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Attorneys for Plaintiff  
Federal Trade Commission

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

**FEDERAL TRADE COMMISSION,**  
Plaintiff,

v.

**DIRECTV,**  
a corporation,  
and

**DIRECTV, LLC,**  
a limited liability company,

Defendants.

Case No.

**COMPLAINT FOR PERMANENT  
INJUNCTION AND OTHER  
EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), for its Complaint alleges:

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and Section 5 of the Restore Online Shoppers’ Confidence Act (“ROSCA”), 15 U.S.C. § 8404, to obtain permanent injunctive relief,

1 rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-  
2 gotten monies, and other equitable relief for Defendants' acts or practices in violation of Section  
3 5(a) of the FTC Act, 15 U.S.C. § 45(a), and in violation of Section 4 of ROSCA, 15 U.S.C. §  
4 8403, in connection with the advertising, marketing, and sale of Defendants' multi-channel video  
5 programming subscription service.

6 **JURISDICTION, VENUE AND INTRADISTRICT ASSIGNMENT**

7 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a),  
8 and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b, and 8404.

9 3. Venue is proper in this district under 28 U.S.C. § 1391(b), (c)(2), and (d), and 15  
10 U.S.C. § 53(b).

11 4. Assignment to the San Francisco Division is proper because Defendants have  
12 advertised and sold direct-to-home digital television service in San Francisco County to  
13 thousands of consumers who reside in the county.

14 **PLAINTIFF**

15 5. The FTC is an independent agency of the United States Government created by  
16 statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a),  
17 which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also  
18 enforces ROSCA, 15 U.S.C. §§ 8401 *et seq.*, which prohibits certain methods of negative option  
19 marketing on the Internet.

20 6. The FTC is authorized to initiate federal district court proceedings, by its own  
21 attorneys, to enjoin violations of the FTC Act and ROSCA, and to secure such equitable relief as  
22 may be appropriate in each case, including rescission or reformation of contracts, restitution, the  
23 refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b),  
24 56(a)(2)(A), 56(a)(2)(B), 57b, and 8404.

25 **DEFENDANTS**

26 7. DIRECTV, LLC is a California limited liability company with its principal place  
27 of business at 2260 East Imperial Highway, El Segundo, California 90245. At all times material  
28 to this Complaint, acting alone or in concert with others, DIRECTV, LLC has advertised,

1 marketed, distributed, or sold direct-to-home digital television service to consumers throughout  
2 the United States. DIRECTV, LLC is owned directly or indirectly by DIRECTV. DIRECTV,  
3 LLC transacts or has transacted business in this district and throughout the United States.

4 8. DIRECTV is a Delaware corporation with its principal place of business at 2260  
5 East Imperial Highway, El Segundo, California 90245. At all times material to this Complaint,  
6 acting alone, in concert with others, or through its subsidiaries, DIRECTV has advertised,  
7 marketed, distributed, or sold direct-to-home digital television services to consumers throughout  
8 the United States. Acting alone, in concert with others, or through its subsidiaries, DIRECTV  
9 transacts or has transacted business in this district and throughout the United States.

#### 10 COMMERCE

11 9. At all times material to this Complaint, Defendants have maintained a substantial  
12 course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act,  
13 15 U.S.C. § 44.

#### 14 DEFENDANTS’ BUSINESS ACTIVITIES

##### 15 Introduction

16 10. Defendants are the largest provider of direct-to-home digital television service  
17 and the second largest provider in the multi-channel video programming distribution industry in  
18 the United States. As of December 31, 2013, Defendants had approximately 20.3 million  
19 subscribers in the United States.

##### 20 Defendants’ Subscription Service

21 11. Defendants offer their direct-to-home digital television service to consumers by  
22 subscription. Defendants’ subscription service consists of a programming package, a satellite  
23 dish and other necessary equipment, and installation and support services.

24 12. Defendants typically require consumers to agree to a mandatory 24-month  
25 contract to receive programming. Defendants typically assess an “early cancellation fee” against  
26 customers who cancel their subscription before the end of 24 months. Defendants’ early  
27 cancellation fee is typically \$20 per month for each month remaining on a subscriber’s  
28 agreement. After 24 months, Defendants’ customers may become month-to-month subscribers.

