Give Us Cable Choice for Decency's Sake!

A consumer-driven system could reverse television's slide toward the sewer

By Martha Kleder

Beleaguered parents are often told that if they don't like a TV program to "just change the channel." To add insult to injury, these same consumers often have to pay for the trash they are trying to avoid.

Cable and satellite dish systems force customers to purchase channels that they don't watch and find offensive. And the excesses of these systems, which are exempt from Federal Communications Commission (FCC) content rules, drive regular broadcasting channels to air ever-more-coarse programming.

The solution may be "cable choice," in which consumers order only the channels they want. But it will take an act of Congress to force companies to create such a consumer-friendly system.

Communist Ethos Alive and Well in U.S. Cable

Here's a simple analogy to illustrate the consumer's current raw deal. Say you visit the grocery to purchase a dozen eggs. You find each carton has cracked and broken eggs, and at least one completely rotten egg, and only one or two safe and usable ones. The grocer tells you they are packaged that way to give customers "variety."

Not satisfied, you ask if you could collect a dozen good eggs from the various cartons so that you buy only what you want. Your grocer denies that request, then tells you that you can't buy just a dozen but must lug home an entire case of 150 to 200 eggs. He assures you that you are free to pick through them and use only what you want.

Of course, your grocer isn't telling you this. You'd shop at another store. But your cable operator is, and the consumer usually has no other choice. Cable gives customers 50-75

channels on the basic service tier alone, and up to 200 channels on most digital systems. But variety aside, the average cable customer watches only 12-15 channels.[1]

Since not even basic cable television, now found in the majority of U.S. homes, is held to the FCC's broadcast indecency laws, cable has been leading the downward spiral of trash television. Many of the themes launched on cable, if not the very shows themselves, have migrated to broadcast television with time, such as Bravo Channel's *Queer Eye for the Straight Guy*, which NBC has run during "family hour" at 8 p.m.

Basic cable television includes some of the most outrageous material. Programs like *Nip/Tuck* are breaking new ground in violence and depravity.

Found on Fox's FX channel, *Nip/Tuck* focuses on the cosmetic surgical practice and the sex lives of Dr. Christian Troy and his partner, Dr. Sean McNamara. Along with extremely graphic, bloody visuals from the operating room, the show features themes such as three-way sex between teenagers, office sexual encounters, Dr. Troy's rampant promiscuity, and necrophilia.[2]

Meanwhile, the Parents Television Council calls the NBC program *Coupling* "an obvious attempt to attract a young audience titillated by sexual innuendo who would otherwise be seeking lascivious cable TV programming."[3] After public outrage and pressure on sponsors, NBC canceled the show last fall.

While *Coupling* contained no violence or graphic sexual language, the entire show was based on sexual innuendo and discussion. A replacement for the popular *Friends, Coupling* featured a group of young singles who showed no remorse or conscience for their actions. Oral sex, masturbation and threesomes were all subject matter for this series, which aired at 9:30 p.m. in the eastern and mountain time zones, but at 8:30 p.m. — the family hour — in the Pacific and central zones.

The Rising Costs of Rising Filth

The cost of cable subscriptions is rising. According to the latest report from the FCC, for the year ending July 2002, cable prices rose five times faster than the rate of inflation.[4]

Cable industry leaders blame those rising costs on the cost of programming, particularly sports. "Less than 20 percent of our customers are avid sports fans, but sports programming is disproportionately driving up cable prices for everyone," Cox Communications CEO James Robbins told the Senate Commerce Committee.[5] He added that the cost of sports programming had increased 20 percent.

James M. Gleason, president and COO of CableDirect, testified before the same committee that the ABC/Disney-owned sports network ESPN had increased its cost to cable companies by 20 percent for five consecutive years.[6]

And while increasing sports costs explains some of the rising costs of cable, there is more, and those factors also hold sway over programming content.

Leo Hindery Jr., chairman and CEO of the Yankee's YES Network, told the committee, "More than half of the channels available to consumers are actually owned by the cable companies."[7]

He said that cable operators raise prices on consumers themselves by creating and forcing subscribers to pay for superfluous channels, which he likened to e-mail spam.

Another factor contributing to escalating costs is a three-tier level of "must-buy" requirements. The first "must-buy" level is a government mandate. Federal law requires that local broadcast channels and community-access channels be purchased by all customers before they can subscribe to the channels they want.

The cable industry imposes the second tier of that "must-buy" on the customer, requiring them to purchase yet more programming. This accounts for the initial "basic" or "expanded basic" package that all subscribers must buy before they can choose the channels they want.

