

switch away from EchoStar if it raised prices relative to all other subscription programming services, would turn to DIRECTV.

97. Like Circuit City and Radio Shack, other third-party witnesses have not produced sufficiently responsive documents. For example, the National Basketball Association produced three banker's boxes of documents comprising more than 10,000 pages; however, only one (1) document was relevant to the issue of the relevant market definition and/or market power. Likewise, Montgomery Ward & Company, Inc. produced one redwell folder containing just two (2) documents relevant to market definition/market share while Hitachi Home Electronics (America), Inc. produced one banker's box (approximately 2,000 pages), also with just two (2) documents relevant to these issues.

98. As a result of objections and/or significantly non-responsive third-party productions, EchoStar must continue seeking documents and information from each of these third-party witnesses and, where appropriate, pursue a motion to compel in the appropriate jurisdiction.

99. On information and belief, many of the third-party Consumer Electronics Retailers are reluctant to provide fully responsive documents for fear that DIRECTV may terminate its relationship with them, refusing to allow these retailers to arrange for the sale of DIRECTV service and cutting-off their supply of DIRECTV-compatible equipment. EchoStar intends to pursue this issue in discovery with the third-party witnesses as well as with DIRECTV.

100. At present, EchoStar anticipates receiving additional documents from Sears, Roebuck & Co. ("Sears") and Phillips Electronics Corporation ("Phillips"). Although Sears'

documents were originally due September 22, 2000, Sears just recently produced documents. The Phillips documents were due on July 31, 2000. EchoStar's counsel is working with Phillips' counsel to coordinate production, which Phillips agreed to produce by October 16, 2000, but to date has not produced the documents that relate to the issues of market definition/market power, among other things.

101. In addition to subpoenaing various consumer electronics retailers, HDTV manufacturers and sports leagues, both EchoStar and DIRECTV have subpoenaed four (4) cable companies: DIRECTV has subpoenaed Adelphia Communications Corporation ("Adelphia"); AT&T Broadband Management Corporation ("AT&T"); Comcast Cable Communications, Inc. ("Comcast"); Cablevision Systems Corporation ("Cablevision"), and Time Warner, Inc. ("Time Warner"). EchoStar has subpoenaed Adelphia, Cablevision and Time Warner and intends to subpoena Comcast in November 2000.

102. Both EchoStar and DIRECTV are seeking from these cable companies documents pertaining to relevant market definition and market power, including the following types of documents that were requested by DIRECTV:

- a) All advertisements or promotion materials that refer to any digital cable service that you offer, DIRECTV, EchoStar or satellite television.
- b) All documents relating to advertising plans for any digital cable service that you offer, and all documents relating to advertising plans which refer to DIRECTV, EchoStar (Dish Network), or satellite television.
- c) All documents discussing or concerning any competition with, or actual or proposed competitive response to or from DIRECTV, EchoStar, or satellite television.
- d) All of your filings or communications with any Federal or State governmental entity (including but not limited to the Federal Communications Commission, the Federal Trade Commission, and the

- Request No. 7 -Any and all Documents reflecting or relating to the perimeter of the geographic area that You serve or other description of the geographic area that You serve.
- Request No. 8 -Any and all Documents reflecting or relating to Your cable television subscribers who are also DBS and/or High Power DBS subscribers.
- Request No. 9 -Any and all Documents reflecting or relating to any comparisons or similarities between cable service/products/programming and DBS or High Power DBS service/products/programming.
- Request No. 10 -Any and all Documents reflecting or relating to DBS or High Power DBS customers switching to, or converting to, Your cable service for any reason whatsoever, and the reasons for such switching or conversion.
- Request No. 11 -Any and all Documents reflecting or relating to your advertising programs and/or advertising campaigns that refer in any way to incentives offered to DBS and/or High Power DBS subscribers for switching or converting to cable television.
- Request No. 12 -Any and all Documents reflecting or relating to any communication that You have had with any Defendant relating to this Litigation.
- Request No. 15 -Any and all Documents reflecting or relating to all consumer, subscriber, or market surveys or analysis that identify or discuss what potential or existing cable television subscribers want/do not want in terms of service or programming features and equipment design/usability.
- Request No. 16 -Any and all Documents reflecting or relating to all consumer, subscriber, or market surveys or analysis that identify or discuss what potential or existing DBS and/or High Power DBS subscribers want/do not want in terms of service or programming features and equipment design/usability.
- Request No. 17 -Any and all documents reflecting and/or referring 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 in the next five (5) years.
- Request No. 18 -Any and all documents reflecting and/or referring to the number of households in the United States receiving cable and the number of households in the United States projected to receive cable in the next five (5) years.

