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

In the Matter of:	)	
	)	
Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-262
	)	
Tier Buy-Through Prohibitions	)	

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To: The Commission

REPLY COMMENTS OF VIACOM INTERNATIONAL INC.

Viacom International Inc. ("Viacom"), by its attorneys, hereby submits its reply comments in the above-captioned proceeding. Viacom's reply is filed solely to respond to a statutory interpretation espoused in the comments of Time Warner Entertainment Company, L.P. ("Time Warner") and Newhouse Broadcasting Corporation ("Newhouse") regarding the definition of a "tier" for purposes of the buy-through prohibition.

Both Time Warner and Newhouse state that services offered on an *á la carte* basis do "not meet the definition of a service tier since they are not sold as a group for a single price." *See* Comments of Time Warner at 34; Comments of Newhouse at 18. As a result, they claim that "an offering of access to premium or pay-per-view channels on the condition that the subscriber agrees to purchase one or more individual and unbundled non-basic programming channels is not a violation of the buy-through prohibition because the subscriber is not required to buy-through any tiers . . . ." Newhouse Comments at 18. In short, they argue

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that the anti-buy-through provision does not prohibit an operator from requiring a subscriber to buy-through one per channel service in order to obtain another. Viacom respectfully submits that this interpretation is inconsistent with both the intention of Congress and the plain language of the Act.

The anti-buy-through provision states that "[a] cable operator may not require the subscription to any tier other than the basic service tier . . . as a condition of access to video programming offered on a per channel or per program basis." 47 U.S.C. § 543(b)(8)(A). Contrary to the conclusions of Time Warner and Newhouse, a "tier," for purposes of the buy-through prohibition, may consist of only one service. A "service tier" is defined in the Communications Act as "a category of cable service or other services provided by a cable operator and for which a separate rate is charged by the cable operator." 47 U.S.C. § 522(16). This definition expressly contemplates that a single service may constitute a service tier if a separate rate is charged by the operator.

Not only is this interpretation required by the plain language of the statute, but it is consistent with the goal of the Act in general and the anti-buy-through provision in particular to enhance subscriber choice in the selection of program services to the greatest extent possible. House Committee on Energy and Commerce, H.R. Rep. No. 102-628, 102d Cong. 2d Sess. (1992), at 90; Notice of Proposed Rule Making, in

MM Docket No. 92-262, FCC 92-540 (rel. Dec. 11, 1992), at ¶3; see also Comments of Cablevision Systems Corporation at 3. The interpretation espoused by Time Warner and Newhouse, however, runs counter to this objective because it would allow a cable operator to force a subscriber to purchase an unwanted per channel service in order to gain the desired one. Indeed, this is the precise harm addressed by the anti-buy-through provision.[1]

In sum, in order to allow subscribers to have the maximum flexibility in their selection of program services, a "tier," for

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[1] It should be noted that the definition of "tier" for purposes of the anti-buy-through provision has no impact on the applicability of rate regulation to services offered on a per channel basis. The rate regulation provision states that "rates for cable programming services shall be subject to regulation by the Commission . . . ." 47 U.S.C. § 543(a)(2)(B). The term "cable programming service" is, in turn, defined as "any video programming provided over a cable system, regardless of service tier . . . other than (A) video programming carried on the basic service tier, and (B) video programming offered on a per channel or per program basis." 47 U.S.C. § 543(l)(2) (emphasis added).

purposes of the buy-through prohibition, may consist of a single per channel service.

Respectfully submitted,

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