The third tier involves retransmission consent. Under FCC authority, network-owned and -operated broadcast stations have the power to deny the national broadcast networks to local cable subscribers. In order to carry the networks, the cable operator often must agree to force his customers to purchase cable programming owned by the broadcast stations. This third area is better understood once you realize the size and scope of today's media conglomerates.

Meet The Big Players

Media consolidation has led to a handful of major players who have now become known informally to cable operators as "OPEC," Organization of Programming Extortion Companies. Those players, more than simply sports programming, are the chief cause for increasing cable prices, according to several cable industry insiders.[8]

Disney/ABC: Disney/ABC, the third largest global media conglomerate , not only controls the ABC television network, but also the Disney Channel and SoapNet, and maintains partial ownership of ESPN, A&E, The History Channel, and Lifetime and E! cable networks.

Disney/ABC also owns the NHL Anaheim Mighty Ducks and partially owns major league baseball's Anaheim Angels. Ten broadcast television stations, 27 radio stations and the ABC Radio Network are also a part of this corporate structure.

Those holdings are in addition to the conglomerate's program production holdings: Walt Disney Pictures, Touchstone Pictures, Hollywood Pictures, Caravan Pictures, Miramax Films and Buena Vista Home Entertainment.[9]

Viacom/CBS: The world's second largest media conglomerate is Viacom. Owner of the CBS Television Network and the UPN Television Network, this conglomerate also controls MTV, Nickelodeon/Nick at Nite, TV Land, CMT, TNN, VH1, Noggin, Showtime, The Movie Channel, the Sundance Channel, FLIX, SET Pay-per-view, BET and half interest in Comedy Central.

Viacom owns 16 CBS-affiliated television stations, as well as more than 180 radio stations of Infinity Broadcasting, Westwood One Radio Network and Metro Networks.

As for program production, Viacom owns Paramount Pictures, MTV Films, Nickelodeon Movies, Spelling Entertainment Group, Big Ticket Television, Viacom Productions and King World Productions.

AOL/Time Warner: AOL/Time Warner, which voted recently to drop AOL from its name, is the world's largest media conglomerate. Its holdings include the WB Television Network, the Time Warner Cable system, HBO, Cinemax, Time Warner Sports, CNN, CNN/fn, CNN/SI, CNN Headline News, TBS, TNT, the Cartoon Network, Turner Movie Classics, half ownership in Comedy Central and partial ownership in Court TV. Time Warner also has print media holdings including *Time* magazine.

As for program production, Time Warner owns HBO Independent Productions, New Line Television, Turner Original Productions, Warner Brothers Television, Warner Brothers Animation, Looney Tunes and Hanna-Barbera.[10]

GE/NBC: Although GE/NBC is not among the largest worldwide media conglomerates, it leaves an enormous footprint on U.S. media and entertainment.

Along with the NBC Network, this conglomerate operates CNBC, MSNBC, MSNBC-Sports, Bravo and Telemundo. It also maintains a partnership in A&E Networks, The History Channel, The National Geographic Channel, ValueVision and Paxson Communications. According to its Web site, "NBC produces hundreds of hours of programming a week and reaches viewers in more than 100 countries on six continents."[11]

NBC owns 14 of its network-affiliated television stations, along with NBC Studios and NBC Enterprises. According to the NBC Web site, "NBC Enterprises creates and produces first-run programming for domestic syndication distribution. NBC Enterprises Domestic Syndication's current first-run syndicated programming includes *Access Hollywood, The John Walsh Show, The Other Half, Weakest Link, The Chris Matthews Show, The George Michael Sports Machine, The Wall Street Journal Report, Rebecca's Garden, Starting Over, Wild Moments*, and the off-network syndication sales of NBC's *Providence*. NBC Enterprises Domestic Syndication also distributes the first-run specials *The Remarkable Journey* and the *Good Housekeeping Reports* inserts."[12]

A recent merger agreement between NBC and French media conglomerate Vivendi Universal, if approved by regulators, would make the new NBC-Universal the nation's third-largest media company. The new company would add to the NBC holdings the Universal movie and television studios, along with USA, Sci-Fi and Trio cable networks.

Many of the cable channels have developed spin-offs, giving us Lifetime Real Woman, ESPN Extreme Sports, and the like.

Tom Wolzien, senior media analyst for Bernstein Research, notes that despite hundreds of broadcast and cable choices available, the nation's media remain controlled by a handful of media companies.

