THE AMERICA CHANNEL™

August 13, 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 – Reply Comments.

Dear Ms. Dortch:

The following reply comments are provided in connection with 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).

The America Channel requests acceptance by the Commission of this late filing. We were unable to file on Friday evening (8/13), because of the impact of Hurricane Charlie on our infrastructure, including loss of electrical power and Internet.

TABLE OF CONTENTS

I. General

II. Necessary Enhancements to A La Carte

- A. Free Tier of Widely Distributed Networks
- B. Prohibition Against Bundling
- C. Universal Delete Rights
- D. Mechanism Permitting Consumer to "Vote" on New Networks

III. Conclusion

I. General

The American people and Congress have clearly and correctly perceived a number of problems in the cable television industry -- most notably lack of consumer choice, rising consumer prices, quality and diversity of content, and bundling by conglomerates of unwanted networks for which consumers have to pay. A sizable segment of the industry has rejected a la carte and claimed that it would be disastrous; however we believe some of these claims are exaggerated.

120 INTERNATIONAL PARKWAY, SUITE 220 HEATHROW, FL 32746 P: 407.333.3031 WWW.AMERICACHANNEL.US

The America Channel has previously stated that in a la carte, it would be virtually impossible for us to raise institutional funding. However as previously stated, if we (and all other new independent nets) are granted a grace period of broad based distribution prior to a la carte in order to establish name brand recognition and a relationship with the consumer, we would not object to a la carte, with modifications as outlined below.

We disagree with the argument by some in the cable community, that as a core problem a la carte would stifle new and emerging networks and undermine diversity of programming – since already today there are artificial, non-market forces which discourage or prevent independent networks from launching, stifle content choices and diversity, and limit competition in the content space. This is the reality on the ground, which militates closer scrutiny by the Commission with or without a la carte, and the Commission should require greater access to information with respect to the prospects and status of independent networks as compared with those of conglomerates and cable operators. We intend to provide more detail on this in connection with matter # 04-227 (NOI on Competition in the MVPD Space).

The favorable aspects of a la carte include consumer ability to select networks, and lower aggregate price to the consumer if a limited number of networks are selected by the consumer. However we also believe the total number of national channels is likely to decrease. In some cases, for example with respect to unwanted bundled networks from conglomerates, this would arguably be a favorable development. However there would in our view also be quality new independent networks that would not launch. Therefore diversity of content would be further adversely affected (to the extent possible beyond today's anti-competitive environment) and consumer choice would be limited to those nets that survive.

Further, since the number of channels would likely decrease, powerful legacy nets owned by conglomerates would emerge with even less competition and more leverage than before, ensuring that they would continue to raise their rates – which price increases would then pass to the consumer.

So we see a la carte in its current iteration as imperfect – though well intentioned -- and with potential to solve real problems, if modifications and enhancements are made, as outlined below.

II. Enhancements to A La Carte

A. Free Tier of Widely Distributed Networks

One addition we propose in connection with a la carte, is the establishment of a tier of networks that do not charge any fees to cable operators, in exchange for securing distribution to a substantial majority of all cable subscribers. Good products with sound economic models will succeed from advertising dollars alone when they are fully distributed. Within the Free Tier, a process of natural selection occurs where only networks that get ratings commensurate with their cost structure survive – a simple and efficient model. Under this "Free Distribution" model, it is not inconceivable that the consumer would ultimately be availed a suite of 30 or more high-quality ad-supported networks, for no fee other than an administrative charge by the cable company. Indeed, one day, consumers might decide that the Free Tier is all they need -- and that they don't want a la carte channels, for which they have to pay. Further, the consumer must be given the ability to call the cable company and delete any network the consumer feels is inappropriate or unwanted (which the consumer may be more likely to do than use blocking technology).

120 INTERNATIONAL PARKWAY, SUITE 220 HEATHROW, FL 32746 P: 407.333.3031 WWW.AMERICACHANNEL.US

A network that is in 75+ million homes and still requires operator license fees to subsidize its business does not have an efficient business model. We disagree with the standard industry pitch that extensive operator fees are needed even when a network is fully distributed. If free networks are provided carriage and the ability to compete for audience, expensive competitor networks seeking payment in an a la carte world would be forced to lower their rates. The competitive forces would result in more efficient networks that rely more heavily on advertising dollars, pressure on existing networks to streamline their businesses and become more efficient, and lower fees charged by legacy networks – thus lowering cost to the consumer. Over time, the Free Distribution model would result in a cottage industry where newer and cheaper high-quality networks replace expensive, unpopular legacy nets, passing the cost savings to the consumer. The Free Distribution model could result in a dramatically lower cable bill for the consumer – and have significant positive impact on the industry. It would create viable competition and reduce subscriber fees.

