**BEFORE THE**
**FEDERAL COMMUNICATIONS COMMISSION**
**WASHINGTON, D.C. 20554**

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| In the Matter of | ) | |
| | ) | |
| A La Carte and Themed Programming and | ) | MB Docket No. 04-207 |
| Pricing Options for Programming Distribution | ) | |
| on Cable Television and Direct Broadcast | ) | |
| Satellite Systems | ) | |

# REPLY COMMENTS OF TIME WARNER CABLE INC.


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## REPLY COMMENTS OF TIME WARNER CABLE INC.

The record in this proceeding demonstrates that there is no real-world problem for which a la carte would be a proper solution. MVPDs are providing subscribers with more choice than ever before. If, given subscriber preferences and relevant costs, more a la carte would enhance aggregate consumer welfare, market forces would compel MVPDs to provide it. There is no reason to believe that, in optimizing consumer welfare, policy makers can outperform the market.

Indecency concerns cannot justify an a la carte requirement either. If subscribers wish to ban objectionable programming from their homes, they can already do so by having channels blocked. It is also wrong to argue that less programming costs less money and that subscribers receiving fewer channels should therefore pay less. The record in this proceeding demonstrates that a la carte pricing would cause the license fees that MVPDs pay to increase.

An a la carte requirement would be no less harmful if cable operators would continue to have the option of providing tiers. Even if few subscribers would actually choose a la

carte, the business models of MVPDs and video-programming services would still be severely impacted.

Calls for "voluntary" a la carte are misleading. "Voluntary" a la carte refers to a government dictate that video-programming services allow MVPDs to sell their product in a way that is different from the way these services prefer. And mandated a la carte is just as harmful at the wholesale level as it is at the retail level.

That cable operators experimented with a la carte in the wake of the 1992 Act does not mean that a la carte is efficient: these experiments merely reflected government regulation. Nor would it be useful to mandate additional experiments: small-scale experiments would not reflect the true harm that a la carte would inflict on the business models of video-programming services. Besides, mandated experiments are unnecessary: MVPDs experiment every day in the market place.

In response to the Commission's inquiry concerning retransmission consent's impact on MVPD offerings and rates, broadcasters argue that retransmission consent is operating well and does not justify a la carte. We agree that retransmission consent does not justify a la carte but we do not agree that it is operating well. Retransmission consent has developed into a burden that is much more onerous than could have been expected in 1992.

There is no sufficient policy justification for such a burden. Broadcasters were granted spectrum and other benefits on the understanding that they would provide television service for free. Thus, it is unfair to make MVPD subscribers pay for that service. It is also unfair that broadcasters should profit from MVPDs' investments that enable the improved reception of broadcast signals for which MVPD subscribers pay. Regardless, the

size of the retransmission-consent burden is now out of proportion to any conceivable justification.

## Argument

### I. TO THE EXTENT CONCERNS ABOUT CHOICE IN MVPD PROGRAMMING EXIST AT ALL, THE RECORD SHOWS THAT THESE CONCERNS CAN BE ADDRESSED BY THE MARKET PLACE.

As the weight of the comments in this proceeding shows, there is no real-world problem for which a la carte would be a suitable solution. MVPDs are providing subscribers with a broad array of choices, including premium channels, mini-tiers (*e.g.*, HDTV, sports, and Latino programming), pay-per-view, and video-on-demand. As the Commission put it in the *Tenth Annual Video Competition Report*, "the vast majority of Americans enjoy more choice, more programming and more services than any time in history."[1]

That is not surprising: cable operators have strong competitive reasons to give subscribers what they want. As noted by Professor Steven Wildman, a Michigan State University economist and panelist at the Commission's a la carte symposium held on July 29, 2004, "consumers don't seem to be that unhappy with the bundling they see. If they were, then you would think that [a la carte] would provide a competitive wedge for the satellite people to take away more of the subscribers. And we don't see satellites responding with anything dramatically different."[2] To the contrary, DirecTV experimented with a la carte

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[1] *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 Annual Video Competition Report*"); *see also id.* ¶ 12 ("Cable television has, in fact, greatly evolved since the first report, providing more choice, greater flexibility, and more control.").

