

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

DOCKET FILE COPY ORIGINAL
RECEIVED

JAN 28 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of Section 3 of the)
Cable Television Consumer Protection)
and Competition Act of 1992)
)
Tier Buy-Through Prohibition)

MM Docket No. 92-262

To: The Commission

REPLY COMMENTS OF PRIME CABLE

These Reply Comments are submitted on behalf of Prime Cable. 1/ Prime Cable operates a cable system serving a substantial part of the City of Chicago. The Chicago system has less than 30 percent penetration and thus is not subject to regulation under Section 623 of the 1992 Cable Act, including the "tier buy-through" provision.

None of the comments submitted in this rulemaking have focused on the fact that the tier buy-through provision of the 1992 Act applies only to systems that are subject to rate regulation. 2/ The buy-through provision, Section 623(a)(8) of the Act, prohibits cable operators

1/ "Prime Cable" is the name by which various related partnerships are generally known in the industry.

2/ One commenter alluded to the fact that exemption from rate regulation would necessarily exempt a system from tier buy-through restrictions, but that concept was never fully explored. Comments of Encore Media Corporation at n.11.

No. of Copies rec'd
List ABCDE

079

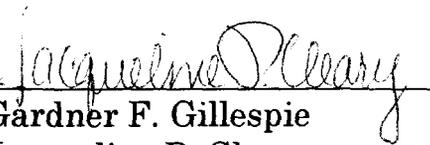
from requiring subscription to any tier other than the basic tier under Section 623(a)(7) as a condition for receiving video programming on a per-channel or per-program basis. Neither the specific requirement of a "basic tier," nor the buy-through provision applies to cable systems not subject to rate regulation. Those provisions are subsections of the rate regulation section, which applies only to systems not subject to effective competition.

The requirements for establishing a "basic tier" and prohibiting a "buy-through" of any other tier both relate directly to the Act's rate regulation provisions. Congress intended to assure that a basic tier subject to local rate control would be available to all subscribers in a rate regulated system, and that these subscribers would be allowed to obtain premium services without having to purchase an additional program tier. One of the primary intentions of the buy-through provision is to encourage rate regulated cable operators to expand the basic tier subject to rate regulation. The House Report states that the basic service tier requirement "sets forth the minimum programming that is to be offered on the regulated basic service tier." H.R. Rep. No. 102-628, 102d Cong., 2d Sess. at 85 (1992) (emphasis added). And the anti buy-through provision "prohibits cable operators from requiring subscribers to purchase any tier of service other than the regulated basic tier before being permitted to purchase programming offered on a per-channel or per-program basis." *Id.* (emphasis added). The legislative history is clear, therefore, that the anti buy-through provision does not apply to systems not subject to basic

rate regulation. We respectfully request the Commission to note this fact in its Report and Order concluding this rulemaking.

Respectfully submitted,

PRIME CABLE

By 
Gardner F. Gillespie
Jacqueline P. Cleary

HOGAN & HARTSON
555 13th Street N.W.
Washington, D. C. 20554

Its Attorneys

Dated: January 28, 1993

CERTIFICATE OF SERVICE

I, Peggy E. Gelinas, hereby certify that copies of the foregoing Reply Comments of Prime Cable were mailed, by first class mail, postage prepaid this 28th day of January, 1993 to:

James E. Meyers, Esq.
Baraff, Koerner, Olender & Hochberg
5335 Wisconsin Avenue, N.W.
Suite 300
Washington, D.C. 20015-2003

Counsel for Encore Media Corporation


Peggy E. Gelinas