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February 20, 2002

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

William F. Caton, Acting Secretary
Office of the Secretary
Federal Communications Commission
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20002

Re: CS Docket No. 01-348

Attention: Marcia Glauberman
Cable Services Bureau

Per request by the staff to National Association of Broadcasters (NAB), please find enclosed copies of the material referenced in footnotes No. 65 to No. 69 in the Declaration of J. Gregory Sidak attached as Appendix B to NAB's Petition to Deny.

Sincerely,

Edward P. Henneberry

Enclosures

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FILED
United States District Court
Denver, Colorado

FEB 01 2000

JAMES R. MANSPEAKER, CLERK

By ________ Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 00- - 212

ECHOSTAR COMMUNICATIONS CORPORATION, a Nevada corporation; **ECHOSTAR SATELLITE CORPORATION,** a Colorado Corporation; **ECHOSTAR TECHNOLOGIES CORPORATION,** a Texas corporation,

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FEB 20 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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.

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs EchoStar Communications Corporation, EchoStar Satellite Corporation, and EchoStar Technologies, Inc. (collectively, "DISH NETWORK" OR "Plaintiffs") bring this action against Defendants DIRECTV Enterprises, Inc., DIRECTV, Inc., DIRECTV Merchandising, Inc., DIRECTV Operations, Inc., Hughes Network Systems ("Hughes") (collectively, "DTV") and Thomson Consumer Electronics, Inc., d/b/a RCA ("RCA") (DTV and RCA, collectively, "Defendants"), and allege as follows:

I. NATURE OF THE ACTION

1. This is an action for violations of federal and state antitrust laws and tortious interference with contractual relations arising from Defendant's ongoing illegal attempts to monopolize the distribution of High Power Direct Broadcast Satellite service and to damage Plaintiffs' business interests. EchoStar and DTV are direct competitors in the High Power Direct Broadcast Satellite ("DBS") market. While EchoStar has been extremely successful and has gained in excess of three million subscribers in less than three years, DTV effectively controls more than 70% of the DBS market. ***DISH Network***'s success has caused DTV to exploit its dominant market position in a variety of illegal ways to attempt to exclude competition, force retailers to boycott ***DISH Network*** products and services, restrain trade, and monopolize the DBS market. In order to protect their monopoly from the threat of higher quality, lower price, and better customer service offered by ***DISH Network***, Defendants have:

- entered into illegal agreements with others in unreasonable restraint of trade and commerce in the High Power DBS industry;
- monopolized, attempted to monopolize, and combined and conspired with others to monopolize, the High Power DBS industry, and the delivery of television via satellite in general;
- engaged in exclusive dealings in the sale of High Power DBS equipment and services on the condition that the purchaser thereof not deal in or with ***DISH Network's*** equipment or services with the intended effect of substantially lessening competition

and maintaining, expanding and consolidating a monopoly in the High Power DBS industry;

- made false and misleading representations of fact concerning the nature and qualities of ***DISH Network's*** equipment and services and concealed the true relationship among DTV and its co-conspirators;
- engaged in unfair competition, deceptive trade practices and unfair business acts and practices;
- tortiously interfered with the business relations of ***DISH Network***; and
- published injurious falsehoods concerning ***DISH Network***.

Defendants engaged in these actions in an unreasonable restraint of trade and commerce all in violation of the Sherman and Clayton antitrust acts, the Lanham Act, the Colorado Antitrust Act, the California Business and Professions Code and common law. Defendants' illegal actions have but one purpose – to injure ***DISH Network***, stifle competition in the DBS industry, and ensure DTV's monopolistic hold on the High Power DBS market. Despite the unlawful conduct of DTV, Plaintiffs have grown remarkably since launching ***DISH Network*** in March 1996. Even so, Plaintiffs' progress has been slowed by DTV's anticompetitive maneuvers, and in the end, the consumers are the ones to suffer. DTV must not be allowed to wield its power in such an unlawful and destructive manner.

II. PARTIES

2. Plaintiff EchoStar Communications Corporation is a Nevada corporation. Plaintiff EchoStar Satellite Corporation is a Colorado corporation. Plaintiff EchoStar Technologies Corporation is a Texas corporation. All plaintiffs have their principal place of business at 5701 South Santa Fe, Littleton, Colorado 80120.

