November 20, 2007

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

RE: Leased Commercial Access, MB Docket No. 07-42; Carriage of Digital Television Broadcast Signals, MB Docket No. 98-120

Dear Ms. Dortch:

We are writing to express our concern about proposals being considered by the FCC that would increase the already substantial distribution challenges faced by independent and niche programmers. Specifically, we write to urge you to oppose proposals to: (1) dramatically reduce the fees paid by commercial leased access programmers and (2) impose expanded must carry obligations on cable operators.

Leased Access

Some proponents of lower leased access rates have claimed that reducing those rates will help independent and niche programmers. But the reality is that we would be harmed instead. A radical restructuring of leased access pricing would lead to massive subsidies for commercial leased access programmers, a result Congress forbids, and would adversely affect existing cable program networks as well as the introduction of new networks.

As traditional basic cable programmers, we do not believe that leased access, no matter how artificially low the rate is set, can support our business model. Our economic model, like virtually all other non-premium cable programmers, depends on receiving subscriber-based license fees from cable operators in addition to advertising revenues. The existence or eventual expectation of these license fees is an integral part of networks' financial plans and is essential to support the quality and variety of programming needed to attract subscribers.

If the leased access rate is set at below marketplace rates, it skews the programming marketplace and allows leased access programmers who are not economically viable to gain access to cable systems. New and niche programmers will inevitably be harmed, since capacity on cable systems is already tight. Programmers dropped to make room for leased access programmers lose revenues (license fees and advertising) – revenues on which our business plans, budgets and financial commitments are based. Even programmers that are not dropped are harmed, as less desirable leased access programmers are added to the tier and subscribership to that tier may be adversely affected.

Programmers carried on other than a leased access basis already greatly contribute to the program and source diversity that leased access was designed to achieve when it was adopted in 1984. The number of national programming services has increased almost sevenfold since 1990, and nearly 80 percent of those are unaffiliated with any cable operator. In addition, there are channels designated for must carry broadcasting, public, educational, and governmental access, and there are rules in place governing cable operator ownership and control of programming networks.

We urge you to reject efforts to substantially reduce the leased access rate. The government should avoid artificially subsidizing lessees, subsidies that inevitably come at the expense of other diverse programmers.

Multicast Must Carry

We also respectfully request that the Commission put to rest efforts to vastly expand broadcasters' must carry rights to include the multicast streams of every must carry broadcast station or to give must carry rights to third party lessees of digital broadcast spectrum. Resuscitating multicast must carry proposals – after the FCC has twice rejected multicast carriage – casts a pall over carriage prospects for new cable networks. It injects additional uncertainty into the marketplace for carriage decisions just as operators and programmers thought the FCC's rules of the road for post-transition digital broadcast signal carriage had been set.

Broadcasters today already have government-granted carriage rights on cable for their primary signal, a guarantee that no other content provider enjoys. Government-mandated multicast must carry would give broadcasters an additional and unfair advantage over all non-broadcast cable programming networks, which would cause irreparable harm to programming diversity and ultimately to consumers.

Programming networks such as ours negotiate carriage deals with cable operators in a highly competitive marketplace. As a result, we must offer high quality compelling programming in order to survive. If broadcasters are given automatic carriage in the form of mandated multicasting, they will have little incentive to develop quality programming.

The Chairman's proposal to allow minority programmers to "lease" surplus broadcast spectrum on channels covered by must carry rules would create yet another category of government-preferred speakers who would get in line for carriage ahead of services like ours. Moreover, as explained above, we do not believe that the leasing model is a viable one for most programming services. The exception may be programmers that have an additional revenue stream, such as home shopping channels. We hope the Commission would not support a proposal that causes our networks to be dropped, or makes it more difficult for them to be added to new systems, in exchange for more home shopping channels.

We know from first-hand experience that starting a new programming service aimed at niche audiences is difficult. However, we urge you not to adopt government regulation that makes it more difficult to develop and grow new and diverse programming services.

Sincerely,

Jacob Arback
President
The Africa Channel

Lawrence Meli
President & CEO
AmericanLife TV Network

Johnathan Rodgers
President & CEO
TV One

cc: Michelle Carey, Legal Advisor, Office of Chairman Martin
Rick Chessen, Sr. Legal Advisor, Office of Commissioner Copps
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