1 Defendants' Marketing Practices

2 13. Defendants typically market their subscription service by disseminating  
3 advertisements with reduced rates for their programming packages. The advertisements appear  
4 in a variety of media, including television, print, mail, and the Internet. The rates are typically a  
5 set monthly charge for the first year of a two-year customer agreement ("initial period"). In the  
6 second year of the agreement, Defendants substantially increase the monthly charges of their  
7 programming packages. This increase in the monthly charge is typically as much as 50 to 70  
8 percent. Also, Defendants typically impose an additional \$3 to \$5 per month increase in the cost  
9 of the programming packages in the second year of the agreement.

10 14. In addition to the rates referenced in Paragraph 13, Defendants advertise that  
11 subscribers will receive additional premium channels, such as HBO, Cinemax and Showtime,  
12 free of charge for a limited period of time, *e.g.*, three months. Consumers must affirmatively  
13 cancel these premium channels before the end of the initial period to avoid monthly charges.  
14 Defendants charge substantial monthly fees, typically around \$48 per month, to consumers who  
15 take no action or otherwise remain silent. Defendants charge consumers for the premium  
16 channels without obtaining express informed consent.

17 15. Defendants' marketing practices have been the focus of tens of thousands of  
18 consumer complaints and of actions by the attorneys general of all 50 states and the District of  
19 Columbia.

20 Defendants' Deceptive Advertising Campaigns

21 16. In numerous instances since 2007, Defendants have disseminated or have caused  
22 to be disseminated advertisements for Defendants' subscription service, including but not limited  
23 to the attached Exhibits 1 through 3. These advertisements direct potential customers to  
24 Defendants' telephone numbers and Internet website, *www.directv.com*. These advertisements  
25 contain the following statements regarding pricing for their subscription service:

- 26 A. "All New! Limited Time Offer! . . . Now only \$19.99\*/mo." (Exhibit 1)  
27 (October 2014).  
28

1 B. "Package offers starting at \$24.99/mo. Limited Time." (Exhibit 2)  
2 (August 2013).

3 C. "Limited Time! \$24.99/mo for 12 months." (Exhibit 3) (July 2013).

4 17. To the extent that Defendants' advertisements described in Paragraph 16, above,  
5 contain any qualifying disclosures concerning the price consumers will pay after the initial  
6 period, any such disclosures are inadequate in terms of their content, presentation, proximity,  
7 prominence or placement such that consumers are unlikely to see or understand such disclosures.  
8 Similarly, to the extent that these advertisements contain any qualifying disclosures concerning  
9 the mandatory two-year contract length, any such disclosures are inadequate in terms of their  
10 content, presentation, proximity, prominence or placement such that consumers are unlikely to  
11 see or understand such disclosures.

12 18. Some of Defendants' advertisements described in Paragraph 16, above, also  
13 contain statements that subscribers will receive premium channels free of charge for three  
14 months. For example, Exhibit 1 states "over 30 premium channels free for 3 months."

15 19. To the extent that Defendants' advertisements described in Paragraph 16, above,  
16 contain any qualifying disclosures concerning the offer of free premium channels, any such  
17 disclosures are inadequate in terms of their content, presentation, proximity, prominence or  
18 placement such that consumers are unlikely to see or understand such disclosures. In particular,  
19 these advertisements do not convey to consumers:

- 20 A. That Defendants automatically enroll consumers in a negative option  
21 continuity plan with additional charges;
- 22 B. That consumers must affirmatively cancel the negative option continuity  
23 plan before the end of a trial period to avoid additional charges;
- 24 C. That Defendants use consumers' credit or debit card information to charge  
25 consumers monthly for the negative option continuity plan; and
- 26 D. The costs associated with the negative option continuity plan.
- 27  
28

Defendants' Deceptive Internet Sales Website

1  
2 20. Consumers who visit Defendants' website, *www.directv.com*, are required to  
3 navigate sequentially through at least eight webpages in order to select a programming package  
4 and purchase Defendants' subscription service. These webpages include: (a) the Landing page,  
5 (b) the Programming Package Selection page, (c) the Receiver page, (d) the Shopping Cart  
6 pages, and (e) the Confirmation page.

7 21. In numerous instances since 2007, Defendants have disseminated or have caused  
8 to be disseminated webpages, including but not necessarily limited to those attached as Exhibit 4  
9 (August 2013). These webpages typically contain statements that are identical or similar to the  
10 following:

11 A. "Limited Time. 140+ channels. \$24.99 month for 12 months" (Exhibit 4  
12 at page 1); and

13 B. "CHOICE: 150+ channels. Only \$29.99 month for 12 months" (Exhibit 4  
14 at page 2).

15 22. To the extent that Defendants' webpages contain any qualifying disclosures  
16 concerning the price consumers will pay after the "discount" period, any such disclosures are  
17 inadequate in terms of their content, presentation, proximity, prominence, or placement such that  
18 consumers are unlikely to see or understand such disclosures. In particular, Defendants'  
19 webpages do not convey that:

20 A. Defendants require consumers to remain a subscriber for two years, a  
21 mandatory term which carries an early cancellation fee for the failure to do  
22 so; and

23 B. Defendants charge significantly higher monthly prices for their  
24 programming packages during the second year of service.

