

<u>Date Produced</u>	<u>CD No.</u>	<u>Total No. of Pages</u>
5/5/00	33	8,601
5/5/00	34	1,401
5/5/00	35	1,957
5/5/00	36	6,464
5/5/00	37	3,188
5/5/00	38	998
5/18/00	39	7,751
5/18/00	40	228
5/18/00	41	2,230
5/18/00	42	858
6/9/00	43	6,631
6/9/00	44	40
7/31/00	45	10,791
7/31/00	46	8,763
7/31/00	47	2,546
7/31/00	48	313
7/31/00	49	970
9/11/00	50	4,983
9/11/00	51	4,407
9/11/00	52	1,589
9/11/00	53	3,501
9/18/00	54	14,728
9/18/00	55	88
5/12/00	SD1	4,322
5/12/00	SD2	11,496
6/1/00	SD3	8,129
7/25/00	SD4	2,256
7/28/00	SD5	961
7/31/00	SD6	2,256
8/22/00	SD7	7,929
9/11/00	SD8	13,261
9/11/00	SD9	3,280
	TOTAL	313,757

33. DIRECTV has only recently professed to have completed its production, some six (6) months after EchoStar first served its document requests. In September 2000 alone, DIRECTV produced eight (8) additional CDs that contain approximately 44,000 pages of documents. Thus, although EchoStar and DIRECTV tentatively resolved most of their discovery disputes, EchoStar has reserved the right to file a motion to compel when it has had the opportunity to review all of DIRECTV's documents and to assess whether there are any deficiencies.

34. EchoStar is in the process of reviewing these approximately 313,000 pages for relevant information. Although EchoStar's counsel has been diligently reviewing the ongoing document productions, the review has not been completed, in part because the production has only recently professed to have been completed.

35. In addition, as noted above, because of the logistics of having EchoStar's third-party vendor process the CDs, EchoStar's counsel has not yet begun reviewing any documents produced that DIRECTV produced after July 31, 2000. Thus, EchoStar's counsel still needs to review, in the first instance, more than 100,000 pages of DIRECTV documents. EchoStar expects to receive these additional 100,000 plus pages from its third-party vendor beginning November 1, 2000.

36. As EchoStar's attorneys review documents, they have been providing relevant material to EchoStar's experts for further review and analysis. The experts, however, will not have all relevant documents to assist in formulating their opinions until DIRECTV completes its document production and EchoStar's attorneys first have had an opportunity to review such documents.

37. The sheer volume of documents produced by DIRECTV and others has required a near full-time commitment to this matter by several attorneys; despite the diligence of EchoStar's attorneys, however, this review is not yet completed.

B. EchoStar's First Set of Interrogatories to DIRECTV

38. EchoStar served its First Set of Interrogatories on DIRECTV on March 14, 2000, the first day on which it could begin discovery. This was among EchoStar's first effort at obtaining discovery, which occurred on the earliest possible date that discovery was allowed to be propounded – the very day that EchoStar had its initial meet and confer with defendants' counsel. DIRECTV responded and objected to EchoStar's First Set of Interrogatories on April 18, 2000. A copy of the Responses and Objections is attached hereto as Exhibit 3.

39. EchoStar's interrogatories were directed to, among other things, identification of the following: DIRECTV personnel responsible for negotiating agreements between defendants and professional sports leagues, HDTV manufacturers and retailers; retailers of DIRECTV-compatible DBS equipment and services and the sales, pricing structures, benefits and terms relating to DIRECTV and these retailers; HDTV products and manufacturers; and damages claimed by DIRECTV.

40. Many of these Interrogatories requested the identities of specific individuals or retailers for the purpose of directing EchoStar to other sources from which EchoStar could obtain information about DIRECTV and DIRECTV's control and effect on the DBS Market. For example, the third party retailers will have information about how DIRECTV exercises its market power by requiring exclusive contracts, how DIRECTV views EchoStar as its chief rival in the DBS Market and the effects on the market caused by DIRECTV's demand for exclusivity.

41. By way of example only, determining the key persons involved in negotiating exclusive contracts with various consumer electronics retailers allows EchoStar to depose such individuals on issues, including: DIRECTV's acknowledgement that EchoStar is its only real competitor in a separate product market from cable; and DIRECTV's pricing does not take into account the pricing of cable services.

