August 28, 2014

Honorable John D. Rockefeller IV
Chairman
Committee on Commerce,
Science and Transportation
U.S. Senate
Washington, D.C. 20510-6125

Honorable John Thune
Ranking Member
Committee on Commerce,
Science and Transportation
U.S. Senate
Washington, D.C. 20510-6125

Dear Chairman Rockefeller and Ranking Member Thune,

The 50 State Broadcasters Associations, whose member broadcast television stations serve local communities across the country, write to oppose the “Local Choice” proposal which you recently circulated for discussion purposes. If adopted, the proposal will unjustifiably eliminate television broadcasting’s longstanding statutory right of retransmission consent and unfairly single out the free, over-the-air, local television broadcast industry for mandatory “a la carte” treatment. For the reasons that follow, the proposal will very negatively impact television broadcasters and all of the nation’s viewers. Accordingly, we strongly oppose inclusion of the proposal as part of the Senate Commerce Committee’s reauthorization of the Satellite Television Extension and Localism Act.

All broadcasters appreciate your recognition of (i) the unique and critical value of broadcast localism, (ii) the economic necessity that broadcasters be fairly compensated for their investment in programming particularly when retransmitted by pay-television providers to their paying subscribers, and (iii) the importance of meaningful consumer choice. However, the proposal will destroy localism, including the backbone of our nation’s Emergency Alert System, by denying fair compensation to broadcasters without providing consumers, who continue to complain loudly about the monthly cost of pay-television service, with any meaningful choice or relief. Furthermore, as reflected in over a decade’s worth of economic literature and policy debate, mandated a la carte pricing proposals have been proven to increase prices, decrease programming diversity, and result in fewer – not more – choices for consumers. Indeed, these are precisely the exact opposite results that your proposal appears to seek.

The prescription of a broadcast-only a la carte regime exacerbates these economic effects because broadcasters are much more reliant upon advertising as a percentage of revenue (almost 80 percent) than other programming channels (HBO: 0 percent; TWC SportsNet LA: 16 percent),
and because consumers wishing to decrease the cost of their bills will only be able to do so (by no means a “given”) by opting out of their local broadcast channels, even if they prefer broadcast channels over non-broadcaster programming for which the proposal denies them full per-channel “choice.” Make no mistake, the net effects of a broadcast-only a la carte requirement will diminish broadcast localism and harm consumers without actually providing consumers meaningful choice or meaningful cost savings.

Such an outcome is inconsistent with the long-held values of the universal accessibility of broadcasting’s local news, weather, and emergency information, as well as broadcasting diversity. As local broadcasters struggle under a la carte economics, there will be less resources to invest in newsrooms, journalists, and local programming and perhaps even fewer broadcaster outlets to cover local affairs and emergencies in the future. Additionally, broadcasters that serve diverse audiences with religious, ethnic, and foreign language programming will find it harder to sustain such niche programming investments with the decline in access to subscriber viewership. An a la carte model will also chill the willingness of broadcasters to cover controversial issues of public importance due to this fact alone – today viewers who are unhappy with a particular program, subject or viewpoint that was aired can, as a form of protest, change the channel and not return to a station’s programming for some period of time. Under a broadcast a la carte model, those same viewers, will be able to extend their “protests” by withholding payment of at least that station’s portion of their monthly subscriptions, thereby chilling the journalistic and editorial decisions of every station, and throwing the economics of the nation’s local television broadcast system, into chaos. All of this will harm not only consumers receiving broadcast programming through pay-television providers, but also those consumers who receive broadcasting for free via over-the-air reception.

Beyond these pitfalls, significant questions remain about how such a system would be implemented:

- Absent a statutory requirement or contractual relationship between broadcasters and pay-television distributors, what incentive would these distributors – who are competitors to broadcasting – have to cooperate with the television broadcast industry in making a la carte work as this proposal intends? Who and how would that cooperation be policed?
- Given that the proposal apparently intends to save those consumers, who opt out of paying for the broadcast stations, money on their monthly subscriptions, who and how will pay-television providers be held accountable?
- How would pay-television providers acquire ancillary programming rights, such as video-on-demand and over-the-top rights that are currently contemplated as part of the retransmission consent negotiations?
- An a la carte business model would upend the network-affiliate relationship with potentially devastating consequences for the networks, for their affiliates and for the financial markets.
  - Would existing retransmission consent contracts, many of which are long-term in nature, remain valid until expiration or would they be voided?
  - All of the television network agreements provide that their affiliated stations pay their networks “reverse compensation” that is tied to retransmission consent fees paid by
pay-TV providers. How would those agreements – which are multiyear and expire at different times – be treated under the proposal?

Once the proposal becomes a matter of public knowledge outside the Beltway, there will be enormous pressure on Congress to expand the a la carte model beyond broadcast, and well it should, in response to the millions of constituents who will complain that the proposal does not provide them with the right to pick and choose which non-broadcast programming (which represent the vast majority of their monthly pay-TV bills) they wish to pay for. In short, the proposal will likely become the slippery “a la carte” slope that broadly upsets a vibrant and functioning video marketplace.

In conclusion, we oppose this proposal because of its likely devastating impacts on broadcast localism and the nation’s viewers. In the coming days and weeks, we look forward to visiting with you and your colleagues in Washington, D.C. as well as in your home offices to further demonstrate our strong concerns.

Sincerely,

Alabama Broadcasters Association
Sharon Tinsley

Alaska Broadcasters Association
Cathy Hiebert

Arizona Broadcasters Association
Art Brooks

Arkansas Broadcasters Association
Doug Krile

California Broadcasters Association
Stan Statham

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Florida Association of Broadcasters
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West Virginia Broadcasters Association
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Wisconsin Broadcasters Association
Michelle Vetterkind

Wyoming Association of Broadcasters
Laura Grott

Cc: Members of the United States Senate Committee on Commerce, Science and Transportation