DOCKET FILE COPY ORIGINAL

RECEIVED

JUL 1 4 2004

Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:	)	
	)	
Comment Requested On 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
GOODLIFE TV NETWORK

Stacey Werner
Of Counsel
GOODLIFE TV NETWORK
650 Massachusetts Avenue, NW
Washington, DC 20001
(202) 289-6633

Frank W. Lloyd
MINTZ LEVIN COHN FERRIS GLOVSKY
AND POPEO, P.C.
701 Pennsylvania Avenue, NW, 9th Floor
Washington, DC 20004
(202) 434-7300

Counsel for GoodLife TV Network

July 15, 2004

No. of Copies rec'd 0+4
List ABCDE

Table of Contents

I. GoodLife Has Been An Innovative Developer Of Original, Family-Friendly Programming 1

II. An A La Carte Regime Would Restrict GoodLife's Ability To Continue And Expand Its Unique Independent Programming Service 3

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:	)	
	)	
Comment Requested On 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
GOODLIFE TV NETWORK

GoodLife TV Network ("GoodLife") is responding to the FCC's Public Notice seeking information on the provision of *a la carte* and themed tier programming and pricing options on cable television and DBS systems.[1] As a provider of a unique, independent, non-MSO and non-broadcaster affiliated advertising-supported program service, GoodLife has a vital interest in the issues to be the subject of the FCC's November report to Congress.

Based upon its own experience, GoodLife is certain that imposing any governmental requirements for a la carte and themed tier programming and pricing will adversely affect consumers. Such requirements will reduce diversity of programming by inhibiting the development of new public service-oriented networks like GoodLife, since independent advertising-supported cable networks like GoodLife depend upon cable and DBS operators agreeing to offer them the widest possible distribution. *A la carte* requirements run contrary to that goal and therefore cause the most harm to independent networks.

[1] DA 04-1454 (released May 25, 2004).

I. GoodLife Has Been An Innovative Developer Of Original, Family-Friendly Programming

GoodLife, currently serving over 8 million subscribers, is one of the few remaining non-vertically integrated, independently owned and operated programming services in the United States. Based in Washington, DC, GoodLife is the nation's only full-time cable channel dedicated to information and entertainment that reflects the attitudes and traditional values important to the network's primary audience, the Baby Boomer generation. Baby Boomers (38-57) currently number 76 million Americans.

To serve this audience, GoodLife features themed nights of classic TV shows such as Romantic Drama, Detective, Western, and Comedy, all of which are designed to be appropriate for family viewing. It also offers informational programming focused on travel, personal finance, health care, cooking and home improvement, again in a family-friendly format.

For example, **"American Family"**, hosted by former ABC correspondent and clinical psychologist Bettina Gregory, is a GoodLife original series that offers real-life solutions to problems of child care, divorce, money management, cancer and emotional disorders that put substantial stress on today's families. It provides families with inspirational stories of solution and hope.

"Volunteers: For the Sake of Others" is a GoodLife original series hosted by veteran journalist Doris McMillon depicting those who quietly give their time and talents to helping their fellow Americans on a volunteer basis.

"Homefront America" is a GoodLife original series and is the only regularly scheduled Homeland Security show on television. Hosted by veteran Pentagon and CNN correspondent Chris Plante, it informs families what Americans are doing to enhance security for themselves and their fellow citizens.

"Embassy Chefs," another GoodLife original series, takes viewers on a tour of Washington D.C.'s famous Embassy Row. It provides an insider's look at the embassies and the residences of ambassadors, while at the same time providing insights into their food, country and customs.

GoodLife also produces family-friendly specials. Next week GoodLife premieres a three hour special, **"We Came In Peace for all Mankind,"** which includes original news coverage of the Apollo 11 moon landing.

GoodLife has provided important services to other specialized communities. GoodLife was a pioneer in Spanish language captioning. GoodLife was also one of the first, and is today one of only a few, cable programmers to offer descriptive programming for over 15 million visually impaired Americans.

II. An A La Carte Regime Would Restrict GoodLife's Ability To Continue And Expand Its Unique Independent Programming Service

Some of the FCC's questions in this Inquiry appear to recognize the potentially severe negative effects of an *a la carte* approach on independent networks like GoodLife, and consequently on diversity of cable and DBS programming.[2] While *a la carte* mandates would alter the business model upon which all cable program networks are based, independents like GoodLife would bear the brunt of the harm.

Program networks like GoodLife generate revenues both from cable operators' subscription fees and from advertising income. Both types of income increase with the number of subscribers the network reaches. This is especially true since the majority of a network's costs are fixed, regardless of audience size.

[2] *See id.* " IV. Diversity of Programming."

Moving GoodLife to an *a la carte* environment or to a mini-tier with fewer subscribers would have a significant impact on GoodLife's network advertising rates. Advertisements are sold both by GoodLife itself on a national or regional basis and by the cable and DBS distributors that carry GoodLife. The advertising revenues that cable and DBS operators receive helps them pay their subscription fees to GoodLife without having to recoup those fees entirely from charging higher rates to consumers for the tiers on which GoodLife is carried.

In the network-cable/DBS marketplace, tier placement of a program network like GoodLife is an important contractual issue. NCTA has cogently demonstrated in its May, 2004 Policy Paper on *A La Carte* that program packages or tiers permit nascent and smaller networks such as GoodLife to be sampled by consumers so that these networks can find and build an audience.[3] Placement in fully-distributed tiers is therefore most critical to a network like GoodLife.

Congressional, FCC, and consumer group dalliance with *a la carte* has been based upon the unproven, and likely false, premise that by permitting consumers to pay for only what they "wish to see" (even if they have never seen GoodLife or the cable or DBS operator's many other offerings), consumers will pay less. In fact, however, by combining a variety of strong consumer interests in a tier offering a variety of program fare, all benefit by paying a package price.

A la carte mandates also run a high constitutional risk. A government-mandated *a la carte* directive would impinge upon the right of GoodLife and other program networks to a free

[3] "The Pitfalls of a la Carte: Fewer Choices, Less Diversity, Higher Prices" (NCTA Policy Paper, May 2004).

and open speech marketplace in which to compete, unburdened by consumer choices that are dictated by government, absent a demonstrably compelling governmental interest.[4]

Respectfully submitted,

Frank W. Lloyd
MINTZ LEVIN COHN FERRIS GLOVSKY
AND POPEO, P.C.
701 Pennsylvania Avenue, NW, 9th Floor
Washington, DC 2004
(202) 434-7300

Counsel for GoodLife TV Network

Stacey Werner
Of Counsel
GoodLife TV Network
650 Massachusetts Avenue, NW
Washington, DC 20001
(202) 289-6633

July 15, 2004

[4] *See*, e.g., *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622 (1994) ("*TurnerI*") and *Turner Broadcasting System, Inc. v. FCC*, 520 U.S. 180 (1997) ("*TurnerII*").

A sharply-divided Supreme Court in *Turner II* upheld the free speech infringement inherent in the 1992 Cable Act must carry provisions only because it found these provisions advanced a well-documented governmental interest unrelated to suppression of free speech and were no more burdensome than necessary. No compelling government interest can be articulated for *a la carte*. There is also no comparable supporting factual record in the case of *a la carte*. Where basic diversity of speech values will be harmed, as here, and no offsetting advantage to consumers can be demonstrated, an *a la carte* regime will be struck down.