

**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 MBC NETWORK

MBC Gospel Network LLC, which distributes MBC Network (“MBC”) (to be known as the Black Family Channel effective October 1, 2004), submits these comments in response to the Commission’s Public Notice, DA 04-1454, released May 25, 2004, seeking information regarding the provision of a la carte and “themed-tier” services on cable television and direct broadcast satellite systems. It is already difficult to obtain the financing, distribution and advertising revenues necessary to launch and sustain an independently-owned programming network in the current marketplace. Mandatory mini-tier or a la carte carriage would favor only large media conglomerates that can cross-promote their services and afford the mass marketing campaigns that would be necessary to obtain and retain subscribers, leading to even further consolidation in the programming industry and fewer and narrower programming choices for consumers.

MBC is the only African-American owned and operated 24-hour cable television programming company in the United States. Its principals include Willie E. Gary, a nationally known trial lawyer; Cecil Fielder, a former major league baseball player and operator of a trucking and logistics company; Evander Holyfield, the former heavyweight champion boxer; Marlon Jackson, one of the famous Jackson Five brothers with over 30 years experience in the

entertainment business; and Alvin D. James, an experienced broadcaster, cable television executive and concert promoter. MBC also recently named Robert Townsend, the nationally-known actor, director and producer, as President and Chief Executive Officer of Productions for the network. Mr. Townsend is developing original programming exclusively for the network, which will change its name to the Black Family Channel later this year to better reflect its emphasis on family-oriented programming.

MBC was formed to develop and provide innovative family programming directed toward an underserved market -- African-American families. It offers entertainment, news, information, sports, movies, children's programming and dynamic religious programming with a positive message for black families. For example, MBC celebrated Black History Month in February by airing "The Future of Black America," a town hall forum program in which civic leaders and social activists discussed a variety of issues confronting African-American families. It also produces a live daily news show. MBC regularly airs programs addressing health and nutrition issues of importance to African-Americans; documentaries about prominent black scientists and inventors; and biographies highlighting the lives of African-Americans who have shaped history, including for example, "A Foot Soldier for Justice," a two-part presentation of the life of Horace Ward, who unsuccessfully tried to desegregate the University of Georgia and later became the first black federal judge in Georgia's history. It also airs a wide slate of sporting events, including football, basketball and other games, between historically African-American colleges and universities.

A. Independent Networks Like MBC Need Broad Distribution to Succeed

MBC was conceived and developed for broadly-distributed tiers or packages of programming services. MBC's programming is directed at a very significant audience that is

underserved by most cable operators and other multichannel video programming distributors (“MVPDs”). African-Americans make up approximately 13 percent of the general population and 10 percent of all cable customers. However, they account for approximately 24 percent of all cable revenues and watch approximately 40 percent more television than the average viewing household. Most significantly, 78 percent of African-Americans consider it important to receive channels with programming oriented specifically toward their needs and interests. Thus, the idea behind MBC was twofold, i.e., to offer: (a) family oriented programming for African-American viewers; and (b) cable operators a unique service that could be added to their existing programming packages on the expanded basic or digital basic service tier, driving further penetration of those tiers, particularly among the African-American community. Despite the favorable demographics of its target audience, MBC continues to work hard to gain distribution among cable operators and other MVPDs and has steadily increased its distribution each year.

MBC was launched in 1999 and currently is available on cable systems reaching approximately 26 million cable homes in 47 states. Because it is not carried on the basic or expanded basic tier by all of its affiliates, it is actually viewed in 12 million homes. Nevertheless, despite the diligent pursuit of additional multiple system operators (“MSOs”), MBC does not have affiliation agreements with certain MSOs or with any direct broadcast satellite system. Where it has been able to obtain affiliation agreements with MSOs, those agreements are essentially “hunting licenses,” permitting MBC to approach individual cable systems affiliated with the MSO to seek carriage on those systems. Consequently, MBC currently devotes the vast majority of its marketing efforts to cable operators and other MVPDs to obtain distribution. Mandatory mini-tier or a la carte carriage would change dramatically the process by which MBC and other programmers market their services, substantially favoring

large entertainment and media conglomerates that already have the financial means and expertise to engage in consumer mass marketing.

