Mediacom

Rocco B. Commisso
Chairman and Chief Executive Officer

July 20, 2012

United States Senate
Commerce, Science and Transportation Committee
254 Russell Senate Office Building
Washington, DC 20510

RE: July 24th Hearing on "The Cable Act at 20"

Dear Committee Members:

As a leading cable company focused on bringing advanced digital telecommunications services to small towns and rural communities, Mediacom strongly endorses the view of Chairman Rockefeller that the purpose of the 1992 Cable Act was **"to empower consumers and provide them with expanded choices at lower rates."** Unfortunately, that goal has not been fully realized. Although some claim that the Act did help accelerate the emergence of competition at the retail level, consumers were left vulnerable to abuses of market power by the media conglomerates and large broadcast station groups that control most television programming. The failure of the FCC to exercise its broad authority to close the gaps in the Act's regulation of the market at the wholesale level has empowered the content providers to engage in unfair pricing, bundling and other practices that have both restricted consumer choice and driven the wholesale cost of broadcast and non-broadcast channels upwards at a rate far in excess of inflation.[1]

For over a decade, joined by other industry participants and consumer advocacy groups, I have been speaking out about the broken market for multichannel video service and urging the FCC to take action. During that time, I have repeatedly warned that unless the FCC took effective action, things would only get worse for consumers. I take no satisfaction from the fact that events have proven me to be right. According to a recent NPD Group report, the average subscriber's bill for pay TV has grown to $86 per month and will reach more than $123 by 2015 and $200 by 2020.

In September 2011, I sent the attached letter to Chairman Genachowski identifying how content owners' practices were harming consumers, calling upon him to lead the FCC in fixing the problem and proposing specific solutions within the FCC's existing authority. Yet, despite the clear and compelling evidence that the immense power held by a handful of media giants has created a dysfunctional marketplace in which the harm to consumers is compounding every year, the FCC has failed to act.

In the short time since I sent the letter, content providers have forced dozens of shutoffs in markets across the country. As of yesterday, prolonged shutdowns involving Viacom/DirecTV, AMC/Dish Network and Time Warner Cable-Bright House/Hearst Television were grabbing headlines. Those three situations alone resulted in 40 million households, the equivalent of roughly 100 million Americans, losing access to dozens of programming channels. Although the disputes are eventually settled and the darkened channels restored, the settlement always involves consumers being forced to pay more for the same programming.

---

[1] As Mediacom stated in a recent filing in the FCC's proceeding on the sunset of the statutory exclusivity ban, these practices include forced bundling of channels, dictating tier placement, unjustified volume discounts and restricting use of new distribution technologies (copy of filing available at www.mediacomonyourside.com). In that and other filings we have demonstrated that, despite its disclaimers, the FCC has the authority to fix the problems plaguing multichannel video subscribers.

Indeed, the price consumers pay for television programming is the fundamental issue behind the blackouts and the main reason for concluding that the goals of the 1992 Cable Act have not been realized. Even though DBS and telephone company video services compete vigorously with cable, retail prices for multichannel video service have risen dramatically, not declined. This is because video prices at the retail level are being driven by double-digit cost increases at the wholesale level.

Broadcasters and cable network owners impose price increases that would be outrageous even in good times, but are simply unconscionable during current economic conditions. The price that programmers demand when an agreement comes up for renewal only moves in one direction – upward, even when ratings decline. For example, our cable networks carriage and retransmission consent fees are going up dramatically this year despite the fact that over the past 12 months ratings for most cable programming channels, local broadcast stations, and national broadcast networks have seen significant declines.

The government's failure to address the dysfunction in the video marketplace has cost American families tens of billions of dollars. To add insult to injury, those extra billions do not even buy a guarantee of uninterrupted viewing—broadcasters and programmers shamelessly resort to blackouts in order to pressure MVPDs to surrender to exorbitant price increases as contracts expire. Emboldened by the government's inaction, content owners are, without fear or hesitation, extending the anti-consumer practices they perfected in the pay TV realm to the emerging market for over-the-top video content and imposing roadblocks to the use of new technologies. The programmers' intent clearly is to control every facet of the distributor-consumer relationship, dictating not only what channels subscribers have to buy, but also when, where and how they view content.

