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 on Cable Television and Direct Broadcast Satellite Systems	)	MB Docket No. 04-207
	)	

COMMENTS OF COMCAST CORPORATION

Joseph W. Waz, Jr.
COMCAST CORPORATION
1500 Market Street
Philadelphia, Pennsylvania 19102

James R. Coltharp
COMCAST CORPORATION
2001 Pennsylvania Avenue, N.W.
Suite 500
Washington, D.C. 20006

Terry S. Bienstock
Thomas R. Nathan
COMCAST CABLE COMMUNICATIONS, INC.
1500 Market Street
Philadelphia, PA 19102

Michael H. Hammer
Ryan G. Wallach
Stephanie L. Podey
WILLKIE FARR & GALLAGHER LLP
1875 K Street, N.W.
Washington, D.C. 20006-1238
Attorneys for Comcast Corporation

July 15, 2004

EXECUTIVE SUMMARY

In its Public Notice, the Commission seeks comment on a number of questions related to the provision of a la carte or "themed tiers" on cable television and direct broadcast satellite systems. The most important of these questions are how mandatory a la carte or themed tier requirements would affect consumer prices and program diversity. The short answer is that such requirements would raise consumer prices and reduce program diversity. Despite the facially attractive claims of proponents, a la carte and themed tiers would result in cable and DBS customers paying more for less.

Before addressing these specific harms, however, it is important to understand that a la carte or themed tier requirements are entirely unnecessary given the state of today's video distribution market:

- *First, the video distribution market is highly competitive and there is absolutely no basis for the government to regulate the way in which program services are packaged or sold by any competitor.* Consumers have multiple options for obtaining video programming, including their local cable operator, two ubiquitous national DBS companies that together have over 22 million customers and 25% market share, competitive local broadband service providers, home video sales and rentals, the Internet (including streaming video and download services like Movielink and CinemaNow, and announced services from TiVo and Akimbo), and other innovative providers like MovieBeam, Netflix, and USDTV.
- *Second, the packaging, or "tiering," model long in use by both cable and DBS operators has produced a vast array of diverse, high-quality programming for consumers*. The government should be particularly wary about enacting laws or adopting regulations that would alter this model.
- *Third, cable operators already give consumers multiple options for creating a mix of program services that meet their interests and financial needs*. By way of example, Comcast describes below the hundreds of program combinations available to customers of its Arlington, Virginia system. With such a variety of program and price choices, as well as all the available competitive alternatives, there is no need for the government to mandate a la carte or themed tiers.
- *Fourth, the government's attempts in the recent past to regulate program pricing and packaging created lasting harm to programmers, cable operators, and consumers alike*. In particular, the regulations crippled the development of new

> programming and dramatically reduced investment in cable system upgrades. The government should not go down that road again with a la carte or themed tiers.

In order to analyze the impact a la carte would have on consumer prices and program diversity, it is necessary to recognize that offering a program service a la carte would reduce the number of subscribers, and thus viewers, the service could attract. Even HBO, the most popular stand-alone service today, is purchased by only about 30% of all subscribers on a typical cable system, and history demonstrates that most services, especially niche services (which appeal to narrower interests) or new services (which have not had an opportunity to attract a significant following), would draw far smaller audiences if offered a la carte or in a themed tier.

By reducing subscribership and viewership, a la carte or themed tiers would undermine a program service's ability to generate revenues from both subscription fees and advertising. Cable and DBS operators pay monthly subscription fees to program services on a per-subscriber basis, so the fewer subscribers a service has, the less subscription revenue it would receive. Likewise, with fewer subscribers, and thus fewer viewers and potential viewers, a program service would be forced to cut the rate it charges for advertising, causing a second revenue reduction.

The countermeasures that a service could employ to recoup these lost revenues are limited and unattractive.

First, a service could reduce its quality in order to bring its costs in line with its revenues. However, this is not a strategy that would help program services, cable and DBS operators, or consumers, and presumably is not an approach the government wants to encourage.

Second, a service could attempt to raise its advertising fees. But this would not work because the service would have *fewer* actual and potential viewers in an a la carte or themed tier format.

Third, a service could raise its subscription fees. However, this would result in significant price increases for consumers. The U.S. General Accounting Office ("GAO") has warned that a la carte could result in increased consumer prices, and, as Comcast shows in these comments, programmers have unanimously endorsed that view. Likewise, Bear Stearns, a financial analyst, studied the impact of a la carte and concluded that even if a consumer chose only five popular a la carte services, he or she would actually pay *more* than the price of an entire tier of services, including the same five selected services and dozens of others as well. Bear Stearns estimated that the price to the consumer for each of the five services it studied would increase between 318% and 1145% in an a la carte world.

Comcast describes below the experience of Comcast SportsNet ("CSN"), whose predecessor, Home Team Sports ("HTS"), was initially offered a la carte and then moved to the expanded basic tier. Using the Baltimore County cable system as an example, Comcast shows that, when HTS was moved to a tier, the consumer price dropped from $15.99 to an effective price of about $1 and subscribership jumped from approximately 10,000 to over 170,000. Moreover, the economics of being on the widely distributed tier allowed CSN to make dramatic quality improvements. This example is consistent with that of other program services that have been offered both a la carte and on a tier; in each case, the services were significantly more expensive for consumers in the a la carte format and viewership and quality increased significantly once the services were moved to the tier.

Not only would mandatory a la carte increase consumer prices, it would reduce diversity. While some program services might survive a la carte by substantially increasing their subscription fees, many others would go out of existence (or never be launched in the first place). Again, the program community is united in this view. Representative comments include those of

Concerned Women Program Executives (a la carte "would be bad for consumers because it would give them less choice and less diversity in programming"), New England Cable News and Pennsylvania Cable Network (a la carte "would be the end of networks like us and there would be no new networks like ours"), Discovery Networks (Discovery "never would have been able to launch such family-friendly channels as Discovery Kids or The Science Channel in an a la carte or mini-tier world"), and Oxygen (Oxygen "would have never raised money in the private equity market if it was going to be an a la carte channel").

Finally, a la carte would create significant operational problems for cable operators. Comcast describes below how these problems would increase prices, reduce customer service, and cause higher customer confusion and dissatisfaction for its customers in Washington, D.C., Northern Virginia, and Maryland. For example, a la carte would require Comcast to redesign and re-implement its order taking, billing, and customer care operations; deploy hundreds of thousands of expensive new digital set-top boxes; upgrade its headend equipment to handle the vastly increased number of transactions that would occur; and increase its marketing budget to promote each individual program service rather than promoting the entire tier. Moreover, because the effort required to convert to a la carte would be massive, it would effectively consume the attention of the systems' management, technical, and customer service personnel, thereby delaying rollout of advanced services, such as home networking, VoIP, high-speed Internet, HDTV, video-on-demand ("VOD"), and digital video recorders – all of that in order to bring consumers the higher prices and reduced choice that mandatory a la carte or themed tiers would create.

It is important to emphasize that the negative effects described in these comments would result from mandatory themed tiers as well as a la carte. Themed tiers, like a la carte, would reduce the subscription and advertising revenues that a program service could earn, and that would increase consumer prices and reduce program diversity. Consequently, Comcast's critiques in these comments apply equally to a la carte and themed tiers.

In addition, themed tiers would be extraordinarily difficult to create given the varied circumstances and interests of consumers. For example, how would a cable operator create a "family tier" that would appeal to families with both pre-schoolers and teenagers? How would a cable operator ensure that such a tier included programming responsive to the diverse ethnicity of the families it serves? Would the government establish criteria to determine whether CNN or Fox News would be included in a news tier, or whether CNBC or MSNBC would be left out of such a tier? Would the government referee the inevitable disputes that would arise with the creation of themed tiers? How could these government roles be squared with the First Amendment? Decisions about packaging of program services are extraordinarily complex. Themed tiers may or may not make sense in certain circumstances, but the decision should be made by cable and DBS operators based on marketplace dynamics, most especially the complex needs and desires of consumers, not government regulation.

For all the reasons described in these comments, Comcast strongly believes that the Commission's primary message in its report to Congress should be the following: ***The video distribution market is competitive; consumers have many options for obtaining video programming; competition and choice are expanding, not contracting; and there is no conceivable basis for the government to mandate a la carte or any other package or price regulations on cable operators, DBS operators, or any other video market participants. This conclusion is all the more persuasive because, as government agencies, programmers, financial analysts, members of Congress, organizations representing consumers and viewers,***

and cable operators have all concluded, a la carte would raise consumer prices and decrease programming diversity.

TABLE OF CONTENTS

Page

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 on Cable Television and Direct Broadcast Satellite Systems	)	MB Docket No. 04-207

COMMENTS OF COMCAST CORPORATION

Comcast Corporation ("Comcast") hereby responds to the above-captioned notice seeking comment on a la carte and themed tier pricing options for programming distributed by cable operators and DBS providers.[1]

I. THE REGULATION OF PRICING AND PACKAGING, INCLUDING PROPOSALS TO REQUIRE THAT PROGRAMMING BE OFFERED ON AN A LA CARTE OR THEMED TIER BASIS, IS ENTIRELY UNNECESSARY IN TODAY'S VIDEO MARKETPLACE.

Given the state of the video distribution market today, a la carte regulation is entirely unnecessary:

- First, the market is highly competitive and, therefore, there is no conceivable basis for the government to regulate the way in which program services are packaged or sold.
- Second, the packaging, or "tiering" model used by cable, DBS, and all other multichannel video distributors ("MVPDs"), has been extraordinarily successful, producing a vast array of diverse programming for consumers.
- Third, cable operators (and other video distributors) already give consumers multiple options for creating the mix of program services that meet their interests and financial needs.

[1] *In re Comment Requested on A La Carte and Themed Tier Programming and Pricing Options for Programming Distribution on Cable Television and Direct Broadcast Satellite Systems*, Public Notice, MB Docket No. 04-207 (May 25, 2004), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-04-1454A1.pdf.

- Fourth, the FCC's recent experience demonstrates that attempting to regulate cable's pricing and packaging would have unintended consequences that would be harmful to programmers, cable operators, and consumers alike.

A. The Video Marketplace Is Highly Competitive.

The vast majority of consumers today have at least three choices for obtaining multichannel video programming -- a local cable operator and two nationwide satellite providers, DIRECTV and EchoStar (d/b/a "DISH Network").[2]

DIRECTV and EchoStar, with fully digital systems and hundreds of programming channels, including local broadcast signals in markets serving over 90% of their customers, offer consumers two full-fledged competitive alternatives to their local cable provider.[3] DIRECTV has 12.6 million subscribers[4] and EchoStar recently passed the 10 million subscriber mark.[5] Together, they serve about 25% of all multichannel video subscribers,[6] and are now the second and fourth largest MVPDs operating today, respectively.

