and play" era has just commenced. In time, many consumers may acquire the equipment capabilities needed to accommodate a digital-only universe voluntarily without needing another set-top box.

Even if digital deployment eventually might facilitate an a la carte approach, it does not follow that the best option to pursue now is a "compromise," under which the a la carte mandate would be limited to digital-only MVPD systems. Given the economic and operational problems otherwise associated with a la carte, this compromise is likely to backfire and effectively discourage digital deployment. This would undermine a technological transformation that otherwise promises operators and consumers considerable benefits.

B. Customer Service Complications

The operational difficulties associated with an a la carte regime go well beyond technical considerations. Customer service is an obvious concern, because customer interactions would become much more cumbersome under an a la carte regime.

Charter has invested much effort in recent years in improving customer service. Unfortunately, the progress made in this area quickly would evaporate if customers began custom-ordering every programming service. Imagine the difficulty of the initial sign-up call -- customer service representatives ("CSRs") would need to talk customers through a daunting panoply of choices. With upgraded systems now offering literally hundreds of cable channels, the explanation would necessarily be long, with the potential for considerable confusion. Unless the customer happened to opt immediately for an existing package, the CSR would need to identify each programming channel, describe the service, and explain the particular rate associated with that particular channel at that particular time.

The truth is that customers likely would become frustrated by the length and complexity of an a la carte subscription process. Charter already has witnessed an increase in the average length of its sales calls, as the breadth of its offerings expands. Whereas the average handle time for sales calls during the first five months of 2002 was just under 5.5 minutes, the average handle time for the first five months of 2004 was just over 6.1 minutes – an 11% increase. This trend would accelerate rapidly with the introduction of an a la carte regime.

The difficulties that Charter's CSRs would encounter explaining a la carte options to potential customers would be accompanied by serious billing difficulties. As cable customers currently select from a fixed array of service option, the coding burden associated with an a la carte regime would vastly exceed today's coding capabilities. Even if the existing billing systems could be updated to accommodate the vast expansion in billing codes required for a la carte, the time spent by the CSR to enter these codes and the likelihood of coding errors would further burden customer relations.

To make matters worse, the increasing length of each individual sales call under an a la carte regime doubtlessly would be matched by an increasing volume of customer-initiated sales calls. The introduction of a la carte pricing would spark far more calls than a typical marketing campaign, because it would fundamentally shift the existing operator-customer relationship.

Current tiering practices contribute greatly to customer stability, because they simplify the customer's choice. Tiering minimizes costly "churn" by encouraging customers to look at the programming package as a whole, rather than constantly evaluating each additional service. Under an a la carte regime, customers would be much more likely to adjust their subscription level – adding a channel this month, deleting a channel the next month – depending on a host of factors. A customer who never previously modified a standard tier subscription might start adjusting his subscription on a constant basis – adding a particular service to catch an important programming special and deleting the service at other times. Even if the customer decided against a subscription change, customer-initiated calls surely would increase, as customers inquire about the costs associated with particular channels. The large number of additional calls would markedly increase the burden on existing customer service resources.[8]

C. Tiering Makes Sense for the Customer.

It is very likely that the a la carte exercise also would be frustrating from the perspective of the typical cable customer. When all is said and done, the overwhelming array of additional choices resulting from an a la carte approach might not be truly welcome, as it would place a burden on the consumer to evaluate the merits of each service offered, even where the incremental cost of each service is actually quite small. Conscientious customers suddenly could find themselves spending significant time and energy customizing subscriptions that did not in the end vary markedly from existing packages.