3. Defendants DIRECTV Enterprises, Inc. and DIRECTV Merchandising, Inc. are Delaware corporations with their principal place of business at 2230 E. Imperial Highway, El Segundo, California 90245.

4. Defendants DIRECTV, Inc. and DIRECTV Operations, Inc. are California corporations with their principal place of business at 2230 E. Imperial Highway, El Segundo, California 90245. DIRECTV, Inc. operates its Broadcast Center in Castle Rock, Colorado 80104, and maintains a regional office in Denver, Colorado 80202.

5. DIRECTV, Inc., DIRECTV Enterprises, Inc., DIRECTV Merchandising, Inc., DIRECTV Operations, Inc. and RCA maintain the following registered agent for service of process in the State of Colorado: The Corporation Company, 1675 Broadway, Denver, Colorado 80202.

6. Defendant Hughes Network Systems is a Delaware corporation with its principal place of business at 11717 Exploration Lane, Germantown, Maryland 20876.

7. DIRECTV, Inc., DIRECTV Merchandising, Inc., and DIRECTV Operations, Inc. are all, directly or indirectly, wholly owned subsidiaries of DIRECTV Enterprises, Inc.

8. Defendant Thomson Consumer Electronics, Inc. is a Delaware corporation with its principal place of business at 10330 North Meridian Street, Indianapolis, Indiana 46290 and does business as "RCA." DTV has an equity stake in RCA's parent company.

III. JURISDICTION AND VENUE

9. Plaintiffs bring this action pursuant to Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2; Section 3 of the Clayton Act, 15 U.S.C. § 14; and Section 43 of the Lanham Act, 15

U.S.C. § 1125(a)(1)(B), as well as the Colorado Antitrust Act of 1992, Col. Rev. Stat. §§ 6-4-101, et seq.; 6-4-104, 6-4-105; the Colorado Consumer Protection Act, Col. Rev. Stat. §§ 6-1-101, et seq.; California Business and Professions Code §§ 17200 and 17203, and the common law of tortious interference with contractual relations and tortious interference with prospective relations.

10. Plaintiffs seek injunctive relief pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26; Section 34 of the Lanham Act, 15 U.S.C. § 1116(a); and California Business and Professions Code §§ 17200-17203.

11. Plaintiffs seek to recover treble damages, costs of suit and reasonable attorneys' fees pursuant to Section 4 of the Clayton Act, 15 U.S.C. § 15, and Section 35 of the Lanham Act, 15 U.S.C. § 1117(a), as well as compensatory and punitive damages, costs and attorneys' fees under state law.

12. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331, 1332, 1337(a) and 1367. Plaintiffs and defendants are residents of different states and the amount in controversy exceeds $75,000, excluding interest and costs.

13. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(b); 15 U.S.C. §§ 15 and 22, inasmuch as DTV and RCA are licensed to do business, transact business and/or are found in this District and/or a substantial part of the acts or omissions giving rise to the claims herein occurred in this District. Defendants' acts have caused harm to Plaintiffs and consumers in this district.

14. Among other contacts, DTV provides subscription television programming to thousands of Colorado citizens on a continuous basis and DIRECTV, Inc. operates its uplink center in Castle Rock, Colorado.

15. DTV derives substantial revenues by selling equipment and distributing programming to consumers in Colorado and nationwide. Hughes acts in concert with DTV on a nationwide basis to sell products and exert market influence within the State of Colorado.

16. RCA derives substantial revenues by selling electronic equipment, including High Power DBS receiving equipment, in Colorado and nationwide. RCA maintains sales and service offices in Denver, Colorado.

17. Defendants' activities, as alleged herein, were, and are, within the flow of interstate commerce, and were, and are, intended to, did and do have a direct, substantial and reasonably foreseeable effect on interstate commerce within the United States.

IV. FACTS

The High Power Direct Broadcast Satellite Market

18. There are approximately 100 million households in the United States, and most households have at least one television set. Surveys report that for every television set in a household, there is usually a second television set found in the same household. In addition, television use in business settings is now commonplace, from the sports bar to the airport. The nation is constantly watching more television and more varieties of programming than were thought possible just 10 years ago.