---

2 *See* U.S. Gen. Accounting Office, *Telecommunications: Wire-Based Competition Benefited Consumers in Selected Markets* 26 (Feb. 2004) ("Regarding subscription television service, direct broadcast satellite service (such as DIRECTV or EchoStar) is available nationwide and, thus, represents a second and third formidable competitor in every market . . . .").

3 DIRECTV and EchoStar both offer their customers a wide array of programming packages. *See generally* DIRECTV Group Inc., *Packages*, *at* http://www.directv.com/DTVAPP/packages/Landing.dsp (last visited July 14, 2004); EchoStar Satellite, *Basic Packages*, *at* http://www.dishnetwork.com/content/programming/packages/index.shtml (last visited July 14, 2004). For example, EchoStar offers its America's Top 60 package plus local broadcast channels for $29.99 per month, and DIRECTV offers its Total Choice package with over 130 channels including local broadcast channels for $39.99 per month.

4 *See* Earnings Release, DIRECTV Group, Inc., *The DIRECTV Group Announces First Quarter 2004 Results* 3 (May 4, 2004).

5 *See* Press Release, EchoStar Communications Corp., *DISH Network Passes 10 Million Customer Milestone* (June 14, 2004).

6 *See* Kagan Research, LLC, *Kagan Media Index*, Kagan Media Money, June 22, 2004, at 8 (reporting that U.S. multichannel video subscribers totaled 91.3 million as of the end of May 2004).

DIRECTV and EchoStar are growing stronger every day. For example, EchoStar is offering consumers more interactive programs, HDTV channels, and expanding access to local broadcast channels.[7] Undoubtedly, the acquisition of a controlling interest in DIRECTV by News Corp. will give DIRECTV access to financial resources, programming assets, and management expertise that will further strengthen its already-proven competitive ability.[8]

Last year, DIRECTV and EchoStar attracted more than 80% of all new multichannel television subscribers,[9] and they are successfully luring subscribers away from cable as well, particularly from those systems that have failed to respond with competitive upgrades and other improvements.[10] As EchoStar's Chairman recently stated, "There's not any cable operator who's immune to an attack from the DISH Network."[11] And DBS is no longer a rural phenomenon; even in larger markets, DBS has made impressive inroads.[12] For example, in Albuquerque, NM, nearly 40% of

---

7 *See generally* EchoStar Communications Corp., *News Releases*, *at* http://www.corporate-ir.net/ireye/ir_site.zhtml?ticker=dish&script=400 (last visited July 14, 2004). EchoStar now offers local broadcast signals in 137 cities in all 50 states and the District of Columbia.

8 *See In re General Motors Corp. & Hughes Elecs. Corp., Transferors, and The News Corp. Ltd., Transferee, for Authority to Transfer Control*, Memorandum Opinion & Order, 19 FCC Rcd. 473 ¶ 315 (2004) (finding that News Corp. will enhance competition to cable by accelerating the introduction of new services (including interactive television), expanding the delivery of local-into-local broadcast channels, and improving customer satisfaction).

9 *See* Eleanor Laise & William Mauldin, *Cutting the Cord*, Smart Money, July 1, 2004, at 68.

10 *See* Ronald Grover & Tom Lowry, *Satellite's Hot Pursuit of Cable*, Business Week, May 24, 2004, at 46.

11 John M. Higgins, *EchoStar Up, But at a Cost*, Broad. & Cable, Aug. 18, 2003, at 21 (quoting EchoStar Chairman and CEO Charlie Ergen).

12 *See* Laise & Mauldin, *supra* note 9, at 71 ("America's grassroots movement toward satellite seems only to be getting stronger.").

multichannel households subscribe to satellite, up from 23% in 2001,[13] and in Springfield, MO, DBS has claimed 35% of multichannel homes.[14]

Moreover, both DIRECTV and EchoStar have recently partnered with powerful regional Bell operating companies, which already provide phone service to well over 90% of all U.S. households, to jointly offer video programming to consumers.[15] These telephone companies' aggressive marketing campaigns have further enhanced competition in the market.[16]

Of course, there are many other ways for consumers to obtain video programming as well. For example, they can purchase programming from VOOM, a new DBS operator, or from broadband service providers ("BSPs"), such as Grande Communications, RCN, Starpower, Everest Communications, and Knology.[17] Consumers also can, and in great volume do, obtain video programming via home video sales and rentals,[18] the Internet,[19] and innovative providers like Netflix with its fast-

---

[13] *See id*.

[14] *See id*.

[15] *See* Press Release, SBC Communications, *SBC Communications Adds New "DISH" to the Menu, Launches "Quadruple Play" Bundle with Satellite TV* (Mar. 3, 2004) (offering a bundle of multichannel TV, wireless, broadband access, and local and long distance voice service); BellSouth Corp., *Introducing DIRECTV Service -- Now a Part of BellSouth Answers*, *at* http://www.bellsouth.com/consumer/directv/ext/index.html?src=rql (last visited July 14, 2004); Press Release, Verizon Communications, *Verizon Invites California Customers To Cut the Cable and Integrate Calling, Internet and DIRECTV Programming* (May 27, 2004); Qwest Communications Int'l, *Qwest TV Services: Better Service, More Choice* (offering service from its own video-DSL service provider in select markets as well as DIRECTV and DISH), *at* http://www.qwest.com/residential/products/tvservices/ (last visited July 14, 2004).

[16] *See* Grover & Lowry, *supra* note 10, at 46 ("In the first two months of its deal with EchoStar, SBC Communications Inc., signed 40,000 new DISH subscribers, says SBC.").

[17] While competition from DBS is fierce and ubiquitous, competition between wireline cable operators is relatively scarce. *See Competition and Overbuilds in the Video Market, Hearing Before the Senate Subcomm. on Antitrust, Competition Policy and Consumer Rights*, 108th Cong. (Feb. 11, 2002) (testimony of Robert Sachs, President and Chief Executive Officer, National Cable & Telecommunications Association).

[18] As of the end of May 2004, 87.4% of U.S. TV households had a VCR and 47.4% had a DVD player. *See* Kagan Research, *supra* note 6, at 8. In 2003, revenue from video rentals for VCRs and DVDs

growing DVD-by-mail service,[20] MovieBeam,[21] and USDTV, which aggregates broadcast spectrum to distribute a wide range of video programming.[22] As the Commission has recognized, in the multichannel television marketplace, "the vast majority of Americans enjoy more choice, more programming and more services than any time in history."[23] In Comcast's view, there is no basis for adopting a la carte regulations, or any other type of packaging or pricing regulations, in such a market.[24]

---

was over $8 billion and revenue from the sale of video tapes and DVDs was over $13.5 billion. *See* Kagan Research, LLC, *VHS Sinks in '03, DVD Now King of Home Video*, Kagan Media Money, May 18, 2004, at 2.

19 *See e.g.,* Nick Wingfield*, Starz Encore Joins Web Movie Fray: Alliance with RealNetworks Offers Unlimited Downloads for a Fixed Monthly Fee*, Wall St. J., June 14, 2004, at B4 ("Analysts believe the service reflects a more serious push by programmers to use the Internet as a way to bypass satellite and cable operators."); Press Release, MLB Advanced Media, L.P., *MLB.com Offers Fans the Ability To Watch MLB.TV on Pay-Per-Day Basis* (June 1, 2004) (offering "the live and on-demand video webcasts of more than 280 games per month, on a pay-per-day basis exclusively on MLB.com"). Accessing video programming online is becoming more popular, and at the same time, online video services are using new technologies to make their programs viewable on television sets. *See, e.g.,* John Markoff, *New Service by TiVo Will Build Bridges from Internet to the TV*, N.Y. Times, June 9, 2004, at C1 (announcing a new set of Internet-based services that will "further blur the line between programming delivered over traditional cable and satellite channels and content from the Internet"); Press Release, CinemaNow, Inc., *CinemaNow Partners with Akimbo To Bring Video-On-Demand Service Directly to Television* (Feb. 16, 2004).

20 *See* Press Release, Netflix, *Netflix Announces Second Quarter 2004 Ending Subscribers of 2,093,000, up 82 Percent over the Prior Year* (July 1, 2004).

21 MovieBeam uses broadcast spectrum to deliver movies directly to a small receiver in consumers' households. The receiver holds over 100 movies and is updated with 10 new movies each month that can be watched at any time. *See* MovieBeam Entertainment, *Frequently Asked Questions About MovieBeam*, *at* http://www.moviebeam.com/misc/faqQnA.jsp?topic=About%20MovieBeam (last visited July 14, 2004).

22 USDTV is now operational in three cities: Albuquerque, Salt Lake City, and Las Vegas. USDTV leases spectrum from broadcast television stations and, for $19.95 per month, transmits 20 to 30 channels -- including all the local broadcast stations and popular cable program services such as ESPN, Disney Channel, Discovery, Lifetime, and TLC -- directly to set-top receivers in consumers' homes (receivers are widely available for purchase at Wal-Mart and RC Wiley stores). USDTV plans to expand to a total of 30 markets by the end of this year and aims to eventually have a presence in all major markets.

23 *See In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Tenth Annual Report, 19 FCC Rcd. 1606 ¶ 4 (2004) ("*Tenth Video Competition Report*").

24 Comcast also believes that in this marketplace a government requirement forcing cable or DBS operators to package and price content in a specified manner would violate the First Amendment. There is no question, for example, that the courts would not allow the government to force the *Washington Post* to sell the Metro Section or Tony Kornheiser's columns separately.

B. The Cable and DBS Industries' Current Economic Model Has Produced Abundant and Diverse Programming for Consumers.

Program tiers are a form of bundling, which is a "commonplace and efficient" means of delivering a wide variety of products and services to consumers.[25] Bundling is often associated with price discounts[26] and can be an "important competitive tool."[27] The FCC has recognized the benefits of bundling:

> [O]ffering consumers the choice of purchasing packages of products and services at a single low-rate will encourage them to subscribe to new, advanced, or specialized services by reducing the costs that they have to pay up-front to purchase equipment, or by giving them a choice of relying on one provider instead of having to assemble the desired combinations on their own. Price bundling also eliminates the transaction costs that carriers have to absorb in order to comply with the bundling rules, thereby enabling them to offer better prices whenever possible. Indeed, facilitating consumer choice is what compels us to take action in this proceeding.[28]

The benefits of bundling are readily apparent in the cable industry. Program tiers *lower transaction costs* because it is easier and less costly to sell many services in a tier with one transaction than to try to sell multiple services on an a la carte basis.[29] Tiers *reduce marketing costs* because program services sold in a tier do not have to spend as much to market the service (or to retain subscribers) as they would if consumers were

---

[25] Economists Inc., *How Bundling Cable Networks Benefits Consumers*, at i (July 23, 1998), filed in CS Dkt. No. 98-102 (July 31, 1998) ("*Economists Inc).*

[26] Michael L. Katz, *Slicing and Dicing: A Realistic Examination of Regulating Cable Programming Tier Structures* ¶ 4 (July 15, 2004) ("*Katz Analysis*") (attached as Appendix A) ("One of the main reasons that bundling is common is that it can dramatically reduce the costs of producing and distributing goods.").