In fact, it is probable that an a la carte regime ultimately would disappoint consumers. As explained above, the typical cable customer likely would see an overall rate increase, and the potential for savings is quite small. Confronted with that disappointing result, these consumers may well call for new regulatory restrictions on package discounting, so as to make the a la carte exercise more meaningful. In fact, consumers interested in aggressively pursing the a la carte option are likely to protest against any restraints on its exercise. The Commission's rate regulation rules, for example, already sensibly allow cable operators to "establish a higher charge for [subscription] changes . . . for a subscriber changing service tiers more than two times in a twelve month period…"[9] Although this regulation has sparked little controversy to date, it surely would aggravate consumers otherwise being encouraged to exercise the a la carte option. They are likely to call for a prohibition on "penalty" charges for frequent service changes. In the end,

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[8]Tiering also has facilitated the introduction of new services, by allowing cable operators to add channels to an existing tier without the difficulties associated with affirmatively marketing those new services. In a true a la carte regime, such roll-outs would be precluded, which would make it extraordinarily difficult to introduce new services.
[9] 47 C.F.R. § 76.980(d).

a host of new regulations might be crafted, yet they probably would leave most customers less satisfied than they are today. The consumers most interested in the a la carte option are likely to be among the most frustrated.

A key fact overlooked by a la carte advocates is that consumer interests are already reflected in MVPD licensing fees and tier placements. Cable companies essentially act as the consumer's agent in negotiating with programming networks. Charter certainly has no incentive to commit to carriage of unaffiliated programming services that it believes to be counter to the customer's best interests. Passing through increased programming costs to the subscriber, after all, does not enhance Charter's profitability. As a result, the licensing fees charged by different networks already vary depending on their relative appeal. The most valued services typically charge the most, and the least valued services typically charge the least.

This process makes it particularly unlikely that the introduction of an a la carte regime would provide appreciable rate relief to the typical cable customer. The customer might consider dropping several "weaker" channels, but the resulting savings in licensing fees would be so trivial that deletion is unlikely. The same customer would not be willing to drop a significant number of "stronger" channels, as those channels presumably are key to his subscription. Yet it is only by dropping those stronger channels that the customer has any possibility of meaningfully reducing his monthly bill.

VI. EVEN A LIMITED A LA CARTE REGIME FOCUSED ON PROGRAMMERS SHOULD BE AVOIDED.

Charter appreciates that certain legislative proposals are now being considered that are far less draconian than mandating a universal a la carte regime. Some of these proposals even appear favorable to cable operators, as they guarantee operators certain marketing options that would be difficult to secure in private negotiations. Nevertheless, Charter remains categorically opposed to legislative action in this area. The Company believes that there is a very high likelihood that even well-intentioned legislation would have unintended adverse consequences.

Charter itself cannot predict how different cable programmers would respond to a federal mandate that they make their services available to cable and DBS systems on an a la carte basis. Confronted with potential subscriber defections, some networks might try reducing their programming investment in order to reduce their licensing fees and financial exposure. This response ultimately would undermine the quality of cable programming. Given the overall success of the cable programming sector, Charter submits that it would be a mistake for the government to intrude. The potential harms clearly and heavily outweigh the potential benefits.

Congress and the Commission must appreciate that the parties to programming agreements have proceeded rationally, based on shared marketing assumptions. An a la carte universe would cast those assumptions aside, potentially leaving the parties unable to honor their contractual commitments.

Yet another problem with any a la carte regulation would be the likelihood that it would affect different MVPDs differently. DBS, which already relies on a digital platform and set-top boxes, could technically accommodate an a la carte regime much more easily than could the cable industry. Given the rigorous competition between these two industries, it is important that the government not unilaterally tilt the playing field in favor of one sector.

In the end, Charter is skeptical that a simple voluntary scheme for encouraging an a la carte option would long remain either simple or voluntary. A requirement that cable programmers simply provide cable operators with an a la carte option would be meaningless unless it were accompanied by pricing constraints. Cable programmers otherwise likely would be inclined to price a la carte options unacceptably high and render the option meaningless.

The same logic inevitably would compel Congress and the Commission to intervene in the a la carte rates that cable operators impose on cable customers. Congress is unlikely to be satisfied with legislation that does not produce real-world results. Operators that do not offer an a la carte option at favorable rates are likely to face future legislative and/or regulatory repercussions.

Charter suggests that a la carte proponents consider the old adage, "Be careful what you wish for, you might get it." If a la carte is to be a meaningful alternative to current marketing practices, it would require extensive regulation. The resulting regulation would impose costly burdens on cable operators and programmers with no discernible public benefit. In the unlikely event that the regulations succeed in their objective, they would necessarily be harmful to the diversity of cable programming.