19. Consumer demand for more channel choices and entertainment options has been the driving force in the multi-channel video programming industry. It has also provided a lucrative incentive for DTV to engage in illegal tactics and maneuvers to protect, grow and consolidate its monopolistic position at all costs.

20. Direct Broadcast Satellite was first offered in 1989 and has steadily grown more popular ever since. Currently, more than 11 million American consumers subscribe to DBS service.

21. DBS service began with medium power service, then offered by Primestar. EchoStar Satellite Corporation and DTV subsequently entered the High Power DBS business. DTV began its service in 1994. EchoStar launched its DBS service in 1996. As part of that business, EchoStar and DTV use high power satellites to broadcast "packaged" television programming to consumers who have purchased the necessary equipment (typically the antenna and receiver) and the necessary authorization (the television subscription) to view the programming. The satellite systems and the terrestrial facilities associated with them require an investment of billions of dollars and years of advance planning.

22. Subscribers of DBS can obtain over 200 channels of programming in digital video and CD quality audio, all from a pizza-size dish. With its introduction in 1994, High Power DBS offered consumers a product that was never before available. Such systems provide access to a panoply of other technological advancements that enhance the home viewing experience, including surround sound, High Definition Television ("HDTV"), Internet and data services, all by way of a single 18" to 20" receiving dish.

23. HighPower DBS is noted for its small dish size. HighPower DBS service uses a dish antenna typically 18 - 20 inches in diameter, widening the appeal of satellite television. Additionally, HighPower DBS service is the only service to offer superior quality digital video and audio to consumers. Only now are other companies even beginning to offer digital television. During the time period relevant to this lawsuit, DBS was the only digital service that brought video programming to consumers.

24. During the relevant time period, DBS service required an initial investment by the consumer that ranged in the hundreds of dollars. This investment created a "lock in" effect for the service provider. Once a consumer decided to purchase HighPower DBS service from a company like DTV, that consumer was not likely to switch to any other company or service for fear of losing that initial investment.

25. Furthermore, equipment that a consumer purchased to receive HighPower DBS from one company, such as DTV, is incompatible with any other service, or any other company's programming. For example, a subscriber that owns a DTV IRD (integrated receiver/decoder) can not use that same IRD to receive service from EchoStar.

26. Approximately 11 million American consumers currently subscribe to High Power DBS service.

27. DTV currently controls more than 66% of the High Power DBS market nationally. DTV recently purchased competitor PrimeStar DBS. Including PrimeStar's subscribers, DTV controls more than 72% of the DBS market.

28. The capital cost of launching rockets and satellites into space to provide High Power DBS is extraordinarily high. The hard dollar costs of the rocket and the satellite alone reach hundreds of millions of dollars and provide significant obstacles and barriers to entering the High Power DBS marketplace.

29. The huge investment in technology and capital equipment required to establish a High Power DBS system requires that a High Power DBS provider have a substantial number of customers over which to allocate the high capital costs. A High Power DBS provider without a substantial customer base will not be able to effectively compete in the long term.

30. Another barrier to entry in the High Power DBS market place is the fact that there are a limited number of orbital slots available for satellites to serve consumers within the United States, and extensive federal regulatory proceedings and approvals are required before a company may provide High Power DBS service.

31. It is very unlikely that competitors, other than ***DISH Network*** and DTV, will enter the DBS service market in the United States because of the significant cost of entry into the marketplace. For example, the News Corporation and MCI, two of the largest telecommunications companies in the world, attempted to enter the U.S. DBS market in 1997. The two companies were unsuccessful.

DTV had significant a head start in the High Power DBS business, giving it the lead in number of subscribers.

32. DTV is owned by Hughes Electronics, a subsidiary of General Motors. DTV was the first company to offer High Power DBS service beginning in mid-1994. For a period of about 18 months, DTV enjoyed a complete absence of competition in the High Power DBS market.

33. During its first 18 months of operation, DTV was able to "lock in" a great number of consumers. These consumers were locked in because of the nature of the High Power DBS market. Consumers were required to make an initial investment in equipment to receive High Power DBS service. Therefore, consumers are less likely to switch DBS companies once they have subscribed to DTV.