[27] *Id*. at ii (pointing out that "suppliers often use bundles to compete" and noting that "when they entered the MVPD market, both DIRECTV and EchoStar relied on large bundles of programming to compete with incumbent cable system operators").

[28] *In re Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended; 1998 Biennial Regulatory Review -- Review of Customer Premises Equipment And Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets*, Report and Order, 16 FCC Rcd. 7418 ¶ 10 (2001).

[29] *Katz Analysis* ¶¶ 16, 18, 51; Economists *Inc.* at 2 ("Transaction costs are a primary reason behind the efficiency of bundling.").

required to make individual purchase decisions for each service.[30] Tiers *lower distribution costs* because "the distribution cost entailed in serving a subscriber is the same regardless of the number of channels delivered," so the more channels subscribed to, the lower the average cost of distributing a channel.[31] Tiers *increase the value of advertising* because they expand viewership by capturing occasional and spontaneous viewers.[32] And tiers *reduce equipment costs* because the only way to effectively sell services on an a la carte basis is to require consumers to purchase or lease addressable set-top boxes.[33]

One particularly important benefit of tiers is that they promote entry by new program services.[34] New and niche services that are offered in a tier with other popular services have a much better chance to attract viewers than if offered a la carte.[35] In this sense, tiers serve a function not unlike shopping malls -- a small boutique store that may have a hard time surviving on its own is more likely to succeed if it is located in a mall that has many other stores and is anchored by several large department stores. The

---

30 *Katz Analysis* ¶ 16 (noting that under a la carte, "[c]able operators would face a very complex and expensive marketing task to inform their customers of available options and correctly process orders"); *Economists Inc.* at 3.

31 *Economists Inc.* at 5-6; *see Katz Analysis* ¶¶ 16, 23-25.

32 *See* U.S. Gen. Accounting Office: *Telecommunications: Issues Related to Competition and Subscriber Rates in the Cable Television Industry* 35-36 (Oct. 2003) ("*GAO Report*"), *available at* http://www.gao.gov/new.items/d048.pdf; *Katz Analysis* ¶¶ 38, 44 (finding that "by reducing subscriber bases, mandatory unbundling would reduce opportunities for programmers and operators to generate advertising revenues").

33 *See GAO Report* at 32 (noting that the only way to ensure that consumers get only the services they purchase is to scramble the signals); *Katz Analysis* ¶ 16 ("Purchasing programming on an *a la carte* basis would require consumers to have addressable set-top boxes, which would entail considerable additional expenses.").

34 *See Katz Analysis* ¶ 42.

35 *See id.* ¶¶ 41-42 (finding that a "large tier[] benefits consumers indirectly because it provides an important vehicle for new networks to attract viewers and build customer bases").

boutique, by dint of its location, has the opportunity to attract a large number of "passersby" and thereby build a following of its own.

The same is true of program tiers. They provide subscribers the option to freely sample all the services in the tier.[36] And we know that subscribers value this option because they routinely exercise it. For example, many program services experience a spike in viewership when a special program is carried. The Weather Channel's viewership goes up in periods of severe weather, viewership for CNN and Fox News increases when there is an international crisis, Outdoor Life Network's ratings surge when it covers the Tour de France, and CourtTV's ratings rise during high-profile trials.[37] This type of occasional viewing is lifeblood to new and niche program services that are trying to attract an audience. These high-interest viewing periods often provide make-or-break revenues for basic program services.

The market provides ample evidence that tiers promote entry and, thus, diversity of programming. As of June 2003, there were over 300 national cable programming networks and 84 regional networks,[38] offering an impressive breadth and diversity, including programming devoted to news, sports, women's issues, minorities, education, children, arts and entertainment, and just about any other interest.

As Chairman Powell has pointed out, "[a] very large majority of Americans . . . have benefited from hundreds of new cable networks offering diverse and niche programming, as well as 24-hour news programming that has established a vital place in

---

36 *See id.* ¶ 32 ("When a consumer subscribes to a tier containing a large number of channels, he or she can readily sample programming on the included networks—there are no extra charges for watching programs on a wide range of networks on either a one-off or repeated basis.").

37 *Economists Inc*. at 5-6.

38 *Tenth Video Competition Report* ¶¶ 142 table 8, 158.

American public affairs."[39] Seen in this context, Michael Hennessey, President and CEO of the Canadian Cable Television Association, recently noted that "it's somewhat ironic that America has become engaged in a spirited debate about regulated choice -- or mandated a la carte -- when our industry looks enviously to your country because of the choice you have in terms of diversity."[40]

C. Cable and DBS Customers Today Already Have a Vast Number of Programming Purchase Options.

A la carte is unnecessary because cable customers today have more options for purchasing video programming than ever before. For example, in Arlington, Virginia, Comcast customers can choose from the following options:[41]

- *Limited Basic:* 32 channels, including all local broadcast stations, C-SPAN and C-SPAN2, News Channel 8, TV Guide, ABC Family, WGN Superstation, three Arlington Public School channels, the Arlington Virginia Network (a local government channel), and a leased access channel.
- *Expanded Basic:* 45 services, including CNN, ESPN, Discovery Channel, Nickelodeon, Bravo, Food Network, Weather Channel, History Channel, and BET.
- *Premium Services:* services offered on a stand-alone basis, including HBO, Showtime, Cinemax, The Movie Channel, STARZ, ART (Arab Radio & Television), TV Asia, and Zee TV (an Indian-language channel).
- *Digital Classic:* an interactive programming guide, VOD access, 45 music channels, and 20 digital services, including Discovery Kids, Noggin, Fine Living, and Toon Disney.

---

39 FCC Chairman Michael Powell, Remarks to the Federal Communications Bar Association (June 21, 2001), *available at* http://www.fcc.gov/Speeches/Powell/2001/spmkp106.html.

40 Michael Hennessey, President and CEO, Canadian Cable Television Association, Remarks Before the Washington Metropolitan Cable Club 5 (June 29, 2004).

41 Consistent with the Commission's must-buy rules, 47 C.F.R. § 76.920, a customer must purchase Limited Basic in order to purchase any of the other packages listed here. Also, under existing law, cable operators are prohibited from providing any tier of cable service to any customer who does not at least buy a tier that includes all local broadcast channels, as well as public, educational, and governmental channels. 47 U.S.C. § 543(b)(7).

- *Digital Plus:* Digital Classic services, plus 23 additional digital services including National Geographic, three Discovery channels, Sundance, and 12 Encore channels.
- *Digital Silver:* Digital Classic services, the Digital Plus services, and one premium service including the service's multiplexed channels and SVOD service.
- *Digital Gold:* Digital Classic services, the Digital Plus services, and three premium networks including the services' multiplexed channels and SVOD services.
- *Digital Platinum:* Digital Classic services, the Digital Plus services, and five premium services (HBO, Cinemax, Showtime, The Movie Channel, and STARZ) including the services' multiplexed channels and SVOD services.
- *Hispanic Tier -- CableLatino:* An add-on package for any subscriber that has the Digital Classic or Digital Plus services. This package is comprised of 18 Hispanic language services, including Discovery en Espanol, CNN en Espanol, and Toon Disney Espanol.
- *Sports Tier:* An add-on package for any subscriber that has the Digital Classic or Digital Plus services. The Sports Tier is comprised of three out-of-market regional sports networks and Gol TV, NBA TV, and Fox Sports World.
- *HDTV Channels:* A package of 14 networks transmitted in HDTV, including ABC, NBC, CBS, Fox, WB Network, two PBS signals, iNHD, ESPN-HD, Comcast SportsNet-HD, HBO HD, Showtime HD, Cinemax HD, and STARZ HD.[42]

This menu offers over 1,000 program and price combinations and allows our customers to create a mix of services to meet any program interest or financial requirement.[43] And this does not even account for pay-per-view ("PPV") and VOD programming, which provide countless additional options.[44] Given this volume of

[42] Comcast does not charge separately for this programming but only for the HD-capable set-top box needed to receive it. With respect to premium services, customers receive only the HD versions of services they purchase.

[43] As described below in Section III, Cable Data, one of Comcast's outside billing services for its D.C., Northern Virginia, and Maryland systems, assigns a separate billing code to each possible combination a consumer can purchase. The maximum number of codes Cable Data can handle is 1,296, and Comcast uses all of them.

[44] PPV offers hundreds of movies, specials, and sporting events. Comcast's VOD offering currently includes 1,500 hours of programming and Comcast plans to increase that to 20,000 hours, most of which will be free. Sports, news, and children's programming are all popular VOD products. In Comcast's

choices, and the many other competitive alternatives for obtaining video programming, it is not clear why anyone would claim that consumers do not have sufficient choices. To the contrary, Comcast believes that cable customers' choices are not only sufficient, they vastly exceed the range of choices associated with almost any other product or service offered in today's economy.

It is also noteworthy, by way of comparison, that an a la carte model likely would provide tens of thousands of possible program combinations. At first blush, this may have some appeal. But, as a practical matter, we think it would not be attractive to consumers. Consider, for example, a restaurant that has over 10,000 items on its menu. The menu would be so extensive and complex that it would leave consumers confused and frustrated. The same is true of a la carte. Comcast has been providing cable services for over 30 years. We have listened carefully to our customers and they have consistently told us that, when it comes to purchasing cable services, they want it simple. A la carte is the opposite of simple.

D. The Government's Past Attempts To Regulate Cable's Pricing and Packaging Have Harmed Programmers, Cable Operators, and Consumers.

In 1992, Congress enacted the Cable Television Consumer Protection and Competition Act, which required the Commission to adopt rules for the regulation of basic and expanded basic services. In April 1993, the Commission issued its *First Rate Order*, requiring operators to reduce basic and expanded basic prices by up to 10%.[45] A year later, in the *Fourth Rate Order,* the Commission increased the reduction to 17% and

---

Philadelphia system this year, customers have used VOD an average of 15 times per month, triple last year's usage rate. *See* Jessica Reif Cohen et al., Merrill Lynch, *Comcast Corp. VOD Content: From 1,500 to 20,000 Hours* 1 (Apr. 5, 2004).

