



July 15, 2004

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: 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.**

Dear Ms. Dortch:

The America Channel is an independent, family-friendly, non-fiction network that will tell the ever-unfolding stories of communities, campuses, local heroes and ordinary people throughout the country that help to form the complex tapestry of America and make it great. The America Channel plans an early 2005 launch. For more information on The America Channel, please feel free to visit www.americachannel.us.

The following responds to the FCC's Public Notice on A La Carte (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).

1. Effects of A La Carte on New, Independent Networks

Question: What effect, if any, would the voluntary offering of a la carte or themed-tier service have on the ability of independent, niche, religious and ethnic programming to continue to be carried or launched?

A la carte attempts to correct significant problems in the television industry, most notably: (a) rising costs to the consumer and payment for networks not wanted by the consumer; and (b) the quality, nature and appropriateness of content that is allowed into our family rooms and the corollary lack of consumer control.

A la carte as currently proposed without modification would render it impossible for The America Channel to secure institutional funding and launch. Having stated that, there are measures which if adopted, would provide benefit to the consumer without the side effects of an unmodified a la carte. One suggested measure would be a grace period of broad distribution for new, independent networks.

Existing networks have in some cases had the benefit of being in widely distributed packages for up to 25 years. This has enabled them to market their products to the largest number of consumers and form longstanding relationships with those consumers. In a la carte, this history

of broad based distribution enjoyed by an established network will result in a significant competitive advantage against a new, independent network with no history on air, since the consumer is not yet familiar with the new network. The consumer is unlikely to select the new network in a la carte, since the consumer is not yet familiar with the new network, and instead will select the legacy network.

In order for the new network to have a fighting chance against the legacy network and have a sustainable model in an a la carte world, it must be given a fair chance to develop familiarity and a relationship with the consumer. Therefore, prior to a la carte, a grace period of five years of widespread distribution on each distribution platform would be necessary, to level the playing field and allow a new network to fairly compete with legacy networks that have been widely distributed in packages, in some cases for decades.

2. Prohibition on Bundling

Question: What if any Constitutional or other legal questions are raised by programmers' ability to bundle services through retransmission consent, regional sports contracts, and national programming contracts for marquee programming?

To enable high-quality independent networks to compete in any scenario, including a la carte, an independent network first has to secure master carriage agreements with the major cable operators. The practice by content conglomerates, of bundling of networks with marginal value, results in reduction of available capacity. This diminished capacity prevents high-quality independent networks from securing carriage agreements. We therefore request that the Commission police bundling behavior, so that all networks are required to compete fairly for the capacity based on their individual merits.

3. Treatment of Cable and Satellite Operators

Question: Is there any reason to treat cable and satellite operators differently with regard to a la carte and themed-tier service?

As stated earlier, a la carte attempts to correct significant problems in the television industry. Accordingly, perhaps a system of incentives could be considered, which would reward individual distributors who demonstrate support of: (a) competition (particularly from independent networks); and (b) high quality, family-friendly content.

Each distributor has a different history with respect to the extent to which that distributor is willing to make its capacity available to high-quality, family friendly programming from independent voices.

The America Channel is in various stages of negotiation with several large cable distributors. On the satellite side, EchoStar has provided a nonbinding commitment to The America Channel. EchoStar should therefore be viewed as supportive of independent voices and competition, and of high-quality, family-friendly content that American families can watch with their children risk-free.

Rather than treating the cable and satellite communities as groups, large distributors should be treated individually, based on whether they support independent networks that provide family-friendly programming.

Thank you for your consideration of these matters.

Sincerely,

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