

*DTV attempts to enter into illegal agreements with television manufacturers to monopolize the market for High Power DBS service.*

103. In what DTV hopes will be the final blow to competition, DTV has entered into schemes to see that new HDTV televisions will be manufactured with DTV receivers built in the TV. In this way, DTV attempts to take the choice away from consumers on which High Power DBS system to purchase.
104. With the recent and long awaited arrival on the consumer market of HDTV, the race to provide this superior programming format has accelerated. High Power DBS offers a distinct advantage to satisfy this consumer demand and is able to offer programming features that match the capabilities of the new HDTV systems by providing sound and video signal of unmatched quality, together with multiple national and foreign channel access that cannot be offered through ordinary cable or off-air broadcast TV systems.
105. The Consumer Electronics Association estimates that within eight years every household in America will have converted to the HDTV system, and the existing televisions of today will be as obsolete as the eight track player of the 1970s. American consumers are likely to spend billions and perhaps trillions of dollars converting to the new and preferred HDTV system.
106. HDTV is an important emerging technology capable of offering much clearer television pictures than existing television sets by utilizing digital rather than analog technology. Many broadcasters are expected to switch to HDTV broadcasting, and federal legislation has established HDTV as a future standard. Because heavy consumer demand for HDTV is imminent, HDTV represents the largest margin product that consumer electronic retailers

will sell in the next few years and the retailers are simply too scared of the possibility of HDTV manufacturers refusing to deal with those retailers. Because of this fear, retailers are coerced into taking part in DTV's group boycott of *DISH Network*. The ability to offer this technology is very important to retailers of consumer electronics, and retailers that do not offer HDTV will be at a significant competitive disadvantage.

107. DTV has embarked upon a path to eliminate or greatly reduce the number of HDTV systems that are manufactured with the capacity to receive any DBS signal other than DTV's. DTV has contracted with and/or otherwise entered into arrangements with its co-conspirators and other third parties in restraint of trade to dominate the manufacturing of HDTV systems and to ensure that such HDTV systems will be built prohibiting reception of *DISH Network* signals. DTV's actions are taken to restrain trade and prevent competition between DTV and *DISH Network*.
108. DTV has entered into agreements with numerous major manufacturers of HDTV sets, including RCA, PROSCAN (another RCA brand), its affiliate, Hughes, and others, under which DTV High Power DBS receiving equipment will be built into the HDTV set as an internal piece of equipment.
109. This DTV receiver is capable of receiving only DTV High Power DBS service. Upon information and belief, DTV has offered payments to television manufacturers who agree to preclude *DISH Network*. Furthermore, as alleged above, DTV has offered payments to manufacturers to induce them not to develop or manufacture equipment also capable of

receiving *DISH Network* signals, even though development of such equipment is technologically feasible, with the purpose and effect of excluding *DISH Network* from the High Power DBS market.

110. If a consumer purchasing an HDTV set is forced to purchase an internal DTV receiver, competition for providing High Power DBS service to that consumer by anyone other than DTV is effectively foreclosed. Having already purchased an HDTV set with an internal receiver that is compatible only with DTV, a consumer is unlikely to purchase a second receiver in order to use the *DISH Network* system. Again, consumer electronic retailers are simply too scared to lose HDTV, their highest margin product, and so participate in DTV's boycott of *DISH Network*.

111. If DTV's scheme is successful, the consumer's choice of a High Power DBS system will not be determined by price or quality competition among High Power DBS providers, but rather by the anti-competitive consequences of agreements purposely designed to exclude *DISH Network* as competition to DTV and to prevent *DISH Network* from engaging in effective national advertising. For instance, DTV and RCA are also threatening retailers that they will be barred from selling HDTV sets from numerous manufacturers if they do not agree to discontinue or terminate sales of the *DISH Network* system, then at times of short supply, the retailers that sell *DISH Network* will not get their supply of HDTV sets.