[45] *In re Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, Report & Order and FNPRM, 8 FCC Rcd. 5631 ¶ 14 (1993).

imposed a 7.5% cap on the permissible mark-up of costs for adding new program services.[46]

Despite the Commission's best intentions in carrying out Congress' direction, the regulations had a number of unintended consequences:

- *Reduced incentives for cable operators to add new program services and, consequently, a reduction in program diversity*. Viacom pointed out that "many operators cite rate regulation as the reason they cannot commit to launch new services, or to carry on a full-time basis services which their systems may currently carry on a part-time basis (such as VH-1 and Comedy Central) because of operator uncertainty with respect to permitted packaging and marketing of new services."[47]
- *Reduced investment in cable system upgrades*. Continental Cablevision explained that the regulations "offer[ed] . . . no compensation for the capital committed to build . . . channel capacity . . . ."[48]
- *Harsh impact on small cable operators*. The regulations created uncertainty among lenders and, consequently, smaller cable operators found "all forms of capital elusive."[49]

---

[46] *In re Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, Second Order on Reconsideration, Fourth Report & Order, and Fifth NPRM, 9 FCC Rcd. 4119 ¶¶ 105 (17% reduction), 246 (7.5% mark-up) (1994).

[47] Letter from Mark Rosenthal, Executive Vice President, MTV Networks, to Meredith J. Jones, Chief, Cable Services Bureau, FCC, filed in Dkt. No. 92-266, at 6 (Sept. 27, 1994) (responding on behalf of Viacom International, Inc.) ("*Viacom Letter*"); *see also* Letter from Nikolas Davatzes, President & CEO, Arts & Entertainment Network, to James Quello, Commissioner, FCC, filed in Dkt. No. 92-266, at 1 (May 17, 1994) ("[N]o matter how meritorious the concept or how strong the demand, no new service will succeed if it cannot obtain significant penetration among cable households. Unfortunately, industry reaction to the latest rate regulation orders has left the future of [The History Channel ("THC")] and other new services in doubt. Operators from across the country have informed us that they will cut back and significantly delay the introduction of new services, including THC."); Letter from Jane Tollinger, Executive Vice President, Lifetime Television, to Meredith J. Jones, Chief, Cable Services Bureau, FCC, filed in Dkt. No. 92-266, at 5 (Sept. 27, 1994) ("Since the onset of cable rate regulation . . . cable operators have refused to launch the Lifetime Network on systems where they were previously prepared to launch new program services.").

[48] Continental Cablevision, Inc. Comments filed in Dkt. No. 92-266, at 5 (June 16, 1994); *see also* Russell Shaw, *Rate Rules Put Squeeze on Upgrades,* Electronic Media, May 30, 1994, at 18, 29 ("With the latest round of rate rollbacks, cable systems are pruning their wish list of desired technical upgrades."); Jube Shiver Jr., *FCC Claims Big Drop in Cable Subscriber Rates*, Los Angeles Times, July 15, 1994, at D1 (Cable operators "say the rate rollbacks . . . are complicating the industry's ambitious plans to spend billions of dollars to upgrade their systems with fiber-optic cable.").

[49] Andrew C. Barrett, Keynote Address at Prentice Hall Law & Business 1993 Cable Conference 5 (1993) ("*Barrett Speech*").

- *Reduced programming quality*. The regulations were "accompanied by a dramatic drop in viewer ratings for basic cable program services, which suggests a loss of quality in the eyes of consumers."[50]
- *Unique hardships for programming targeted to specific groups, such as minorities*. BET pointed out that the regulations were "particularly harmful to minority-targeted services, such as BET, which cannot charge the same rates as high-priced, mass appeal channels."[51]

As former Chairman Quello recently noted, "[u]nfortunately, right at the time cable was poised to re-invest to upgrade technology, our rules sent a shiver through Wall Street and the financial community."[52] Similarly, at the time the regulations were adopted, Commissioner Barrett warned of "dire, unintended consequences," including a delay in "the implementation of new operator services, as well as some new programming services."[53] Moreover, ironically, the regulations did not lower consumers' cable prices. The Commission's former chief economist explained that "difficulties arose in regulating the supply of a product as complex as cable television services. . . . [E]ven under regulation, the prices of various tiers of service can -- and did -- increase."[54]

---

[50] Thomas W. Hazlett & Matthew L. Spitzer, *Public Policy Toward Cable Television: The Economics of Rate Controls* 2 (1997); *see also* Thomas W. Hazlett, *Good Riddance to Cable TV Regulations*, Wall St. J., Apr. 1, 1999, at A22 ("The failure of rate caps had been hammered home, by basic cable networks like A&E, Discovery and C-SPAN, which adamantly argued that rate controls destroyed quality programming . . . .").

[51] Letter from Maurita K. Coley, Senior Vice President, BET Holdings, Inc., to William F. Caton, Acting Secretary, FCC, filed in Dkt. No. 92-266, at 2 (May 9, 1994); *see also* Public Interest Petitioners, Petition for Expedited Reconsideration filed in Dkt. No. 92-266, at ii (May 16, 1994) ("Unfortunately, cable programming services [became] the primary victims of the FCC's implementation of rate regulations. Of those programmers who [we]re affected adversely, the most vulnerable [we]re new services. And of the new services that [we]re hurt, the greatest damage [was] done to those seeking to fill special public interest niches."); United Church of Christ Comments filed in Dkt. No. 92-266, at 2 (June 27, 1994).

[52] James H. Quello, Editorial, *Regulating Cable Services; Free Market Competition Better for Americans*, Wash. Times, Nov. 12, 2003, at A17.

[53] *Barrett Speech* at 1, 2-3 (also noting that Ted Turner "emphasized that to the extent that cable regulations inhibit cable operators, they will also inhibit programmers by discouraging launches of new channels").

[54] Michael L. Katz, *An Economic Analysis of the Claims Made by Dr. Mark Cooper in "Cable Mergers, Monopoly Power and Price Increases"* 20, 21 (July 28, 2003); *see also* Nicholas W. Allard, *Reinventing Rate Regulation*, 46 Fed. Comm. L.J. 63, 66-67 (1993) ("Perhaps the last thing legislators expected upon returning to their districts was 'man bites dog' news stories suggesting that the 1992 Cable

To reverse these effects, the Commission adopted the "going forward" rules in its *Sixth Recon Order* in 1994. The rules were intended to create incentives for cable operators to add new program services and to restart the investment and innovation that had been stifled by the earlier rules.[55] As an alternative to the 7.5% cap, the rules allowed cable operators to add new channels to the expanded basic tier at a price of not more than $.20 per channel plus license fees (with a total increase over two years not to exceed $1.50). The Commission also created a new type of program package, called the New Product Tier ("NPT"). Cable operators were permitted to offer NPTs on an unregulated basis.

However, by 1996 Congress decided to repeal the entire regulatory scheme.[56] The House Report to the 1996 Act summarized Congress' reasons for scrapping the regulations:

> The complicated and intrusive regulatory structure created by the Commission has severely inhibited the industry's growth. During testimony at hearings on the legislation, the Committee heard evidence that the regulations have slowed development of new programming and dampened the industry's efforts to expand system capacity and introduce new technology. The Committee also heard testimony that the regulations have severely hampered the industry's ability to obtain capital from the financial community, which, in turn, has delayed cable operators' efforts to rebuild their systems and develop new infrastructures.[57]

Act was causing cable rate increases and sharp inquiries from local authorities and consumers pressing them for an explanation.").

55 *See In re Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, Sixth Order on Reconsideration, Fifth Report & Order, and Seventh NPRM, 10 FCC Rcd. 1226 ¶ 22 (1994) ("We are concerned, based on the comments filed by operators and programmers, that our current rules may not provide sufficient incentives for operators to expand capacity and provide new services to consumers.").

56 *See* Telecommunications Act of 1996, Pub. L. No. 104-104, § 301(b), 110 Stat. 56, 115 (amending 47 U.S.C. § 543(c)(4)) ("*1996 Act*").

57 H.R. Rep. No. 104-204, at 54 (1995). According to Senators McCain and Packwood, "Congress made a terrible mistake in 1992 when it re-regulated the cable industry." S. Rep. No. 104-23, at 71 (1995) (Minority Views of Senators Packwood and McCain). In particular, they pointed out that between 1992 and 1994 investment in cable from venture capital sources declined from $712 million to $89 million, and

Congress' decision to rely on the marketplace rather than regulation unleashed massive investment in both cable system upgrades and program development. Since 1996, the cable industry has invested over $85 billion in system upgrades -- roughly $1,200 for every cable customer -- and over $69 billion in programming.[58]

In short, in the space of four years, the government enacted a complex statutory regulation scheme, adopted implementing regulations, adopted new regulations to overcome the unintended consequences of the first regulations, and then eliminated the regulations in their entirety. The Commission issued over 20 separate rate orders and hundreds of regulations, fact sheets, notices of inquiry, and notices of proposed rulemaking, comprising thousands of pages in the Federal Register.

And the results of these efforts were: severe cutbacks in programming and infrastructure investment; reduced program diversity; a nearly decade-long delay in the digital transition; and no improvement in consumer welfare.

The government should not go down that road again -- with a la carte or any other restrictions on packaging or pricing.

II. A LA CARTE WOULD REDUCE SUBSCRIPTION AND ADVERTISING REVENUES FOR PROGRAM SERVICES AND THIS, IN TURN, WOULD RESULT IN HIGHER PRICES AND LESS DIVERSITY FOR CONSUMERS.

A la carte would necessarily reduce a program service's revenues from both subscription fees and advertising. The result, as government agencies, programmers, financial analysts, members of Congress, and cable operators have all concluded, would be higher prices and less diversity for consumers.

---

investment from stock offerings declined from $640 million to $163 million, thereby crippling the cable industry's ability to upgrade infrastructure and improve programming quality. *See id*.

[58] National Cable & Telecommunications Association, *2004 Mid Year Industry Overview* 3, 12 (2004), *available at* http://www.ncta.com/pdf_files/Overview.pdf.

The same effects would result from mandatory themed tiers.[59] Themed tiers are designed to attract a portion of a cable or DBS operator's customers that have a particular interest in the subject matter of the tier. Thus, program services offered in themed tiers would have fewer subscribers than if offered on a widely distributed tier. As explained below, this would diminish the program services' subscription and advertising revenues, causing increases in the prices of the services and ultimately making it more difficult for niche services to survive and new services to launch.

There are other problems with themed tiers as well. For example, it would be particularly difficult to define themed tiers. Proponents of themed tiers often cite the need for "family tiers." However, while the idea of "family tiers" may have surface appeal, it would be very difficult to create a package of programming that would appeal to the varied interests of families served by a cable or DBS operator. Some families may be interested in news programming, while others may be interested in cartoons or educational programs. The same programming that appeals to a family with pre-schoolers would not appeal to a family with teenagers. And ethnic or foreign language programming will be uniquely important to many families, but not to others.