> Last season ABC, CBS and NBC split about 23 percent [of television ratings]. … But if the viewing of all properties owned by the parent companies – Disney, NBC, and Viacom — is totaled, those companies now directly control television sets in over a third of the TV households. Add AOL [Time Warner], Fox and networks likely to see consolidation over the next few years (Discovery, A&E, EW Scripps, etc.), and five companies or fewer would control roughly the same percentage of TV households in prime time as the three net[work]s did 40 years ago. The programming oligopoly appears to be in a process of rebirth.[13]

David Croteau, Ph.D., associate professor in the Department of Sociology and Anthropology at Virginia Commonwealth University, makes the same assessment.

"While the expansion of cable and the rise of the Internet have produced more outlets, not much has changed in terms of who owns and controls these outlets," he said in testimony before an FCC field hearing on changes in the media ownership rules.

"Broadcast networks and cable providers control 90 percent of the most popular cable channels. The Internet's most popular Web sites are also mostly owned by the same handful of media companies who dominate other parts of the industry.

"New media *outlets* often do NOT mean new media *content*, either. Instead, broadcast TV programs are recycled for cable channels. Newspaper and cable news content is repackaged for the Internet, and so on."[14]

Content and Competition?

Gail Berman, Fox Entertainment president, told the Gannett News Service bluntly in October 2002 that broadcasters were losing viewers to cable: "We're under siege. And in order to (fight) that, we must be able to compete with *The Shield*, or *The Sopranos*, or *The Osbournes*."[15]

That quote came just as Fox premiered its controversial undercover drama *Fastlane*, a show that pushed all limits in the 9 p.m. hour. The show was rated TV-14-S-L-V-D,

meaning unsuitable for 14 and younger with intense violence, intense sexual situations, coarse language and intensely suggestive dialogue.[16]

Broadcasters are feeling the pinch. The summer of 2002 saw the combined cable audience exceed the combined broadcast audience for the first time. The major networks feel they could soon become irrelevant.

That "competition" with cable is the main reason operators of broadcast networks have justified pushing the indecency envelope, according to Jeffrey McCall, a communications professor at DePauw University in Greencastle, Indiana.

"Since most viewers don't know the difference between cable and over-air programs, or care one way or the other, network programmers must figure they can push content limits and not really offend anybody," he told *Gannett.*[17]

But is the claim of "competition" from cable believable where the same company owns both outlets? Or is "competition" merely an excuse to lower broadcast programming to better facilitate the recycling of programming?

We are already seeing successful cable programs moving to the broadcast networks and less successful broadcast programming disappearing to cable. Examples of the cable-to-broadcast movement are *The Victoria's Secret Fashion Show, Queer Eye for the Straight Guy* and *Monk.* Could the nation's handful of media conglomerates be turning up the heat in their broadcast programming simply to facilitate future broadcast of cable's popular shows like *The Sopranos, The Osbournes, The Shield,* or *Sex and the City?*

NBC has used the Bravo Network's *Queer Eye for the Straight Guy* as a fill-in program. The show first aired at 10 p.m., following *Will & Grace.* Then, as NBC juggled its fall lineup, it placed the show in the 8 o'clock family hour as *Miss Match* sank in the ratings.

One thing is clear. Broadcast networks are not competing with cable — they *are* cable. (They own cable or cable owns them.) And the conglomerates are creating an increasing number of cable channels, slicing the viewing audience pie even further.

Changes proposed by the FCC to allow still more local broadcast stations to be owned by the media conglomerates will only worsen the situation.

"If the six large media conglomerates were allowed more control over the airwaves, community standards and local accountability would be swept away," said Brent Bozell, president of the Parents Television Council. "The networks have simply ignored the public's standards of decency and the same holds true for the FCC."[18]

Retransmission Consent Links Cable and Broadcasting

According to James M. Gleason of CableDirect, these new media conglomerates are using the government-approved retransmission consent – the third tier of the "must-buy"

mentioned earlier – in ways Congress never intended. Gleason told a Senate Commerce Committee Hearing:

> Oftentimes, in order to get the local ABC or Fox affiliate, Disney and Fox will force us through retransmission consent to take and pay for other channels we know our customers don't want. This abuse of retransmission consent goes farther — in order to get consent to carry a local broadcast station in one market, our members are forced to carry Disney and Fox's satellite programming in other markets, where Disney and Fox do not even own the broadcast station. For example, is it really in the public interest for all of my customers to pay for recycled soap operas, a programming service for which most of them have absolutely no interest, just so some of my customers can be permitted to watch their ABC affiliate?[19]

This rule, he adds, is why cable bills are skyrocketing; customers are paying for an increasing number of channels for which they have no interest. Many, if not most, of these "throw away" channels are forced onto customers at the basic subscription tier, which shoehorns them into as many homes as possible.