112. DTV has thus orchestrated a plan to unlawfully tie the sale of HDTV sets to the purchase of DTV High Power DBS receiving equipment and High Power DBS service.

113. DTV is thereby attempting to harness the collective market power of the HDTV set manufacturers to eliminate competition for High Power DBS service and High Power DBS equipment. The purpose of DTV's unlawful scheme is to enhance its grip on the market for High Power DBS receiving equipment and High Power DBS transmission service, and to unlawfully maintain its monopoly in both of these markets.
114. DTV also conspired with RCA to require retailers purchasing RCA HDTV sets without internal DTV receivers to purchase an equivalent number of external DTV High Power DBS receivers, and DTV and RCA have imposed this requirement on retailers.
115. This arrangement illegally ties the sale of HDTV sets to the purchase of DTV High Power DBS receiving equipment, and is intended to restrain competition in the market for High Power DBS equipment and services.
116. DTV also implemented its plan to deny *DISH Network* access to the market by threatening national chain retailers that they may be prevented from obtaining their allocation of high margin HDTV sets unless they terminated contractual relationships with *DISH Network* and ceased selling *DISH Network*-compatible High Power DBS receiving equipment and *DISH Network* DBS service.
117. DTV and RCA have used, and continue to use, these unlawful collusive tying arrangements, in conjunction with unlawful collusive boycotts, to coerce retailers into either agreeing not to do business with *DISH Network* or terminating their contractual relationships to sell *DISH Network*-compatible DBS receiving equipment and *DISH Network* DBS service.

118. For example, as described above, in 1999, DTV threatened SoundTrack. Unless SoundTrack agreed to exclude *DISH Network*-compatible DBS equipment and services, DTV would not permit SoundTrack to sell DTV services or receiving equipment including the high margin sales of HDTV systems made by leading manufacturers such as Sony, RCA and Zenith.
119. As a result, in January 2000, SoundTrack informed *DISH Network* that while it wanted to offer both *DISH Network* and DTV, it would no longer offer *DISH Network*-compatible DBS receiving equipment and *DISH Network* DBS service for sale and would instead offer only DTV-compatible DBS receiving equipment and DTV DBS services. Because of DTV's agreements with HDTV set manufacturers to install DTV receiving equipment in HDTV sets, fulfillment of this threat would effectively preclude SoundTrack from selling HDTV sets manufactured by many of the leading manufacturers of television sets such as Sony, RCA and Zenith.
120. Upon information and belief, DTV is telling television manufacturers of HDTV systems that it will license them for DTV's DBS system, but that such systems must only default to or use DTV decoders, and must (by express agreement and payment) exclude *DISH Network*.
121. Upon information and belief, DTV seeks to use its unlawful collusive tying arrangements, and its unlawful collusive boycotting, to coerce other retailers of the *DISH Network* system to similarly terminate their relationships with *DISH Network*. DTV is using their illegal conduct to prevent other retailers from doing business with *DISH Network* at all. The primary goal of DTV is to boycott *DISH Network* on a national basis.

122. DTV intends to use its agreements with the major manufacturers of HDTV sets to restrain competition in the markets for High Power DBS receiving equipment and High Power DBS service, and these agreements threaten to do so, and are in fact doing so. Incredibly, in the face of such a nationwide boycott, *DISH Network* still has grown to more than three million subscribers.

#### V. THE RELEVANT MARKET

123. The relevant product market affected by Defendant's conduct is the Direct Broadcast Satellite market, or the High Power DBS market. This involves the distribution of programming via high power satellites to consumers who have purchased the necessary antenna (dish) and IRD (Integrated Receiver/Decoder) to view the programming.
124. The geographic market in which EchoStar and DTV compete is the continental United States.
125. The characteristics of the High Power DBS market include but are not necessarily limited to: (1) more than 200 channels of programming; (2) digital video; (3) CD quality audio; (4) use of high power satellites to broadcast programming; (5) use of satellite dishes usually measuring 18 - 20 inches; (6) requires the use of an IRD and antenna; (7) programming that includes a mixture of "basic" services (such as ESPN, CNN, USA, TNT), as well as multi-channel premium services (such as HBO, Showtime, and Cinemax) that are not available "over-the-air" or through cable; (8) programming that allows the consumer to purchase numerous "pay-per-view" movies and special events; (9) the ability to view distant sports games, including "out-of-market" college and professional sporting events; and (10) a monthly subscription fee for programming.