- Request No. 19- Any and all documents reflecting and/or referring to the number of households in the United States receiving DBS or High Power DBS service/programming and the number of households in the United States projected to receive DBS service/programming in the next five (5) years.
- Request No. 20 -Any and all documents reflecting and/or referring to Your market share or the relative amount of Your sales activity with respect to Your cable television competitors.

See, e.g., Exhibit 11, EchoStar's Subpoena to Adelphia.

107. EchoStar originally requested production of documents responsive to the foregoing requests on the following dates: October 24, 2000 (Time Warner, Inc.); October 25, 2000 (Cablevision Systems Corporation); and November 2, 2000 (Adelphia Communications Corporation). Like DIRECTV, however, EchoStar has granted both Time-Warner, Inc. and Cablevision Systems Corporation thirty-day (30) extensions of time in which to respond. In addition, as noted above, Adelphia has indicated it will be objecting to the subpoena directed to it and will not be producing any documents voluntarily. EchoStar will attempt in good faith to resolve this dispute, but a motion to compel may be necessary.

108. Documents from the cable companies have yet to be produced, and, as with certain consumer electronics retailers, HDTV manufacturers and sports leagues, the future document production could potentially be deficient, thus requiring EchoStar to expend additional time and effort obtaining the documents and information necessary to further factually develop its relevant market analysis.

109. The documents to be produced by the cable companies, to the extent responsive, should reveal significant information regarding the relationship between DBS and cable. Demonstrating the precise relationship between these two groups of programming distributors is necessary when proving the existence of separate product markets. In particular, documents

DLJ personnel, communications with Hughes Network Systems and communications with third parties.

- Any and all Documents reflecting or relating to the growth or expansion of DIRECTV, including, without limitation, any Documents reflecting or relating to actual or contemplated financing transactions, consolidations, mergers and/or acquisitions.
- Any and all Documents reflecting or relating to the growth or expansion of General Motors Corporation, Hughes Electronics Corporation and/or Hughes Network Systems in any aspect of the DBS or High Power DBS market, including, without limitation, any Documents reflecting or relating to actual or contemplated financing transactions, consolidations, mergers and/or acquisitions.
- Any and all Documents reflecting or relating to any actual or contemplated take-over, consolidation, merger and/or acquisition of DIRECTV or any affiliate thereof which provides DBS or High Power DBS products and/or services.
- All Communication between DLJ or any of its personnel and DIRECTV, General Motors Corporation, Hughes Electronics Corporation and/or Hughes Network Systems or any of their personnel relating to any aspect of the DBS or High Power DBS market.
- Any and all Documents reflecting or relating to investment banking services, financial advising services, underwriting services and/or brokerage services utilized by DIRECTV, General Motors Corporation, Hughes Electronics Corporation and/or Hughes Network Systems as such services relate to the DBS or High Power DBS market, and further including any Documents that Identify any of these service providers.
- Any and all Documents reflecting or relating to any securities of General Motors, including the securities of any affiliate or subsidiary thereof, which track the ownership and growth of DIRECTV or any related company providing DBS or High Power DBS products and/or services.
- Any and all Documents reflecting or relating to any analysis prepared in connection with the valuation of DIRECTV or any affiliate thereof that provides DBS or High Power DBS products and/or services.
- Any and all Documents reflecting or relating to the DBS and/or High Power DBS market, including but not limited to: (a) the size of the DBS and/or High Power DBS market at the present time and since January 1, 1994; (b) the entities that comprise the DBS and/or High Power DBS market; (c) the current market share of each entity in the DBS and/or High Power DBS market and the market share of

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- Provide relevant information to experts to enable experts to analyze, proffer opinions, and create reports relating to, among other things, market definition and market share.

**A. Document Discovery**

115. Before proceeding with depositions, EchoStar must complete its review of the voluminous materials and documents already produced by DIRECTV, RCA and third parties.

116. EchoStar understands that it will have to begin depositions before it has received all relevant documents from the defendants and third parties. However, EchoStar will not begin the DIRECTV depositions until DIRECTV has at least produced all responsive documents; EchoStar's completion of its review of the DIRECTV documents is important to efficiently conduct the DIRECTV depositions.

117. EchoStar has already found documents produced by DIRECTV demonstrating both that the relevant market is the DBS Market and that DIRECTV has market power within that relevant market.

