Consumers Union
Nonprofit Publisher of Consumer Reports

freepress

September 3, 2004

Ms. Marlene Dortch, Secretary
Federal Communications Commission
TWA325
445 Twelfth Street, SW
Washington, DC 20554

Re: Submission to MB Docket 04-207 and MB Docket 04-227

Dear Ms. Dortch:

We would like to submit the enclosed studies for your attention in the Federal Communications Commission (FCC) investigations of *a la carte* pricing of cable and satellite service as well as the annual assessment of video competition. They demonstrate that cable networks owned by cable operators and broadcasters have an anti-competitive advantage in gaining carriage.

Consumers Union[1] and Free Press[2], as organizations committed to diverse and competitive media systems, believe strongly that concentration of ownership has yielded an unacceptable degree of gatekeeping authority to vertically integrated MSOs and horizontally integrated broadcasting conglomerates. This factor has not been sufficiently attended in this proceeding, and it is consistently denied by the industry filings.

Discriminatory practices in carriage agreements driven by economic favoritism have led to declining numbers of truly independent networks and a subsequent reduction in the diversity of voices on cable systems as well as the consumers' right to choose content. It is an issue of paramount importance if carriage is granted or denied based not on a network's usefulness to citizens or desirability to consumers, but rather on its integration into the bottom line of the gatekeeper. It is equally troubling if broadcasters, who receive retransmission rights for over-

[1] Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the state of New York to provide consumers with information, education and counsel about goods, services, health and personal finance, and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* with more than 4 million paid circulation, regularly carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

[2] *Free Press* is a national nonpartisan organization working to increase informed public participation in crucial media policy debates, and to generate policies that will produce a more competitive and public interest-oriented media system with a strong nonprofit and noncommercial sector. http://www.freepress.net/

the-air stations, are given most-favored status for carriage of their cable networks over independent competitors. The likely outcome will be the provision of networks owned by broadcasters and MSOs in tiered packages which are unwanted by consumers and effectively subsidized by other commonly-owned networks.

We would like to draw the Commission's attention to an October 2003 Government Accountability Office study, "Issues Related to Competition and Subscriber Rates in the Cable Television Industry." The evidence presented therein is further developed in Michael E. Clements and Amy D. Abramowitz, "Ownership Affiliation and the Programming Decisions of Cable Operators," a paper to be presented at the October 2004 Telecommunications Policy Research Conference. Both are appended to these comments for reference.

These studies find "that cable networks owned by cable operators and broadcasters are significantly more likely to be carried on cable systems than are independent cable networks."[3] Of the 90 most popular cable networks, broadcasters have majority ownership of 40% and cable operators a further 20%. As compared to an independent network, the GAO report found that a new network was 46% more likely to gain carriage on a cable system if owned by the cable operator and 31% more likely if owned by a broadcaster. Further, cable operators were found 64% more likely to carry their own networks than those of any other ownership affiliation.[4] These numbers would rise if partial ownership by an MSO or a broadcaster were also factored into the equation. If major non-broadcast media conglomerates such as Liberty Media [owners of over a dozen cable networks including Discovery Channel, Starz, and the Learning Channel, as well as substantial stakeholders in News Corporation] were not counted as "independent" in these equations, doubtless the percentages would rise even further.

The implication of these findings is that independent networks are being denied carriage for reasons of economic favoritism driven by concentrated ownership and vertical integration. The gatekeeping power vested in the MSOs in this instance is absolute. Consumers and citizens are offered no possibility to choose alternative content, either at the point of carriage or at the point of network selection in a tiered system. This situation weighs heavily on the continued diversity and competition in the media system.

Thank you for your time and attention,

Sincerely,

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[3] Michael E. Clements and Amy D. Abramowitz, "Ownership Affiliation and the Programming Decisions of Cable Operators," Paper to be presented at the October 2004 Telecommunications Policy Research Conference, http://web.si.umich.edu/tprc/papers/2004/289/TPRC2004.pdf

[4] Government Accountability Office, "Issues Related to Competition and Subscriber Rates in the Cable Television Industry," October 2003, http://www.gao.gov/new.items/d048.pdf