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

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

10 **COMMERCE**

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

1 Defendants' Marketing Practices

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

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

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

20 Defendants' Deceptive Advertising Campaigns

21 16. In numerous instances since 2007, Defendants have disseminated or have caused
22 to be disseminated advertisements for Defendants' subscription service, including but not limited
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B. “Package offers starting at \$24.99/mo. Limited Time.” (Exhibit 2)
(August 2013).

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

17. To the extent that Defendants’ advertis

Defendants' Deceptive Internet Sales Website

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

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

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

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

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

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

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

25 23. Defendants' webpages typically contain statements concerning an offer of free
26 premium channels that are identical or similar to the following: "Free for 3 months. HBO +
27 Starz + Showtime + Cinemax." (Exhibit 4 at page 1).
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1 24. To the extent that Defendants’ webpages contain any qualifying disclosures
2 concerning the offer of free premium channels, any such disclosures are inadequate in terms of
3 their content, presentation, proximity, prominence, or placement such that consumers are
4 unlikely to see or understand such disclosures. In particular, Defendants’ webpages do not
5 convey to consumers:

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

16 *Defendants’ Deceptive Telemarketing Presentation*

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

23 *VIOLATIONS OF THE FTC ACT*

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

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

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

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

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

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

16 **CONFIDENCE ACT**

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

23 35. Section 4 of ROSCA, 15 U.S.C. § 8403, generally prohibits charging consumers
24 for goods or services sold in transactions effected on the Internet through a negative option
25 feature, as that term is defined in the Commission's Telemarketing Sales Rule (“TSR”), 16
26 C.F.R. § 310.2(u), unless the seller (1) clearly and conspicuously discloses all material terms of
27 the transaction before obtaining the consumer's billing information, (2) obtains the consumer's
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1 42. Defendants’ acts or practices, as described in Paragraph 41 above, constitute a
2 violation of Section 4(2) of ROSCA, 15 U.S.C. § 8403(2), and are therefore treated as a violation
3 of a rule promulgated under Section 18 of the FTC Act, 15 U.S.C. § 57a.

4 **PRAYER FOR RELIEF**

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

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

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

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

16
17 Respectfully submitted,

18 Jonathan E. Nuechterlein
19 General Counsel

20
21 Dated: March 11, 2015

/s/ Eric D. Edmondson
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Erika Wodinsky
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25 Attorneys for Plaintiff
26 Federal Trade Commission
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