34. During this period of no competition, DTV was able to form relationships with national-chain retailers that would sell DTV services. During this period, DTV entered into agreements solely designed to restrict any future competitor's ability to have access to these national retailers. DTV now uses its relationships with these retailers to boycott ***DISH Network***. Any competitors entering the market later have many tough hurdles to climb if they hope to compete with DTV.

35. During this time when it was alone in the High Power DBS market, DTV did all it could to discourage and eliminate potential competition in the High Power DBS market. A key element was its ability to lock in millions of customers through the purchase of High Power DBS receiving equipment compatible only with DTV service and to use its illegal agreements with retailers to foreclose channels of distribution.

Plaintiff EchoStar brings competition to the High Power DBS Industry.

36. In March 1996, EchoStar launched the Dish Network,^{SM} the first and only High Power DBS competitor to DTV.

37. On December 28, 1995, EchoStar successfully launched its first Direct Broadcast Satellite, and the ***DISH Network*** during March, 1996. EchoStar currently operates five satellites which gives ***DISH Network*** the capacity for over 500 channels of digital video, audio and

data services to be delivered to homes throughout the continental United States. EchoStar's more efficient infrastructure allows EchoStar to offer consumers a lower cost alternative to DTV's service.

38. EchoStar is headquartered in Littleton, Colorado and employs over 5,000 people. Unlike DTV, EchoStar offers consumers a single, convenient source for equipment distribution, sales, installation and service, as well as programming and distribution. In addition to the state-of-the-art Uplink Center in Cheyenne, Wyoming and three Customer Service Centers, the company has seven regional distribution centers and installation centers throughout the United States.

39. Because of its high quality and lower costs, the ***DISH Network*** is a serious economic threat to DTV's control of the High Power DBS industry. ***DISH Network*** gained more than three million subscribers in less than three years, in spite of the anticompetitive machinations of DTV. This demonstrates the superior quality and commitment to customer service that ***DISH Network*** has in comparison to DTV. Consumers and DBS subscribers have so well received the ***DISH Network*** that the J.D. Power and Associates Customer Satisfaction Study in 1999 ranks the ***DISH Network*** Number 1. This just shows that when DTV and ***DISH Network*** compete on an equal playing field, ***DISH Network*** is the predominate choice among consumers.

40. To meet consumer demand and to integrate the technology that supports HDTV, ***DISH Network*** has launched five satellites, with another satellite scheduled for launch Spring, 2000.

41. In the High Power DBS marketplace, only these two companies, ***DISH Network*** and DTV, have been able to meet the economic demands of the capital expense required to launch satellites into orbit and overcome the hurdles to enter the High Power DBS market.

Defendant DTV begins to utilize its relationship with its retailers to cause harm to Defendants.

42. As soon as DTV realized that it would face competition in the High Power DBS market, DTV took steps to stifle that competition. In fact, the more successful that ***DISH Network*** becomes, the more DTV steps up its efforts to illegally injure ***DISH Network***.

43. High Power DBS receiving equipment (DBS systems) is marketed principally through consumer electronics stores and other retailers, which sell equipment and arrange for customers to purchase service and installations from a DBS service provider.

44. Retail stores make most High Power DBS receiving equipment sales. Therefore, unimpeded access to retailers is important for High Power DBS providers such as ***DISH Network*** to compete against an entrenched monopolist such as DTV.

45. The retailers' established name recognition, expertise in marketing, local presence, servicing and installation capability, and the retailers' ability to demonstrate in the store the advantages of ***DISH Network*** technology to consumers are all vital to ***DISH Network's*** ability to compete in the High Power DBS market. Having a relationship with a nationwide consumer electronic retailer makes it effective for ***DISH Network*** to engage in national advertisement. Without such a relationship, it is not near as effective for ***DISH Network*** to place national advertisements as the retailer that consumers expect to carry ***DISH Network*** products do not sell ***DISH Network***. Upon information and belief, it is a key strategy of DTV to prevent ***DISH Network*** from engaging in effective national advertising.