126. DTV dominates the High Power DBS market. DTV accounts for more than 65% of all subscribers to High Power DBS. DTV uses its substantial market power to intimidate retailers of High Power DBS service.
127. DTV's actions with regard to Distant NFL games affect the market for Distant NFL games. This market is comprised of all NFL games that are not available free to any particular consumer. DTV illegally dominates the market for Distant NFL games, as well as other distant sports packages. DTV is the exclusive distributor for Distant NFL games and DTV has conspired with the NFL to boycott *DISH Network* and exclude all competition in this market.
128. High Power DBS is the only multichannel television transmission service capable of serving the entire continental United States.
129. Millions of potential DBS customers also live in areas that do not have access to cable. For these millions of customers and potential customers, if there is no competition between DTV and *DISH Network*, there is no competition at all.
130. Moreover, cable and Satellite TV service are not mutually exclusive, and 24% of DBS subscribers who have access to cable, also subscribe to cable, representing more than 1.5 million households.
131. High Power DBS is the only choice for consumers desiring a broad range of premium sports broadcasting, such as access to all professional sports league games.
132. Premium sports programming has proven highly popular, and the growing number of consumers who want this programming option constitute a market only Satellite TV can serve.

133. Consumers desiring as broad a range of television programming and entertainment options as possible, comprehensive premium sports coverage, maximum clarity of video and audio transmission and ease of installation and operation have no alternative to High Power DBS service, since cable and off-air broadcasts do not offer such choices.

## VI. ANTI-COMPETITIVE EFFECTS

134. Plaintiffs suffered, and continues to suffer injuries due to DTV's actions. Plaintiffs have suffered lost revenue - revenue from subscribers that Plaintiffs would have gained if not for DTV's illegal acts. Despite the success of *DISH Network*, the amount of damages incurred by Plaintiffs on account of DTV's actions is in the billions of dollars.
135. Plaintiffs' injuries were proximately caused by DTV's conduct. Plaintiffs failed to gain subscribers it surely would have obtained if not for the "lock out" effect of DTV's boycott and exclusive dealing agreements.
136. Plaintiffs' injuries are the type of injuries that the Antitrust Laws were designed to prevent. Specifically, DTV's activities have caused a lessening of competition. DTV seeks to control all outlets of distribution of High Power DBS service. With these outlets closed off, DTV would then be free to control prices and prevent *DISH Network* from engaging in effective national advertising. DTV has also foreclosed all competition in the market for Distant NFL games, and as such is able to charge a monopoly price for such games. Plaintiffs' injuries arise from the fact that DTV has stifled competition. *DISH Network* has lost many sales, despite its fast growth, because it did not have access to the retailers that DTV paid to boycott *DISH Network*.



137. DTV's illegal agreements with the largest television manufacturers will, if not stopped, substantially lessen competition in the market for High Power DBS. Purchasers of future televisions, if they are forced to buy a bundled DTV system, will not be as likely to purchase DBS service from *DISH Network*, thereby insuring DTV's already monopolistic hold on the market. In addition, DTV is using its relationship with these television manufacturers as leverage to force satellite television retailers to only sell DTV systems and not to sell *DISH Network* systems.
138. An injunction preventing DTV from engaging in these acts is necessary to prevent further anticompetitive harm to Plaintiffs.
139. DTV's actions have been effective in foreclosing substantial competition in interstate commerce.
140. National chain retailers, who historically have made the large majority of sales of DBS systems, have been coerced into refusing to sell *DISH Network*-compatible DBS receiving equipment and *DISH Network's* DBS service, and retailers that previously sold such equipment and services have discontinued such sales. This occurrence is simply unprecedented, when a chain of national consumer electronic retailers refuse to sell the hottest consumer product in history.
141. As a result, *DISH Network's* ability to market its equipment and services and license its technology has been damaged, and continues to be threatened and damaged, and *DISH Network* has lost, and continues to lose, substantial sales and revenues.