118. For example, in a 1999 presentation at a Sales and Marketing Meeting, DIRECTV noted that "DTV Dominates DBS Market." See Exhibit 13, DIRECTV Rocks: - The New DIRECTV, 1999 Sales and Marketing Meeting, at p. 3. In this presentation, DIRECTV admitted that its market share of the DBS Market was 74%, thus demonstrating its market power. Id.

119. Outsiders also appear to recognize the DBS Market as separate and distinct market. For example, in a February 16, 1999 Morgan Stanley Dean Witter report (produced by DIRECTV), the authors noted:

DIRECTV's service is located in over 26,000 consumer electronics locations across the United States such as Circuit City, Best Buy and Sears. The

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breadth of locations enabled DIRECTV to capture a large portion of the DBS market where it has remained. . . . Today, DIRECTV has over 51% of the total DBS market. . . .

To strengthen its dominant market share further, in January, DIRECTV announced that it would acquire Primestar's 2.3 million medium power subscribers and high power satellite assets . . . . The acquisition would also boost DIRECTV's market share from 51% to 78% to make the DBS industry a duopoly versus an oligopoly.

Exhibit 14, U.S. and the Americas Investment Research, Morgan Stanley Dean Witter, February 16, 1999, at page 18.

120. DIRECTV itself has thus apparently characterized the market in which it competes as the "DBS Market." EchoStar believes that additional incriminating documents regarding DIRECTV's characterization of the DBS Market, DIRECTV's market power, and the anticompetitive effects caused by that power will be located once EchoStar has had an opportunity to fully review the more than 400,000 documents produced thus far as well as the additional documents that DIRECTV and others continue to produce.

121. EchoStar anticipates that these documents will include, among other things, the following information relating to market definition, market power and anticompetitive effect: admissions by DIRECTV relating to the relevant market and DIRECTV's share thereof; DBS subscriber demographic and characteristic information; reports or studies indicating why people purchase DBS equipment and services; product characteristics; pricing information; DIRECTV's competitive strategies and plans; evidence of anti-competitive effects relating to, among other things, retailers, HDTV set manufacturing and sports-leagues.

122. EchoStar will also propound additional document requests on DIRECTV to follow up on information obtained during the first round of discovery requests, which is ongoing.

123. For example, EchoStar intends to seek documents from DIRECTV regarding the factors DIRECTV has considered in setting its prices. This discovery is directly relevant to the relevant market definition because EchoStar believes the evidence will demonstrate that DIRECTV's price structure is driven by competition from EchoStar and what EchoStar is doing in the marketplace and not what cable companies are doing in the marketplace.

124. Although EchoStar is diligently conducting third party discovery, the sheer number of potential third party witnesses (more than 200) and the lack of cooperation exhibited by some third parties (who have close ties to DIRECTV) effectively means it will take several more months to conduct this discovery.

125. EchoStar also believes that it should have the opportunity to complete its third-party discovery before it is required to substantively respond to the Motion. Third-party discovery is critical to establish the DBS Market as the relevant market, DIRECTV's market power, and, most importantly, the anticompetitive effects caused by DIRECTV. As alleged in the Complaint, DIRECTV has entered into exclusive relationships with numerous retailers, the goal of which, upon information and belief, is to drive EchoStar out of the DBS market. Accordingly, third-party document discovery and third-party depositions are important elements of EchoStar's discovery plan.

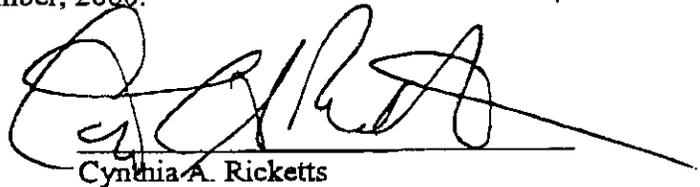
126. Where, as here, the parties are literally in the middle of extensive document discovery, it is simply not practical to focus on the substantive issues of a motion for summary judgment. EchoStar believes that it should be permitted to continue with this extensive discovery effort and then move on to the next phase of discovery – depositions – before being required to substantively respond to DIRECTV's Motion.

intends to share with its experts documents that the third party has designated as confidential under the Protective Order. As a result of this additional time consuming process, EchoStar's experts have not been yet permitted to review, or even had access to, many of the documents produced by third parties.

136. EchoStar believes that, before responding substantively to the motion, its experts should be given an opportunity to review and analyze relevant documents and to conduct their own analysis of the relevant market definition, DIRECTV's market power and the anticompetitive effect's of DIRECTV's exercise of its power.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed this 12 day of November, 2000.