46. Without direct, head-to-head product competition between ***DISH Network*** and DTV in the same store and without the ability to demonstrate side-by-side to customers the differences in the competing systems, it is difficult for customers to compare the products, leaving both consumers and competition at a disadvantage. DTV is able to mislead customers into thinking that DTV has the superior High Power DBS since the customer is prevented from recognizing DTV's deficiencies that would be apparent in a side by side comparison. When DTV and ***DISH Network*** compete side by side, ***DISH Network*** is clearly the consumer's choice.

47. DTV currently has a monopoly market share of more than 66%, not including subscribers it gained from PrimeStar, in the relevant markets, most of which it obtained without competition.

48. Realizing the significant threat from ***DISH Network***, DTV now seeks to retain, exploit and consolidate this monopoly market share through its various illegal acts, rather than offering consumers higher quality and lower prices. DTV has no interest in competing fairly with ***DISH Network*** and so would rather coerce national retailers into boycotting ***DISH Network***.

49. DTV is abusing its market power to increase market share without meeting price or quality competition.

Defendant DTV uses undisclosed direct payments to retailers to limit competition from EchoStar.

50. DTV-compatible DBS receiving equipment and subscriptions to its service are marketed through a vast retailing network, including national chain retailers of consumer electronics with many thousands of retail outlets, such as Best Buy, Radio Shack and Circuit City, the

three largest retailers of consumer electronics. These national electronic retail stores typically offer consumers a wide range of competing brands, and are the "supermarkets" of the consumer electronic boom. By offering a wide variety of products from multiple manufacturers, the stores are able to increase sales and profits. But this profit seeking behavior is non-existent when it comes to the High Power DBS equipment and service.

51. Upon information and belief, DTV conspired with RCA and others to force these retail outlets and others through which DTV-compatible DBS receiving equipment is sold to exclude ***DISH Network*** and ***DISH Network***-compatible DBS receiving equipment from the market.

52. Contrary to retailers' typical approach of stocking a variety of similar and competitive products, DTV's plan focused on ensuring that major retailers, including the electronic retail "supermarkets", banned ***DISH Network*** from their stores and instead only carried and promoted DTV equipment and services. When ***DISH Network*** competes directly to DTV, ***DISH Network*** typically outsells DTV. DTV's answer to this is not to improve its own product, but rather to convince others to boycott ***DISH Network***. This has the additional effect of preventing ***DISH Network*** from engaging in effective national advertising. Now, because of the boycott against ***DISH Network***, there is an unprecedented situation developing where national consumer electronic retailers such as Best Buy and Circuit City are refusing to sell one of the most popular and best selling products in the country. Although ***DISH Network*** has sold extraordinarily well over the last three years, DTV's conduct has impeded its progress.

53. To implement its plan to boycott ***DISH Network***, DTV offered cash payments and other inducements that are tantamount to illegal monetary enticements, if not bribes, to national electronic retail chains and other stores to improperly induce such retailers to eliminate ***DISH Network*** equipment from their shelves and to cease selling ***DISH Network*** services (or not to sell ***DISH Network*** in the first place); instead, such retailers would stock only DTV equipment and sell only DTV services

Defendant DTV forces distributors into exclusive dealerships.

54. After ***Dish Network*** came to terms with Best Buy and Circuit City, two of the largest chains of consumer electronic stores in the country, to offer ***DISH Network*** service and equipment in their respective stores, DTV offered Best Buy and Circuit City cash payments and other inducements to boycott ***DISH Network*** and to refuse to sell ***DISH Network*** service and equipment.

55. DTV features these retailers in national marketing campaigns as an additional method of giving these retailers economic compensation to boycott ***DISH Network*** equipment and services. The featuring of these national and prominent retailers is illegally tied to the proposition that the retailers must exclude ***DISH Network*** from their stores. As a direct and proximate result of DTV's improper acts, Best Buy and Circuit City have refused to sell ***DISH Network*** service and equipment. As a result, while ***DISH Network*** has done well, ***DISH Network*** has lost potential and actual sales and revenues, and consumers have been denied the benefits of head-to-head DBS competition in such stores. In addition, RCA has threatened to withhold other RCA products from retailers unless those retailers boycott ***DISH Network***.