Many believe that we are at or near a critical tipping point. I urge Congress and the FCC to act decisively to adopt laws and regulations needed to protect consumers before the video marketplace simply crashes.

In the meantime, I would like to enlist Congress and the FCC to lend public support to a proposal that does not require any changes in the law. Specifically, **Mediacom is prepared to commit to freezing its published rates for its most popular video service tiers (limited and expanded basic) for <u>two years</u> if the owners of the broadcast channels and cable networks on those tiers likewise agree to freeze the fees they charge for their content.** The benefits of my proposal to consumers across America would be obvious if the government does its part in convincing content providers to hold their rates.[2] With your backing, I am confident that a significant number of other MVPDs would join the freeze.

In closing, I wish to make it clear that I believe that we all share the goal of ensuring that Americans have access to affordable advanced telecommunications services. I hope to have the opportunity to work with you and the FCC to put into place laws and policies that will help achieve that goal.

Very truly yours,

cc: FCC Chairman and Commissioners

Enclosure

---

[2] It also would make it more practical for lower income Americans to subscribe to broadband at home. While only 43% of low-income Americans have broadband at home, nearly two-thirds of the 43.6 million households classified as below the poverty line in 2010 had cable or satellite television. These households are not likely to drop pay TV service for broadband. But if pay TV service prices can be brought under control, they will be much more likely to have the resources to sign up for broadband service.

Mediacom

Rocco B. Commisso
Chairman and Chief Executive Officer

September 1, 2011

Chairman Julius Genachowski
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Genachowski:

Shortly after becoming Chairman, you said that protecting consumers was one of your goals, and you pledged that the Commission would "strive to be smart" about how its decisions affect consumers' lives. We respectfully submit that you cannot hope to achieve that goal if you allow the Commission to continue to ignore the escalating wholesale costs for television programming.

For nearly a decade, I have been speaking out about the harm to Americans caused by rising programming costs. I devoted my keynote address at a 2003 industry event to this issue, and predicted that things would only get worse unless the Commission took an active role in finding a solution. Your remarks when you were first appointed as Chairman encouraged us to believe that, under your leadership, the Commission would finally address the problem. I regret to say that it is now almost three years later and nothing has been done.

The Commission's inexplicable inaction:

- Costs Americans billions of dollars, as programming owners have increased their rates well in excess of inflation in every year since my speech, and there is no end in sight. One study found that monthly per-subscriber video programming costs for basic and expanded basic channels increased by 67% across all MVPDs between 2003 and 2008, **four times** the rate of inflation during the same period. There is no reason that any of this has to be the case, as I understand that the per-subscriber wholesale cost for cable/satellite television programming in the United States is as much as **three to five times** the cost in Europe.

- Adds to consumers' bills and severely limits their freedom of choice by allowing content owners to require MVPDs to buy costly bundles of networks and carry them on the most popular service tiers, so that subscribers are forced to pay for channels they do not want.

- Exposes consumers to service disruptions because the Commission refuses to adopt measures like binding arbitration to prevent content owners from using blackouts as a negotiating tactic.

- Forces consumers to pay more for less or, at best, to simply keep what they already have. Paying additional money for channels that customers already receive does not produce additional content. Given the original intent of retransmission consent, it is especially shameful that retransmission consent fees have dramatically increased even as movies and sports events migrate from broadcast channels to pay networks and broadcast stations severely cut staff and budgets for news and public affairs programming.

- Creates a new digital divide as the price of cable television service is driven steadily upward to levels that are beyond the means of more and more Americans, especially in a time of high unemployment and stagnant wages. The second quarter of 2011 marked the first time that video subscribership in the combined cable/telephone/satellite industries suffered a net decrease.

- Opens the door for programmers to leverage their online content into higher fees. Online viewing of television programs once available for free to everyone is beginning to be confined to MVPD subscribers whose distributor has agreed to pay the programmer extra as part of retransmission consent or cable network license deals. Programmers also plan to charge extra if a video subscriber wants to watch a show on his/her laptop, iPad or smart phone, rather than on the television set. These practices will drive up consumer prices even more and negatively impact the ability to extend the benefits of broadband and advanced technology across all income levels.