Cable Companies on the Verge of Becoming Monopolies

Cry as they do about price gouging from program producers, cable companies are in their own consolidation race, and often hold monopolies in some communities, thanks to community charters barring competition.

Also, while the cable industry comprises about 11 equal-sized competitors, according to the FCC's ninth annual report on cable/satellite video competition, many hold monopoly power within their region. That point-of-sale monopoly, called clustering, has increased 75 percent since 1994. Only 10 percent of cable franchise territories face head-to-head competition from another cable company.[20]

Kimmelman with the Consumers Union also maintains that satellite video distribution systems do not compete directly with cable, and therefore have had no impact on cable costs. He notes that the cable industry is 3.5 times larger than satellite and that many satellite customers live in areas not served by cable.[21]

That lack of competition makes it easy for cable companies to simply pass the added costs on to their customers. It also makes them reluctant to embrace reform ideas such as a la carte pricing, where customers pay only for the channels they wish to receive.

Such pricing strategies in the current media environment would reduce the number of households reached by many cable channels, and would in turn reduce the amount the cable companies can charge for advertising.

But some cable operators are beginning to see the light, thanks mostly to cost excesses of sports programming. In July 2003, Time Warner Cable reached an agreement with the

Yankees Network that allows New York subscribers to "deselect" the Yankees and save a dollar or two a month on their cable bill.

Cox Communications CEO James Robbins, who is fed up with the cost increases of the ESPN Network, has indicated he is considering charging for sports channels separately. He estimated that three-quarters of his customers would drop the channel if it meant saving money on their monthly cable bill.

Gleason of CableDirect has also endorsed the idea of a la carte pricing, as has Charles Doan, chairman of Cablevision Systems.

Yet the cable industry has yet to fully embrace the idea. While Time Warner Cable is allowing New York customers to pick and choose when it comes to the Yankees, president and CEO Glenn Britt is an outspoken critic of a la carte cable pricing proposals.

"Neither cable operators or DBS providers are free to unilaterally make this happen. Most contracts between programmers and distributors such as cable include precise stipulations about channel and tier placement, as well as pricing terms. Under an a la carte system, those constraints would need to be re-negotiated. Each programmer would try to charge enough to make up for lost subscribers and lost advertising. Consumers would pay considerably more per channel," Britt told the National Cable and Telecommunications Association.[22]

He added that a la carte pricing would drive marginal programmers out of business and raise the entry barrier for new networks.

If by "new networks" Britt is referring to Lifetime Real Women, WAM!, MTV Hits, or Walt Disney Co.'s ESPNews, one is left scratching his head. Today, only one highly successful channel is independent of the major media conglomerates: The Weather Channel.[23]

But while Britt says he has the customer's best interest at heart, it was Time Warner Cable that told its New York City analog customers that they would no longer receive various channels including HBO2 and HBO Family unless they upgraded to digital cable for an extra $10 a month.[24]

And what of these dozens of new channels like MTV Hits, VHI Classic, and ESPNews? The programming conglomerates created many of these at the request of cable companies as a way to promote digital cable. They were not created to meet public demand.[25]

New, Limited Law Helps with Cable Bills

Another way programming conglomerates and cable companies work to each other's benefit is through the previously mentioned channel tier pricing system, where very few channels are priced separately. Although customers cannot be required to buy increasing tier levels simply to purchase channels marketed separately like HBO, Showtime and

pay-per-view [a practice called tier buy-through], that is a fact about which cable operators remain largely silent.

“It’s up to our clients [the cable operators] to decide how they offer our services,” Jeff Wade, executive vice-president for sales and affiliate marketing at Showtime Networks, told *Business Week Online.* “It’s our hope that our affiliates would use whatever tactics are available to increase their premium penetration.”[26]

The 1992 Cable Act, however, prohibits the tier buy-through practice. . That provision went into effect in early October 2002, but is rarely acknowledged by cable companies.

Yet, savvy customers aware of the provision can cut their cable bills in half, although the law is structured in such a way as to be of only moderate benefit to cable customers who are less interested in the premium movie channels.