56. RCA, as well as other HDTV manufacturers, has threatened retailers that it will not supply HDTV and other products unless the retailer distributes DTV products and services and refuses to distribute ***DISH Network*** products, thereby attempting to coerce the retailer into joining DTV's group of exclusive distributors.

57. DTV and RCA have also offered cash payments and other economic benefits to induce a number of retailers who were selling ***DISH Network***-compatible High Power DBS receiving equipment and ***DISH Network*** DBS services to discontinue their contractual relationships with ***DISH Network***, and cease the purchase and distribution of ***DISH Network*** equipment and services. For example, numerous such offers have been made to independent operators of Radio Shack stores to prevent those stores from selling ***DISH Network*** equipment and service.

58. In response to DTV's threats, several consumer electronics outlets that previously sold both DTV and ***DISH Network*** DBS systems either terminated their sales of ***DISH Network***-compatible High Power DBS receiving equipment or have informed ***DISH Network*** of their intention to do so.

59. For example, Ultimate Electronics, Inc. operates numerous retail outlets under the name of SoundTrack ("SoundTrack"). SoundTrack has carried ***DISH Network*** service and equipment in its stores and has sold thousands of ***DISH Network*** systems for years.

60. In January 2000, SoundTrack informed ***DISH Network*** that it would discontinue its sales of ***DISH Network***-compatible High Power DBS receiving equipment and ***DISH Network*** DBS services because DTV had barred SoundTrack from selling DTV equipment and services or

from selling HDTV sets unless it discontinued sales of ***DISH Network***-compatible equipment and ***DISH Network*** services.

61. SoundTrack representatives told ***DISH Network*** personnel that while SoundTrack would prefer to carry both ***DISH Network*** and DTV equipment and services, it was nevertheless discontinuing its relationship with ***DISH Network*** because of DTV's threats. Because of DTV's threats, SoundTrack simply could not risk the loss of sales associated with the major manufacturers' withdrawal of their HDTV (see discussion *infra*) products if it continued to carry and sell both the ***DISH Network*** system and the DTV system.

62. Upon information and belief, other retailers have yielded to DTV's similar threats and actions, and discontinued the sale of the ***DISH Network*** system in favor of the sale of the DTV system.

63. This is illegal commercial activity, as it forces retailers to participate with DTV in a campaign of illegal discrimination against ***DISH Network*** services and equipment. DTV's actions have effectively foreclosed a substantial amount of competition.

64. DTV and RCA threatened to bar retailers that sold ***DISH Network***-compatible equipment and services from selling DTV-compatible equipment and DTV services, including DTV-compatible equipment manufactured or distributed by other companies (like RCA and Sony), unless such retailers discontinued the sale of ***DISH Network***-compatible DBS receiving equipment and services.

65. Upon information and belief, RCA receives a royalty on every DTV system sold, whether or not the system was built by RCA. This provides motivation for RCA to participate in DTV's schemes to boycott ***DISH Network***.

Defendant DTV punishes retailers that do not comply with its demands.

66. When retailers refused to comply with these threats, DTV and its licensees, including RCA, refused to permit the sale of DTV-compatible equipment and DTV service in such stores and discontinued sales to such retailers. In addition, upon information and belief, DTV makes smaller or no "residual" payments (a percentage in the programming revenue received by DTV) to those distributors that are not exclusive.

67. One example of how DTV punishes those that do not conspire with it against ***DISH Network*** is what happened to Sears. DTV attempted to coerce retailer Sears Roebuck and Co. ("Sears") to discontinue the sale of ***DISH Network*** equipment and services. Sears had carried DTV-compatible equipment and services in its stores since 1994. Such equipment was marketed under the names of Sony and RCA and was purchased by Sears from those suppliers. Upon information and belief, Sony and RCA manufactured such equipment, again with the undisclosed equity holder DTV in the background.

68. After Sears began to offer ***DISH Network***-compatible DBS receiving equipment and service in addition to DTV equipment and service and annual sales of ***DISH Network*** products eclipsed those of DTV, DTV then tried to coerce Sears to cease the sale of ***DISH Network*** equipment and service.