[2] Symposium on "A La Carte" MVPD Pricing, at time-stamp 5:30:41 (July 29, 2004), *available at* http://www.fcc.gov/realaudio/mt072904.ram ("*Symposium Video*").

some years ago but abandoned the experiment when subscribers found it confusing and bothersome.[3]

A number of commenters nonetheless refer to surveys in which, they claim, subscribers said that they desire more choice over their cable package. Consumers Union, for example, reports that "two-thirds of cable customers would prefer to choose the channels in their cable packages."[4] The City of Seattle likewise posits that 46% of its telephone survey respondents would be likely "to pay a little extra for the opportunity to make up their own package of channels, in addition to paying for basic cable service."[5] But consumers in any industry will say, when asked, that, all else being equal, they would like more choice: more choice, considered by itself, is always better. The right question to ask is whether subscribers would still want more choice if it might mean paying more for less. None of the surveys did that.

In sum, there simply is no need for any a la carte requirement. If, given subscriber preferences and relevant costs, more a la carte would improve aggregate consumer welfare, market forces would compel MVPDs to provide it. The Commission and Congress should resist the temptation of thinking that, in optimizing consumer welfare, regulators can outperform the market. Policy makers should be particularly vigilant against that temptation when industry dynamics are complex, when the potential consequences of mistakes (dramatically increased rates for consumers and widespread collapse of video-programming

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[3] *See* Comments of DirecTV at 7.

[4] Comment of Consumers Union at 9.

[5] Comments of City of Seattle at 2.

services) are serious, and when there is strong cause to doubt that government intervention would provide any benefit at all.[6]

## II. A LA CARTE IS NOT A SUITABLE TOOL TO ADDRESS INDECENCY CONCERNS.

Various commenters supporting a la carte argue that subscribers should not be required to pay for channels that they find indecent or otherwise undesirable. Thus, Consumers Union states that, under an a la carte scheme, "rather than putting the government in the untenable position of trying to control cable content for taste and decency, consumers could merely choose the programming they want, eliminating from their homes those channels which they find offensive."[7] Similarly, the Center for Creative Voices in Media argues that "a la carte will allow consumers to not pay for and receive in their homes channels they deem 'indecent,' as they must presently when those offending cable networks are bundled on a take it or leave it basis with the networks they do want."[8] And Parents Television Council asks: "Why should parents have to subsidize cable channels that undermine their core values and beliefs? Why should a parent who wants their child to

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[6] *See Tenth Annual Video Competition Report* ¶ 174 ("Factors, including the pricing of a la carte service, consumers' purchasing patterns, and whether certain niche services would cease to exist with a la carte service, make it difficult to ascertain whether consumers would be better or worse off with such an approach."); *GAO Report* at 30 ("A variety of factors — such as the pricing of a la carte service, consumers' purchasing patterns, and whether certain niche networks would cease to exist with a la carte service — make it difficult to ascertain how many consumers would be better off and how many would be made worse off under an a la carte approach.").

[7] Comments of Consumers Union at 4; *see also id.* at 10 (cable operators "dictate which programs the public can view, while forcing them to pay for large numbers of channels they do not watch").

[8] Comments of Center for Creative Voices in Media at 13-14.

benefit from educational programming on the Disney Channel or the Discovery network also have to pay for offensive material like . . . MTV's Real World . . . ."[9]

Insofar as these commenters are arguing that viewers should be shielded from programming that they find offensive, shielding capability is already in place,[10] and many MVPDs offer the service and necessary equipment for free.[11] The availability of the blocking remedy makes a la carte unnecessary. Insofar as the point is that subscribers who do not view a channel should, from an equity standpoint, be charged less, the point rests on a mistaken premise. For the reasons shown above, and as the record in this proceeding makes clear, a la carte pricing will lead to higher prices for fewer video-programming services.[12] Thus, there are no cost savings to return.

## III. AN A LA CARTE REQUIREMENT WOULD BE JUST AS HARMFUL EVEN IF CABLE OPERATORS WOULD REMAIN FREE TO PROVIDE TIERS.

Some commenters suggest that a la carte does not constitute intrusive regulatory intervention so long as cable operators remain free to provide programming in tiers.[13] This is facile and wrong.[14] Our argument is not that no customers would choose a la carte. Rather, our argument is only that an a la carte requirement would force most subscribers to

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[9] Comments of Parents Television Council at 1.

[10] *See* 47 U.S.C. § 544(d)(2).

