

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D. C.

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FEDERAL COMMUNICATIONS COMMISSION  
STATIONERY

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

MM Docket No. 92-262

REPLY COMMENTS OF TELE-COMMUNICATIONS, INC.

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1155 21st Street, N.W.  
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Its Attorneys

January 28, 1993

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REPLY COMMENTS OF TELE-COMMUNICATIONS, INC.

Tele-Communications, Inc. ("TCI"), by its attorneys, files its Reply Comments in the above-captioned proceeding. TCI reiterates its full support for the policy initiatives surrounding the tier buy-through prohibition provision of section 3(b)(8) of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). The initial comments focus on two issues: the means for technical compliance and the appropriate interpretation of the discrimination prohibition of section 3(b)(8). This reply briefly responds to the comments on these two points.

Technical Compliance.

As stated in TCI's original comments, TCI is planning to implement a program designed to eliminate the technical barriers to complying with the tier buy-through prohibition.<sup>1</sup> TCI's

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<sup>1</sup> See Comments of TCI at pp. 2-5.

approach involves a series of channel reconfigurations as well as the addition, removal, and replacement of traps in ways specially configured for virtually each individual TCI cable system. This system-by-system approach, with both its cost and marketing implications, is one which TCI has elected to undertake for early implementation of the buy-through requirements.

As TCI's comments explained, its solution will achieve the required results only if two assumptions are correct. First, a must-carry station whose on-air channel position is a number that exceeds the total number of basic service tier channels cannot be carried on its on-air position. Thus, the Commission's tentative proposal in the Must Carry proceeding to refrain from imposing any such requirement must be adopted.<sup>2</sup> Second, local franchise requirements may impose conflicting requirements at odds with the new Cable Act and its implementation, specifically, requirements for the cable operator to carry on the basic tier a large number of channels in excess of the statutory "basic service tier." TCI's approach cannot be implemented if these franchise requirements remain in effect, and thus they should be preempted. Of course, their preemption is essential to the Cable Act's rate regulatory schema as well.<sup>3</sup>

Several commenters described the difficulties with complying with the tier buy-through prohibitions using non-addressable

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<sup>2</sup> Notice of Proposed Rulemaking in MM Docket No. 92-259, FCC 92-499 (rel. Nov. 19, 1992) at ¶ 33.

<sup>3</sup> See TCI Comments in MM Docket No. 92-266 (filed January 27, 1993).

technology.<sup>4</sup> While these comments have not dissuaded TCI to abandon its unique approach, TCI does not believe that it should serve as an industry-wide solution. TCI in fact concurs with the majority of the commenters that support the Commission's tentative legal conclusion that cable systems which were not designed or built with addressable technology are by definition within the scope of the Act's 10-year exemption.<sup>5</sup>

Discrimination Provision.

There is near unanimous agreement that the Commission must construe the discrimination provision of section 3(b)(8)(A) in the limited way intended by Congress. The language in question was plainly intended to reach "discrimination" in price such that a "buy-through" was effectively achieved through pricing rather than by outright requirement. To construe it more broadly would disserve consumers.

Cable operators should be given the flexibility of selling several services to the same subscriber by packaging them at a discount.<sup>6</sup> This will allow subscribers to share in the efficiencies of single transactions for multiple services. Permissive packages include, among others, discounts for two or more premium services and "value packages" that reduces the price

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<sup>4</sup> See, e.g., Comments of National Cable Television Association at pp. 4-9 ; Comments of Continental Cablevision at pp. 2-10.

<sup>5</sup> See Notice at ¶ 6. See also Comments of Community Antenna Television Association at p. 3.

<sup>6</sup> See, e.g., Comments of Cablevision Systems Corp. at pp. 8-9; Comments of NCTA at pp. 17-19.

of the "upper tier" if the subscriber takes "upper tier" and pay programming.<sup>7</sup> So long as basic subscribers have these same options available to them, they are not being "discriminated" against within the meaning of the statute or as a matter of common sense. FCC clarification of this point will promote consumer interests by adding certainty to future marketing planning and practices.

Respectfully submitted,  
TELE-COMMUNICATIONS, INC.



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<sup>7</sup> In its comments submitted in Rate Regulation, MM 92-266, filed January 27, 1993, TCI explained that the equipment regulation section, section 623(b)(3)(A), also precludes the same type of discrimination with respect to equipment rates for subscribers who choose to not "buy-through" cable programming services. As also discussed there, the packaging of premium channels does not transmogrify these channels or their packages into "tiers" for purposes of determining their regulatory classification.