Cynthia A. Ricketts

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

W

Civil Action No. 00-WY-212-CB

**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

MAR 13 2000

JAMES R. MANSPEAKER  
CLERK

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EHOSTAR COMMUNICATIONS CORPORATION, a  
Nevada corporation; EHOSTAR SATELLITE  
CORPORATION, a Colorado corporation; EHOSTAR  
TECHNOLOGIES CORPORATION, a Texas corporation,

Plaintiffs,

v.

DIRECTV Enterprises, Inc., a Delaware corporation;  
DIRECTV, INC., a California corporation; DIRECTV  
Merchandising, Inc., a Delaware corporation;  
DIRECTV Operations, Inc., a California corporation;  
HUGHES NETWORK SYSTEMS, a Delaware corporation;  
THOMSON CONSUMER ELECTRONICS, INC.,  
d/b/a, RCA, a Delaware corporation,

Defendants.

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DIRECTV, INC., a California corporation;  
HUGHES ELECTRONICS CORPORATION,  
a Delaware corporation;

Counterclaimants,

v.

EHOSTAR COMMUNICATIONS CORPORATION, a  
Nevada corporation; EHOSTAR SATELLITE  
CORPORATION, a Colorado corporation; EHOSTAR  
TECHNOLOGIES CORPORATION, a Texas corporation,

Counterdefendants.

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**ANSWER TO COMPLAINT, AFFIRMATIVE AND  
OTHER DEFENSES, AND COUNTERCLAIM**

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## ANSWER

Defendants DIRECTV Enterprises, Inc., DIRECTV, Inc., DIRECTV Merchandising, Inc., and DIRECTV Operations, Inc. (collectively "DIRECTV") and Hughes Electronics Corporation ("Hughes") (incorrectly identified as Hughes Network Systems) answer the Complaint of Plaintiffs EchoStar Communications Corporation, EchoStar Satellite Corporation, and EchoStar Technologies Corporation (collectively "EchoStar") as follows.

Plaintiff EchoStar is, in its own words, "a multichannel video programming distributor ('MVPD') providing Direct Broadcast Satellite ('DBS') service to subscribers throughout the United States." Comments of EchoStar Satellite Corp., In the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, FCC CS Docket No. 99-320 (Aug. 6, 1999) p. 1. As such, it competes with many other MVPD providers, principally cable companies. EchoStar acknowledges it is "pursuing a pure strategy of head-on, direct competition against cable. . . . Ever since it commenced DBS service in the spring of 1996, EchoStar has viewed cable subscribers as its primary market. Accordingly, EchoStar has priced and structured its offering with the primary purpose of attracting cable subscribers." Comments of EchoStar Satellite Corp., In the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, FCC CS Docket No. 97-141 (July 23, 1997) p. 2. EchoStar has also proclaimed, loudly and boldly on many occasions, that "CABLE OPERATORS POSSESS MARKET POWER IN THE MVPD MARKET." *Id.*; see also, *id.* at p. 17 ("EchoStar believes the MVPD market is still dominated by cable operators"). Indeed, EchoStar has publicly stated that no satellite carrier has market power. Comments of EchoStar Satellite Corp., In the Matter of Implementation of the Satellite Home Viewer Improvement Act of 1999, FCC CS Docket No. 99-363 (February 1, 2000) p. 2 ("broadcast

stations do not need to be protected from the market power of satellite carriers for the simple reason that satellite carriers do not have market power”).

DBS is a technology designed to compete with cable in the MVPD market. DIRECTV and Hughes pioneered high-power Direct-to-Home satellite service, also known as DBS service -- the precursor to what EchoStar touts in its Complaint as “the hottest consumer product in history.” Beginning in 1991, DIRECTV and Hughes conceived of, designed and developed the equipment and software necessary to deliver DBS video programming to consumers. They created and fostered consumer awareness and consumer demand for DBS service, and they created and fostered interest and demand on the part of manufacturers and retailers. Consumers view DBS programming as a competitive alternative to programming from cable television providers, C-Band satellite delivery systems, Multi-Point Microwave Distribution Systems (“MMDS”), terrestrial broadcasters and other sources.

EchoStar, originally a distributor of C-Band satellite systems and later a distributor for DIRECTV, followed with its own DBS service in 1996, years after DIRECTV. Since then, EchoStar has “drafted” in the wake of DIRECTV’s hard work and success, capitalizing on the consumer awareness and demand that DIRECTV created. EchoStar has chosen to market its satellite dishes and receiving/decoding equipment largely directly to consumers and through thousands of local and regional retailers, and at very low prices. Its strategy has been successful. EchoStar has publicly stated that it has 3.4 million subscribers, and, in little more than a year, its stock price has risen 1,000%.

