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September 8, 2008

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

via email: KJMWEB@fcc.gov and Federal Express

RE: Ex Parte Comments; MB Docket No. 07-198

Dear Chairman Martin:

There's no truth to the notion that wholesale unbundling would have a significant negative impact on the amount of minority-interest programming available to consumers, particularly those served by small, independent operators. It's been shown that large programmers use their market power to coerce these providers into carrying their affiliated networks,[1] but by and large, they do not do so to ensure carriage of their minority-focused channels. Rather, these networks are offered to small, independent operators on a standalone basis. Despite claims to the contrary, wholesale unbundling would promote the availability of minority-oriented programming, whether conglomerate owned or independent, by freeing up small, independent cable operators' channel capacity and cash that is today taken up by the large programmers' unwanted affiliated channels that target general audiences.

There is a perception that minority-oriented networks would not be carried by small, independent operators but for large programmers' bundling of these channels with their channels popular with national audiences. While large programmers coerce these providers into accepting bundled programming deals, on the whole, these agreements do not require carriage of minority-interest networks. For instance, Viacom does not bundle any of its marquee networks for general audiences, such as Nickelodeon or MTV, with any of its minority-focused networks, including the Black Entertainment Television ("BET") networks and Logo, in the deals available to and accepted by the vast majority of independent operators. Instead, these channels are carried by these operators through standalone arrangements. Similarly, NBC Universal has not bundled any of its recently acquired Telemundo networks, such as the Telemundo and Mun2, with any of its other networks,

[1] *See* Comments of ACA, MB Docket No. 07-198 (Jan. 3, 2008).

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including the top rated USA Network, in the deals available to the small, independent operators. These channels are similarly carried by these operators in standalone arrangements. Only the Walt Disney Company can claim to some extent that its bundling practices encourage the distribution of minority-focused programming, but Disney's deal — which requires carriage of ESPN Deportes when ESPN is carried — only applies to small cable operators who already offer a Spanish language tier, a subset of providers who would be interested in carrying this programming whether bundled or not.

The truth is that small cable operators with limited bandwidth and cash resources would be able to carry more minority-oriented programming not less, but for the large programmers' bundled deals that require carriage of unwanted affiliated programming targeted toward general audiences. This docket is replete with examples of how these arrangements actually *encumber* independent programmers' ability to gain carriage on small cable systems, particularly those with limited capacity.[2] Wholesale unbundling would actually free up small, independent cable operators' bandwidth and funds that would allow them to carry more minority-interest networks that are available on a standalone basis, whether owned by the conglomerates or independents.

We hope this letter sets straight the misperceived notion that there would be a significant negative impact on the availability of minority-interest programming as a result of wholesale unbundling, particularly on the systems of small, independent cable operators. We applaud you and your colleagues' ongoing interest in examining how the practices of programmers and broadcasters prevent operators from providing their customers with a superior television service, including greater choice, better value, and more independent programming, and urge the Commission to promptly adopt the rule changes suggested by ACA and others.

Sincerely,

Matthew M. Polka
President and CEO
American Cable Association

cc: Commissioner Michael J. Copps *(via email: Michael.Copps@fcc.gov)*
Commissioner Deborah Taylor Tate *(via email: dtaylortateweb@fcc.gov)*
Commissioner Jonathan S. Adelstein *(via email: Jonathan.Adelstein@fcc.gov)*
Commissioner Robert McDowell *(via email: Robert.McDowell@fcc.gov)*

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[2] *See, e.g.*, Letter from Si TV, Inc. (Feb. 12, 2008); Notice of Ex Parte Presentation by HDNet LLC (Jun. 5, 2008); and Notice of Written Ex Parte Presentation by Public Knowledge, Consumers Union, Free Press, and Media Access Project (Jul. 25, 2008).