42. EchoStar requested that DIRECTV provide answers to, among other things, the following:

- Interrogatory 1 - With respect to all agreements, contracts and/or understandings between DTV and RCA, DTV and Hughes, and/or DTV and any retailer relating to the sale and/or marketing of DBS and/or High Power DBS service and/or equipment, all agreements, contracts and/or understandings between DTV and any HDTV manufacturers, and/or all agreements, contracts and/or understandings between DTV and any Sports League, Identify each person with non-clerical authority or responsibility for the terms and/or conditions of each such agreement, contract and/or understanding, and for each person so identified, Identify the precise role each person played with respect to each such agreement, contract and/or understanding.
- Interrogatory 2 - Identify each retailer that has sold and/or marketed, and/or sells and/or markets DIRECTV-compatible DBS and/or High Power DBS service and/or equipment and DISH Network-compatible DBS and/or High Power DBS service and/or equipment, and with respect to each retailer identified, identify which retailers have exclusively sold and/or marketed, and/or exclusively sell and/or market, DTV-compatible DBS and/or High Power DBS service and/or equipment and with respect to each retailer:
 - (a) Identify the price charged to each retailer since 1994, and for the price(s) charged to each retailer, Identify the factors used to determine and/or establish each such price, and whether the price charged to each retailer changed after EchoStar entered the marketplace; and
 - (b) Identify any and all payments, offers of payment, monetary incentives and/or economic benefits or other incentives that Defendants have made, directly or indirectly, to and/or for the benefit of any retailer since 1994, and for each such payment, offer of payment, monetary incentive and/or economic benefit or incentive; Identify the factors used to determine and/or establish each such payment, offer of payment, monetary incentives

and/or economic benefits; explain the substance and nature of each such payment, offer of payment, monetary incentives and/or economic benefits; and whether such payments, offers of payment, monetary incentives and/or economic benefits changed after EchoStar entered the marketplace.

- Interrogatory 3 - Identify each HDTV manufacturer who manufactures DTV-compatible DBS and/or High Power DBS service and/or equipment, and each entity to whom DTV has granted a license to use DTV's equipment and/or services and/or DTV technology in connection with the manufacture of HDTV equipment.
- Interrogatory 4 - State DTV's share (in both percentage and dollars) of the DBS and High Power DBS service and equipment industry and/or market and/or any other market, and
 - (a) Identify any computational formulae involved in determining each share; and
 - (b) Identify each person who calculated and/or determined DTV's share (in both percentage and dollars) of the DBS and High Power DBS service and equipment industry and/or market and/or any other market.

43. Between April and July 2000, the parties participated in numerous conferences and a lengthy exchange of correspondence relating to disputes over DIRECTV's responses to these Interrogatories.

44. Through these conferences and correspondence, and through DIRECTV's responses to EchoStar's interrogatories, both direct responses and responses under Rule 33(d) which generally directed EchoStar to search the documents that DIRECTV produced or would produce, DIRECTV provided some of the names and information about and relating to market share, market definition, and the names of numerous individuals and companies who will possess information relating to market definition and market share.

45. EchoStar has obtained or hopes to obtain this information in order to use it to conduct depositions and third-party discovery. EchoStar has been diligently pursuing third party

discovery as discussed in section III of this Declaration. However, EchoStar expects to yet obtain information detailing the competitive effect and control that DIRECTV has demonstrated through its relationships with sports leagues, manufacturers, retailers, and how and against whom DIRECTV aimed its competition. All of this information is relevant to the factual determination of the relevant DIRECTV's market power and the anticompetitive effects of that power, issues raised by DIRECT in its Motion.

C. Motions to Compel DIRECTV

46. As noted above, EchoStar and DIRECTV have tentatively resolved most of their discovery disputes to date, subject to DIRECTV ultimately producing the documents it has agreed to produce and that DIRECTV, in part, was ordered to produce.

47. However, on June 13, 2000, EchoStar filed a Motion to Compel Discovery Responses from DIRECTV relating to DIRECTV's failure to provide the following information:

- DIRECTV's failure to provide information with respect to SHVA litigation;
- DIRECTV's failure to search its electronic archives for responsive information;
- DIRECTV's failure to provide all programming agreements; and

DIRECTV's information with respect to its compliance with the SHVA.

48. EchoStar also filed a Motion to Compel Supplemental Disclosures with respect to Witnesses and Damages from DIRECTV on May 1, 2000. The Motion to Compel Supplemental Disclosures with respect to Witnesses and Damages from DIRECTV related to DIRECTV's failure to provide information in its Initial Rule 26 disclosure statement.

49. As a result of the continuing dialogue, the parties were able to resolve their differences relating to the Motion to Compel Supplemental Disclosures, which was withdrawn.

50. On July 10, the Court entered a Minute Entry granting EchoStar's Motion in part and denying it in part. DIRECTV was ordered to provide all information relating to the SHVA consumer litigation and to provide the information that DIRECTV agreed to produce with respect to DIRECTV's compliance with the SHVA.

II. ECHOSTAR'S DISCOVERY EFFORTS WITH RESPECT TO RCA

A. EchoStar's First Requests for Production of Documents from RCA

51. In the Complaint, EchoStar alleges that DIRECTV has illegally conspired with defendant RCA by, among other things, requiring retailers purchasing RCA HDTV sets without internal DIRECTV receivers to purchase an equivalent number of external DIRECTV High Power DBS receivers. Accordingly, discovery from RCA will be important to establish on the issues of relevant market, DIRECTV's market power in that market, and the anticompetitive effects caused by DIRECTV's improper market power.