Despite its enormous success in the market and on Wall Street, and despite its continued strategy of trading on DIRECTV’s early efforts and success, EchoStar brings the current lawsuit, claiming that it cannot fairly compete in the marketplace. But its own conduct and statements

belie its entire case. While in its Complaint EchoStar adopts for its litigation purposes the pretense that the consumer "market" in which it competes is a satellite broadcast market dominated by DIRECTV, for years EchoStar has more honestly affirmed, repeatedly and consistently, that the real consumer "market" here is the entire market for multi-channel video programming distribution and that cable television companies (with their 69 million customers), not DIRECTV, dominate that market. DIRECTV agrees. Thus, EchoStar's claims have no basis in fact or law and should be dismissed.

**RESPONSE TO PARAGRAPH NO. 1:**

DIRECTV and Hughes admit that Plaintiffs purport to allege violations of federal and state antitrust laws and tortious interference with contractual relations, but DIRECTV and Hughes deny that Plaintiffs have pled or can prove any valid cause of action. DIRECTV and Hughes further state that they have not violated any antitrust laws or interfered tortiously with any contracts. DIRECTV and Hughes admit, upon information and belief, that EchoStar and DIRECTV compete with each other and with cable television companies and other entities to provide multi-channel video programming to consumers across the country. DIRECTV and Hughes admit that EchoStar has publicly stated that it has 3.4 million customers and that its stock price has risen dramatically in the last fifteen months. DIRECTV and Hughes deny the remaining allegations of this paragraph.

**II. PARTIES**

**RESPONSE TO PARAGRAPH NO. 2:**

Admitted, upon information and belief.

**RESPONSE TO PARAGRAPH NO. 3:**

Admitted.

**RESPONSE TO PARAGRAPH NO. 4:**

Admitted.

**RESPONSE TO PARAGRAPH NO. 5:**

DIRECTV, Inc., DIRECTV Merchandising, Inc., and DIRECTV Operations, Inc. maintain "The Corporation Company" as a registered agent for service of process in Colorado at the address listed. DIRECTV and Hughes deny the remaining allegations of this paragraph.

**RESPONSE TO PARAGRAPH NO. 6:**

DIRECTV and Hughes admit that Hughes Network Systems is a business unit of Hughes Electronics Corporation and that Hughes Electronics Corporation is a Delaware corporation with its principal place of business in El Segundo, California. DIRECTV and Hughes deny the remaining allegations of this paragraph.

**RESPONSE TO PARAGRAPH NO. 7:**

Admitted.

**RESPONSE TO PARAGRAPH NO. 8:**

DIRECTV and Hughes are without knowledge or information sufficient to form a belief as to the truth of the allegation of the first sentence of this paragraph, and therefore deny the same. DIRECTV and Hughes admit that DIRECTV Enterprises, Inc. owns approximately 5% of Thomson multimedia, the parent corporation of Thomson Consumer Electronics Inc. DIRECTV and Hughes deny the remaining allegations of this paragraph.

**III. JURISDICTION AND VENUE**

**RESPONSE TO PARAGRAPH NO. 9:**

DIRECTV and Hughes admit that Plaintiffs purport to bring this action pursuant to various statutory and common laws, but deny that Plaintiffs have pled or can prove any valid

cause of action, and deny the remaining allegations of this paragraph.

**RESPONSE TO PARAGRAPH NO. 10:**

DIRECTV and Hughes admit that Plaintiffs purport to seek injunctive relief, but deny that Plaintiffs are entitled to this or any other relief, and deny the remaining allegations of this paragraph.

**RESPONSE TO PARAGRAPH NO. 11:**

DIRECTV and Hughes admit that Plaintiffs purport to seek the various types of damages cited, but deny that Plaintiffs have suffered legal damages, deny that Plaintiffs are entitled to damages of any kind, and deny the remaining allegations of this paragraph.

**RESPONSE TO PARAGRAPH NO. 12:**

DIRECTV and Hughes admit that Plaintiffs purport to base subject matter jurisdiction on 28 U.S.C. §§ 1331, 1332, 1337(a) and 1367 and purport to plead damages in excess of \$75,000, excluding interest and costs. DIRECTV and Hughes are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph, and therefore deny same.

**RESPONSE TO PARAGRAPH NO. 13:**

DIRECTV and Hughes admit that they are licensed to do business, transact business and are found in this District. DIRECTV and Hughes deny that any acts or omissions occurred in this District or anywhere else that give rise to claims of any kind. DIRECTV and Hughes are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of the first sentence of this paragraph, and therefore deny same. DIRECTV and Hughes deny the allegations of the second sentence of this paragraph.

