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October 19, 2004

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

Re: American Cable Association ("ACA")
Additional submission to MB Docket No. 04-207

Dear Ms. Dortch:

On behalf of the American Cable Association, we submit this letter to supplement ACA's Comments[1] and the presentation of Mr. Ben Hooks[2], and to follow up on questions from Media Bureau staff concerning bundling and pricing practices.

Bundling practices and coercive pricing.

ACA's Comments and Mr. Hooks' presentation describe how major program suppliers use market power over "must have" broadcast and satellite programming channels to require smaller cable companies to carry affiliated channels and pay higher rates.[3] As a result, basic and expanded basic tiers have become filled with channels controlled by a handful of companies.[4] For consumers served by smaller cable companies, this results in increased costs and decreased choice.[5] This also reduces program diversity by squeezing out independent channels from many small cable systems.[6]

In response to ACA's Comments and Mr. Hook's testimony, certain programming conglomerates claim they offer smaller cable operators ample choice in wholesale programming transactions. For example, Viacom reports that even smaller cable operators are free to purchase

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[1] *Inquiry Concerning A La Carte, Themed Tier Programming and Pricing Options for Programming Distribution on Cable Television and Direct Broadcast Satellite Systems,* MB Docket No. 04-207, Comments of the American Cable Association (filed July 12, 2004) ("ACA Comments").

[2] *Symposium on the Commission's Inquiry Concerning A La Carte, Themed Tier Programming and Pricing Options for Programming Distribution on Cable Television and Direct Broadcast Satellite Systems,* MB Docket No. 04-207, Testimony of Ben Hooks (July 29, 2004) ("Hooks Testimony").

[3] ACA Comments at ii, vi-vii, 3-6, 9-14, 26, 30-6, 45-7; Hooks Testimony at 4-7, 13.

[4] ACA Comments at ii, vi, 3-4, 9-14, 33; Hooks Testimony at 4-7.

[5] ACA Comments at 3-4; Hooks Testimony at 2-3.

[6] ACA Comments at vi, 37-8. As Mr. Hooks explained in his oral presentation, some of his companies' systems serve communities with substantial Hispanic populations. Current carriage obligations under programming contracts with the Big Five have filled the systems' channel capacity and restrict his ability to launch Spanish language programming.

any of Viacom's channels on a stand-alone basis.[7] Not surprisingly, these claims fail to describe how these stand-alone offers are priced.

Investigation into the pricing of stand-alone offers will reveal that unbundled channels are not genuine alternatives. In most cases, unbundled channels are priced at levels that coerce small operators into carrying the "bundle".

Due to confidentiality restrictions and fear of reprisal,[8] we cannot identify specific channels and pricing practices here. As stated in ACA's Comments, the Commission has ample authority to require programmers to disclose this information.[9] To answer Congress' questions as completely as possible, the Commission's investigation should dig beneath filed comments and examine the actual prices, terms, and conditions of wholesale programming transactions. If time constraints prevent this, the Commission should identify these limitations in its report to Congress, and ask for additional authority and time to probe further.

Examples of coercive pricing.

The major programmers use a variety of coercive pricing strategies. We provide examples of two here. We call them "Choose one, triple your cost" and "Buy less, pay more."

"Choose one, triple your cost." Consider how one of the Big Five purports to offer channels on a stand-alone basis. The company offers a core bundle of widely distributed entertainment channels, some aimed at children, others at teenagers or young adults. If a cable operator purchases the bundle, it pays one price for each channel, which adds up to the bundle price. If a cable operator purchases one of the same channels on a stand-alone basis, <u>the channel price increases by 295%</u>.

Put another way, a stand-alone "choice" means the wholesale price triples. For smaller cable operators seeking to control programming costs, this presents no meaningful choice. They must buy the bundle.

"Buy less, pay more." Consider another pricing scheme used by one of the Big Five. This company offers a bundle of widely distributed entertainment channels, some aimed at children, others at teenagers or young adults. If a cable operator purchases the bundle, it pays one price for each channel, which adds up to the bundle price. If a cable operator purchases *less* than the entire bundle, the per channel price increases so that the smaller package costs more than the big bundle. In some cases the cable operator will pay 20% more than the full bundle price, while receiving 30% fewer channels.

Again, for smaller cable operators, this presents no meaningful choice; they must buy the bundle to control costs.

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[7] *Inquiry Concerning A La Carte, Themed Tier Programming and Pricing Options for Programming Distribution on Cable Television and Direct Broadcast Satellite Systems,* MB Docket No. 04-207, Viacom Reply Comments (filed August 13, 2004) at 16 ("More generally, Viacom simply does not 'force' MVPDs to carry any of its program services. Despite the handful of claims to the contrary, all MVPDs are, in fact, free to buy none, one, several, or all of Viacom's services.").

[8] ACA Comments at iii, 8-9, 39.

[9] ACA Comments at iii, 9.

Commission scrutiny of wholesale programming practices will expose a variety of similar coercive pricing schemes.

Before reaching any conclusion about the existence of any meaningful "stand-alone" alternatives claimed by certain Big Five programmers, the Commission will need to examine the coercive pricing practices underlying these alternatives.

Sincerely,

Christopher C. Cinnamon
Emily A. Denney

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