At a Congressional hearing earlier this week, Alfred Liggins, President and CEO of Radio One, raised similar questions about his company's new service, TV One, which features a broad range of lifestyle and entertainment programming for African American adults:

---

59 In recent testimony before the Senate Commerce, Science, and Transportation Committee, GAO recognized that themed tiers, or "mini-tiers," would have the same effects as a la carte: "[T]he industry and the financial analysts and advertising executives we talked to said that the business model kinds of issues would not change with respect to mini-tiers. It's the same issues, frankly, in their opinion." *Escalating Cable Rates: Causes and Potential Solutions. Hearing Before the Senate Comm. on Commerce, Science, and Transportation*, 108th Cong. (Mar. 25, 2004) ("*Senate Commerce Committee Hearing*") (testimony of Mark Goldstein, Director of Physical Infrastructure Issues, GAO), *available at* http://commerce.senate.gov/hearings/testimony.cfm?id=1127&wit_id=2836.

> If a cable or satellite operator creates a "family-friendly" tier and excludes TV One, does that make our quality network "family-unfriendly?" And what kind of "themed tier" would the government say that TV One, a network targeted to African Americans, should be on? I think that any time the government starts trying to draw lines like this, terrible consequences follow.[60]

Similar difficulties would arise with a themed tier focusing on news. How would a cable operator choose among CNN, CNN en Espanol, Headline News, CN8, CNBC, Court TV, MSNBC, Fox News Channel, The Weather Channel, ESPN News, C-SPAN, and a regional news service? If the operator cut out the local and regional news channels, how would that affect the attractiveness of the tier? Would a decision to include CNN but not Fox News have a significant impact on the appeal of the tier? What is the value of including sports news, foreign language news, or news about the weather in the tier?

Creating a themed tier that would appeal to a broad range of consumer interests, while keeping the price of the tier affordable by limiting the number of services included in the tier, would be especially challenging. It is worth noting that none of the many other competitors in the video distribution marketplace have made themed tiers an important part of their service offering or demonstrated that themed tiers are a sustainable model for offering programming to consumers. This indicates both how difficult it is to create attractive themed tiers and how little consumers want them.

Moreover, there would inevitably be disagreements about how the tiers are defined and what program services would be included in the tiers. Who would referee these disagreements? Would the government step in to determine which news channels would be included in a themed tier? Would it decide which ethnic channels would be

---

[60] *See Competition and Consumer Choice in the MVPD Marketplace, Hearing Before the House Subcomm. on Telecommunications and the Internet* (July 14, 2004) (testimony of Alfred Liggins, President and CEO, Radio One).

included in a themed tier? How could such a government role possibly be squared with the First Amendment?

And even if it were possible for regulators to establish criteria for determining which services would go in which themed tiers, the program services would have economic incentives to reposition their content to "game" the arbitrary regulations to avoid being placed in undesirable tiers.[61] For example, if having a specific type of programming above a certain percentage threshold triggered movement to an unfavorable tier, program services would have artificial incentives to diversify their content into other categories. As shown in the *Katz Analysis*, "to the extent that program suppliers are able to design their networks to game the rules, program offerings will be distorted, reducing the effectiveness of the regulations, generating efficiency costs, and ultimately harming consumers."[62]

Comcast continually considers adjustments to its offerings in response to consumer demand and intense competition from other video providers. It has experimented with a variety of tiers, including themed tiers, and it will continue to do so. But this experimentation should be based on marketplace dynamics and the complex needs and desires of consumers, not government regulation.

A. A La Carte Would Reduce Subscription Revenues for Program Services.

Cable program services rely on a dual revenue stream of (a) subscription fees, paid by cable operators on a per-subscriber basis, and (b) advertising fees. Subscription fees typically account for 50% or more of a service's revenues.

---

61 *See Katz Analysis* ¶ 46.

62 *Id.*

In order to generate the maximum revenue from subscription fees, program services seek the widest possible distribution. The most efficient way for most services to achieve that goal is to be carried on a tier with other popular services that attract a large number of subscribers. By contrast, mandating that a service be offered a la carte or in a themed tier would reduce the number of subscribers to a service. This is so for several reasons.

First, experience demonstrates that an a la carte service would generate only a fraction of the subscribers that it would generate in a tier. For example, HBO, by far the most popular a la carte service today, is typically purchased by only about 30% of cable system subscribers despite providing some of the most critically acclaimed programming in the history of television.[63] Similarly, regional sports networks that used to be offered a la carte generally did not exceed 10% penetration.[64] Many niche services, which appeal to somewhat narrower viewing interests, or new services, which have not had an opportunity to be sampled or to attract a significant following, would draw even smaller audiences if offered a la carte.

Second, even among a service's loyal viewers, it is extremely unlikely that every subscriber would elect to purchase a particular service if it is moved from a tier to a la carte. For example, some consumers may simply be unwilling to accept the higher price of the service when it is offered a la carte.

Third, a program service offered a la carte would lose tier subscribers who occasionally or spontaneously view the service when it is offered on a tier. Many cable

---

[63] *See* Raymond Lee Katz, et al., Bear Stearns Equity Research, *A La Smart?* 4 (Mar. 29, 2004) ("*Bear Stearns*").

[64] *See id.*

customers channel surf until they find a program they want to watch. According to a study from Knowledge Networks Statistical Research, of 2000 survey respondents, only 9% knew what was on TV when they turned on their sets.[65] In contrast, 33% used an electronic programming guide to find out what was on TV, while 23% "just flipped channels."[66] Services offered a la carte would lose a large portion of this sampling group.

Fewer subscribers, of course, means lower subscription revenues. A service could attempt to offset the lost subscription revenues by raising its per subscriber subscription fee, but, as shown in Subsection C(1) below, this would result in sharply increased prices for consumers.

B. A La Carte Would Reduce Advertising Revenues for Program Services.

There are generally two types of advertising time sold on cable program services: network advertising and spot advertising. Network advertising is sold by the program service to national advertisers and generally represents about 50% of a service's total revenue.[67] Program services typically have 12-14 minutes of advertising time to sell per hour. Spot advertising is sold by cable operators to local and regional advertisers and represents a relatively small part of an operator's total revenue.[68] As part of their agreement to carry a service, operators generally negotiate for two minutes of spot advertising time per hour (referred to as "ad avails").

---

65 Knowledge Networks Statistical Research, *How People Use Television* 7 (2004), *available at* http://www.onetvworld.org/?module=displaystory&story_id=968&format=html.

66 *Id*.

67 *See GAO Report* at 34 ("Our analysis of information on 79 networks from Kagan World Media indicates that these cable networks received nearly half of their revenue from advertising in 2002.").

68 Comcast generally sells spot advertising to regional advertisers as part of an "interconnect," a venture formed by several cable operators in a region in order to compete for advertising sales across an entire DMA. Today, even the most successful spot sales in cable companies generate considerably less than 1% of the companies' revenues.

The revenue generated by the sale of spot advertising goes to the cable operator, so it does not directly affect a program service's revenues. For this reason, we will focus in these comments on the impact of a la carte on the ability of a program service to sell network advertising.

The revenue a program service can derive from network advertising is based on the rate the service can charge advertisers, which, in turn, depends on several variables, including actual viewers of the service (referred to as "reach"), potential viewers of the service (*i.e.*, subscribers), the number (or "frequency") of impressions an ad makes, the volume of ad time purchased, and the duration of the ad. The most important of these variables are actual viewers and potential viewers.

Actual viewers are measured by Nielsen Media Research ("Nielsen") and are reported according to a share of viewers in the aggregate of all designated market areas ("DMAs"). The Nielsen ratings are a critical variable in determining how much an ad is worth, and therefore, how much revenue a program service derives from selling ad time. However, Nielsen only measures 59 of the over 300 national cable program services.[69] Moreover, Nielsen does not yet measure digital cable channels.[70] Thus, many program services, especially niche, new, or digital services, must rely almost exclusively on potential viewers as the primary variable for determining the price they can charge for advertising.

---

[69] Cabletelevision Advertising Bureau, *CAB Research, National Market Facts, Cable Penetration*, *at* http://www.onetvworld.org/ (last visited July 14, 2004).

[70] Nielsen Media Research, *Frequently Asked Questions, Measuring Digital Television* ("Nielsen Media Research is in the process of testing a new metering system capable of identifying analog and digital transmission [and] plan[s] to roll out this technology as the digital environment unfolds."), *at* http://www.nielsenmedia.com/ (last visited July 14, 2004).

Potential viewers are based on the number of households to which a program service is distributed. Theoretically, if all the regular viewers of a service offered in a tier were to subscribe to the service if it were offered a la carte, the service would not suffer a reduction in viewership, or consequently in advertising revenue. However, for the reasons described above, that is not what would happen. Some of the regular viewers would not subscribe to the service for various reasons, including the higher a la carte price. And the service would lose spontaneous and occasional viewers that it enjoyed when carried on the tier.

Moreover, even if all the regular viewers of a service offered in a tier were to subscribe to the service if it was offered a la carte, the service would still suffer a reduction in advertising revenues because it would lose "rotation," the ability to reach more potential viewers.

Consider the following example: a program service offered a la carte has 20 subscribers, each subscriber watches the service every night for a week, and each subscriber views a particular ad one time each night. At the end of the week the service would have provided the advertiser with 140 "impressions" (20 viewers x 1 viewing x 7 nights = 140 actual viewings of the ad). In this example, the advertiser will have reached 20 viewers (albeit seven times each).

Now assume the program service is carried on a tier with 200 subscribers, it still attracts 20 viewers every night for a week, and each viewer watches the ad once per night. At the end of the week the service has provided the advertiser with the same 140 impressions, but it may have reached 50, 80, or 100 *different* viewers as opposed to only 20 in the a la carte scenario. In other words, because the tier provides a greater number of potential viewers access to a service, it is more likely that a larger number of subscribers will actually view the service (and its advertisements) than if the service is offered a la carte, even assuming that the service's viewership level (measured by total number of impressions) is the same.

Many advertisers seek "rotation" and value new impressions more highly than repetitive impressions -- they prefer their ad to be seen fewer times by more potential purchasers of their products than repeatedly by a smaller number of potential purchasers. As a result, advertising time on a service offered on a tier is generally worth more than the same advertising time on a service offered a la carte.[71]

C. The Combination of Reduced Subscription Revenues and Reduced Advertising Revenues Would Result in Higher Prices and Less Diversity for Consumers.