**RESPONSE TO PARAGRAPH NO. 14:**

DIRECTV and Hughes admit that DIRECTV provides multi-channel video programming to thousands of Colorado consumers and operates a Broadcast Center in Castle Rock, Colorado. DIRECTV and Hughes deny the remaining allegations of this paragraph.

**RESPONSE TO PARAGRAPH NO. 15:**

DIRECTV and Hughes admit that DIRECTV derives revenue from the sale of multi-channel video programming to consumers, and that Hughes derives revenue from the sale of equipment to consumers in Colorado and nationwide. DIRECTV and Hughes deny the remaining allegations of this paragraph.

**RESPONSE TO PARAGRAPH NO. 16:**

DIRECTV and Hughes admit that Thomson sells receiver/decoder equipment throughout the United States. DIRECTV and Hughes are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph, and therefore deny same.

**RESPONSE TO PARAGRAPH NO. 17:**

DIRECTV and Hughes admit that DIRECTV's sale of multi-channel video programming to consumers and Hughes' sale of equipment are, in part, within interstate commerce and have, in part, a direct, substantial and reasonably foreseeable effect on interstate commerce. DIRECTV and Hughes are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph, and therefore deny same.

**IV. FACTS**

**RESPONSE TO PARAGRAPH NO. 18:**

DIRECTV and Hughes admit, upon information and belief, the allegations of the first

sentence of this paragraph. DIRECTV and Hughes further admit that, as a result of the efforts of cable television companies, Direct-to-Home satellite broadcasters like DIRECTV and EchoStar, and other entities, many consumers today have access to more programming than they did a decade ago. DIRECTV and Hughes are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph, and therefore deny same.

**RESPONSE TO PARAGRAPH NO. 19:**

DIRECTV and Hughes admit that consumer demand for more programming has been a factor in the growth of the multi-channel video programming distribution industry. DIRECTV and Hughes deny the remaining allegations of this paragraph.

**RESPONSE TO PARAGRAPH NO. 20:**

DIRECTV and Hughes admit that the number of consumers subscribing to Direct Broadcasting Satellite ("DBS") service has increased since 1994 and that, upon information and belief, currently more than 10 million households in the continental United States subscribe to DBS service. DIRECTV and Hughes deny the remaining allegations of this paragraph.

**RESPONSE TO PARAGRAPH NO. 21:**

DIRECTV and Hughes admit that Primestar, DIRECTV and EchoStar, among others, have offered Direct-to-Home satellite service to consumers; that Primestar originally employed a medium-power satellite; that DIRECTV and EchoStar employ high-power satellites; that DIRECTV began service in 1994 and EchoStar began service in 1996; that DIRECTV and EchoStar sell programming to consumers; that, upon information and belief, EchoStar also sells equipment to consumers necessary to receive and decode the programming signals; and that the satellite systems and the terrestrial facilities associated with them can cost hundreds of millions of dollars to own and that building or acquiring such systems and facilities can require significant

planning. DIRECTV and Hughes deny the remaining allegations of this paragraph.

**RESPONSE TO PARAGRAPH NO. 22:**

DIRECTV and Hughes admit that subscribers of DBS service may have access to 200 or more channels of digital video or audio programming and that DIRECTV and EchoStar both typically rely on 18" to 20" diameter receiving dishes. DIRECTV and Hughes admit that DBS service may be linked or provide access to other features, including surround sound, High Definition Television ("HDTV"), and the Internet. DIRECTV and Hughes specifically deny that "High Power DBS offered consumers a product that was never before available." DIRECTV and Hughes further state that multi-channel video programming was available before 1994 and is available today from DBS providers, cable television providers, C-Band satellite delivery systems, Multi-Point Microwave Distribution Systems ("MMDS"), terrestrial broadcasters, and other sources. DIRECTV and Hughes deny the remaining allegations of this paragraph.

**RESPONSE TO PARAGRAPH NO. 23:**

DIRECTV and Hughes admit that DBS service typically relies on an 18" to 20" diameter receiving dish and that DBS service offers high-quality digital video and audio programming to consumers. DIRECTV and Hughes further admit that companies other than DBS providers offer digital television programming. DIRECTV and Hughes deny the remaining allegations of this paragraph.

**RESPONSE TO PARAGRAPH NO. 24:**

DIRECTV and Hughes admit that, at times, the cost to a consumer of equipment needed to receive and decode DBS programming signals has been in the range of hundreds of dollars. DIRECTV and Hughes deny the remaining allegations of this paragraph.