142. DTV has eliminated substantial competition, consolidated and expanded its dominance of the High Power DBS market, reduced its need to compete in price and quality, and enhanced the prospect that DTV can charge monopoly prices for the sale of its services and equipment.
143. DTV's agreements with manufacturers of HDTV sets to build only DTV-compatible DBS receiving equipment into the set itself and its conspiracy with RCA and Hughes to tie the sale of HDTV sets to the purchase of DTV-compatible DBS receiving equipment have also had, and will continue to have, serious anti-competitive effects.
144. Incorporating DTV High Power DBS receiving equipment into HDTV sets as permanent equipment and/or tying the sales of such televisions to the purchase of DTV DBS receiving equipment will permit DTV to capture market share without having to compete in price or quality for the consumer.
145. DTV is illegally leveraging its agreements with television manufacturers, among other things, to force consumer electronics retailers to eliminate sales of *DISH Network* systems and thus preclude competition.
146. DTV's anti-competitive agreements with the NFL and other sports leagues are particularly pernicious because they prevent *DISH Network* from even bidding for programming that is highly attractive to consumers and is an important distinguishing feature of High Power DBS service.
147. The exclusion of *DISH Network* permits DTV to charge more for its system, shuts out *DISH Network's* subscribers from desirable programming and consolidates DTV's illegal ability to exclude competition and further abuse its monopoly position.

148. In addition, as DTV's market dominance is illegally maintained and increased, consumers may increasingly choose DTV for fear (albeit inaccurate) that if they purchase a new television set without DTV satellite receiving capability, they are getting an inferior product.
149. Moreover, consumers may begin to believe that DTV equipment and services will be increasingly dominant and become the industry standard, potentially a self-fulfilling prophecy.
150. This kind of consideration mirrors the issues presented in the development and purchase of video tape players during the 1980s. It is also very similar to the illegal tactics identified by the Department of Justice in its suit against Microsoft.
151. An injunction is necessary to prevent DTV from continuing its anti-competitive acts.
152. *DISH Network*, although successful, has suffered, and continues to suffer, substantial injury as a direct and proximate result of DTV's anti-competitive actions.
153. *DISH Network* has already lost considerable sales and revenues due to DTV's anti-competitive acts and *DISH Network* continues to suffer competitive harm, and lost sales and revenues.
154. DTV's anti-competitive conduct has prevented, and continues to prevent, *DISH Network* from gaining customers for its services and its equipment that it otherwise would have had, and from otherwise effectively and legitimately competing with DTV in the High Market DBS market.

## VII. CAUSES OF ACTION

### COUNT I

#### Monopolization in Violation of Section Two

#### of the Sherman Act

155. Plaintiffs incorporate the above allegations as if fully set forth in this Count I of the Complaint.
156. DTV has monopoly power in the High Power DBS service market and in the High Power DBS equipment market.
157. It has unlawfully acquired, maintained and enhanced its power to control prices and exclude competition in both markets.
158. DTV serves at least 65% of the households that receive High Power DBS TV service.
159. DTV and other companies selling DTV-compatible DBS receiving equipment under license agreements with DTV have sold at least 65% of the High Power DBS receiving equipment.
160. The High Power DBS equipment market and the High Power DBS service market have high barriers of entry.
161. Through defendants' illegal actions discussed herein, DTV has been able to exclude *DISH Network* from fully effective competition in the High Power DBS equipment market and the market for High Power DBS subscribers.
162. *DISH Network* has been injured, and continues to be injured, in its business and/or its property as a direct and proximate result of DTV's unlawful monopolization in violation of Section Two of the Sherman Act and is therefore threatened with continuing and irreparable loss and/or damage.