[11] *See, e.g.*, Comments of Charter at 18 ("these blocking mechanisms are routinely provided to the customer at no charge"); Comments of Time Warner Cable at 21 (noting that Time Warner Cable provides free equipment to subscribers to block channels).

[12] *See generally* Comments of Time Warner Cable at 7-11.

[13] *See, e.g.*, Comments of Consumers Union at 7 (proposing that "cable operators . . . continue to offer all the bundles they want, but also make the channels they choose to bundle available on an a la carte basis.").

[14] *See generally* Comments of Time Warner Cable at 11-12.

pay more for less, so that aggregate consumer welfare would decline. As Professor Waterman explained at the Commission's a la carte symposium: although a "fairly small slice of people" might be made better off, "the problem is that anything that you do to try to force a la carte and less bundling . . . has some kind of a negative effect that . . . is probably going to swamp other things."[15]

This would be so even if a la carte were only a subscriber option. Both MVPDs and video-programming services would see their marketing costs increase, even while their license fees and advertising revenue decline. To make up for the shortfall, video-programming services would have to raise rates not only for a la carte distribution, but also for tier distribution.[16] And, regardless of how many subscribers would order a la carte, MVPDs would have to re-train customer-service representatives, create a new billing infrastructure, and order set-top boxes. All of these consequences would occur even if very few subscribers actually selected programming a la carte.

Moreover, subscribers are likely to see little or no price benefit from such a mixed bundling regime. As noted by another a-la-carte-symposium panelist, Professor Gregory Crawford of the University of Arizona, "it's quite possible that the a la carte price for individual networks would be extremely high."[17] For illustration, Professors Brynjolfsson and Wildman pointed to the Microsoft Office software suite, in which individual components

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[15] *Symposium Video* at 5:42:45.

[16] *See* Booz Allen Hamilton, *The A La Carte Paradox: Higher Consumer Costs and Reduced Programming Diversity, An Economic Analysis of the Implications of a la Carte Pricing on Cable Customers*, at 8 (July 2004) (predicting rate increases of seven percent "even if no consumers ultimately moved to a la carte").

[17] *Symposium Video* at 4:44:08.

cost nearly as much as the entire bundle.[18] In short, while the mixed bundling concept may seem enticing to some in the abstract, it will likely cause serious harm to video-programming services without providing any significant upside for consumers.

## IV. CALLS FOR "VOLUNTARY" A LA CARTE ARE MISLEADING.

A number of commenters propose — what they call — a "voluntary" a la carte regime.[19] But "voluntary" a la carte is a misnomer. It describes a government dictate: a requirement that video-programming services allow MVPDs to sell their product in a way that is different from the way these services prefer. There is nothing voluntary about that proposal. Nor does it constitute sound policy. Whether a la carte is imposed at the retail level (*i.e.*, on MVPDs) or at the wholesale level (*i.e.*, on video-programming services), the industry's economic model will be harmed, causing rates to increase for all subscribers.

This is not to suggest that we are opposed to increasing MVPD subscribers' choice. We are not. Rather, we oppose a government mandate that dictates the way in which service is offered to the public, whether imposed on MVPDs or video-programming services. MVPDs and video-programming services, if left to the dictates of the marketplace, will

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[18] *See id.* at 4:40:00 ("The reality is that the equilibrium pricing for a single channel might be a lot closer to the entire bundle than it is to a fraction of that. If you look at other places where some of this has happened, like, say, Microsoft Office . . . the components cost almost as much as the bundle itself."); *id.* at 4:44:30 (to similar effect).

[19] *See*, *e.g.*, Comments of the Broadband Service Providers Association at 11 ("Voluntary A La Carte is created when distributors are given the freedom to offer content in a variety of packages or tiers that are different than the content bundles driven by the constraints of 'most widely distributed tier' requirements in today's structure."); Comments of the Center for Creative Voices in Media at 8 ("CCVM believes that if cable and satellite operators provide consumers with the voluntary option of ordering channels a la carte, the extreme concentration in television will be significantly ameliorated and the Commission's 'retail' goal of viewpoint diversity will be substantially advanced."); Comments of EchoStar at 3 (discussing "what Congress and the Commission can do to facilitate voluntary a la carte").

continue to create more and more choice for consumers. But this can happen only if they are free to devise and refine their economic models, unfettered by government regulation.