52. EchoStar served its First Requests for Production of Documents on RCA on March 14, 2000, again the first day on which it could conduct discovery. RCA responded to EchoStar's First Request for Production of Documents on April 20, 2000. A copy of RCA's response is attached hereto as Exhibit 4.

53. EchoStar directed these requests to, among other things, the definition of the relevant market, adverse effect on competition, exclusive dealing, market share, who RCA and DIRECTV were attempting to compete against, relationships with retailers, details of dealings and information about retailers, payments and incentives to retailers, refusals and threats of refusals by RCA and/or DIRECTV to enforce exclusive dealings, manufacturers of DBS equipment, and manufacturers of HDTV sets.

54. EchoStar needs this information to demonstrate the relevant product market, DIRECTV's market power, and the anticompetitive effects caused by that power.

55. More specifically, EchoStar requested that RCA produce, among other things, the following documents:

- Request No. 4 - Any and all Documents which mention, refer or relate to any program, practice or strategy of converting Dish Network subscribers to DTV or RCA products or services.
- Request No. 5 - Any and all Documents which mention or refer to the market share of DTV and/or EchoStar and Dish Network.
- Request No. 8 - Any and all Documents that mention, refer to or relate to any retailer's, distributor's or wholesaler's sale or marketing of EchoStar or Dish Network equipment or services.
- Request No. 9 - Any and all Documents, including but not limited to agreements and all correspondence, e-mails or memoranda related thereto, which refer to, relate to or evidence the relationship or potential relationship between any Defendant and any retailer, wholesaler or distributor of DTV compatible DBS and/or High Power DBS service and/or equipment.
- Request No. 10 - Any and all Documents which show the volume of sales or purchases, by any retail or wholesale outlet, of DTV compatible DBS and/or High Power DBS equipment or services.
- Request No. 11 - Any and all Documents that refer to any payments, offer of payments, monetary incentives, inducements, economic benefits, or other consideration given or offered by any Defendant to any retailer, wholesaler or distributor that sells and/or markets DTV-compatible DBS and/or High Power DBS service and/or equipment to the exclusion of other DBS and/or High Power DBS service and/or equipment.
- Request No. 12 - Any and all Documents which refer to, relate to or evidence the difference in consideration or benefits provided to any retailer, wholesaler or distributor that does not sell or offer for sale any EchoStar or Dish Network equipment or services.
- Request No. 13 - Any and all Documents that refer or relate to any Defendant's refusal and/or threat of refusal to sell and/or market DBS and/or High Power DBS

- equipment or services to any retailer, distributor or wholesaler that sells or markets any other DBS and/or High Power DBS equipment or services.
- Request No. 14 - Any and all Documents, including but not limited to, agreements and all correspondence, e-mails or memoranda related thereto, which refer to, relate to or evidence the relationship or potential relationship between Defendants and any manufacturer of High Definition Television sets and/or any manufacturer of DTV compatible technology or equipment.
 - Request No. 15 - Any and all Documents, including but not limited to, agreements and all correspondence, e-mails or memoranda related thereto, which refer to, relate to or evidence the relationship, including financial relationship, between any of the Defendants both as it relates to the ownership and the manufacturing, marketing and sale of DTV-compatible DBS service and/or equipment.
 - Request No. 16 - All Documents which mentioned, describe or relate to the product or geographic markets in which any of Defendants operate.
 - Request No. 19 - Any and all budgets, projections, multi year plans, or other forward looking analyses which refer or relate to the sale or marketing of DBS and/or High Power DBS service and/or equipment and or the sale or marketing of HDTV products.
 - Request No. 20 - Any and all marketing plans, or other Documents which mention refer or relate to any of the Defendants' marketing strategies (including but not limited to Documents analyzing the successes or failures of those plans or strategies) or marketing of their DBS and/or High Power DBS equipment or services and/or marketing HDTV products or equipment.
 - Request No. 21 - Any and all Documents which refer to, relate to or mention competition by EchoStar, or any other party, to Defendants' DBS and/or High Power DBS equipment or services.
 - Request No. 22 - Any and all studies, surveys or analyses which mention or refer to potential subscribers to DBS and/or High Power DBS equipment or services and/or potential purchasers of a High Definition Televisions Set, including but not limited to any particular, design, feature or service offered.
 - Request No. 23 - Any and all Documents which establish the financial arrangements or agreements between any of the Defendants related to the sale, marketing or distribution of DBS and/or High Power DBS equipment or service and/or HDTV products or equipment and/or High Definition Television Sets.