25 23. Defendants' webpages typically contain statements concerning an offer of free  
26 premium channels that are identical or similar to the following: "Free for 3 months. HBO +  
27 Starz + Showtime + Cinemax." (Exhibit 4 at page 1).  
28

1           24.     To the extent that Defendants’ webpages contain any qualifying disclosures  
2 concerning the offer of free premium channels, any such disclosures are inadequate in terms of  
3 their content, presentation, proximity, prominence, or placement such that consumers are  
4 unlikely to see or understand such disclosures. In particular, Defendants’ webpages do not  
5 convey to consumers:

- 6           A.     That Defendants automatically enroll consumers in a negative option  
7 continuity plan under which Defendants charge consumers for access to  
8 premium channels after an initial free period, typically three months,  
9 unless consumers contact Defendants and cancel their access to the  
10 premium channels;
- 11           B.     That consumers must affirmatively cancel the negative option continuity  
12 plan before the end of the initial free period to avoid charges;
- 13           C.     That Defendants use consumers’ credit or debit card information to charge  
14 consumers for the negative option continuity plan; and
- 15           D.     The costs associated with the negative option continuity plan.

16                   *Defendants’ Deceptive Telemarketing Presentation*

17           25.     Consumers who call the telephone number listed in Defendants’ advertisements  
18 described in Paragraph 16, above, speak with a telemarketer. Defendants’ telephonic sales  
19 presentations typically include statements concerning the initial monthly prices that consumers  
20 will pay for programming packages. Defendants’ telephonic presentations do not adequately  
21 disclose the monthly cost to consumers of the programming packages during in the second year  
22 of their subscription agreements.

23                   *VIOLATIONS OF THE FTC ACT*

24           26.     Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts  
25 or practices in or affecting commerce.”

26           27.     Misrepresentations or deceptive omissions of material fact constitute deceptive  
27 acts or practices prohibited by Section 5(a) of the FTC Act.

**COUNT I**

*Failure to Disclose or Disclose Adequately Pricing of  
Defendants' Satellite Television Subscription Service*

28. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, and sale of Defendants' subscription service, Defendants have represented, directly or indirectly, expressly or by implication, that their programming packages can be purchased by paying the advertised monthly prices, typically for a twelve-month period.

29. In numerous instances in which Defendants have made the representation set forth in Paragraph 28 of this Complaint, Defendants have failed to disclose, or to disclose adequately, to consumers certain material terms and conditions of the offer, including but not limited to:

- A. The mandatory two-year agreement period, which carries an early cancellation fee, for the subscription service; and
- B. The significantly higher price for programming packages, typically \$25 to \$45 per month higher, during the mandatory second year of the consumer's agreement.

This additional information would be material to consumers in deciding to purchase Defendants' subscription services.

30. Defendants' failure to disclose or disclose adequately the material information described in Paragraph 29, above, in light of the representation described in Paragraph 28 above, constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**COUNT II**

*Failure to Disclose or Disclose Adequately Premium Channel Offer Terms*

31. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, and sale of Defendants' subscription service, Defendant have represented, directly or indirectly, expressly or by implication, that consumers could obtain certain premium channels for free for a certain period of time, typically three months.



1           32.     In numerous instances in which Defendants have made the representation set forth  
2 in Paragraph 31 of this Complaint, Defendants have failed to disclose, or disclose adequately, to  
3 consumers the material terms and conditions related to the costs of the offer, including:

- 4           A.     That Defendants automatically enroll consumers in a negative option  
5                   continuity plan with significant charges;
- 6           B.     That consumers must affirmatively cancel the negative option continuity  
7                   plan before the end of the trial period to avoid charges;
- 8           C.     That Defendants use consumers' credit or debit card information to charge  
9                   consumers for the negative option continuity plan; and
- 10          D.     The costs associated with the negative option continuity plan.

11          33.     Defendants' failure to disclose or to disclose adequately the material information  
12 described in Paragraph 32 above, in light of the representation described in Paragraph 31 above,  
13 constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. §  
14 45(a).