## V. GOVERNMENT MANDATED A LA CARTE "EXPERIMENTS" ARE NOT THE ANSWER.

NATOA points out that the "cable industry responded to [rate regulation in the early 1990s] by offering a limited number of channels on an a la carte basis."[20] NATOA appears to suggest that, if, ten year ago, cable operators introduced a la carte of their own volition, then imposing a la carte by government mandate does not constitute a drastic intervention. But that is wrong: as NATOA's own description shows, a la carte initiatives in the early 1990s were the result of efficiency-distorting rate regulation, not of market forces.

NATOA also argues that a la carte activity in the early 1990s "evidences that there are no technological barriers."[21] But NATOA itself suggests that the prices for individual channels in relevant initiatives were such that few subscribers actually purchased them.[22] If that is true, it made no practical difference that the technological barriers to a la carte required expensive technical solutions.[23]

Some commenters suggest that Congress or the Commission should organize small-scale tests to evaluate a la carte's viability.[24] But as Professor Wildman explained: "The

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[20] Comments of NATOA at 3.

[21] Comments of NATOA at 4.

[22] *See* Comments of NATOA at 3 ("The industry then priced the a la carte channels at levels so high that it made sense to purchase a la carte channels only as a tier package.").

[23] *See Adelphia Cable Partners, L.P. South Dade County, Florida*, Letter of Inquiry, 9 FCC Rcd 7781, ¶ 10 (1994) (recounting that Adelphia required subscribers choosing a la carte to rent addressable interdiction devices for $6 per month).

[24] *See, e.g.*, Comments of American Cable Ass'n at 16 ("The small cable sector offers an ideal laboratory for marketplace experiments of this kind."); Comments of the Broadband Service Providers Association at 14 ("A market test of Voluntary A La Carte can

nature of an experiment is that you start small. And so, by definition for this kind of experiment, you won't have these longer-term, backward effects of people responding to total effects on total advertising dollars, total effects on quality. Those effects can't really be addressed in the experiment."[25] Besides, there is no need for government-mandated experiments: constantly fine-tuning their mix of premium, tiered, mini-tiered, on-demand, and pay-per-view offerings, MVPDs are experimenting in the market place every day.

## VI. CONCERN OVER RISING CABLE RATES IS BETTER DIRECTED TOWARDS REFORM OF THE RETRANSMISSION-CONSENT PROCESS.

In the public notice, the Commission asked about "the retransmission consent process" and its impact on MVPD offerings and rates.[26] In response, broadcasters argue that the retransmission consent is operating well and could not justify an a la carte requirement.[27] We agree that retransmission consent could not justify an a la carte requirement. But we do not agree that the retransmission-consent process is operating well.

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only enhance the Commission's ability to come to the best conclusions and better inform the legislative debate in Congress regarding consumer choice, pricing, and indecency issues addressed herein.").

[25] *Symposium Video* at 4:56:40.

[26] *See 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, 19 FCC Rcd 9291, 9292 (2004) ("How have broadcast networks and affiliate groups used the retransmission consent process to expand carriage of affiliated programming? How has this affected rates for MVPD offerings for consumers? Do the rules governing retransmission consent and must-carry limit consumers' ability to select their own programming? If so, how?").

[27] *See*, *e.g.*, Comments of the Walt Disney Co. at 37 ("Nothing has happened since enactment of retransmission consent in 1992 to justify any changes to the statute — or its implementing regulations."); Testimony of Ben Pyne, Executive Vice President, Disney and ESPN Networks, On A La Carte and Themed Tier Regulation, Before the Committee on House Energy and Commerce, Subcommittee on Telecommunications and the Internet, July 14, 2004 ("This concept, known as retransmission consent, has worked well since Congress established it in 1992.").

### A. Retransmission Consent Has Developed into a Much More Onerous Burden on MVPD Subscribers Than Originally Expected.

In 1992, Congress concluded that the broadcasting industry's viability was in jeopardy.[28] In response, Congress enacted the must-carry/retransmission-consent combination. Must-carry was intended to ensure that broadcast stations would continue to be carried on cable, thereby guaranteeing them advertising revenue.[29] Retransmission consent was intended to give broadcasters a "right to . . . be compensated for others' use of their signals," which, like must-carry, would provide funds for over-the-air television and thereby help "ensure that our system of free broadcasting remain vibrant."[30] But, given that Congress perceived a threat to broadcasters' viability serious enough to warrant a must-carry requirement,[31] it had no reason to believe that many stations would choose retransmission consent.[32]

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[28] *See* S. Rep. No. 102-92, at 41 (1991) (expressing concern that broadcasting's "vital role in serving the public interest . . . is in jeopardy").

