

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C.

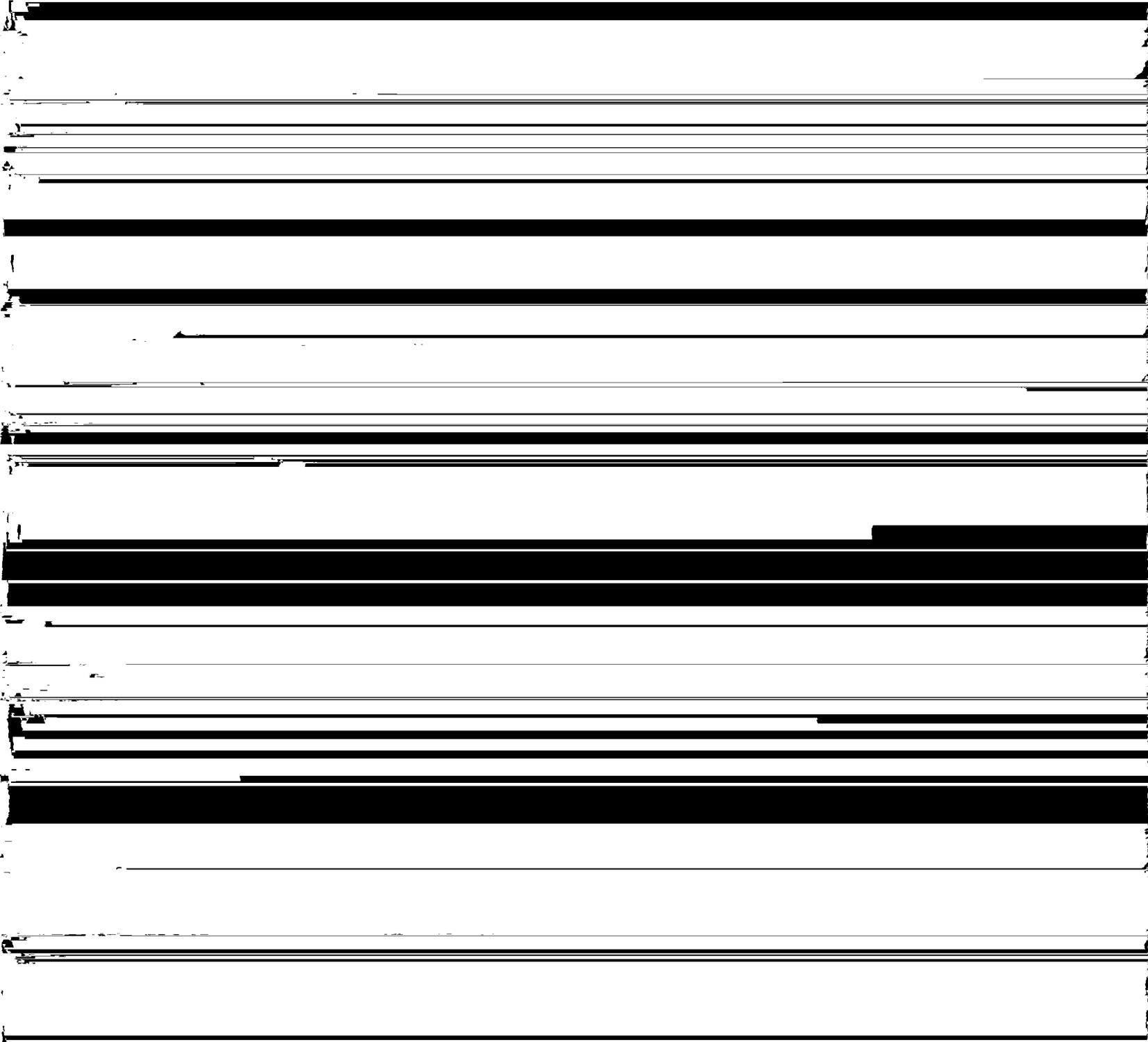
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Section 3)
of the Cable Television)
Consumer Protection and)

MM Docket No. 92-262



In its Report and Order in this proceeding, the Commission determined that the tier buy-through restriction extends to every cable system. Little support was provided for this position. Stating simply that the legislative history of the buy-through provision "speaks to giving subscribers in general the right to purchase, where possible, only those

[REDACTED]

The buy-through provision is set out at Section 623(b)(8) of the Act, 47 U.S.C. § 543(b)(8), as a subsection of Section 623(b). Section 623 establishes the general framework for rate regulation; Section 623(b) specifically requires establishment of basic service tier rate

(1992). Such explanation would make no sense unless Congress understood the buy-through prohibition to be necessary and to apply only in a rate regulated environment. Indeed, as Senator Inouye, a co-sponsor of the Senate bill, explained, the rate regulation provisions, including the tier buy-through prohibition, were necessary components of the Act because "Congress must respond to the unfair practices that occur when the cable operator is a monopoly. But there is no need for Government involvement where there is competition." 138 Cong. Rec. S 14223 (September 21, 1992) (statement of Senator Inouye) (emphasis added).

That Congress intended the provision of service on the basic tier to be unregulated where competition exists is entirely consistent with the underlying objective of the statute -- to enhance viewer choice through regulation in the absence of competition. Regulations promulgated under Sections 623(b)(1)-(4) are all meant to bring basic service in line with the type of service that would be offered in a competitive environment. In this regard, the buy-through provision was adopted to encourage rate regulated cable operators to act as if subject to competition by adding programming to the basic tier of service.

There is nothing in the legislative history that remotely supports the Commission's interpretation. The legislative history cited by the Commission simply does not address whether the buy-through provision applies in a

competitive market. In fact, the Senate Report on which the Commission relies does not discuss the issue at all, since the buy-through prohibition emerged solely from the House version of the bill. While it is beyond doubt, as the Commission noted, that the tier buy-through provision is meant in general to increase viewer choice, there is no basis for extrapolating from such purpose that the prohibition applies in all circumstances. To the contrary, competitive systems exempt from rate regulation are also exempt from the buy-through prohibition.

Accordingly, Prime respectfully requests that the Commission conclude on reconsideration that the tier buy-through prohibition does not apply to cable systems subject