15                   **VIOLATIONS OF THE RESTORE ONLINE SHOPPERS'**

16                                   **CONFIDENCE ACT**

17          34.     In 2010, Congress passed ROSCA, 15 U.S.C. §§ 8401 *et seq.*, which became  
18 effective on December 29, 2010. Congress passed ROSCA because “[c]onsumer confidence is  
19 essential to the growth of online commerce. To continue its development as a marketplace, the  
20 Internet must provide consumers with clear, accurate information and give sellers an opportunity  
21 to fairly compete with one another for consumers' business.” Section 2 of ROSCA, 15 U.S.C. §  
22 8401.

23          35.     Section 4 of ROSCA, 15 U.S.C. § 8403, generally prohibits charging consumers  
24 for goods or services sold in transactions effected on the Internet through a negative option  
25 feature, as that term is defined in the Commission's Telemarketing Sales Rule (“TSR”), 16  
26 C.F.R. § 310.2(u), unless the seller (1) clearly and conspicuously discloses all material terms of  
27 the transaction before obtaining the consumer's billing information, (2) obtains the consumer's  
28

1 express informed consent before making the charge, and (3) provides a simple mechanism to  
2 stop recurring charges. 15 U.S.C. § 8403(1)–(3).

3 36. The TSR defines a negative option feature as: “an offer or agreement to sell or  
4 provide any goods or services, a provision under which the consumer’s silence or failure to take  
5 an affirmative action to reject goods or services or to cancel the agreement is interpreted by the  
6 seller as acceptance of the offer.” 16 C.F.R. § 310.2(u).

7 37. As described in Paragraphs 23-24, above, Defendants have advertised and sold  
8 access to premium channels, as part of their subscription service, to consumers through a  
9 negative option feature as defined by the TSR. See 16 C.F.R. § 310.2(u).

10 38. Pursuant to Section 5 of ROSCA, 15 U.S.C. § 8404, a violation of ROSCA is  
11 treated as a violation of a rule promulgated under Section 18 of the FTC Act, 15 U.S.C. § 57a.

12 **COUNT III**

13 *Failure to Disclose All Material Terms*

14 39. In numerous instances, Defendants have charged or attempted to charge  
15 consumers for access to premium channels, as part of its subscription service, through a negative  
16 option feature while failing to clearly and conspicuously disclose all material terms of the  
17 transaction before obtaining consumers’ billing information.

18 40. Defendants’ acts or practices, as described in Paragraph 39 above, constitute a  
19 violation of Section 4(1) of ROSCA, 15 U.S.C. § 8403(1), and are therefore treated as a violation  
20 of a rule promulgated under Section 18 of the FTC Act, 15 U.S.C. § 57a.

21 **COUNT IV**

22 *Failure to Obtain Consumers’ Express Informed Consent*

23 41. In numerous instances, Defendants have charged or attempted to charge  
24 consumers for access to premium channels, as part of their subscription service, through a  
25 negative option feature while failing to obtain consumers’ express informed consent before  
26 charging their credit card, debit card, bank account, or other financial account for those premium  
27 channels.

28

1 42. Defendants’ acts or practices, as described in Paragraph 41 above, constitute a  
2 violation of Section 4(2) of ROSCA, 15 U.S.C. § 8403(2), and are therefore treated as a violation  
3 of a rule promulgated under Section 18 of the FTC Act, 15 U.S.C. § 57a.

4 **PRAYER FOR RELIEF**

5 Wherefore, Plaintiff FTC, pursuant to Section 13(b) and 19 of the FTC Act, 15 U.S.C. §§  
6 53(b), 57b, Section 5 of ROSCA, 15 U.S.C. § 8404, and the Court’s own equitable powers,  
7 requests that the Court:

8 A. Enter a permanent injunction to prevent further violations of the FTC Act and  
9 ROSCA by Defendants;

10 B. Award such relief as the Court finds necessary to redress injury to consumers  
11 resulting from Defendants’ violations of the FTC Act and ROSCA, including but not limited to,  
12 rescission or reformation of contracts, restitution, the refund of monies paid, and the  
13 disgorgement of ill-gotten monies; and

14 C. Award Plaintiff the costs of bringing this action, as well as such other and  
15 additional relief as the Court may determine to be just and proper.

16  
17 Respectfully submitted,

18 Jonathan E. Nuechterlein  
19 General Counsel

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21 Dated: March 11, 2015

/s/ Eric D. Edmondson  
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