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ONE HUNDRED EIGHTH CONGRESS

**U.S. House of Representatives**  
**Committee on Energy and Commerce**  
**Washington, DC 20515-6115**

JOE BARTON, TEXAS  
CHAIRMAN

May 18, 2004

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BUD ALBRIGHT, STAFF DIRECTOR

The Honorable Michael K. Powell  
Chairman  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Dear Chairman Powell:

In the context of our recent examination of satellite television reauthorization legislation, the Committee on Energy and Commerce has been engaged in discussions concerning the efficacy of providing *a la carte* and themed-tier services to cable and satellite subscribers. As the members of the Committee have discussed these issues, some have indicated that they do not have sufficient information to make an informed decision on the potential merits and drawbacks of proposals which would allow multi-channel video programming distributors (MVPDs) to offer programming to their consumers on an *a la carte* or themed-tier basis.

Therefore, Committee members desire insight from the Federal Communications Commission (the Commission) to assist them in forming their judgments about these issues. Accordingly, we request that the Commission submit a report to this Committee by November 18, 2004 that answers questions relating to the ability of MVPDs to voluntarily provide their customers programming on an *a la carte* or themed-tier basis, in addition to broadcast basic and expanded basic tiers that may already be sold. The report should address, at a minimum, the following:

## HISTORICAL

Do MVPDs currently have the option to purchase channels from programmers on a stand-alone basis, such that they could, if they chose, offer programming to consumers on an *a la carte* or themed-tier basis? What are the limitations, if any, on their flexibility to do so? What statutory or regulatory action would be needed to remove any such limitations?

## RATES

What would the impact be on retail rates to consumers if programmers were required to offer their programming to MVPDs exclusively on a stand-alone basis, and could not also offer programming on a bundled basis for free or at a discounted rate?

What would the impact be on retail rates to consumers if programmers, in addition to the currently offered packages, were required to allow MVPDs to offer their programming on an *a la carte* or themed-tier basis if the MVPD chose to do so?

Can MVPDs currently offer *a la carte* and themed-tier service in addition to the packages currently offered, such as basic and expanded basic? Can the same universe of channels be offered both on a basic/expanded basic basis, as well as an *a la carte* or themed-tier basis?

How would an *a la carte* or theme-tiered approach affect a network's ability to attract advertising revenue? Would the impact change depending upon whether an MVPD subscriber had to purchase a basic/expanded basic tier before purchasing additional channels on an *a la carte* basis? How would an *a la carte* or themed-tier option, in addition to packages currently offered, affect a network's ability to attract advertising revenue?

What effect would *a la carte* or themed-tier have on a network's per-subscriber license fees?

Are there networks that have migrated from being offered on a tiered basis to an *a la carte* basis, or vice versa? What was the effect of this migration on the network's economic viability and cost to consumers?

#### RETRANSMISSION CONSENT

How have broadcast networks and affiliate groups used the retransmission consent process to expand carriage of affiliated programming? How has this affected rates for MVPD offerings for consumers?

Do the rules governing retransmission consent and must-carry limit consumers' ability to select their own programming? If so, how?

#### DIVERSITY OF PROGRAMMING

What effect, if any, would the voluntary offering of *a la carte* or themed-tier service have on the ability of independent, niche, religious, and ethnic programming to continue to be carried or launched?

#### RURAL AND SMALLER MARKETS

Describe the programming cost differential for the largest cable and satellite companies and the smallest independent MVPDs in smaller markets and rural areas. What is the "volume discount" to the larger companies?

What percent of total expenses do smaller MVPDs in smaller markets and rural areas attribute to programming, and how does this compare to the largest cable and satellite companies?

What would be the impact on the programming costs of smaller MVPDs if they were to purchase programming on a stand-alone basis rather than in bundles?

What would be the impact on the programming costs of smaller MVPDs if they were allowed to offer *a la carte* or themed-tier service in addition to bundled packages?

## SET-TOP BOXES

Is an addressable converter box required for every television set on which a consumer might wish to view programming offered on an *a la carte* or themed-tier basis? What is the number of television sets that are not currently connected to addressable converter boxes? What are the costs to consumers of buying or leasing these boxes?

Is an addressable converter box required for every television set on which a consumer might wish to view digital programming? Is it true that *a la carte* or themed-tier services can only be offered on a digital basis? What percent of cable and satellite distributors offer digital programming to their subscribers? What percent of consumers currently subscribe to digital programming packages?

What impact would *a la carte* and themed-tier service have on the uni-directional Plug-and-Play regulations, and on the ongoing discussions regarding potential bi-directional Plug-and-Play regulations?

## LEGAL AND REGULATORY QUESTIONS

Is there any reason to treat cable and satellite operators differently with regard to the *a la carte* and themed-tier service?

Would MVPDs be in compliance with the must-carry rules so long as they offered all local broadcast stations on an *a la carte* or themed-tier basis, or would the must-carry rules prohibit MVPDs from offering local broadcast stations on an *a la carte* or themed-tier basis?


What, if any, Constitutional or other legal questions are raised by programmers' ability to bundle services through retransmission consent, regional sports contracts, and national programming contracts for marquee programming?

What, if any, Constitutional or other legal questions would be raised if Congress required programmers to offer their channels to MVPDs on a stand-alone basis and prohibited them from requiring carriage of their programming on particular tiers?

What, if any, Constitutional or other legal questions would be raised if, in addition to currently offered packages, Congress required programmers to allow MVPDs to voluntarily offer their channels on an *a la carte* or themed-tier basis?

Sincerely,

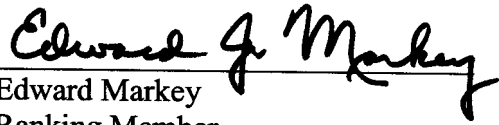
  
\_\_\_\_\_  
Joe Barton  
Chairman

  
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John D. Dingell  
Ranking Member



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Fred Upton  
Chairman  
Subcommittee on Telecommunications  
and the Internet



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Edward Markey  
Ranking Member  
Subcommittee on Telecommunications  
and the Internet



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Nathan Deal

cc: Commissioner Kathleen Abernathy  
Commissioner Kevin Martin  
Commissioner Michael Copps  
Commissioner Jonathan Adelstein