**RESPONSE TO PARAGRAPH NO. 25:**

DIRECTV and Hughes admit that an integrated receiver/decoder used for DIRECTV programming in the United States cannot be used to receive and decode EchoStar programming, and vice versa. DIRECTV and Hughes are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph, and therefore deny same.

**RESPONSE TO PARAGRAPH NO. 26:**

DIRECTV and Hughes admit, upon information and belief, that at least 10 million households in the United States subscribe to DBS service. DIRECTV and Hughes are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph, and therefore deny same.

**RESPONSE TO PARAGRAPH NO. 27:**

Denied.

**RESPONSE TO PARAGRAPH NO. 28:**

DIRECTV and Hughes admit that the cost of building and launching a satellite into space can amount to hundreds of millions of dollars. DIRECTV and Hughes deny the remaining allegations of this paragraph.

**RESPONSE TO PARAGRAPH NO. 29:**

DIRECTV and Hughes admit that the number of customers a DBS provider can attract and retain is one of many factors that may affect how well that provider can compete with other multi-channel video programming providers. DIRECTV and Hughes deny the remaining allegations of this paragraph.

**RESPONSE TO PARAGRAPH NO. 30:**

DIRECTV and Hughes admit that, under current technology and current regulations,

there is a finite number of geosynchronous orbital slots assigned or assignable to satellites serving consumers in the United States and that regulatory approval is required to obtain such orbital slots. DIRECTV and Hughes deny the remaining allegations of this paragraph.

**RESPONSE TO PARAGRAPH NO. 31:**

DIRECTV and Hughes deny the allegations of the first sentence of this paragraph. DIRECTV and Hughes are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph, and therefore deny same.

**RESPONSE TO PARAGRAPH NO. 32:**

DIRECTV and Hughes admit that DIRECTV, Inc. is, indirectly, a subsidiary of Hughes Electronics, which in turn is a subsidiary of General Motors Corporation. DIRECTV and Hughes further admit that DIRECTV began offering high-power Direct-to-Home satellite service, also known as DBS service, in mid-1994. DIRECTV and Hughes deny the remaining allegations of this paragraph.

**RESPONSE TO PARAGRAPH NO. 33:**

DIRECTV and Hughes admit that a number of consumers in the United States purchased programming from DIRECTV during its first 18 months of operation and that those consumers also typically purchased equipment to receive and decode DIRECTV's programming. DIRECTV and Hughes deny the remaining allegations of this paragraph.

**RESPONSE TO PARAGRAPH NO. 34:**

DIRECTV and Hughes deny there was ever a period when they faced no competition. DIRECTV and Hughes admit that DIRECTV, during its first 18 months of operation, contracted with retailers in connection with the sale of DIRECTV programming and/or related equipment. DIRECTV and Hughes deny the remaining allegations of this paragraph.

**RESPONSE TO PARAGRAPH NO. 35:**

Denied.

**RESPONSE TO PARAGRAPH NO. 36:**

DIRECTV and Hughes admit, upon information and belief, that EchoStar began providing DBS service through its DISH Network in approximately March 1996. DIRECTV and Hughes deny the remaining allegations of this paragraph.

**RESPONSE TO PARAGRAPH NO. 37:**

DIRECTV and Hughes admit, upon information and belief, that EchoStar began providing DBS service in approximately March 1996. DIRECTV and Hughes are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph, and therefore deny same.

**RESPONSE TO PARAGRAPH NO. 38:**

DIRECTV and Hughes deny that EchoStar offers consumers a single, convenient source for equipment distribution, sales, installation, service, programming and distribution, and further deny that EchoStar's distribution, sales, installation, service, programming and distribution functions are preferable to or more convenient than DIRECTV's. DIRECTV and Hughes are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph, and therefore deny same.

**RESPONSE TO PARAGRAPH NO. 39:**

DIRECTV and Hughes admit that EchoStar has publicly stated that it has 3.4 million customers today and that EchoStar's DISH Network (followed closely by DIRECTV) was ranked #1 by J.D. Power and Associates in 1999 for customer satisfaction among satellite/cable television subscribers. DIRECTV and EchoStar received "significantly higher customer

satisfaction scores than any cable television company.” according to a press release on J.D. Power’s web site. DIRECTV and Hughes deny the remaining allegations of this paragraph.

**RESPONSE TO PARAGRAPH NO. 40:**

DIRECTV and Hughes are without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and therefore deny same.

**RESPONSE TO PARAGRAPH NO. 41:**

Denied.

**RESPONSE TO PARAGRAPH NO. 42:**

Denied.