69. Sears, however, refused to succumb to DTV's threats and pressure.

70. In the spring of 1999, in retaliation for Sears' refusal to cease such ***DISH Network*** sales, DTV terminated its relationship with Sears, barred it from continuing to arrange the sale of DTV service, cut off its supply of DTV-compatible equipment, and, upon information and belief, has stiffed Sears on amounts due from its prior sales of DTV equipment and services.

71. DTV has sought to make "an example" of Sears simply because Sears had the audacity to refuse to take money from DTV or listen to its threats, which were all purposely designed to eliminate and discriminate against the sale of ***DISH Network*** equipment and services, and to exploit and maintain DTV's monopoly position in the High Power DBS market. DTV's message was simple: if it will stiff a large retailer like Sears and Roebuck, then the smaller retailers better take note.

DTV makes false statements about *DISH Network*, and otherwise disparages Plaintiffs.

72. Defendants were not satisfied with coercing others not to do business with ***DISH Network*** as a means of foreclosing competition. Defendants also engaged in a campaign to use misrepresentations and deceptive advertising to misinform retailers and the general public about ***DISH Network***.

73. DTV, through its sales personnel and representatives, falsely disparaged ***DISH Network*** in its trade or business by making false statements intended to discourage retailers (and customers) from doing business with ***DISH Network***. Among other statements, DTV representatives falsely informed retailers that ***DISH Network*** is unlikely to remain in business. DTV, through its sales personnel and representatives, warned retailers to beware of ***DISH Network's*** upgrade and falsely characterized ***DISH Network's*** offers and sales tactics as "deceptive."

74. On its own website, DTV makes the following misleading comparison between the DBS services that it can provide and those that its only competitor, ***DISH Network***, provides:

DIRECTV vs. EchoStarChannel Type

	DIRECTV Total Choice $29.99	EchoStar America's Top 100 $28.99*
Core Package		
Variety Channels	51	53
Music Channels	**36**	35
Sports Channels	5	5
Movie Channels	5	5
Addl. Service Choices		
Premium Movies	**33**	23
Regional Sports Networks	**23**	22
Sports Packages	**8**	1
Pay Per View	**50**	17**
Broadcast Networks	8	14

Source: Kagan Pay TV Newsletter, 9/25/98.
*EchoStar also offer 59 a-la-carte channels ranging from $1.00 to $29.99 **per channel.**
Note also that some channels require a second dish. Finally, EchoStar broadcasts some of its channels on a **part-time basis** only. Channel counts do not include EchoStar's local-into-local channel offerings, where available. **EchoStar offers 12 PPV channels. A second dish is **required** to receive all 17 channels.

75. The footnote to the chart is misleading and intentionally designed to disparage the ***DISH Network***.

76. Although many of the DTV programming channels are "part time," DTV only tells consumers, when comparing the two products on its website, that ***DISH Network*** products are "part-time."

77. DTV also suggests a second dish is "required" for ***DISH Network*** service when it knows and/or should know this is not true.

78. DTV blatantly uses the channel comparison chart to emphasize its advantage in Sports Packages. These very Sports Packages are obtained illegally by DTV (see discussion *infra*).

79. DTV also uses the chart to highlight various "advantages" of DTV, but it purposely fails when comparing the two products to even mention or highlight those areas in which ***DISH Network*** is superior. DTV therefore intends to imply that all ***DISH Network*** offerings are inferior to its own when DTV knows and/or reasonably should know this is not true. ***DISH Network***, when it competes head to head with DTV, clearly outsells DTV and is the consumer's choice for quality and customer service.

80. In addition, as set forth above, on its website, DTV has made, and continues to make, misleading statements about the ***DISH Network*** system in a purposeful effort to disparage ***DISH Network***.

81. These statements were knowingly false when made and were made with the intention of persuading and inducing retailers (and consumers) not to do business with ***DISH Network***.

82. As a direct and proximate result of these and other false statements, DTV has disparaged and damaged, and continues to disparage and damage, ***DISH Network's*** reputation, and has injured its business in the marketplace.

DTV monopolizes the satellite distribution of National Sports League games.