The actual law reads:

> A cable operator may not require the subscription to any tier other than the basic service tier required by paragraph (7) as a condition of access to video programming offered on a per channel or per program basis. A cable operator may not discriminate between subscribers to the basic service tier and other subscribers with regard to the rates charged for video programming offered on a per channel or per program basis.[27]

This means that while customers are required to purchase the basic cable package, containing local channels and the public access channels required by law, they cannot be required to purchase further tiers of programming to access channels marketed on a per-channel basis, like Showtime, HBO or pay-per-view.

The key to this provision’s helpfulness to consumers rests in how the majority of cable channels are marketed. According to the FCC’s Fact Sheet titled “Consumer Options for Selecting Cable Channels and the Tier Buy-Through Prohibition”[28]:

> The cable operator and the entity that owns the channel or programming service may negotiate the terms and conditions that will govern the carriage of the channel or service on the cable system. Such negotiation may include whether the channel or service will be offered in a package with other programming or whether the channel or service will be offered on a per-channel or pay-per-view basis.

Programmers’ practice of dictating to cable operators that their channel must be on the basic tier stems from an effort to reach as many subscriber homes as possible. That means that as programming deals are re-negotiated with cable operators in the wake of this law, more programming will be wedged into the basic cable tier.

That results in little, if any, flexibility over what customers pay to have pumped into their home.

A good example is Laurnes, Iowa. There, cable operator Mediacom advertises a “Family Package.” Does this give citizens a programming tier that takes local community standards for family viewing into account? No.

According to the Parents Television Council:

> There is no difference between this package and any other basic cable package offered by other cable providers.
>
> In addition to local channels, the package includes standard cable channels like Discovery, MTV, FX, and CNN. Mediacom is a large service provider and is not able to customize cable packages for individual communities nor does it offer a la carte packages where customers can deselect specific channels due to content concerns.[29]

That means that, in Mediacom’s opinion, the French kiss between Madonna and Britney Spears on MTV and the sex-laden and graphic *Nip/Tuck* on Fox are suitable family viewing.

But in Hawarden, Iowa, the cable system HiTech is locally owned. A committee of community residents makes programming decisions. While cost has been the biggest factor to date for programming decisions, the committee has the power to reject channels based on content that violates community standards.

It’s Time to Let the Market Decide

The tiered system doesn’t have to exist. The buy-through prohibition in the 1992 Cable Act is the seed of an idea whose time has come. With the issue of media consolidation now before Congress, and leading lawmakers enraged over the rapidly growing costs of cable and the increasingly foul content of broadcast and cable programming, the stage is set for crafting a more consumer-friendly system.

Congress should act now to re-balance the national media toward the public interest in the wake of a decade of media consolidation. That justified deregulation was done in the name of a free market. Yet, can a market be truly free if customers have their purchases and choices dictated?

Could such a change in the marketing of cable result in fewer cable channels? More than likely. It’s doubtful that a channel programming nothing but recycled soap operas would survive. But would that signal an end to viewing choices for soap fans? No, at least not if they choose to invest their money in a VCR instead. Has anyone asked the public if they really want the cost and clutter of 200-plus channels piped into their homes?

Cable choice or a la carte pricing would require cable channels to be more responsive to their target audience if they wish to survive. If a channel such as Bravo wishes to attract homosexuals to its audience, then its programming should reflect that. However, that channel has no business forcing those who are not so-inclined to pay for it or have it in their homes. In that regard, a la carte pricing would improve the programming of niche channels, and encourage cable channels to serve their public.

A la carte pricing would give the consumer leverage against channels that push the envelope of decency and routinely violate community standards. For example, FX, a cable channel that now forces itself into every cable-subscribing home through its placement on the basic cable tier, would either have to tame shows like *Nip/Tuck* that push the boundaries of common decency or become a niche channel through loss of subscribers.

The time to act is now, while lawmakers are reviewing the issues of media consolidation, cable pricing and increasing levels of television sex and violence.

The first thing citizens can do is call, write or e-mail members of the House and Senate Commerce committees that oversee these issues. You should also contact House and Senate leadership and your own senators and representatives. With enough public outcry, changes can be made for the better.

The message should be simple: Tell your representatives that it is time for market forces to control the cable industry. Media conglomerates assume their viewers are happy with increasing levels of indecency and vulgarity in their entertainment choices. But how can they know for certain, if all customers are forced to pay for the programming?

The cable industry may be surprised to find that its coveted 18-30 male demographic isn't necessarily the household member who pays for the cable service. It's time to end big media's welfare program and to give customers choice.

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