B. The Cost of A La Carte Carriage Is Prohibitive for Independent Programmers

In addition to marketing to MVPDs to obtain distribution, MBC would be forced in an a la carte or mini-tier world to devote substantial resources to retail marketing efforts aimed at the end user in order to drive subscription. As a small independent programmer, retail marketing presents overwhelming problems to MBC. Among other things, a la carte carriage would dramatically increase costs so substantially that independent programmers, particularly those that appeal to minority audiences, would not survive.

First, there is the simple matter of economics. Premium a la carte programmers like HBO, Showtime and Starz Encore are required to devote millions of dollars to broad-based, mass media advertising campaigns to drive and sustain subscription. Likewise, they devote substantial resources to “win-back” marketing aimed at convincing subscribers who have cancelled the service to re-subscribe. Such efforts include national mass-media advertising, telemarketing, coordination with MSOs on promotions and cross-channel spots, direct mail campaigns and other similar efforts to reach the consumer directly. Like most independent programmers, MBC simply does not have the resources to devote to such consumer-oriented marketing efforts.

Second, unlike premium movie services that market to all television homes and offer programming that broadly appeals to all viewers,¹ MBC’s target audience is narrower. African-Americans, the most likely subscribers to MBC’s services, represent just 13 percent of the population. Unlike potential subscribers to a regional sports network who are concentrated in

¹ HBO, Showtime, and Starz Encore often are marketed in multi-channel packages, with each channel formatted to a particular genre (i.e. westerns, family movies, mysteries, etc.).

one area and can be reached through local or regional media, the potential subscribers to MBC live throughout the country. In order to reach the entire potential audience and drive subscription to an a la carte service, MBC would have to market nationally, even though its service could not be received in markets where it is not carried by the cable operator serving those markets or by any DBS provider. Even in markets with substantial African-American populations, a significant portion of any money spent on mass media advertising would be wasted because some portion of the audience reached by that advertising inevitably would be served by a distributor who has refused to carry MBC. Thus, even if MBC had the resources, it would “get less bang for each buck” spent on consumer advertising.

Third, unlike many other programming networks, MBC is independently owned and operated. It is not affiliated with any broadcast network, cable operator, direct satellite broadcaster or other media or programming conglomerate. As a result, in an a la carte world, MBC would have a significant disadvantage vis-à-vis programmers affiliated with broadcast networks or other media conglomerates.² Those programmers can use their affiliated broadcasters or more popular, widely distributed affiliated programming services to let the consumer sample their programming. Many such programmers have generated interest in their developing networks by running particular shows on their more popular, established networks, arranging for appearances on talk shows or other affiliated programs, and otherwise cross-promoting the developing network on their other, more popular and widely distributed programming services. In contrast, small independent programmers like MBC have no means,

² By virtue of the statutory mandates of must-carry and retransmission consent, MBC already is at a competitive disadvantage relative to broadcasters, the broadcast networks and their affiliated programming services. Broadcasters receive guaranteed carriage on basic service, and the broadcast networks have leveraged their retransmission consent rights to obtain carriage of other programming services, such as, for example, Disney’s launch of SoapNet.

other than tired carriage, to give a viewer an opportunity to sample its programming service.³ In an a la carte world, MBC essentially would have to ask the consumer to subscribe to the network sight unseen.