**RESPONSE TO PARAGRAPH NO. 43:**

DIRECTV and Hughes admit that equipment to receive and decode DBS programming is marketed by consumer electronics stores and other retailers, among other channels of distribution. DIRECTV and Hughes deny the remaining allegations of this paragraph.

**RESPONSE TO PARAGRAPH NO. 44:**

DIRECTV and Hughes admit that equipment to receive and decode DIRECTV programming is sold in a wide variety of retail stores. DIRECTV and Hughes deny the remaining allegations of this paragraph.

**RESPONSE TO PARAGRAPH NO. 45:**

DIRECTV and Hughes deny the allegations of the first and last sentences of this paragraph. DIRECTV and Hughes further state that EchoStar has chosen to market its satellite dishes and receiving/decoding equipment largely directly to consumers and through thousands of local and regional retailers. DIRECTV and Hughes are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph, and

therefore deny same.

**RESPONSE TO PARAGRAPH NO. 46:**

Denied.

**RESPONSE TO PARAGRAPH NO. 47:**

Denied.

**RESPONSE TO PARAGRAPH NO. 48:**

Denied.

**RESPONSE TO PARAGRAPH NO. 49:**

Denied.

**RESPONSE TO PARAGRAPH NO. 50:**

DIRECTV and Hughes admit that equipment to receive and decode DIRECTV programming is sold at a wide variety of retail stores, including national retailers Best Buy, Radio Shack, and Circuit City. DIRECTV and Hughes are without knowledge or information sufficient to form a belief as to the truth of the allegations of the second and third sentences of this paragraph, and therefore deny same. DIRECTV and Hughes deny the remaining allegations of this paragraph.

**RESPONSE TO PARAGRAPH NO. 51:**

Denied. DIRECTV and Hughes further state that EchoStar has chosen to market its satellite dishes and receiving/decoding equipment largely directly to consumers and through thousands of local and regional retailers.

**RESPONSE TO PARAGRAPH NO. 52:**

Denied. DIRECTV and Hughes further state that EchoStar has chosen to market its satellite dishes and receiving/decoding equipment largely directly to consumers and through

thousands of local and regional retailers.

**RESPONSE TO PARAGRAPH NO. 53:**

Denied.

**RESPONSE TO PARAGRAPH NO. 54:**

Denied.

**RESPONSE TO PARAGRAPH NO. 55:**

DIRECTV and Hughes admit that DIRECTV tags certain of its retailers in certain of its advertising. DIRECTV and Hughes deny the remaining allegations of this paragraph.

**RESPONSE TO PARAGRAPH NO. 56:**

Denied.

**RESPONSE TO PARAGRAPH NO. 57:**

Denied.

**RESPONSE TO PARAGRAPH NO. 58:**

DIRECTV and Hughes are without knowledge or information sufficient to form a belief as to whether several consumer electronics outlets have ceased carrying or have informed EchoStar that they would cease carrying EchoStar DBS equipment, and therefore deny same. DIRECTV and Hughes deny the remaining allegations of this paragraph.

**RESPONSE TO PARAGRAPH NO. 59:**

DIRECTV and Hughes admit, upon information and belief, the allegations of the first sentence of this paragraph. DIRECTV and Hughes are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph, and therefore deny same.

**RESPONSE TO PARAGRAPH NO. 60:**

DIRECTV and Hughes are without knowledge or information sufficient to form a belief as to what SoundTrack told EchoStar in January 2000, and therefore deny same. DIRECTV and Hughes deny the remaining allegations of this paragraph.

**RESPONSE TO PARAGRAPH NO. 61:**

DIRECTV and Hughes are without knowledge or information sufficient to form a belief as to what SoundTrack told EchoStar, and therefore deny same. DIRECTV and Hughes admit that SoundTrack markets DIRECTV-compatible satellite dishes and receivers/decoders. DIRECTV and Hughes deny the remaining allegations of this paragraph.

**RESPONSE TO PARAGRAPH NO. 62:**

Denied.

**RESPONSE TO PARAGRAPH NO. 63:**

Denied.

**RESPONSE TO PARAGRAPH NO. 64:**

Denied.

**RESPONSE TO PARAGRAPH NO. 65:**

DIRECTV and Hughes admit, upon information and belief, that Thomson has one or more patents covering the equipment used to receive and decode DIRECTV programming and that Thomson licenses those patents to other entities that manufacture such equipment. DIRECTV and Hughes deny the remaining allegations of this paragraph.

**RESPONSE TO PARAGRAPH NO. 66:**

Denied.