1. Higher Prices for Consumers.

The Commission's analysis of price effects should start with the widely-held view that a la carte would increase consumer prices:

- GAO: In an a la carte environment, "*cable rates could actually increase* for some consumers."[72]
- Morgan Stanley: "It is also unclear what the pricing would be for individual channels on an a la carte basis, so *consumers taking many channels could end up paying more* than the standard analog package."[73]
- Discovery Communications**:** "To make up for lost advertising revenues, programmers will have to increase the price of their channels. *Consumers would be burdened with these increased prices*."[74]

---

71 *Katz Analysis* ¶ 38 ("[R]estrictions on tiers would reduce overall cable television viewing. This means that programming costs would be amortized over less overall viewing and fewer total viewers. Moreover, such restrictions would reduce opportunities for programmers and operators to generate advertising revenues that would offset their costs. Consequently, programmers and operators would have economic incentives to set higher prices. This is another way in which mandatory unbundling would harm consumers.")

72 *GAO Report* at 34 (emphasis added).

73 Richard A. Bilotti, Morgan Stanley Equity Research, *The Evolution of Programming Costs* 4-5 (Dec. 15, 2003) (emphasis added).

- ESPN: "We [also] agree with GAO that a la carte distribution schemes, whether for all services or just directed at a particular genre, will only produce *higher prices for all cable customers . . . .*"[75]

- Lifetime Entertainment, Shop At Home, Sci Fi Channel, Food Network, Rainbow Media, Rainbow Sports Network, E! Entertainment, Oxygen, BET, Discovery, National Geographic Channel, A&E Network, Disney Media Networks, TRIO, MTV Networks, VH1, Scripps Networks, Wisdom Media Group, CNBC, Nickelodeon: "Under an a la carte system, consumers who now pay $40 per month for expanded basic cable service that provides 60 to 70 channels, may need to *pay the same $40 for a fraction of the channels they currently receive*."[76]

- Congressional Black Caucus: A la carte "would lead to less advertising dollars for the programmer, an increase in licensing fees and ultimately *an increase in consumer costs*."[77]

- BET, TV One, Si TV, International Channel: "If cable and satellite companies sell channels a la carte, it would instantly erode potential advertising support, forcing us to dramatically increase the per-subscriber fee we must charge. Ultimately, *subscribers would find themselves paying about the same amount -- and possibly more -- for just a handful of channels*, rather than having hundreds from which to choose, as they do today."[78]

- The Weather Channel, Game Show Network, Outdoor Channel, A&E, Crown Media, TechTV, Oxygen, Tennis Channel: "Government-mandated a la carte or specialized tier distribution would also harm consumers. In particular, consumers would actually have *fewer* programming choices and yet, because it is highly likely that the license fees of cable program services would dramatically rise in order to cover

---

74 Letter from Judith McHale, President and Chief Operating Officer, Discovery Communications, Inc., to Members of the Senate Commerce, Science, and Transportation Committee 1 (Mar. 8, 2004) (emphasis added).

75 *Senate Commerce Committee Hearing* (testimony of George Bodenheimer, President, ESPN Inc. and ABC Sports) (emphasis added).

76 Letter from Concerned Women Programming Executives to Members of Congress 1 (May 5, 2004) (emphasis added) (on file with author).

77 Letter from the Congressional Black Caucus to Representative Joe Barton, Chairman, and Representative John Dingell, Ranking Member, House Committee on Energy and Commerce 1 (May 12, 2004) (signed by 39 members) (emphasis added) (on file with author); *see also* Letter from Marc H. Morial, President & CEO, National Urban League, to Marlene H. Dortch, Secretary, FCC (July 7, 2004) ("Ultimately, subscribers would find themselves paying about the same amount -- and possibly more -- for just a handful of channels, rather than having the hundreds from which to choose, as they do today.").

78 Letter from Executives at BET Holdings, Si TV, TV One, and International Channel to Representatives Joe Barton, Chairman, and John Dingell, Ranking Member, House Energy and Commerce Committee 2 (May 12, 2004) (emphasis added) (on file with author).

the ad revenue shortfalls, as GAO found, *prices for cable subscribers could actually increase under a government-mandated a la carte model*."[79]

- NCTA: "A cable network cannot recoup lost revenues by charging more for advertising since it will have fewer potential viewers in an a la carte world. The network's only option is to raise its subscription fees, and this means *higher prices for consumers*."[80]

Against this backdrop, the Commission must be skeptical of claims that a la carte would allow cable subscribers to select only those program services they wish to watch and, thereby, reduce their overall cable bills. As the parties listed above have advised, a la carte would *increase* the price of individual program services, so much so that even if a consumer selects only a handful of a la carte services, his or her overall cable bill would be likely to increase as well.

Bear Stearns, a financial analyst, studied the impact of a la carte if a consumer chose only five popular services – the Disney Channel, ESPN, MTV, Fox News, and TBS. Bear Stearns estimated that the cost to the consumer of the five services a la carte, assuming a 25% take-rate, would be $28.63.[81] When the cost of the basic tier mandated by law, franchise fees and other taxes, and consumer equipment costs are added in, the consumer would be paying over $40. The result, according to Bear Stearns, is that the subscriber would actually pay *more* for the five services a la carte than he or she would pay for an entire tier today, including the same five selected services and dozens of other services as well.[82]

---

79 Letter from Independent Program Network Executives to Members of the Senate Committee on Commerce, Science, and Transportation 1 (Mar. 8, 2004) (emphasis added) (on file with author).

80 *See* National Cable & Telecommunications Association, *The Pitfalls of A La Carte: Fewer Choices, Less Diversity, Higher Prices* 3 (May 2004) (emphasis added) ("*NCTA White Paper*").

81 *Bear Stearns* at 4.

82 *Id*. (noting that a la carte is "probably more expensive than today's basic + expanded basic package, with only five networks and the [broadcast basic] tier included").

The following chart shows the drastic program price increases, ranging from 318% - 1145%, that Bear Stearns estimated would be caused by a la carte:

	Current Price	**A La Carte Consumer Price (with a 25% take rate)**	**Percentage Consumer Price Increase**
Disney Channel	$1.48	$5.90	1145%
ESPN	$3.78	$15.82	318%
MTV	$0.43	$2.32	435%
Fox News	$0.51	$2.17	321%
TBS	$0.47	$2.42	410%
Total Cost to Consumer	**$6.67**	**$28.63**	**329%**

Moreover, even proponents of a la carte acknowledge that most cable customers watch significantly more than five services. For example, *Consumer Reports*, whose parent, Consumers Union, has been a vocal advocate of a la carte, recently reported that the average cable household regularly watches 17 channels.[83] No party has suggested that the price of 17 channels purchased a la carte would be less than the price of today's expanded basic tiers with 40-70 channels.

There are numerous examples of program services that have been offered a la carte and on a tier and, in every case, they have been significantly more expensive for consumers in the a la carte format.[84] Comcast SportsNet ("CSN") is a good example of this dynamic. CSN was originally launched as Home Team Sports ("HTS") in the

83 *Cable A La Carte: Pay Per Channel*, Consumer Reports, June 2004, at 61 (citing the *GAO Report*); *see also GAO Report* at 31.

84 *NCTA White Paper* at 11-12 (pointing out that the Disney Channel was offered a la carte for about $8-$13 per month, but when it was moved to the expanded basic tier, it accounted for approximately $1-$2 of the overall tier price); *see also GAO Report* at 36 (reporting that one network told GAO that a la carte would drive its licensing fee from $.25 to a few dollars a month).

Baltimore and D.C. areas in 1984. Comcast acquired HTS in early 2001 and re-launched it as CSN in April 2001.

HTS was originally offered only as an a la carte service. However, because it was unable to generate revenues consistent with management expectations or sufficient to justify the quality improvements management envisioned for the service, in the late 1980s, HTS began migrating from a la carte to the expanded basic tier.

The move had a dramatic impact. For example, when the Baltimore County cable system moved HTS to the tier in 1995, the following effects occurred:

- *Significant reduction in the consumer's price*. When offered a la carte, Baltimore County consumers paid $15.99 for HTS. When HTS was moved to the tier, the effective price dropped to about $1.[85]
- *Greater access to the service for consumers*. As an a la carte service, HTS had approximately 10,000 subscribers in Baltimore County, but when it was moved to the tier, the subscribership jumped to over 170,000.

One additional result of the move to the tier is that CSN has been able to substantially increase the quality of its service. The quality increases came in many forms: acquisition of additional sports rights (*e.g*., more professional and collegiate games), more original programming (*e.g*., pre- and post-game live programming, sports news programming), more experienced on-air talent (*e.g*., nationally-recognized game announcers), and equipment and service upgrades (*e.g*., introduction of HDTV). Without the economic base created by the tier, CSN would not have been able to undertake these quality improvements (certainly not all of them or in the same time frame).

The price-increasing effects of a la carte are present in any variation of a la carte that has been proposed. For example, some have suggested that cable operators should

---

[85] The prices for HTS may have differed slightly in other areas of the mid-Atlantic region, including Washington, D.C. and Annapolis, MD, depending on whether those areas were considered "inner" or "outer" markets, as defined by the respective sports leagues for the games carried by HTS.

offer certain services both in a tier and a la carte (this is often referred to as "mixed bundling"). But this, too, would raise consumer prices. Consider, for example, an expanded basic tier with 100 subscribers and 50 services, 10 of which are offered both on the tier and a la carte. Assume 20 subscribers opt out of the tier and choose the 10 a la carte services. Theoretically, the 10 selected services would not be harmed, since they would have 80 subscribers on the tier and 20 subscribers a la carte, the same 100 subscribers they had when carried only on the tier. However, the 40 services that are *not* selected to be offered a la carte *would be harmed* because they now have only 80 subscribers on the tier. Once again, these services would not be able to increase their advertising revenue (since they would have fewer subscribers), so their only realistic option would be to increase their subscription fees, and these increased fees would be passed along to consumers in the form of higher prices.

The *Katz Analysis* further describes the manner in which mixed bundling would harm consumers:

> The academic literature . . . has shown that [mixed bundling] is more profitable than so-called pure bundling when transaction costs are low. The fact that cable system operators do not pursue such strategies suggests that the costs of offering cable networks on an unbundled basis are significant. Stated in terms of policy implications, current practices indicate that mandatory unbundling would generate significant costs for service providers and their customers.[86]

Likewise, as described above, themed tiers would increase consumer prices as well. The point of a themed tier is to create a small group of like-genre services that appeal to only a limited portion of a cable operator's customers. By definition, services offered in a themed tier would have fewer subscribers and, therefore, would need to

[86] *Katz Analysis* ¶ 11 (footnote omitted).

charge cable operators higher subscription fees to cover their costs. This would mean that consumers would have to pay a higher price to receive the services.[87]

The fact that cable operators today offer a number of services a la carte or in themed tiers does not change the analysis. First, in each case the consumer prices for the a la carte services are significantly higher than for services carried as part of a tier. Second, the principal a la carte services today are premium services like HBO, Showtime, and Starz! However, there has not been a successful launch of a new premium service in over 10 years. Third, some cable operators are beginning to offer ethnic or foreign-language channels on a stand-alone basis, but the price of these channels typically ranges from $10 to $15, and because of the unique nature and narrow focus of the channels, they do not constitute a basis for concluding that a la carte is a generally viable model.[88] Finally, although in a few instances cable operators have recently offered themed mini-tiers, it is not yet clear how consumers will react to these tiers or whether they will be sustainable in the long run. For example, in Arlington, Virginia, Comcast offers a sports tier with six services. However, three of the services are out-of-market regional sports networks and the other three (Gol TV, NBA TV, and Fox Sports World) are fledgling services that otherwise would not have received carriage. Again, this type of experimental tier does not provide a basis for a mandatory themed tier requirement.