- Request No. 24 - All Documents that relate to RCA's sale and/or marketing of DTV-compatible DBS and/or High Power DBS equipment through retailers.
- Request No. 25 - All Documents that relate to RCA's refusal and/or threat of refusal to sell and/or market RCA products through retailers that sell and/or market DISH Network.
- Request No. 26 - All Documents that relate to payment(s) to RCA relating to the sale and/or marketing of DTV-compatible DBS and/or High Power DBS service and/or equipment.
- Request No. 27 - All Documents that relate to RCA's agreements, contracts and/or understanding with any retailer relating to the sale and/or marketing of HDTV with the capacity to receive DTV's DBS signal.
- Request No. 29 - Any and all documents that mention EchoStar and/or Dish Network or evidence or relate to activities undertaken by You in response to competition from EchoStar Satellite or Dish Network, including but not limited to documents that mention the quality of their goods and services; their market share; their market strategies or tactics; and the threat of competition from them.

56. RCA failed to produce any documents with its response, and did not produce any documents whatsoever until August 15, 2000. Since August 15, 2000, RCA has produced more than 80,000 pages of documents. The following chart details the dates of RCA's ongoing document production:

<u>Date Produced</u>	<u>CD No.</u>	<u>Total No. of Pages</u>
08/15/00	1	5,216
08/15/00	2	10,463
08/15/00	3	10,082
08/15/00	4	8,277
08/15/00	5	11,759
08/15/00	6	10,716
08/16/00	7	9,370
08/16/00	8	9,425
08/16/00	9	2,880
09/07/00	10	6,252
TOTAL		84,440

On September 28, 2000, RCA also produced thirty (30) videotapes, four (4) audio cassettes and two (2) computer discs.

B. EchoStar's First Set of Interrogatories to RCA

57. On March 14, 2000, the first day the parties could begin discovery, EchoStar also served its First Set of Interrogatories on RCA. RCA responded to EchoStar's First Set of Interrogatories to RCA on April 20, 2000. A copy of RCA's response is attached hereto as Exhibit 5.

58. EchoStar's interrogatories were directed to, among other things, the relevant market definition, DIRECTV's market share, the identification of RCA personnel responsible for negotiating agreements between defendants, content providers, HDTV manufacturers, and retailers, DIRECTV retailers, compatible DBS equipment and services and the sales, pricing structures, benefits, and terms relating to DIRECTV and retailers, HDTV products and manufacturers.

59. EchoStar needs this information to demonstrate the relevant product market, DIRECTV's market power, and the anticompetitive effects of that power.

60. Many of these Interrogatories requested the identities of specific individuals or retailers for the purpose of directing EchoStar to other sources from which EchoStar could obtain information about DIRECTV and RCA's control and effect on the relevant Market.

61. These individuals and/or companies possess information relevant to the determination of market definition, DirecTV's market power and the anticompetitive effects of DIRECTV's misuse of that power.

62. Specifically, EchoStar requested that RCA provide, among other things, answers to the following:

- Interrogatory 1 - Please identify each non-clerical person with responsibility for negotiating the terms and conditions of any agreements or understandings between RCA and DTV, any Content Provider, any manufacturer of HDTV products (including but not limited to Sony, Panasonic, Mitsubishi, Zenith, JVC, Toshiba, GE, or any other manufacturer of televisions and/or receivers capable of receiving High Definition television content) or any retailer, including but not limited to Circuit City, Sears, Best Buy, Radio Shack and Montgomery Wards. For each person so identified, identify the precise role each person played with respect to each such agreement, contract and/or understanding.
- Interrogatory 2 - For the time period of January 1, 1994 through the trial of this cause, identify each retailer that has sold and/or marketed, and/or sells and/or markets DTV-compatible DBS and/or High Power DBS service and/or equipment manufactured by RCA and with respect to each retailer identified, Identify which retailers have exclusively sold and/or marketed, and/or exclusively sell and/or market, DTV-compatible DBS service and/or equipment manufactured by RCA and with respect to each retailer:
 - (a) Identify the price charged to each retailer since January 1, 1994, and for the price(s) charged to each retailer, Identify the factors used to determine and/or establish each such price, and whether the price charged to each retailer changed after EchoStar entered the marketplace; and
 - (b) Identify any and all payments, offers of payment, monetary incentives and/or economic benefits or other incentives that Defendants have made, directly or indirectly, to and/or for the benefit of any retailer since January 1, 1994, and for each such payment, offer of payment, monetary incentive and/or economic benefit or incentive; Identify the factors used to determine and/or establish each such payment, offer of payment, monetary incentives and/or economic benefits; explain the substance and nature of each such payment, offer of payment, monetary incentives and/or economic benefits; and whether such payments, offers of payment, monetary incentives and/or economic benefits changed after EchoStar entered the marketplace.
 - (c) Identify each retailer's total dollar amount of purchases and/or sales of DTV-compatible DBS equipment manufactured by RCA.
 - (d) Identify each retailer's total number of units of DTV compatible DBS equipment manufactured or services purchased and/or sold.

C. EchoStar's Motions to Compel RCA

65. Because of RCA's frivolous objections and refusal to even discuss its over broad objections with EchoStar, EchoStar was accordingly forced to file a Motion to Compel Discovery Responses from RCA on April 28, 2000.