VII. A LA CARTE IS NOT THE RIGHT SOLUTION TO RESTRICT RECEIPT OF OBJECTIONABLE PROGRAMMING.

The final irony in this proceeding is the recent advocacy for imposition of an a la carte mandate by individuals concerned about the unwanted reception of "objectionable" cable programming. They believe that cable packaging has subjected their families to undesirable networks, and they argue that an a la carte regime is the best option available to solve this predicament.

In fact, a la carte is far too blunt a tool to efficiently accomplish this particular task. The cable industry has long been conscious of the negative implications of carrying "objectionable" programming. The most provocative programming already is excluded from programming tiers and limited to premium or pay-per-view distribution. To the extent a customer finds a tier network objectionable, cable operators provide multiple methods to block out the offending channel. These "parental control" mechanisms are much more targeted and much less expensive to implement than an all-encompassing a la carte mandate. Moreover, these blocking mechanisms are routinely provided to the customer at no charge.

Although it is true that a tier subscriber is technically paying for all the services on the tier, even if a particularly "objectionable" network is blocked out, the financial impact on the typical customer is truly minimal.[10] And if these customers were offered a special rate reduction, it is difficult to understand why similar reductions should not be provided to other tier subscribers who might be willing to forgo receipt of even more expensive programming. Once that process begins, the economic benefits associated with tiering would be jeopardized.

The real irony here is the impracticability of imposing an a la carte regime to restrict the receipt of "objectionable" programming by cable customers. The particular telecast that prompted the current public debate was a Superbowl game airing on CBS. In fact, given the current state of broadcast programming, a cable customer troubled by contemporary television programming is likely to be just as troubled by the programming offered by a broadcast network as a cable network. Yet cable operators are compelled to include local broadcast channels on the basic tier and deliver that tier to every cable customer. Under this scenario, an a la carte mandate is certainly not the right tool to filter objectionable programming.

[10] Using a simple analogy, a customer in an "a la carte" restaurant does not expect, and is not provided, a discount for foregoing the standard pickle on his hamburger.

CONCLUSION

For the reasons set forth above, Charter respectfully submits that any a la carte mandate ultimately would backfire – increasing customer costs and frustrations while decreasing the quantity and quality of cable programming. This is not to say that "mini-tiers" and a la carte offerings will not increase in the future, but this evolution will be best achieved by allowing the competitive marketplace to govern. Charter urges the Commission to so advise the Congress.

Respectfully submitted,

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/s/

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Attachment A

SAMPLE PROGRAMMING CONTRACTS
RATES VARYING BY PENETRATION

	Subscriber Penetration	Rate Per Subscriber
Network A	≥ 90%	$0.2750
	89% - <90%	$0.2833
	88% - <89%	$0.2860
	87% - <88%	$0.2915
	86% - <87%	$0.2943
	85% - <86%	$0.3300
	80% - <85%	$0.3575
	75% - <80%	$0.3850
	70% - <75%	$0.4125
	65% - <70%	$0.4400
	60% - <65%	$0.4950
	55% - <60%	$0.5500
	50% - <55%	$0.6050
	45% - <50%	$0.6875
	40% - <45%	$0.7700
Network B	≥ 85%	$0.1125
	69.5% - 84.4%	$0.2600
	64.5% - 69.4%	$0.2750
	59.5% - 64.4%	$0.3000
	54.5% - 59.4%	$0.3250
	49.5% - 54.4%	$0.3450
	44.5% - 49.4%	$0.3850
	39.5% - 44.4%	$0.4250
	34.5% - 39.4%	$0.4450
	0% - 34.4%	$0.4650
Network C	≥ 85%	$0.4326
	75% - < 85%	$0.4929
	65% - < 75%	$0.5715
	55% - < 65%	$0.6793
	45% - <55%	$0.8355
	0% - < 45%	$1.0791
Network D	≥ 70%	$0.1520
	30% - <70%	$0.1840
	0% - <30%	$0.3120
Network E	≥ 50%	$0.4360
	< 50%	$0.8720