**Count II**

**Attempted Monopolization in Violation of Section Two  
of the Sherman Act**

163. Plaintiffs incorporate the above allegations as if fully set forth in this Count II of the Complaint
164. DTV has engaged in predatory, anti-competitive conduct in an attempt to destroy *DISH Network* as a competitor, thereby acquiring and/or consolidating its monopoly power in the High Power DBS service market and the High Power DBS equipment market.
165. DTV has acted with the specific intent to destroy *DISH Network* as a competitor and thereby to maintain and preserve its monopoly power in the High Power DBS service market and the High Power DBS equipment market.
166. There is a dangerous probability that DTV will succeed in maintaining, preserving and/or consolidating its monopolistic power in the High Power DBS service market and High Power DBS equipment market unless otherwise restrained.
167. *DISH Network* has been injured, and continues to be injured, in its business and/or property as a direct and proximate result of DTV's unlawful attempted monopolization in violation of Section Two of the Sherman Act and is thereby threatened with continuing and irreparable injury and/or loss.

**COUNT III**

**Conspiracy to Monopolize in Violation of Section Two  
of the Sherman Act**

168. Plaintiffs incorporate the above allegations as if fully set forth in this Count III of the Complaint.

169. DTV and RCA have conspired to eliminate *DISH Network* as a competitor and to monopolize the High Power DBS service market and High Power DBS equipment market.
170. Pursuant to this conspiracy, the defendants have engaged in predatory, anti-competitive conduct with specific intent to destroy *DISH Network* as a competitor and thereby to acquire and/or maintain monopoly power in the High Power DBS service market and High Power DBS equipment market.
171. The defendants' actions in furtherance of their conspiracy to monopolize the High Power DBS market service and High Power DBS equipment market affect an appreciable amount of commerce.
172. The High Power DBS equipment market amounts to hundreds of millions of dollars annually.
173. Upon information and belief, the defendants' sales of High Power DBS equipment exceeded \$100,000,000 dollars in 1999.
174. The High Power DBS service market exceeds billions of dollars per year.
175. DTV's sale of High Power DBS service exceeds \$2,000,000,000 per year.
176. *DISH Network* has been injured, and continues to be injured, in its business and/or property as a direct and proximate result of defendants' unlawful conspiracy to monopolize in violation of Section Two of the Sherman Act and is thereby threatened with continuing and irreparable loss and/or damage.

COUNT IV

**Exclusive Dealing in Violation of Section Three  
of the Clayton Act**

177. Plaintiffs hereby incorporate the above allegations as if fully set forth in this Count IV of the Complaint.
178. DTV, in the course of interstate commerce, has made sales or contracts for the sale of High Power DBS receiving equipment for resale within the United States, and/or has set the price charged therefor (or the discount from such price), on the condition, agreement and/or understanding that the purchaser thereof shall not deal in *DISH Network*-compatible High Power DBS receiving equipment in violation of Section Three of the Clayton Act.
179. The effect of such sale, contract, condition, agreement and/or understanding is likely to substantially lessen competition or create, maintain and/or consolidate a monopoly in the High Power DBS equipment market and/or in the High Power DBS service market and it has tended to foreclose to *DISH Network* a substantial share of the High Power DBS equipment market and the High Power DBS service market.
180. As a direct and proximate result of DTV's exclusive dealing in violation of Section Three of the Clayton Act, *DISH Network* has been injured, and continues to be injured, in its business and/or property, and is thereby threatened with continuing and irreparable loss and/or damage.