66. EchoStar was also forced to file a Motion to Compel Supplemental Disclosures with Respect to Witnesses and Damages from RCA on April 28, 2000. This Motion addressed significant deficiencies with RCA's disclosures in its initial Rule 26 disclosures.

67. Through subsequent telephonic conferences and correspondence, EchoStar and RCA resolved many of their differences with respect to the issues raised in EchoStar's Motions to Compel.

68. Therefore, in the September 1, 2000 Status Report to the Court, EchoStar agreed to limit its Motion to Compel Discovery Responses from RCA to the following issues:

- RCA's improper and inadequate responses relying on Rule 33(d);
- RCA's categorical refusal to respond to EchoStar's Interrogatory No. 4, relating to identifying statements relating to issues or facts involved in the lawsuit;
- RCA's refusal to identify and produce documents relating to oral statements and admissions by EchoStar; and,
- RCA's failure to produce a single document;

69. Although EchoStar narrowed its Motion to Compel, it has reserved the right to seek relief on all items discussed in its Motion to Compel if RCA reneges on its agreement to produce the documents that it has agreed to produce, which EchoStar will assess after completing its review and analysis of RCA's documents produced.

70. EchoStar also agreed to limit its Motion to Compel Supplemental Disclosures to RCA's failure to sufficiently identify persons with discoverable information. Again, EchoStar reserved the right to revisit this issue with the Court should RCA fail to honor its commitment to EchoStar.

71. To the best of my knowledge, the Court has not yet ruled on these Motions and these issues remain pending.

III. THIRD-PARTY DISCOVERY

72. Third-party discovery will be critical to both EchoStar's claims and EchoStar's ability to substantively respond to DIRECTV's Motion. EchoStar believes that DIRECTV has used its enormous market power to illegally restrain trade in the DBS marketplace. Upon information and belief, DIRECTV has used its monopoly power to force thousands of individual retail stores (e.g. Circuit City, Best Buy, and Radio Shack) throughout the country to deal exclusively with DIRECTV or not at all. By doing so, upon information and belief, DIRECTV is effectively depriving consumers the opportunity to choose any DBS alternative, and illegally restraining trade. For example, much of the information about DIRECTV's exclusive contracts with retailers and the effects on competition, will come from third parties.

73. As part of its third-party discovery efforts, EchoStar is in the process of obtaining, both formally and informally, documents and information from more than eighty-three (83) third-party witnesses, including various consumer electronics retailers, HDTV manufacturers, professional sports leagues, cable television companies, wireless telecommunications companies, DBS valuation analysts, underwriters, investment banks, financial analysts, and consultants.

74. As part of this process, EchoStar is considering the documents and information provided by each third-party witness, the relevancy of the disclosure and whether certain documents and information can be obtained more efficiently from other sources.

75. EchoStar has modified and continues to modify its third-party witness list, adding and deleting sources of information, as the discovery process continues. This process entails not only the review and analysis of voluminous third-party documents, but also consideration of information sources disclosed in the more than 400,000 pages of documents produced thus far by the defendants and third parties.

76. To date, EchoStar has served formal subpoenas on fourteen (14) third-party witnesses in order to obtain documents supporting its federal and state law claims. EchoStar began issuing third-party subpoenas on June 6, 2000, and has diligently proceeded with third-party discovery since that time.

77. EchoStar is also engaged in active discussions regarding document production and/or interviews with forty-six (46) other third-party witnesses. Only twenty-one (21) third-party witnesses have yet to be contacted. EchoStar anticipates that it will serve subpoenas on at least 25-30 additional third parties.

78. EchoStar intends to contact and obtain documents and/or interviews from all prospective third-party witnesses in the next several months, and thereafter to take necessary depositions of the key third-party witnesses prior to the June 2001 discovery cutoff. EchoStar is trying to do as much of this third-party discovery and investigation as possible on an informal basis because of the limit on the number of fact witness depositions (35) that can be taken.

These third parties, however, are located all across the United States, which necessarily has increased the time necessary to seek relevant discovery from these third parties.

79. All of EchoStar's third-party discovery is directed, either entirely or in part, at obtaining documents and information relevant to the relevant market definition, DIRECTV's market power and the anticompetitive effects of that market power.