- Impedes achievement of the Commission's goal of increasing broadband penetration. There is a direct correlation between broadband adoption and video penetration rates, so that consumers who find cable television service unaffordable may also forego broadband subscriptions.

- Reduces the ability of cable companies to respond to your call to extend the availability of low-cost broadband service for the under-privileged. If MVPDs have to pay hundreds of millions more for the same programming every year, that necessarily means there is less money to support your initiative.

Contrary to accusations by industry critics, cable companies are reluctant to raise video subscriber rates because when we do, we lose customers. Mediacom does not make more money when we raise video prices, since we remit virtually every penny of the increase on to the content owners. Over the last three years, the increase in our programming costs was more than **<u>double</u>** the increase in video revenues, even after taking our subscriber rate increases and equipment charges into account.

I am deeply disappointed with the Commission's lack of interest in keeping multichannel television service affordable. Twice in the past five years, I have tried to stand up for consumers by resisting exorbitant demands for retransmission consent fees. And twice the Commission put the interests of broadcasters ahead of those of the viewing public. The Commission's position that it does not have the authority to intervene—even though a different interpretation of the law would clearly be sustainable—is forcing American consumers to pay billions of dollars for "free" over-the-air television without receiving anything more in return. Although retransmission consent fees have been the fastest growing component of programming cost increases, non-broadcast networks also keep pushing their charges higher and higher. Content owners have been unwilling to exercise the slightest measure of self-restraint, and are emboldened by the Commission's unwillingness to even try to impose some limits or speak out against programmers' practices.

Mr. Chairman, I respectfully call upon you to live up to the pledge you made when you took office and move forcefully to protect senior citizens, low-income households and rural residents from practices that are rendering cable television unaffordable. There are a range of tools at your disposal, including, but by no means limited to:

- Prohibiting price discrimination by program owners through volume discounting practices that prejudice millions of Americans living in rural areas and small towns throughout our nation.

- Increasing transparency by requiring broadcasters and cable networks to make public the prices they charge MVPDs in each market.

- Mandating the unbundling of stations and program services at the wholesale level.

- Banning programmers from forcing carriage on the basic, expanded basic or most popular digital tier.

- Preventing programmers from driving up the price of broadband, as well as video, service by replicating in the case of Internet video content the bundling and pricing practices that have been so detrimental to consumers of cable television service.

- Establishing a standstill mechanism and alternative dispute resolution to ensure service to consumers is not disrupted during negotiating impasses.

- Prohibiting a single company from negotiating for multiple big-four broadcast stations in a market, a network or other proxy from negotiating for multiple stations and a station group from refusing to offer consent for its stations on an unbundled basis and on reasonable terms.

- Instituting a carefully designed *a la carte* system, so that decisions about what video services are bought are made by consumers themselves, rather than by content owners.

The Commission, citing its duty to promote the public interest, has employed similar tools in other contexts, including its recent program carriage order. Frankly, the harm to consumers from the practices of television content owners is far greater than that flowing from many of the issues to which you have devoted so much of your personal attention and the Commission's resources. There is no excuse for the Commission not to at least try to assert its vast authority with the goal of restoring a semblance of balance to the video programming marketplace—there is nothing to lose if its actions are successfully challenged in court and much to gain if, as we fully expect, its authority is confirmed by the courts.

When, as is inevitable, the retransmission consent cycle beginning this October 1 and recurring renewal negotiations for cable networks trigger a fresh round of actual and threatened service disruptions and yet another subscriber rate increase, the Commission must share responsibility with the content owners. In this regard, as of 5 PM yesterday, we were forced by LIN Television Corporation to stop retransmitting its television stations to tens of thousands of Mediacom subscribers in multiple DMAs simply because we refused to surrender to its exorbitant and discriminatory demands for triple-digit increases in retransmission consent payments.

My passion with respect to the issue of programming costs and their impact on my customers and my employees is well-known. I have spoken frankly in this letter, but mean no disrespect. I think we share a desire for a nation in which all of our citizens have affordable access to a basic level of information and entertainment programming.

I would be happy to meet with you at any time to discuss how we can work together to reach our shared goals.

Sincerely,