more for the same premium channel or pay-per-view event - all subscribers are offered the same rate for these channels. However, this definition also does not require the cable operator to charge the same rate for different pay channels, events, or programming packages offered to the same subscriber.

The Commission must be careful not to adopt an overly broad definition of discrimination that would force cable operators to diminish marketing innovations and promotional discounts which would reduce the programming choices made available to subscribers.[31] Thus, a cable operator who offers discounts for the purchase of multiple premium service packages does not engage in discrimination so long as the same discounts are available to basic-only subscribers. Such package discounts reflect non-discriminatory economic incentives. As the subscriber adds premium or pay channels, the marginal utility for additional programming may diminish. The nondiscrimination clause should not prevent the cable operator from providing additional premium channels at a reduced price to both basic-only and expanded tier subscribers which maximizes efficiency in the distribution of video programming. The same analysis would apply whether the cable operator offers a specific group of premium channels for a reduced price or whether it applies a discount for every second, third, etc. premium channel added by the subscriber. Using this

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[31]The Commission has long recognized that in the rapidly evolving video marketplace, operators must have the maximum flexibility in packaging their services. Community Cable TV, Inc., 95 FCC 2d 1204 (1983).

analysis, the discounts suggested in paragraph 8, footnote 7 of the Notice are nondiscriminatory so long as basic subscribers can also take advantage of these discounts on the same basis as expanded tier subscribers.

Enforcement of the buy-through prohibition should be accomplished by resolving disputes as they arise on a case-by-case basis. Since this provision is part of the basic tier rate regulation scheme of §623(b) of the Act, the implementation and enforcement provided for in that section of the 1992 Cable Act should apply.[32] Under this dispute resolution provision, enforcement by the FCC would be conducted by resolving the tier buy-through disputes that are brought before the Commission by franchising authorities or cable operators. This enforcement scheme leaves to the franchising authority the initial resolution of disputes, which reduces administrative burdens on the FCC.

CONCLUSION

Commenters urge the Commission to apply the ten year grace period to any system which would be required to incur more than nominal costs to comply. Moreover, cable operators should not be required to compromise security against theft in order to comply with anti buy-through. In addition, the Commission should not prematurely force cable systems to implement current technology to accommodate anti buy-through at the expense of more flexible technologies on the horizon. Finally, the Commission should encourage flexible marketing strategies which will maximize

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[32] 47 U.S.C. §543(b)(5)(B).

consumer choice as it enforces the rate nondiscrimination clause of the anti buy-through provision.

Respectfully submitted,

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