80. As explained more fully below, each of EchoStar's subpoenas to third-parties seeks documents and information supporting the following facts, among other things:

- a) DBS is in a separate product market, from alternative sources of programming, including cable television;
- b) A significant number of DBS subscribers view DIRECTV and EchoStar as a significantly closer substitutes than alternative sources of programming, including cable television;
- c) Cable television is an imperfect and comparatively weak substitute for DBS;
- d) If not constrained by EchoStar, DIRECTV could raise its prices above the competitive level without experiencing a significant constraint by cable;
- e) DBS and/or High Power DBS is superior to most cable services in several respects, including higher quality picture, substantially more programming options, and pay-per-view in a "near-on-demand" environment that consumers find more attractive than the pay-per-view environment offered by cable;
- f) Significant numbers of consumers have subscribed to both DBS and/or High Power DBS service and cable service, reflecting that the two products are imperfect substitutes;
- g) EchoStar is DIRECTV's closest competitor;
- h) Many, if not most, consumers who would switch away from EchoStar if it raised its prices relative to all other subscription programming services would turn to DIRECTV;
- i) DIRECTV expects to profit from raising EchoStar's costs since other potential satellite providers cannot easily enter the market and attract the customers that EchoStar is losing as a result of DIRECTV's conduct;

- j) There are significant entry barriers to the DBS and/or High Power DBS market;
- k) DIRECTV and EchoStar react primarily to each other when setting equipment and service prices;
- l) High Power DBS is the only multichannel television transmission service capable of serving the entire continental United States;
- m) Millions of potential DBS and/or High Power DBS customers live in areas that do not have access to cable such that, if there is no competition between DIRECTV and EchoStar, there is no competition at all;
- n) 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; and
- o) 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 does not offer such choices.

81. EchoStar has subpoenaed documents that it believes will support these facts from various third-party witnesses, including consumer electronics retailers such as Best Buy Co., Inc., Circuit City Stores, Inc., Montgomery Ward & Company, Inc., Phillips Electronics Corporation, Radio Shack/Tandy Corporation, Sears, Roebuck & Co., and Ultimate Electronics, Inc. (collectively, "the Consumer Electronics Retailers").

82. EchoStar's subpoenas to each of the Consumer Electronics Retailers seek the following types of information, which is directly relevant to the relevant market definition, DIRECTV's market power and the anticompetitive effects of that market power:

- Request No. 11 - Any and all Documents reflecting or relating to any and all communications between or among Your directors, officers, employees, agents, independent contractors, retailers, or representatives relating to: (a) EchoStar, Dish Network or any Plaintiff; (b) the distribution of television programming via satellite; (c) the sale or marketing of HDTV; [and] (d) the DBS market

- Request No. 15 - Any and all Documents reflecting or relating to any and all consumer, subscriber, or market surveys or analysis that identify or discuss what potential or existing satellite subscribers want in terms of service or programming features and equipment design/usability.
- Request No. 16 - Any and all Documents reflecting or relating to the number of households in the United States, the number of households in the United States with television sets, and the number of households in the United States that are projected to have television sets during the next five (5) years.
- Request No. 17 - Any and all Documents reflecting or relating to customer service scripts, video tapes, Documents, brochures or the other communications directed at Dish Network subscribers or potential DBS subscribers that mention, refer to, or relate to EchoStar or Dish Network, or their services, products, or marketing activities.
- Request No. 18 - Any and all Documents reflecting or referring to the market share of any defendant and/or EchoStar and Dish Network.

See, e.g., Exhibit 6, EchoStar's Subpoena to the Circuit City Stores, Inc.

83. EchoStar has also subpoenaed documents from various HDTV manufacturers, including Hitachi Home Electronics (America), Inc., Phillips Electronics Corporation, Sony Electronics, Inc., and Toshiba America Consumer Products, Inc. (collectively, "the HDTV Manufacturers").

84. EchoStar's subpoenas directed to each of the HDTV Manufacturers seek the following types of information, also relevant to the relevant market definition, DIRECTV's market power and the anticompetitive effects of that market power:

- Request No. 6 - Any and all Documents reflecting or relating to any and all communications between or among Your directors, officers, employees, agents, independent contractors, retailers or representatives reflecting or relating to: (a) EchoStar, Dish Network or any Plaintiff; (b) the distribution of television programming via satellite; (c) the sale, distribution or marketing of HDTV; [and] (d) the DBS market or the High Powered DBS market;
- Request No. 7 - Any and all Documents reflecting or relating to any communications between You and any retailers of satellite television products and

services, including but not limited to: . . . (c) the sales, distribution or marketing of HDTV; [and] (d) the DBS market or the High Powered DBS market

- Request No. 11 - Any and all Documents reflecting or relating to DIRECTV's market share, EchoStar/Dish Net's market share, the size of the DBS market and the High Powered DBS market, and the potential growth of the DBS market and the High Powered DBS market during the next five (5) years.
- Request No. 12 - Any and all Documents reflecting or relating to potential for the HDTV market and/or the direct broadcast satellite market.

See, e.g., Exhibit 7, EchoStar's Subpoena to Hitachi Home Electronics (America), Inc.

85. In addition, EchoStar has subpoenaed professional sports leagues and organizations, including Major League Baseball and the National Basketball Association (collectively, "the Sports Leagues").