COUNT V

**Unreasonable Restraint of Trade in Violation of Section One**

**of the Sherman Act**

**(High Power DBS Equipment Conspiracy)**

181. Plaintiffs hereby incorporate the above allegations as if fully set forth in this Count V of the Complaint
182. DTV has contracted, combined and/or conspired with RCA and others, with no pro-competitive or legitimate business justification, to coerce and/or induce retailers of High Power DBS receiving equipment, as a condition of doing business with DTV and/or RCA, to refuse to purchase and resell *DISH Network*-compatible High Power DBS receiving equipment (“the High Power DBS Equipment Conspiracy”).
183. Upon information and belief, DTV has provided benefits to accrue to its High Power DBS equipment co-conspirators and/or to threaten them with harm, to induce and/or coerce their participation in the High Power DBS Equipment Conspiracy.
184. Upon information and belief, DTV has provided benefits to RCA and to other manufacturers of High Power DBS receiving equipment not to develop or manufacture High Power DBS receiving equipment also capable of receiving *DISH Network* programming and threatened them with harm to induce their participation in the High Power DBS Equipment Conspiracy.
185. DTV and its High Power DBS equipment co-conspirators, including RCA, jointly possess market power and/or leverage in the High Power DBS equipment market.



186. As a result of the High Power DBS Equipment Conspiracy, many retailers of High Power DBS equipment have refused to purchase and resell *DISH Network*-compatible High Power DBS equipment, and manufacturers have not developed or manufactured equipment also capable of receiving *DISH Network* programming.
187. The effect of the High Power DBS Equipment Conspiracy is to foreclose *DISH Network* and other wholesalers of *DISH Network*-compatible High Power DBS equipment from a substantial portion of the High Power DBS equipment market.
188. *DISH Network* has been injured, and continues to be injured, in its business and/or property as a direct and proximate result of the High Power DBS equipment conspiracy in violation of Section One of the Sherman Act, and is thereby threatened with loss and/or damage.

#### **COUNT VI**

#### **Unreasonable Restraint of Trade in Violation of Section One of the Sherman Act (HDTV Set Conspiracy)**

189. Plaintiffs hereby incorporate the above allegations as if fully set forth in this Count VI of the Complaint.
190. DTV has contracted, combined and/or conspired with RCA, other *HDTV* set manufacturers and others, with no pro-competitive or legitimate business justification, to tie the sale of HDTV sets to the purchase of DTV-compatible High Power DBS receiving equipment (the "HDTV Set Conspiracy").

191. Upon information and belief, DTV has provided benefits to accrue to its HDTV set co-conspirators and/or threatened them with harm, to induce them to participate in the HDTV Set Conspiracy.
192. DTV and RCA, through their agreements with other HDTV manufacturers and otherwise, jointly possess market power and/or leverage in the market for wholesaling HDTV sets.
193. As a result of the HDTV Set Conspiracy, many High Power DBS receiving equipment retailers have refused to purchase and resell *DISH Network*-compatible High Power DBS receiving equipment.
194. The direct and proximate effect of the HDTV Set Conspiracy is to foreclose *DISH Network* and other wholesalers of *DISH Network*-compatible High Power DBS equipment from a substantial portion of the High Power DBS equipment market and the High Power DBS service market.
195. *DISH Network* has been injured, and continues to be injured, in its business and/or property by reason of the HDTV Set Conspiracy in violation of Section One of the Sherman Act and is thereby threatened with continuing and irreparable loss and/or damage.

#### COUNT VII

#### **Unreasonable Restraint of Trade in Violation of Section One**

#### **of the Sherman Act**

#### **(Sports Broadcast Conspiracy)**

196. Plaintiffs hereby incorporate the above allegations as if fully set forth in this Count VII of the Complaint.

197. DTV has induced and/or coerced the NFL and other sports leagues and their members, with no pro-competitive or legitimate justification, to grant DTV the exclusive rights to High Power DBS transmission of games sponsored by such leagues, and to deny *DISH Network* any opportunity to even bid for such rights (“Sports Broadcast Conspiracy”).
198. Upon information and belief, DTV provided improper benefits to accrue to such leagues and/or threatened them with harm in order to induce and/or coerce them to grant it such rights and to induce them to participate in the Sports Broadcast Conspiracy.
199. The direct and proximate effect of DTV’s exclusive relationship with such leagues and the Sports Broadcast Conspiracy is to foreclose *DISH Network* from a substantial portion of the High Power DBS service market in which DTV possesses market power and/or leverage.
200. *DISH Network* has been injured, and continues to be injured, in its business and/or property by this restraint of trade in violation of Section One of the Sherman Act and is thereby threatened with continuing and irreparable loss and/or damage.