[29] *See*, *e.g.*, H.R. Conf. Rep. No. 102-862, at 75 (1992) ("Given the current economic condition of free, local over-the-air broadcasting, an affirmative must-carry requirement is the only effective mechanism to promote the overall public interest.")

[30] S. Rep. at 36; *see also Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Broadcast Signal Carriage Issues*, Memorandum Opinion and Order, 9 FCC Rcd 6723, ¶ 104 (1994) ("the statutory goals at the heart of Sections 614 and 325 [are] to place local broadcasters on a more even competitive level and thus help preserve local broadcast service to the public")

[31] *See* Cable Television Consumer Protection Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460, 1462, § 2(a)(16) (1992) ("As a result of the economic incentive that cable systems have to delete, reposition, or not carry local broadcast signals, coupled with the absence of a requirement that such systems carry local broadcast signals, the economic viability of free local broadcast television and its ability to originate quality local programming will be seriously jeopardized.").

[32] *See*, *e.g.*, S. Rep. at 35 ("many broadcasters may determine that the benefits of carriage are themselves sufficient compensation for the use of their signal by a cable system").

Nevertheless, Congress expressed concern that retransmission consent — even if invoked by only small numbers of broadcasters — might cause cable rates to rise. It therefore instructed the Commission, in implementing retransmission consent, to "consider . . . the impact that the grant of retransmission consent by television stations may have on the rates for the basic service tier."[33] The Commission, however, found that there was no cause for concern: in 1993, before it had gathered real-life experience with retransmission consent and its impact on rates, the Commission stated that there was "no evidence that the effect may be significant."[34]

Now that Congress has inquired about retransmission consent and its possible relation to cable-rate increases,[35] the time is ripe to re-evaluate that conclusion. We submit that, when the Commission reviews the evidence, it will find that, in the past decade, retransmission consent has developed into something very different from what Congress and the Commission expected in the early 1990s.

*First*, the retransmission-consent tail now wags the must-carry dog. In the most recent cycle, "virtually all" commercial stations went the retransmission-consent route.[36] In

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[33] 47 U.S.C. § 325(b)(3)(A).

[34] *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order, 8 FCC Rcd 2965, ¶ 178 (1993).

[35] *See* Letter from Chairman Joe Barton *et al.*, United States House of Representatives Committee on Energy and Commerce, to Michael K. Powell, Chairman, Federal Communications Commission, at 2 (May 18, 2004) ("How have broadcast networks and affiliate groups used the retransmission consent process to expand carnage of affiliated programming? How has this affected rates for MVPD offerings for consumers?"); *id.* ("Do the rules governing retransmission consent and must-carry limit consumers' ability to select their own programming? If so, how?").

[36] *Most TV Stations Go for Retransmission Consent*, Warren's Cable Regulation Monitor, Oct. 7, 2002, *available at* 2002 WL 8174460.

particular, all stations owned by or affiliated with the top six networks now appear to elect retransmission consent. This is at least in part the result of increased competitiveness in the MVPD industry: in light of competition from DBS and other MVPDs,[37] cable operators cannot refuse to carry popular broadcast stations without losing substantial numbers of subscribers.[38]

*Second*, retransmission consent has had the unexpected consequence of encouraging station groups to develop non-broadcast video-programming services. Using retransmission consent as a bargaining chip, broadcasters have been able to persuade MVPDs to carry affiliated programming services that otherwise might have had difficulty finding carriage.[39] These carriage rights (promising advertising and license-fee revenue) are valuable, or broadcasters would not accept them in lieu of cash.[40] Retransmission consent's unintended consequence, then, has been to channel investment away from over-the-air broadcasting and towards non-broadcast video-programming services, which retransmission consent's intended beneficiaries (over-the-air viewers) cannot receive.

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[37] *See generally* Comments of Time Warner Cable at 6-7.

[38] *See General Motors and Hughes Electronics, Transferors, and the New Corp. Ltd., Transferee*, Memorandum Opinion and Order, 19 FCC Rcd 473, ¶ 202 (2004) ("*News Corp.-DirecTV Order*") ("carriage of local television broadcast stations is critical to MVPD offerings").