---

[87] In addition to driving up consumer prices, mandatory themed tiers would also have all the other problems associated with a la carte. For instance, as shown in the next subsection, themed tiers will reduce the program diversity that consumers now enjoy.

[88] Most foreign-language channels are widely distributed in other countries and are not reliant on distribution in the United States to remain viable.

2. Less Diversity for Consumers.

The countermeasures a program service could employ to recoup lost subscription and advertising revenues are limited and unattractive. In the case of lost subscription revenues, the service could raise its per subscription fee, but, as noted, this would lead to significantly higher consumer prices (and likely further reduction in the service's subscriber base). In the case of lost advertising revenues, the service has no realistic option. It plainly cannot hope to *raise* its advertising fees when it has *fewer* viewers and subscribers.

The results, then, of a la carte are fairly straightforward: some program services would reduce quality in order to bring their costs in line with their revenues,[89] and others would simply go out of existence (or never be launched in the first place).[90] As GAO has warned, a la carte would result in "less diversity and program choice."[91] It is telling that the program industry is unanimous in this view:

- "Government efforts to dictate how our programming is packaged or marketed," according to Concerned Women Program Executives, "would be bad for consumers because it would give them *less choice and less diversity in programming*."[92]

---

89 *GAO Report* at 36 (a program service facing a decline in revenue could "take steps to reduce production costs").

90 Douglas Shapiro, Banc of America, *Broadband Brief: Could Cable "Rate Regulation" Benefit Cable Operators* 7 (Mar. 19, 2003) (noting that the "combination of foregone ad revenue and much higher marketing costs could substantially reduce programmers' margins" and "probably result in marginal networks shutting down and significantly raise entry barriers for new nets").

91 *Senate Commerce Committee Hearing* (statement of Mark L. Goldstein) ("One of the concerns we had, frankly, in talking to people was that you would actually be losing some channels and some networks, and it's based on a lack of viewership that they could not -- couldn't get enough subscribers, couldn't get enough advertisers.").

92 Letter from the Concerned Women Programming Executives to Members of Congress 1 (May 5, 2004) (signed by women executives at Lifetime, Rainbow Media Holdings, Shop At Home, Rainbow Sports Network, Sci Fi Channel, E! Entertainment Networks, Food Network, Oxygen Media, BET Holdings, MTV Networks, Discovery, VH1, National Geographic, Scripps Networks Affiliate Sales, A&E Networks, Wisdom Media Group, Disney-ABC Television, CNBC, TRIO, and Nickelodeon) (on file with author).

- "New England Cable News President Philip Balboni and Pennsylvania Cable Network President Brian Lockman said a la carte would destroy their cable news channels. 'I think it would be disastrous to us,' said Lockman, arguing that his state public affairs network would have never gotten off the ground in an a la carte world. '*I think it would be the end of networks like us and there would be no new networks like ours*,' Balboni said."[93]
- "[G]overnment-mandated packaging in the form of a la carte or specialized tiers would significantly harm our businesses, *reduce program diversity and consumer choice*, and likely increase consumer cable prices."[94]
- "Without the continued use of bundling, it is possible that Court TV and/or AETN's networks will *not be able to stay in business*."[95]
- "'Oxygen would have *never raised money in the private equity market* if it was going to be an a la carte channel. . . . It's bad for American audiences and it's bad for business.'"[96]
- "Discovery Network spokesman David Leavy says that the network group *would never have been able to launch such family-friendly channels* as Discovery Kids or The Science Channel in an a la carte or mini-tier world."[97]

A la carte and themed tier requirements would harm diversity in other ways as well. First, such requirements would reduce consumers' ability to efficiently view programming they *currently* desire. As the *Katz Analysis* shows:

> A tier with a large number of networks allows a consumer efficiently to select certain programs shown on a given network even if he or she does not wish to view all of the programs on that network. . . . With mini-tiers or *a la carte* pricing, a consumer faces incremental charges when he or she wishes to watch

93 *Regional News Network Execs Bemoan A La Carte*, Television A.M., May 26, 2004 (emphasis added).

94 Letter from Independent Program Network Executives to Members of the Senate Committee on Commerce, Science and Transportation 1 (Mar. 8, 2004) (signed by executives at Weather Channel, Game Show Network, Outdoor Channel, History Channel, Biography Channel, History Channel International, Hallmark Channel, TechTV, Oxygen Media, Tennis Channel, MBC Network, International Channel, Ovation, SiTV, and Bloomberg Television) (on file with author) (emphasis added).

95 Letter from Court TV and A&E Television Networks to Members of the House Energy and Commerce Committee 1 (May 11, 2004) (on file with author) (emphasis added).

96 Michael Grebb, *The Political Endurance Test; Offering Channels in "Family Friendly" Tiers – or One by One – Could Be the Death Knell for Some*, Multichannel News, May 17, 2004, at 34 (quoting Geraldine Laybourne, CEO, Oxygen Media) (emphasis added).

97 *Id.*

> programming on an additional network, and thus that consumer will be discouraged from watching programming on a wide range of networks. Suppose, for example, that The Disney Channel were offered solely on an *a la carte* basis for $12 per month. Then a consumer who greatly liked one program on that network might nonetheless choose not to purchase it and thus forgo viewing that program. On the other hand, if The Disney Channel were offered as part of tier to which the consumer subscribed, then he or she would watch that one program on Disney.[98]

Second, a la carte and themed tier requirements would eliminate consumers' ability to efficiently sample program services to find desirable *new* programming. Again, the *Katz Analysis* demonstrates that:

> In reality, consumers often are unsure or even unaware of what programming is available. Even if a consumer has some information about a program, she may not know her full reaction to it until she actually sees it. For instance, short of viewing one or more episodes of American Chopper on The Discovery Channel, who would have guessed that a show about building motorcycles would be a compelling drama about father-son relationships?[99]

The issue of program diversity has always been a sensitive one -- our First Amendment heritage demands that it be so. In that regard, the Commission should not lose sight of the fact that the cable industry has produced something profound and unprecedented -- an abundance of diverse program services that mirrors the diverse nature of our Nation. These services not only provide consumers with programming that addresses special interests, such as children's programming, news, sports, and the arts, they provide programming that promotes dialogue and understanding on important cultural, political, and religious issues. For example, services like C-SPAN, CN8 (The Comcast Channel), CNN Headline News, New England Cable News, MSNBC, The History Channel, Court TV, and BBC America all provide consumers with critical information on issues of public importance. Increasingly, cable operators also provide

---

98 *Katz Analysis* ¶ 28.

99 *Id.* ¶ 31.

their customers with specialized ethnic and foreign language programming. In its Philadelphia area system, for example, Comcast provides NTV America (Russian programming) and Zhong Tian (Chinese programming), as well as CNN en Espanol, Discovery en Espanol, and TV International.

Even if the likelihood that forced a la carte would deny consumers access to such services were slim -- and in fact it is not -- the government should emphatically reject the risk. The stakes are much too high. As executives at BET, Si TV, TV One, and International Channel recently told members of the House Energy and Commerce Committee, "One of the great promises of cable is that with its multi-channel universe, subscribers can not only have programming designed for them, but also have the ability to share other cultures, communities, styles and viewpoints. The imposition of a la carte would drastically reduce, if not eliminate entirely, that opportunity."[100]

III. A LA CARTE WOULD CAUSE SEVERE OPERATIONAL PROBLEMS FOR CABLE OPERATORS AND THIS WOULD CAUSE SIGNIFICANT CONFUSION AND FURTHER PRICE INCREASES FOR CONSUMERS.

As Comcast demonstrates in the prior section, and the *Katz Analysis* corroborates, a la carte would raise consumer prices and reduce program diversity. In this section, Comcast describes the severe operational problems that would be caused by a la carte and the reasons why these problems would lead to even higher prices and more confusion and dissatisfaction for consumers:

- The industry's order taking, billing, and customer care operations would have to be completely redesigned and, once redesigned, they would have to be re-implemented in each cable system.

[100] Letter from Executives at BET Holdings, Si TV, TV One, and International Channel to Representatives Joe Barton, Chairman, and John Dingell, Ranking Member, House Energy and Commerce Committee 2 (May 12, 2004) (on file with author).

- The manner in which operators secure programming would have to be altered significantly, forcing millions of consumers to pay for set-top boxes.
- Cable system headends would need to be upgraded to add the processing power necessary to handle the vastly increased number of transactions that would occur in an a la carte world.
- Cable operators (and programmers) would need to substantially increase their marketing budgets to promote each program service on an individual basis rather than promoting the tier.
- And the level of effort required to deal with a conversion to a la carte would be so significant that it would require the full attention of a cable system's management, technical, and customer service personnel, thereby delaying the rollout of advanced services such as home networking, VoIP, high-speed Internet, HDTV, VOD, and digital video recorders.

A. A La Carte Would Force Cable Systems To Completely Redesign Their Order Taking, Billing, and Customer Care Operations.

At a typical cable company, customer calls (for example, to order service, to report a service problem, or to make a billing inquiry) are handled by customer account executives ("CAEs"). Because the relationship with the customer is critical, Comcast's CAEs go through an extensive six week training program before they are allowed to handle customer calls. Then, for an additional four weeks, the CAEs go through a "nesting period," in which they are given a low volume of calls so they can become accustomed to the many issues that arise when dealing with customers. Comcast's CAEs generally do not become fully productive for at least a year. For example, in the first year, their "handle times" (the time it takes to complete a customer call) and their disconnect rates (the percentage of times a customer call terminates unsuccessfully) are high, and their work order accuracy is lower than more experienced CAEs.

