

**Consumers
Union**

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Consumer Federation of America



January 18, 2006

The Honorable Ted Stevens
Co-Chairman
Committee on Commerce,
Science and Transportation
U.S. Senate
Washington, D.C. 20510

The Honorable Daniel Inouye
Co-Chairman
Committee on Commerce,
Science and Transportation
U.S. Senate
Washington, D.C. 20510

Dear Co-Chairs Stevens and Inouye:

Thank you for your leadership in tackling the important issue of consumer control over television programming.

As the Committee considers how to ensure consumers are able to protect their families from television content they find objectionable, we urge you to reject voluntary industry proposals that fail to offer consumers adequate control through new “family choice tiers.” Further, we urge you to carefully scrutinize whether the companies are designing and promoting the “family choice” tiers in good faith to ensure they have a chance to succeed in the market place. Absent commitments to offer meaningful family choice, the Committee should pursue legislative solutions. And finally, we urge the Committee to address the unfair contractual restrictions imposed by video programmers that prevent existing cable distributors and new video market entrants from offering “a la carte” programming that would actually lower consumers’ monthly cable bills according to recent analysis announced by Federal Communications Commission Chairman Kevin Martin at the Committee’s November 29, 2005 open forum on indecency

Announcements of new “family choice” tiers by some of the largest cable distributors is a good first step toward greater consumer choice if only because it demonstrates that the cable industry can do what, for years, it claimed it could not—offer consumers smaller, specialized bundles in lieu of the costly expanded basic tier. Unfortunately, because cable distributors, in tandem with powerful broadcast programmers, have decided which channels will be included, the tier offers consumers very little choice. The programming line-up of family choice tiers unveiled to date offer only limited channels and may discourage families who want greater control from subscribing to the tier because it lacks other general interest programming they may desire. Subscribers who want programming choices beyond those offered in the basic cable package but who do not wish to pay for programming they find objectionable are left with the Hobson’s Choice of the limited “family choice” tier or no popular cable programming whatsoever.

In order for family-targeted tiers to offer a meaningful consumer choice and to serve as a viable solution to objectionable programming, cable distributors must allow subscribers to choose the channels they subscribe to and pay for from the expanded basic line-up. We urge the Committee to seek commitments from cable distributors to offer families that choice and commitments from cable programmers not to block efforts by distributors to do so. In lieu of those commitments, we urge the Committee to seek legislative solutions which ensure that subscribers, not cable companies, select the programming they view as appropriate for their families based on their unique values and preferences.

In addition, we urge the Committee to address the contractual restrictions that dominant video programming companies impose on cable distributors. As you know, both Echostar and Cablevision Systems have publicly supported policies allowing subscribers to choose the channels they will pay for. In addition, new video market entrant AT&T has likewise supported the option. Each of these distributors, however, is or will be precluded from offering channels individually by their contractual agreements with content providers. Smaller, independent cable distributors, too, have long objected to these contractual restrictions as they seek greater ability to respond to local community needs.

Prohibiting contractual restrictions that prevent distributors from offering subscribers the option to buy channels individually would facilitate a marketplace response to consumer demand for greater choice in channel selection. At least in the limited markets where video competition exists, new competitors offering cable "a la carte" may enjoy a marketplace advantage, driving other distributors to respond with new choices and more diverse programming, and lower prices. And, in addition to other policy options to increase diversity of content offered on cable systems, eliminating the ability of dominant programmers to dictate all-or-nothing bundles of channels opens the door to independent, unaffiliated programmers seeking to offer television channels that respond to and reflect diverse interests and needs not met by the media giants.

Recent statements by FCC Chairman Martin have debunked the much-promoted and counter intuitive myth that cable a la carte will not benefit consumers. And the recent concession by the cable industry to offer family choice tiers likewise contradicts prior claims that smaller programming tiers are not economically viable. There remains no viable reason that cable distributors and programmers should be allowed to force the "all-or-nothing" expanded basic package upon consumers who merely want the ability to pay for those offerings they want—an option they have in every other market.

Cable providers, working hand-in-hand with the dominant broadcast network programmers, should not be allowed to use their absolute control over television packaging to stifle video competition and impede the marketplace from responding to overwhelming consumer demand for cable channel choice. We urge the Committee to ensure that they cannot.

Sincerely



Jeannine Kenney
Consumers Union



Mark Cooper
Consumer Federation of America



Ben Scott
Free Press