As for content diversity and competition, one opponent of a la carte stated in its filing on this matter, that from 1996 to 2003, 194 new national channels launched (or an average of about 22 new networks per year), as evidence of diversity and competition in the marketplace. However according to a Multichannel News article dated May 3, 2004 and entitled "New Nets Abound at National Show," the total number of truly independent nets securing carriage at the two largest cable operators since 01/01/03, is less than a handful collectively. This would be as if Borders, Barnes & Noble, and Amazon.com collectively announced that in the past few years inventory of books increased by over 200%, but that from now on all books are to be written by only 6 authors. Further, some cable operators have stated that they are skeptical about the necessity of adding more channels; while at the same time proceeding to develop and grant carriage to new MSO-owned and conglomerate-owned networks – all indicia of a market closing to independent competitors.

B. <u>Prohibition on Bundling</u>

We have previously expressed our concerns with respect to the practice by content conglomerates, of bundling of networks with marginal value, resulting in reduction of available capacity. We asked the Commission to police bundling behavior, so that all networks are required to compete fairly for the capacity based on their individual merits.

One proponent of bundling stated in its filing on this matter that "If niche program networks had been denied the ability to offer MVPDs incentives that make it more attractive for an MVPD to carry an established network's progeny network, many new networks might not have been launched, and many planned networks might be shelved." This is inconsistent with our experience, which has led us to conclude that bundling impairs our ability to secure carriage. Bundling provides an unfair advantage to less desirable networks from conglomerates, over high quality independent networks. Indeed, if a network requires the muscle of its parent to secure carriage, which carriage it would not secure based on its merits alone in a level playing field, then arguably that network should not be on the air.

C. <u>Universal, Non-Discriminatory Delete Rights</u>

Several large cable operators are requiring independent networks to accept 30-day delete rights as part of carriage deals. Delete rights are rights of a cable operator to "delete" or drop the independent network and terminate all distribution -- at any time, for any reason. Based on information and belief, networks owned by content conglomerates, and networks owned by cable operators, are not subject to delete rights, and frequently lock in distribution for periods of up to

120 INTERNATIONAL PARKWAY, SUITE 220 HEATHROW, FL 32746 P: 407.333.3031 WWW.AMERICACHANNEL.US

15 years, even if ratings are abysmal or the content inappropriate. We believe this highly discriminatory and coercive practice is used exclusively against independent networks.

We also believe that the consumer will favor The America Channel over many channels, particularly bundled networks of conglomerates that have marginal value to consumers. We therefore propose that the cable and DBS operators have the right to delete *any* network, or any network that is not generating ratings – and not just independents. If a network is confident in the value of its product, delete rights based on ratings should not be objectionable. This will create more opportunity for deserving, high-quality independent networks, by freeing capacity vacated by underperforming conglomerate-owned bundled networks that secured distribution because of the leverage and strength of their owners (and not their appeal to the consumer). (If preferred, an appropriate criterion other than ratings could be used for deletion – but it must be applied in a nondiscriminatory manner to conglomerate-owned, operator-owned, and independently-owned networks alike.)

Delete rights were created by the cable operators and are used in carriage agreements with independent networks. If applied universally and fairly, they would be good for the consumer. The public has an interest in a check and balance against bundling of unwanted channels that don't add value, don't generate ratings, and increase cost.

D. Non-Binding Methodology for Empowering the Consumer to Select New Networks

For several years, cable MSOs have touted their groundbreaking progress in interactive features and technological advancements. Indeed, in spite of all of this, the most arcane and archaic methodology still employed by cable MSOs, seems to be the process of selection of new networks. It would seem easy to implement a *non-binding* process, by which the cable operator's consumers would have access to online or interactive television polls and questionnaires, asking consumers which new channels they would like to receive, with descriptions of each channel. Independent channels would compete side by side against MSO-owned networks and conglomerate-owned networks. This process would be fair, accurate, and most importantly, provide the consumer with a voice. Thus far however, the MSOs have not provided the consumer with this ability. The Commission should encourage such a non-binding methodology to measure consumer interest and encourage consumer feedback. While the MSO would not be bound by the consumer's selections, the results would be publicly available, and the MSO accountable in the court of public opinion within the community it serves.

III. Conclusion

The America Channel asks the Commission to consider and encourage the measures identified above.

Thank you for your consideration of these matters.

Sincerely,

Doron Gorshein
President and CEO
The America Channel, LLC
120 International Parkway, Suite 220

Heathrow, Florida 32746
tel: 407-333-3031
fax: 801-838-4226
email: doron.gorshein@americachannel.us
web: www.americachannel.us

cc: Ben Golant
Media Bureau
Federal Communications Commission
445 12th Street, S.W. -- Suite 4A-803
Washington, DC 20554