### COUNT VIII

#### **Unfair Competition in Violation of Section Forty-Three**

#### **of the Lanham Act and Demand for Accounting of Illegal Profits**

201. Plaintiffs hereby incorporate the above allegations as if fully set forth in this Count VIII of the Complaint.
202. In the promotion of its own products, DTV has made false and/or misleading descriptions or representations of fact that misrepresent the nature, characteristics and/or qualities of *DISH Network’s* goods, services and/or commercial activities, and has caused deception in the market place.

203. DTV has also engaged in specific conduct prohibited by the Lanham Act in that it has passed off, in concert with at least the other defendants, manufactured goods to consumers without revealing its own ownership interest in such manufacturers or the money paid to the manufacturer to induce it to build a product that is suitable only for DTV-compatible High Power DBS service.
204. By passing off goods in this fashion, DTV and at least the other defendants are engaged in an effort to create a false impression upon the consumer public that its products are "preferred" by third-party independent manufacturers.
205. Furthermore, unless restrained, DTV is likely to continue to engage in such false and/or misleading deceptions and/or representations of fact.
206. Moreover, DTV has engaged, and is likely to continue to engage, in such conduct.
207. *DISH Network* has been injured, and continues to be injured, in its business and/or property as a direct and proximate result of DTV's unfair competition in violation of Section Forty-three of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B), and is thereby threatened with continuing and irreparable loss and/or damage.
208. *DISH Network* is therefore entitled to an accounting of all DTV and other defendant profits obtained from this illegal activity. *DISH Network* is entitled to payment in-kind of those illegal profits or the payment of the illegal profits into the registry of the Court to be used for a public purpose. *DISH Network* is entitled to an award of damages to the *DISH Network* in the sum necessary to compensate it for its loss of sales and damage to its goodwill and business reputation, and an injunction against DTV and the other defendants prohibiting this illegal behavior.

**COUNT IX**

**Deceptive Trade Practices in Violation**

**of the Colorado Consumer Protection Act**

209. Plaintiffs hereby incorporate the above allegations as if fully set forth in this Count IX of the Complaint.
210. DTV has disparaged the goods, services, property and/or business of *DISH Network* by false and/or misleading misrepresentations of fact.
211. Unless restrained, DTV is likely to continue to engage in such unfair competition and/or deceptive trade practices.
212. DTV has engaged, and is likely to continue to engage, in such bad faith conduct. Such conduct is malicious, willful and wanton.
213. *DISH Network* has been injured, and continues to be injured, in the course of its business, in part in Colorado, as a direct and proximate result of such deceptive trade practices in violation of Col. Rev. Stat. § 6-1-105(1)(h), and is thereby threatened with continuing and irreparable loss and/or damage, in part in Colorado.

**COUNT X**

**Monopolization in Violation**

**of the Colorado Antitrust Act**

214. Plaintiffs hereby incorporate the above allegations as if fully set forth in this Count X of the Complaint
215. DTV has monopolized the High Power DBS equipment market and the High Power DBS service market, in part in Colorado, in violation of Col. Rev. Stat. § 6-4-105.

216. *DISH Network* has been injured, and continues to be injured, in its business and/or property, in part in Colorado, as a direct and proximate result of such violations and is thereby threatened with continuing and irreparable injury and/or damage, in part in Colorado.

**COUNT XI**

**Attempted Monopolization in Violation  
of the Colorado Antitrust Act**

217. Plaintiffs hereby incorporate the above allegations as if fully set forth in this Count XI of the Complaint.

218. DTV has attempted to monopolize the High Power DBS equipment market and the High Power DBS service market, in part in Colorado, in violation of Col. Rev. Stat. § 6-4-105.