C. Reduced or Unpredictable Distribution Adversely Affects Financing Opportunities and Advertising Sales

There is no doubt that the movement of programming services from the expanded basic or other popular service tier to a mini-tier or a la carte carriage would result in reduced distribution and corresponding losses of license fees and advertising revenues. According to the General Accounting Office, “any movement of networks from the most widely distributed tiers to an a la carte format could result in a reduced amount that advertisers are willing to pay for advertising time because there would be a reduction in the number of viewers available to watch the networks.” United States General Accounting Office, “Telecommunications: Issues Related to Competition and Subscriber Rates in the Cable Television Industry,” Report No. GAO-04-8 (rel. Oct. 24, 2003) at 35. Obviously, reduced distribution also would result in lower net license fees, unless the per subscriber fee is increased.

Lower license fees and advertising revenues, combined with higher marketing and other costs attributable to a la carte carriage, obviously would make it more difficult for programmers, particularly independent, niche programmers like MBC, to survive. Moreover, the uncertainty resulting from a transition to a la carte carriage would adversely affect programmers, particularly on the availability of financing necessary to create and develop a network and selling advertising time.

³ The appeal of MBC’s programming, such as its family and sports programming, extends beyond simply African-American viewers. Subscribers to broad programming packages who are “surfing” among the available channels also will view MBC programming, thereby exposing them to additional information about African-Americans.

Developing networks are always in need of financing. Commitments by MSOs and other MVPDs to carry a particular programming service on a popular service tier are invaluable in obtaining the financing needed to develop and sustain a programming network because they enable the programmer to provide a reasonably accurate estimate of the number of homes that will be reached by the network and to develop budgets and financial projections. Many networks, particularly those affiliated with broadcasters (who can use their retransmission consent rights to negotiate favorable carriage commitments for affiliated programmers) and cable or DBS operators, obtain pre-launch commitments for carriage on widely distributed tiers, which helps to facilitate investment in the network. In an a la carte environment, it would be impossible for even these networks to obtain reliable distribution estimates in advance of launch, adversely affecting financing opportunities for the network. For an independent service like MBC, it would make financing virtually impossible.

The inability to predict distribution levels over time would adversely affect a programmer's ability to sell advertising. Reliable estimates of distribution and network ratings months into the future are critical to the sale of national advertising time. Nielsen does not rate networks until they have at least 20 to 25 million subscribers. Consequently, MBC is not a Nielsen-rated network. Moreover, in order to be even a minor player in national advertising sales, a network needs at least millions more subscribers and the ability to predict accurately distribution months into the future. A large portion of total national advertising inventory is sold in the "up front" market, many months before the advertising is actually aired. Rates for "up front" advertising are based on predicted distribution levels and viewership ratings months into the future, with appropriate "make-goods" at the back end if actual distribution or ratings are lower than predicted. Because it is not Nielsen-rated, MBC already is at a disadvantage in terms

of selling advertising time. However, conversion to a la carte carriage would make it almost impossible for MBC to predict distribution months into the future, further complicating its advertising sales efforts.

D. A La Carte Carriage Is Contrary to the Commission Objective of Promoting The Availability of a Diversity of Viewpoints for the American Public

One of the broad policy objectives of the Commission historically has been to promote the availability of a diversity of viewpoints to the American public. That objective underlies the Commission's rules limiting ownership of mass media. In addition, when it allowed the Commission to award certain licenses by random selection, Congress required the Commission to establish rules specifically designed "to further diversify the ownership of the media of mass communications." See 47 U.S.C. §409(i)(3)(A). The "national policy concerning cable communications" embodied in the Cable Television Consumer Protection and Competition Act of 1992 also includes a commitment to "assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public." See 47 U.S.C. §521(4). However, the government initiatives contemplated by the current inquiry are inconsistent with these objectives because they would substantially undermine the diversity of programming for American consumers -- specifically African-American viewers.

The only programmers that are likely to survive the revenue reductions and cost increases associated with the movement to mini-tier or a la carte carriage are those that are affiliated with broadcast networks or major programming and entertainment conglomerates. Independent programmers like MBC would be unable to engage in the consumer marketing campaigns and cross-promotions that would be necessary to survive in an a la carte environment. The net result would be the absence of new programming launches, the eventual elimination of

