

FEDERAL COMMUNICATIONS COMMISSION



FACT SHEET

February 2003

CONSUMER OPTIONS FOR SELECTING CABLE CHANNELS AND THE TIER BUY-THROUGH PROHIBITION

Q: Who determines the programming services that are available on a cable television system?

A: In general, a cable television operator has the right to select the channels and services that are available on its cable system. With the exception of certain channels, such as local broadcast television channels, that are required to be carried by federal law, the cable operator has broad discretion in choosing the channels that will be available and how those channels will be packaged and marketed to subscribers. In order to maximize the number of subscribers, the cable operator selects channels that are likely to appeal to a broad spectrum of viewers.

Q: May a cable subscriber be required to purchase a specific programming package?

A: Yes, in most cases. In general, cable companies are required to offer a basic service tier and all subscribers must purchase this tier before purchasing any other video programming. The basic service tier is required to include, at a minimum, the local broadcast television stations carried on the system and all of the public, educational, and governmental (PEG) access channels that the operator may be required to include pursuant to an agreement with the local government. After complying with these minimum requirements, the cable operator may offer additional programming as part of the basic service tier.

Q: Who determines how cable channels or programming services are packaged and marketed to subscribers?

A: Typically, with the exception of programming that is required to be carried on the basic tier, the cable operator and the entity that owns the channel or programming service may negotiate the terms and conditions that will govern the carriage of the channel or service on the cable system. Such negotiation may include whether the channel or

service will be offered in a package with other programming or whether the channel or service will be offered on a per-channel or pay-per-view basis.

Q: What does it mean when a channel is offered on an *a la carte* (per-channel) or pay-per-view basis?

A: “*A la carte*” means that a channel is offered on an individual per-channel basis rather than as part of a package or tier of programming. For example, premium movie services are often offered on an individual basis rather than as part of a package of several channels. “Pay-per-view” means there is a separate charge for each program or event. For example, a separate rate may be charged for each movie or for a specific sports event. The rates charged for per-channel or pay-per-view programming are not subject to review by federal or local authorities.

Q: What is the “tier buy-through” prohibition in the 1992 Cable Act?

A: The tier buy-through provision of the 1992 Cable Act generally prohibits cable operators from requiring subscribers to purchase tiers of programming, other than the basic service tier, in order to obtain access to video programming offered on a per-channel or per-program basis. In addition, the provision prohibits a cable operator from discriminating between consumers who subscribe to only the basic tier and other subscribers with regard to the rates charged for programming on a per-channel or per-event basis. The tier buy-through provision does not apply if the cable operator is subject to “effective competition” as that term is defined by federal law. In addition, a cable operator may request a waiver of the tier buy-through prohibition from the Commission.

Q: Does the tier buy-through prohibition of the 1992 Cable Act permit cable subscribers to select and purchase only the channels the subscriber wants to receive?

A: Not in all cases. The tier buy-through provision only applies to programming offered on a per-channel or per-program basis. For example, if a movie channel, such as HBO, is marketed as a per-channel service, the cable operator cannot require a subscriber to purchase any tier of service (other than the basic tier) in order to receive the HBO service.

Q: May a cable operator require the purchase of one tier of programming in order to subscribe to another tier?

A: Yes. Because the tier buy-through prohibition only applies to programming offered on a per-channel or per-program basis, programming, such as MTV and CNN, that is available only as part of a tier, is not subject to the tier buy-through prohibition. Thus, a cable operator is not required to make these services available on an *a la carte* basis and the operator may require that a subscriber purchase one or more tiers of programming in order to have access to other tiers of programming.

Q: Some “per channel” services, such as HBO, Showtime as well as other premium movie services, are being offered on a “multiplexed” basis (multiple screens of programming). Are these “multiplexed” services covered by the tier buy-through prohibition?

A: Yes. In adopting rules to implement the tier buy-through prohibition, the Commission determined that multiplex services are to be treated as per channel services. Thus, a consumer is not required to purchase any intervening tier or tiers of programming in order to subscribe to a multiplex service.

Q: Is the cable operator required to offer per-channel or pay-per-view programming?

A: No. Such services may be offered if the cable operator elects to do so. Cable operators, as well as other entities that offer video programming services to subscribers, such as satellite television providers, continue to have broad discretion to determine if services are offered on per-channel or pay-per-view basis and how programming will be packaged and marketed to consumers.

Q: May a cable operator require the use of a set-top box to receive per-channel or pay-per-view programming?

A: Yes. The tier buy-through provision does not prohibit the use of a set-top box in order to receive these services.

Q: Does the tier buy-through prohibition apply to other distributors, such as satellite television companies, which provide video programming to subscribers?

A: No. The requirements of the tier buy-through provision only apply to cable television system operators that are not subject to effective competition or that have not obtained a waiver from the Commission. It does not apply to other entities, such as satellite television companies, which distribute multichannel video programming services to subscribers.