219. *DISH Network* has been injured, and continues to be injured, in its business and property, in part in Colorado, as a result of such violation and is thereby threatened with continuing and irreparable injury and/or damage, in part in Colorado.

**COUNT XII**

**Conspiracy to Monopolize in Violation  
of the Colorado Antitrust Act**

220. Plaintiffs hereby incorporate the above allegations as if fully set forth in this Count XII of the Complaint.

221. DTV and RCA have conspired to monopolize the High Power DBS equipment market and the High Power DBS service market, in part in Colorado, in violation of Col. Rev. Stat. § 6-4-105.

222. *DISH Network* has been injured, and continues to be injured, in its business and/or property, in part in Colorado, as a direct and proximate result of such violations and is thereby threatened with continuing and irreparable injury and/or damage, in part in Colorado.

**COUNT XIII**

**Conspiracy to Restrain Trade in Violation**

**of the Colorado Antitrust Act**

223. Plaintiffs hereby incorporate the above allegations as if fully set forth in this Count XIII of the Complaint.

224. DTV and RCA have contracted, combined and/or conspired to restrain trade unreasonably, in part in Colorado, in per se violation (and otherwise in violation) of Col. Rev. Stat. § 6-4-104.

225. DTV and RCA have contracted, combined and/or conspired with others to force retailers to boycott *DISH Network* and refuse to deal with or otherwise sell products and services of *DISH Network*.

226. *DISH Network* has been injured, and continues to be injured, in its business and/or property, in part in Colorado, as a direct and proximate result of such violations and is thereby threatened with continuing and irreparable injury and/or damage, in part in Colorado.

COUNT XIV

**Tortious Interference with Contract**

227. Plaintiffs hereby incorporate the above allegations as if fully set forth in this Count XIV of the Complaint.
228. *DISH Network* has had contractual relationships with numerous retailers, both inside and outside the State of Colorado, to sell *DISH Network* equipment and services, and *DISH Network* derived substantial revenue from these contractual relationships.
229. DTV and RCA at all relevant times had notice and knowledge of these contractual relationships.
230. As a direct and proximate result of the inducements and/or threats by DTV and RCA set forth herein, which are continuing, several such retailers have agreed to breach and/or terminate their respective contractual relations with *DISH Network* and have done so or are about to do so.
231. DTV and RCA made such inducements or threats with the conscious intent, maliciously, willfully, intentionally, wrongfully, tortiously and wantonly, to injure *DISH Network* in its trade or business, in part in Colorado, and not with any intent to compete legitimately. These actions of DTV and RCA have no legitimate business purpose and are without any privilege or justification.
232. As a direct and proximate result of the conduct described herein, *DISH Network* has been damaged, and continues to be damaged, in its trade or business, in part in Colorado.



233. *DISH Network* has suffered, and will continue to suffer, monetary loss from lost sales of goods and services that would have been made but for DTV's tortious conduct, and is threatened with continuous and irreparable damage and/or loss.

**COUNT XV**

**Tortious Interference with Economic Relations/**

**Prospective Contractual Relations/Business Expectancy**

234. Plaintiffs hereby incorporate the above allegations as if fully set forth in this Count XV of the Complaint.

235. *DISH Network* has entered into, and continues to attempt to enter into, business relationships and negotiations and contracts terminable at will with retailers or prospective retailers of electronic products, both inside and outside the State of Colorado, to sell High Power DBS equipment and services, and has sought to enter into economic relationships with the NFL, the NBA and other owners of the rights to sports programming.

236. *DISH Network* has derived, and expected to derive, substantial revenue from such relationships.

237. At all relevant times, DTV and RCA had notice and knowledge that *DISH Network* had entered into and was continuing to enter into such business relationships and negotiations with retailers and prospective retailers of consumer electronic products.