86. EchoStar's subpoenas directed to the Sports Leagues seek the following types of information, which is again relevant to the relevant market definition, DIRECTV's market power and the anticompetitive effects caused by that market power:

- Request No. 7 - Any and all Documents reflecting or relating to any oral, written or electronic communications, reports and/or internal memoranda between or among Your directors, officers, employees, agents, independent contractors or representatives reflecting or relating to (a) EchoStar, Dish Network or any Plaintiff; (b) the sale or distribution of sports programming via satellite television in general; . . . (f) the present size of the DBS market or High Powered DBS market and the size of the DBS or High Powered DBS market since January 1, 1994; or (g) the projected size of the DBS market or High Powered DBS market for the next five (5) years.
- Request No. 12 - Any and all Documents reflecting or relating to customer, consumer or marketing surveys, including but not limited to any and all surveys relating to what existing and potential satellite subscribers want in terms of programming and/or service.
- Request No. 13 - Any and all Documents reflecting or relating to the total number of households in the United States, the total number of households in the United States with television sets the outlook for the DBS or High Powered DBS

industry, or the total number of households in the United States projected to have television sets during the next five (5) years.

- Request No. 16 - Any and all Documents reflecting or relating to DIRECTV's market share and EchoStar/Dish Net's market share.

See, e.g., Exhibit 8, EchoStar's Subpoenas to the Major League Baseball.

87. In response to its formal subpoenas and informal document requests directed to various third parties, EchoStar has received more than 80,000 pages of documents from various third-parties. The following chart describes the dates and volume of documents produced by each third-party:

<u>Third Party</u>	<u>Date Produced</u>	<u>Total No of Pages</u>
AT&T/Media One	07/31/00	420
Dixon & Associates	07/26/00	12
Circuit City	08/09/00	56,222
CVS Systems	09/29/00	219
Fry's Electronics	07/18/00	3,881
Gulf Coast Electronics	05/01/00	1,831
Hitachi	07/24/00	2,059
Kelly Broadcasting	09/26/00	400
Montgomery Ward	06/22/00	751
NBA	07/29/00	10,737
Radio Shack	08/03/00	113
Sony Electronics	07/26/00	99
Ultimate Electronics	06/23/00	3,631
Wal-Mart	08/31/00	588
TOTAL:		80,963

88. EchoStar believes that the volume of future third party document discovery will significantly exceed the number of documents received to date from third-parties.

89. While third-party witnesses have generally produced some relevant documents, many of the third-party documents that have been produced are in fact non-responsive to EchoStar's subpoenas. Many third parties have also objected to producing additional, responsive materials. This requires that EchoStar consider the responsiveness of each third-party's document production, as well as the merits of all objections, in order to work with opposing counsel and/or counsel representing each of the parties in an effort to obtain a fully responsive production. If despite these good faith efforts to work with counsel representing the third-parties responsive documents are not forthcoming, EchoStar will be forced to file motions to compel and will likely have to attend hearings and file supplemental actions in each of the jurisdictions in which the contested subpoena was served. Currently, most of the third-party discovery is being conducted in jurisdictions outside of the District of Colorado. Simultaneous discovery skirmishes in multiple jurisdictions will necessarily increase the time required to obtain responsive and relevant discovery, discovery needed for EchoStar to substantively respond to DIRECTV's Motion.

90. By way of example only, Circuit City Stores, Inc. ("Circuit City") submitted a 30-page objection to EchoStar's subpoena, specifically objecting to the production of documents directly relevant to the relevant market definition and DIRECTV's market share in that market. See Exhibit 9, Circuit City's Objections to Subpoena Duces Tecum dated August 8, 2000.

91. Circuit City's objections to EchoStar's Request Nos. 11, 15, 16, 17, and 18 are as follows:

Request "11."

Any and all Documents reflecting or relating to any and all communications between or among Your directors,

officers, employees, agents, independent contractors, retailers or representatives reflecting or relating to: (a) EchoStar, Dish Network or any Plaintiff; (b) the distribution of television programming via satellite; (c) the sale, marketing or distribution of HDTV; (d) the DBS market; (e) the decision of any HDTV manufacturer not to provide television products or other electronic equipment to any retailer of satellite television equipment or services that sold plaintiffs' products or services; (f) the decision by any Defendant (or any HDTV manufacturer) to prevent or not to authorize any retailer of satellite television equipment or services to sell DIRECTV products and services; or (g) comparing Plaintiffs and their products or services to DIRECTV and its products or services.

OBJECTION:

Circuit City objects in part to this request for production on the grounds that it is overbroad, unduly burdensome, vague, and oppressive to the extent that it seeks all communications reflecting or relating to the distribution of television programming via satellite, the sale or marketing of HDTV, and the DBS market, including communications unrelated to parties to this Litigation, which are not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Circuit City also objects to this request for production on the grounds that it is duplicative of other requests in this Subpoena Duces Tecum. Circuit City also objects to this request for production on the grounds and to the extent it seeks confidential commercial information. Subject to and without waiving these objections, Circuit City will provide these Documents to the extent that they involve communications related to parties to this Litigation. Pursuant to the Agreed Protective Order, Circuit City will designate as "CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER" those Documents that are non-public and which must be held confidential to protect business or commercial interests. Circuit City will designate as "RESTRICTED CONFIDENTIAL PURSUANT TO COURT ORDER - OUTSIDE COUSEL ONLY" those Documents that are so commercially sensitive or confidential that disclosure to employees of another party, even under the restricted terms and conditions applicable to material designated "CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER," would not provide adequate protection to Circuit City's interests.