A la carte would geometrically expand the number of service options available to consumers and this, in turn, would increase the complexity and volume of calls handled by CAEs.[101] A cable company's existing CAEs would have to be retrained to handle the increased complexity of a la carte and, during this re-training period, they would not be as efficient at handling customer calls. For example, they would not be as familiar with the vastly expanded range of choices the system would offer in an a la carte world. Today, CAEs are trained to explain a relatively finite number of choices, *e.g.*, the various tiers, premium services, pay-per-view, etc. Under an a la carte system, in which customers would make separate purchase decisions about each program service, CAEs would need to be able to provide much more information about the individual services. Likewise, because customers' bills would look very different in an a la carte world than they do today, CAEs would not be as familiar with the bills or as efficient in handling billing inquiries.

A cable company would also have to hire new CAEs to handle the increased volume and length of customer calls. The new CAEs would be even less effective in dealing with customer calls in an a la carte environment.

Depending on the volume and length of the customer calls caused by a la carte, a cable company would likely have to hire third-party vendors to handle calls. This is not a good solution for cable operators or their customers. In Comcast's experience, third-party call centers generally do not fully understand an operator's service offerings. They provide an inferior level of service, create much higher consumer confusion and dissatisfaction, and are more expensive than in-house CAEs. For these reasons, Comcast has been steadily decreasing its use of third-party call centers. In its D.C., Northern Virginia, and Maryland systems, for example, Comcast in the past has used three or four

---

[101] For example, a typical customer call today lasts about five minutes and costs the company $5 to $7. In an a la carte environment, Comcast estimates that the length and cost could double.

third-party call centers but today uses none because it has brought this function "in-house" to improve the customer experience. A la carte likely would drive Comcast back to third-party call centers to the detriment of consumers.

A la carte would cause similar problems for a cable company's field technicians, the system employees who make service calls at customers' homes (*e.g.*, to install cable service or fix equipment or plant problems). A typical service call lasts 30-60 minutes. However, because of the increased complexity of a la carte and the need to install a set-top box in each outlet, the length of these visits would likely be extended and there would be more of them. In an a la carte environment, a cable company would have to retrain its existing technicians, hire more technicians, and increase its dependence on contract labor.

Not only would these problems leave consumers confused and dissatisfied, they would further increase the price of cable service. A cable company would experience substantial additional costs to retrain existing CAEs and field technicians, hire new CAEs and new field technicians, engage third-party call centers, and increase its reliance on technical contract labor. All of these costs would ultimately be borne by consumers.

A la carte would cause similar difficulties for a cable company's customer billing systems. For example, in the D.C. region, one of the outside vendors Comcast uses to handle its billing requirements is DST Innobis, which provides a billing service called "Cable Data." The Cable Data billing system requires that each purchase option available to a consumer be given a two-character code. As noted, in the Arlington, Virginia system, there are over 1,000 purchase and price options. In an a la carte world, there would be literally tens of thousands of purchase combinations and price points available to customers. The Cable Data system would have to be completely overhauled to handle this increased complexity.

Once the billing system is redesigned, a cable company would have to re-implement it in each of its systems. Implementing billing changes is always stressful for cable systems and consumers. The conversion to a la carte billing would be a massive undertaking that would be particularly costly and confusing for consumers.[102] In any billing system change, a certain percentage of bills will have errors. In a conversion of the magnitude required to accommodate a la carte, the number of billing errors would likely be very high. And this means that there would be more calls to CAEs, which would put more stress on a cable system's resources, thereby compounding the level of confusion and the costs that ultimately would be paid by consumers.

B. A La Carte Would Require Consumers To Have Expensive Set-Top Boxes.

As GAO recognized, under an a la carte regime, "cable operators would need to scramble all of the networks they transmit to ensure that subscribers are unable to view networks they are not paying to receive."[103] In order to receive the scrambled signals,

---

[102] To implement the new billing arrangements, the cable system would have to stop its normal billing process for seven to ten days to allow for the installation of new billing computers, etc. During that period, CAEs would have to record all billing entries by hand. In Comcast's D.C., Northern Virginia, and Maryland systems, for example, there literally could be tens of thousands of hand entries recorded over a seven to ten day period. At the end of the transition period, all the hand recorded entries would have to be transferred, again by hand, to the new billing system. Once this process is completed, the bills could be sent to customers. But the bills would be different than the bills the customers are used to receiving. First, the bills would look different because they would be likely to have many more line items and that will confuse consumers. Second, customers would not get the normal bill for one month's service. For example, they could get one bill for three weeks service (the month *minus* the seven to ten day transition period), and the next month they would get a bill for five weeks service (the month *plus* the seven to ten day period).

[103] *GAO Report* at 32. Theoretically, cable operators could use traps, which are physical devices attached to the cable plant outside a consumer's home, to block channels. However, as a practical matter, traps would not work in an a la carte environment. First, traps are expensive because they require that a cable technician be sent to each household to install the traps (and to change the traps each time a customer

customers would need an addressable set-top box. The cost for cable systems and the price for cable customers would be significant. For example, in its D.C. system alone, Comcast could be required to install up to 200,000 new addressable set-top boxes.[104] The price of additional set-top boxes for many D.C. cable customers could be nearly $11 per month.[105]

C. A La Carte Would Cause Additional Headend Upgrade Costs.

In order to accommodate a la carte, cable systems would need to upgrade the processing power of the Digital Access Control ("DAC") in their headend. The DAC is a cable system's main processor that handles the communications between the order taking system, the billing system, and a customer's set-top box. Because a la carte would present exponentially more purchase options and require a three- to four-fold increase in the number of set-top boxes deployed in customers' homes than in today's tiered environment, the processing power of the DAC would need to be much greater than is typical of DACs in most cable systems today.

The upgrade would be costly. Not only would the DAC need to be upgraded to accommodate the expanded purchase options available under a la carte, and the additional set-top boxes deployed, but the system architecture would have to be expanded

---

changes his or her service line-up). Second, traps expose cable systems to theft of service because some consumers would attempt to tamper with the traps to obtain services for which they did not pay. Third, the use of more than two or three traps degrades the consumer's picture quality and in an a la carte world, many more than three traps likely would be necessary for each household.

[104] The D.C. system has approximately 100,000 customers. About 50,000 of these customers currently have no set-top box, or have an older box with insufficient processing power to handle a la carte. The other 50,000 customers have an addressable set-top box, but may not have a box on every television in their home. The average home has 2.5 television sets. So, Comcast could be required to deploy 125,000 addressable set-top boxes in the homes that currently have no box (50,000 x 2.5 = 125,000), and another 75,000 addressable boxes in the homes that need a box for their second or third television sets (50,000 x 1.5 = 75,000).

[105] *GAO Report* at 32; *NCTA White Paper* at 12-13.

to allow VOD service to be provided to the additional boxes. Changes to the cable plant would include substantial increases to the server capacity, headend processing equipment, data transport and node deployment to ensure that the VOD service would continue to operate. Comcast estimates that the cost of upgrading the DAC for a la carte and protecting the integrity of its VOD offerings could be approximately $7-$8 million in its D.C., Northern Virginia, and Maryland region systems alone.

D. A La Carte Would Cause Additional Marketing Costs.

Today, cable operators focus on selling a tier with multiple services, which is an efficient way to sell programming. In an a la carte world, operators would have to revamp their approach to marketing and reformulate all their marketing materials. Where consumers can make separate purchase decisions about individual program services, they would want much more information about each service. This would increase the complexity and cost of marketing for cable operators.

A la carte would increase marketing costs for program services as well. A service offered in a tier has a guaranteed subscriber base. A service offered a la carte would incur additional marketing costs to attract subscribers in the first place, and to "resell" the service every month to retain those subscribers.[106] As Viacom has pointed out, "If programmers . . . are forced to accept carriage on an a la carte basis, then subscribers' retail rates will rise as the service attempts to recover both the *additional marketing costs* entailed in a successful a la carte offering and the lost revenues resulting from the still inevitable loss of advertising reach . . . ."[107]

---

[106] *Bear Stearns* at 6 (noting that "in an a la carte world, marketing focus will need to change to the consumer"); *see Katz Analysis* ¶ 16.

[107] *Viacom Letter* at 8 (emphasis added).

E. A La Carte Would Delay the Rollout of Advanced Services Such as Home Networking, VoIP, High-Speed Internet, HDTV, VOD, and Digital Video Recorders.

Cable systems have a finite number of employees. Today, a great deal of their attention is focused on deploying advanced services such as home networking, VoIP, high-speed Internet, HDTV, VOD, and digital video recorders. A conversion to a la carte would be so massive and complex that it would effectively occupy the full attention of virtually all of a cable system's management, technical, and customer service personnel for an extended period of time. As a result, the roll out of advanced new services that consumers highly value would be delayed, and the length of the delay could be significant. By way of comparison, the conversion from analog to digital took 18-36 months in Comcast cable systems. A similar delay could be expected with a conversion from the current tiered model to an a la carte model. Such a delay is plainly at odds with the Commission's policy of *promoting* the digital transition and the deployment of advanced new services.

* * *

Comcast has very significant experience with the types of operational problems that would be caused by a la carte. This experience leads us to the following conclusions: (1) the problems with a conversion to a la carte would be massive; (2) the conversion would be very costly and that cost would mean higher prices for consumers; (3) the conversion would be so difficult and complex that it would leave a large number of consumers confused and dissatisfied; and (4) the effort required to convert to a la carte would be such a drain on cable system resources that it would delay the rollout of many advanced services to consumers. Again, this does not mean that Comcast can never make changes in its program offerings and program packaging. It merely underscores that the nature and timing of any such changes need to be governed by marketplace dynamics, not government regulation.

IV. CONCLUSION

For the reasons cited herein, Comcast respectfully urges the Commission to underscore the following points in its report to Congress on a la carte:

(1) the video distribution market is highly competitive, consumers have multiple options for obtaining video programming, and there is no conceivable basis for the government to mandate a la carte or any other package or price regulations on cable operators, DBS operators, or any other video providers; and

(2) there is overwhelming evidence to demonstrate that a la carte or themed tier regulation would harm consumers by dramatically increasing prices and killing off many of the diverse niche program services that consumers enjoy today, a conclusion in which the programming industry, virtually all other market participants and observers, and GAO are united.

Respectfully submitted,

/s/ Michael H. Hammer

Michael H. Hammer
Ryan G. Wallach
Stephanie L. Podey
WILLKIE FARR & GALLAGHER LLP
1875 K Street, N.W.
Washington, D.C. 20006-1238
Attorneys for Comcast

Joseph W. Waz, Jr.
COMCAST CORPORATION
1500 Market Street
Philadelphia, Pennsylvania 19102

James R. Coltharp
COMCAST CORPORATION
2001 Pennsylvania Avenue, N.W.
Suite 500
Washington, D.C. 20006

Terry S. Bienstock
Thomas R. Nathan
COMCAST CABLE COMMUNICATIONS, INC.
1500 Market Street
Philadelphia, PA 19102

July 15, 2004