[39] *See, e.g.*, General Accounting Office, *Issues Related to Competition and Subscriber Rates in the Cable Television Industry*, GAO-04-8, at 29 (Oct. 2003) ("These [retransmission-consent] agreements often include, as part of the agreement between cable operators and broadcasters for the right of the cable operator to carry the broadcast station, a simultaneous agreement to carry one or more broadcast-owned cable networks.").

[40] *See* Comments of the Walt Disney Co. at 43 (explaining that Disney will accept either cash or carriage rights).

*Finally*, the amount of retransmission-consent value paid has proved greater than expected. According to Disney's comments in this proceeding, ABC-affiliated stations now have the power to demand $2 per MVPD subscriber per month.[41] (It is true that, according to Disney, it in fact charges only 70 to 80 cents.[42] But, if Disney — as it says — really has the ability to demand $2, it eventually will — or it would be short-changing its shareholders.) Whether broadcasters receive this value in the form of cash or in the form of carriage rights, MVPD subscribers end up paying in the form of higher rates or lower quality.[43] And, if ABC stations can demand this much, stations affiliated with other networks should be able to muster comparable amounts. Contrary to the Commission's 1993 evaluation, the aggregate payment would have an impact on basic-tier rates that is unquestionably significant.

### B. The Strong Policy Justification That Would Be Required To Justify an Onerous Retransmission-Consent Burden Does Not Exist.

Retransmission consent's grounding in policy is not sufficiently strong to warrant these payments. The notion that retransmission consent simply places broadcasters in the same position as any other programmer that compiles an attractive package of content is unpersuasive. Broadcasters are different from non-broadcast video-programming services: they were given spectrum and other benefits on the understanding that they would provide access to their services for free. It is not clear why, if broadcast programming should be free to over-the-air viewers, it should not be free to MVPD subscribers.

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[41] *See id.*

[42] *See id.*

[43] *See News Corp.-DirecTV Order* ¶ 160 ("fees are unlikely to be absorbed solely by MVPDs, but would be passed on to consumers in the form of higher rates").

Retransmission consent is also unfair to MVPDs. When viewers who may access broadcast programming off-air for free are willing to pay extra for viewing it off-MVPD, they are paying for improved reception, not for content.[44] That is also why cable operators, who must buy copyright licenses to carry a non-broadcast video-programming service, are granted compulsory licenses virtually for free insofar as local broadcasters are concerned.[45] MVPDs spent billions of risk-bearing dollars to build the infrastructure enabling improved reception. It is difficult to see why broadcasters, who did not contribute to that investment, should reap its rewards.

Even if there were a convincing rationale for retransmission consent, the size of the current burden would be disproportional. Broadcasters undoubtedly incur costs in connection with creating and maintaining an infrastructure of terrestrial transmitters. But those costs are not so large as to justify the kind of subsidy of which Disney speaks. And it is no answer to suggest that the size of retransmission-consent payments is the result not of regulation but of market forces. Retransmission consent *is* regulation: it is a law requiring MVPD subscribers to pay for something that others may obtain for free. Whether and to what extent there should be such a law is a question of policy, not of market forces.

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[44] *Cf. Fortnightly Corp. v. United Artists Television, Inc.*, 392 U.S. 390, 399 (1968) (cable "no more than enhances the viewer's capacity to receive the broadcaster's signals; it provides a well-located antenna with an efficient connection to the viewer's television set"); *Teleprompter Corp. v. Columbia Broad. Sys., Inc.*, 415 U.S. 394, 408 (1974) ("The reception and rechanneling of [broadcast] signals for simultaneous viewing is essentially a viewer function, irrespective of the distance between the broadcasting station and the ultimate viewer."); *see also* H.R. Conf. Rep. at 57 ("Consumers who subscribe to cable television often do so to obtain local broadcast signals which they otherwise would not be able to receive, or to obtain improved signals.").

[45] *See* 17 U.S.C. § 111(c) & (d) (requiring only a modest fee that does not vary depending on the number of non-distant stations carried).

## Conclusion

For the reasons set forth above, the Commission should urge Congress not to adopt an a la carte requirement but to re-evaluate retransmission consent.

Respectfully submitted,

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