Request "15."

Any and all Documents reflecting or relating to any and all consumer, subscriber, or market surveys or analyses that identify or discuss what potential or existing satellite subscribers want in terms of service or programming features and equipment design/usability.

OBJECTION:

Circuit City objects to this request for production on the grounds that it is overbroad, unduly burdensome, vague, and oppressive. Circuit City also objects to this request for production on the grounds that it seeks Documents unrelated to DBS and HDTV or to the parties to this Litigation, which are not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Circuit City also objects to this request for production on the grounds that the information requested is readily available to EchoStar from public sources which are more convenient, less burdensome, and less expensive than obtaining it from Circuit City. Circuit City does not perform this type or research internally.

Request "16."

Any and all Documents reflecting or relating to the number of households in the United States, the number of households in the United States with television sets and the number of households in the United States that are projected to have television sets during the next five (5) years.

OBJECTION:

Circuit City objects to this request for production on the grounds that it is ridiculous. Circuit City also objects to this request for production on the grounds that it is overbroad and unduly burdensome and seeks Documents which are not relevant and not reasonably calculated to lead to the discovery of admissible evidence because the information requested is readily available to EchoStar from public sources which are more convenient, less burdensome, and less expensive than obtaining it from Circuit City. Circuit City does not perform this type or research internally. Circuit City also objects to this request for production on the grounds that it is overbroad and unduly burdensome to the extent that it seeks information unrelated to DBS and HDTV, which is not relevant and not reasonably calculated to lead to the discovery of admissible evidence.

Request "17."

Any and all Documents reflecting or relating to customer service scripts, videotapes, Documents, brochures or other communications directed at Disk Network subscribers or potential DBS subscribers that mention, refer to, or relate to EchoStar or Dish Network, or their services, products or marketing activities.

OBJECTION:

Circuit City objects to this request for production on the grounds that the term "customer service scripts" is vague and ambiguous. Subject to and without waiving this objection, Circuit City will produce Documents responsive to this request for production. Pursuant to the Agreed Protective Order, Circuit City will designate as "CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER" those Documents that are non-public and which must be held confidential to protect business or commercial interests. Circuit City will designate as "RESTRICTED CONFIDENTIAL PURSUANT TO COURT ORDER - OUTSIDE COUSEL ONLY" those Documents that are so commercially sensitive or confidential that disclosure to employees of another party, even under the restricted terms and conditions applicable to material designated "CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER," would not provide adequate protection to Circuit City's interests.

Request "18."

Any and all Documents reflecting or referring to the market share of any defendant and/or EchoStar and Dish Network.

OBJECTION:

Circuit City objects to this request for production on the grounds that it is overbroad, unduly burdensome, vague, and oppressive and seeks Documents which are not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Circuit City also objects to this request for production on the grounds that the information requested is readily available to EchoStar from public sources which are more convenient, less burdensome, and less expensive than obtaining it from Circuit City. Circuit City does not perform this type of research internally.

Id.

92. To date, notwithstanding its wide-ranging objections, Circuit City has produced more than 56,000 pages of documents.

93. For the most part, the documents produced by Circuit City relating to market definition are helpful in defining the geographic market only. None of the documents provide significant insight into the DBS product market.

94. At this point, EchoStar must attempt to obtain from Circuit City additional relevant documents, and, if necessary, file a motion to compel in Richmond, Virginia.

95. Similarly, Radio Shack/Tandy Corporation ("Radio Shack") produced a single file containing a few, selected documents, none of which is relevant to the relevant market definition and/or DIRECTV's market power. EchoStar must therefore attempt to obtain additional documents from Radio Shack responsive to EchoStar's subpoena and relevant to the issues that are the subject of DIRECTV's Motion for Summary Judgment, and, if necessary, file a motion to compel in Fort Worth, Texas.

96. Obtaining responsive documents from Consumer Electronics retailers is critical because, upon information and belief, DIRECTV has focused much of its monopoly power on retailers by forcing many of them to refuse to do business with EchoStar as a precondition for selling DIRECTV, an inferior product. Accordingly, EchoStar expects third-party discovery to reveal, among other things, (1) that the retailers view the DBS Market as a separate market with distinct differences from the overall MVPD Market; (2) that EchoStar is DIRECTV's chief competitor; (3) if not constrained by EchoStar, DIRECTV could raise its prices above the competitive level without any constraints by cable; (4) many, if not most, consumers, who would