83. Defendants have done more than attempt to control the means of distribution and attempt to prevent ***DISH Network*** from engaging in effective national advertising. DTV wishes to control content as well. DTV's predatory scheme to exclude competition from ***DISH Network*** and to maintain, exploit and consolidate its monopoly power in the High Power

DBS market also includes a plan to preclude ***DISH Network*** from offering premium sports programming.

84. The availability of specialized sports packages is an important programming feature offered by High Power DBS providers, and the ability to offer a wide array of NFL games and games of other sports leagues is a significant programming advantage for a DBS service provider.

85. The NFL and its member teams own the rights to make and distribute images of football games.

86. Each Sunday during the football season, approximately a dozen NFL games are distributed on network television, but an individual viewer is limited to the two or three television broadcasts in the viewer's local market. Furthermore, the ability of the consumer to receive those few broadcasts is limited by certain factors.

87. DBS distribution permits the real-time broadcast of "distant NFL games," and permits a viewer to view any game the consumer wishes.

88. Transmission of distant NFL games enhances the attractiveness of DBS service and distinguishes it from cable and network broadcasting. Cable companies cannot provide their subscribers with this sports programming feature.

89. Using its dominant and monopolistic market position, enhanced and enabled by anti-competitive actions, DTV coerced and/or induced the NFL and its member teams into an agreement to jointly sell their rights in all football games to DTV, permitting sales to C-Band and specifically boycotting only ***DISH Network*** entirely.

90. DTV offers these games in an all-or-nothing package to its subscribers at a fixed cost per season.

91. Through misuse of its market dominance and monopoly position, DTV coerced and/or induced the NFL to preclude ***DISH Network*** from even bidding for the rights to provide DBS transmission of certain NFL programming.

92. Moreover, DTV coerced and/or induced the NFL and its member teams to preclude ***DISH Network*** from even bidding for such rights when DTV's agreement with the NFL was up for renewal. Although ***DISH Network*** asked the NFL for an opportunity to submit a bid, the NFL advised ***DISH Network*** that its "deal" with DTV prevented it from considering any other DBS provider. NFL representatives further informed ***DISH Network*** that they could not even discuss the matter with ***DISH Network***.

93. ***DISH Network*** made it clear that its bid would not have been conditioned on excluding DTV from also broadcasting the games, and would therefore have expanded NFL viewership. Because payments to the NFL are calculated on the basis of the number of viewers, inclusion of ***DISH Network*** would have likely increased revenues to the NFL.

94. Upon information and belief, DTV coerced and/or induced the NFL to exclude ***DISH Network*** and its millions of viewers by offering to pay the NFL not only on the basis of its own viewership, but on the basis of ***DISH Network's*** viewership as well. In other words, DTV paid the NFL not only for dealing exclusively with it, but also paid an additional amount to induce the NFL to boycott with ***DISH Network***.

95. Upon information and belief, DTV has entered into similar exclusive arrangements with other major sports leagues, including the NBA, with similar anti-competitive purposes and similar anti-competitive results.

96. DTV's actions have directly and proximately harmed ***DISH Network*** by foreclosing it from even bidding for rights to include these highly desirable sports broadcasts in its programming package, putting it at a competitive disadvantage. Even in the face of DTV's anticompetitive actions, ***DISH Network*** has grown to more than three million subscribers, ***DISH Network***'s success should have been much more.

97. These exclusive arrangements harm DTV's subscribers and consumers because DTV is thereby enabled and empowered to charge an anti-competitive price for the package and to force consumers to accept the games in an all-or-nothing package.

98. These arrangements harm millions of ***DISH Network*** subscribers by totally denying them access to these games.

99. Such predatory action, designed only to exclude ***DISH Network*** from the High Power DBS market, was taken with the intention of harming ***DISH Network***. The harm to ***DISH Network*** was that potential customers interested in these programming packages were forced to purchase the higher priced and lower quality DTV system.

100. DTV's actions also harm consumers by essentially eliminating choice for High Power DBS service.

101. As a result, DTV can charge consumers exorbitant equipment and monthly service fees.

102. Not only is each of these anti-competitive arrangements based on an abuse of DTV's market power, but each such arrangement further solidifies DTV's monopoly and makes future competitive abuses easier and more likely.