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ONE HUNDRED TENTH CONGRESS

# Congress of the United States

## House of Representatives

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November 21, 2007

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

Dear Chairman Martin:

I am writing to express my concerns about recent actions and announcements by you that appear to conflict with requirements for transparency and public accountability in agency decision-making. I am also concerned that some initiatives you continue to advocate may undermine diversity in video programming and media ownership.

To maintain public confidence in the working of administrative agencies, it is critical that the agency decisionmaking process is transparent and open to public review and comment. Yet recent media reports suggest that under your chairmanship, the FCC is conducting its decisionmaking in just the opposite manner. It has been suggested, for example, that draft rules are not made available for public comment; that intended actions are announced in the press rather than through proper channels; that there is a very limited opportunity for comment on any proposed rules; and that the Commission does not provide advance notice of public FCC meetings.

It has also been alleged that the FCC ignores ex parte or other restrictions on communications for certain individuals. I would encourage the FCC to follow the recommendations contained in GAO report 07-1046, FCC Should Take Steps to Ensure Equal Access to Rulemaking Information, to "maintain an environment in which all stakeholders have an equal opportunity to participate in the rulemaking process and that the process is perceived as fair and transparent."

For example, I am troubled by the persistent consideration of a government mandate on cable operators to offer programming to consumers on an a la carte basis. I have heard from many in the media community who are concerned that such a requirement will undermine the important goal of encouraging diversity in video programming. There is extensive evidence that such policies would hinder the ability of smaller, niche- or minority-oriented channels to survive,

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thus actually decreasing programming diversity. Nearly every major civil rights organization has asserted that a la carte pricing will both raise prices on consumers while materially damaging the business models for small and minority cable programmers. I am troubled that these important voices are not being recognized.

I am also very troubled by the rulemaking process on media ownership. I understand that you have decided to move forward with this proceeding, holding votes on December 18, even though the FCC has not yet finished its study on how the changes would affect localism and diversity. It is my understanding that these proceedings have continued regardless of concerns raised about the validity of the studies upon which you rely, of a flawed peer review process, and of inadequate notice of hearings.

So that we may better understand the Commission's processes and the impact on diversity, please respond to the following questions and requests as expeditiously as possible.

1. In which cases have you announced rules or circulated draft rules either prior to public comment ending or within a week of completion?
2. In which cases have you discussed with the press the contents of rules under consideration prior to those rules being adopted?
3. Will the Commission announce the agenda of FCC meeting dates for all of 2008 at the commencement of the year, as I understand prior Commissions have done?
4. What public comments has the Commission received on the impact of an a la carte requirement on program diversity and the continued availability of niche or minority-oriented programming? Please summarize the comments for and against this policy and identify the commenters. Include persons filing formal comments as well as those that have expressed their views to the Commission through ex parte communications or meetings.
5. What are the views of the other Commissioners on an a la carte requirement?
6. Do you believe the FCC has the authority under current law to order cable operators to provide programming on an a la carte basis? Do you believe the FCC has the authority to abrogate existing programmer contracts that require programming to be carried on a tier? If the answer to either or both of these questions is in the affirmative, please identify the provisions of law that you rely upon.
7. Will you establish an independent task force on minority ownership prior to completion of the media ownership proceeding?

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I thank you for your prompt attention to these important matters.

Sincerely,



John Conyers, Jr.  
Chairman

cc Hon. Michael J. Copps  
Hon. Jonathan S. Adelstein  
Hon. Deborah Taylor Tate  
Hon. Robert M. McDowell