

3. Claimants bring this arbitration on behalf of themselves and on behalf of a class defined as follows: "DIRECTV Dealers who sold, installed, repaired or maintained home satellite service for Respondents from 1996 until the present" (the "Class" or "Class Members").

4. Claimants and the Class sold, installed, repaired and maintained DIRECTV's satellite television equipment for DIRECTV. Pursuant to contracts that DIRECTV required all Dealers to sign, Claimants and the Class were entitled to certain payments for the services they provided. Specifically, Dealers were entitled to compensation for: (i) installing and activating DIRECTV equipment for a new customer ("activation commissions"); (ii) the continued subscription of DIRECTV by the customers the Dealer activated ("residual commissions"); (iii) performing repair and maintenance services for DIRECTV customers ("maintenance commissions"); and (iv) meeting certain volume quotas established for activating new DIRECTV customers ("volume commissions").

5. Respondents, however, failed to pay and unlawfully withheld activation commissions to Claimants and the Class. Respondents also failed to pay Claimants and the Class the appropriate amount of residual, maintenance and volume commissions. Separately, Respondents wrongfully assessed "charge-backs" to Dealers' accounts thereby improperly reducing Dealer commissions. As a result of Respondents' conduct, Claimants and the Class seek to recover for all unpaid and improperly reduced commissions and to recover for all wrongful charge-backs.

6. Respondents failed and refused to pay the amounts due to Claimants and the Class in an effort to reduce their costs of acquiring and retaining new customers and to increase their profit margins. Respondents willfully breached contracts, engaged in unfair business practices, breached their fiduciary duties, violated California antitrust laws, and converted commission

payments belonging to Claimants and the Class in an effort to increase their own profits at the expense of the individuals and the small businesses around the country that have helped to make DIRECTV so successful. In hundreds of cases, Class Members are no longer in the business of installing satellite television solely because of the Respondents' wrongful actions.

PARTIES

7. Claimant Cable Connection is an Oklahoma corporation with its executive offices and principal place of business in Oklahoma City, Oklahoma. Claimant TV Options is an Alabama corporation with its executive offices and principal place of business in Jasper, Alabama. Claimant Swartzel Electric is a California partnership with its executive offices and principal place of business in Riverside, California. Claimant Orbital Satellite is an Ohio corporation with its executive offices and principal place of business in Ohio.

8. DIRECTV is a California corporation with its executive offices and principal place of business in California. DIRECTV is a wholly owned subsidiary of Hughes. Hughes is a Michigan corporation with its executive offices and principal place of business in California.

FACTS

9. Respondents required each and every Dealer to enter into a uniform set of contracts prior to selling, installing or repairing DIRECTV's products and services. While Respondents frequently (and oftentimes improperly) amended, modified, or otherwise changed the terms of the contracts, at all times, all Dealers operated under the same set of contracts relevant to this arbitration.

1996 Residential Dealer Agreement

10. In 1996, Respondents required all Dealers to sign the DIRECTV Residential Dealer Agreement (1996 RDA), which incorporated at least two other documents. A copy of the 1996 RDA is attached as Exhibit A.

11. By the terms of the 1996 RDA, Respondents also required all Dealers to enter into an agreement with one or more Sales Management Agents ("SMAs"). Exhibit A, ¶¶ 1, 1.1, 4.1. The SMAs were responsible for processing orders and providing equipment to Dealers. In addition, one of the SMAs' primary functions was to distribute commissions earned by the Dealers, as discussed below. See DIRECTV Commission Structure 1996, Digital Programming Center attached as Exhibit B. The SMAs had to be approved by DIRECTV, Exhibit A, ¶ 1.1, and, upon information and belief, there were only five approved SMAs in the country in 1996.

12. The agreements between the Dealers and the SMAs (SMA/Authorized Residential Dealer Agreement) had to be reasonably acceptable to DIRECTV in form and substance. Exhibit A, ¶ 4.1. Upon information and belief, the SMA/Authorized Residential Dealer Agreements were substantially uniform.

13. In 1996 and thereafter, until the RDA was replaced by a subsequent agreement between DIRECTV and its Dealers (discussed below), DIRECTV Dealers were entitled to certain specified commissions. Specifically, Dealers were entitled to a commission of \$220 for every installation and activation they completed (part of the "activation commission" defined earlier). Dealers also were entitled to a four percent (4%) residual commission on the total volume of sales they generated from new DIRECTV customers (part of the "residual commission" defined earlier), and the possibility of an "incremental" bonus of one to four percent (1%-4%) depending on the

number of new customers the Dealer recruited.¹ Finally, Dealers were guaranteed five percent (5%) commission on all paid DIRECTV programming for the lifetime of the customer's subscription.

14. With respect to termination of the 1996 RDA, the contract provided that either DIRECTV or the Dealers could terminate the agreement without cause upon ninety (90) days advance written notice to the other party. However, while either party could terminate without cause upon appropriate written notice, the 1996 RDA could not be modified or amended "except by a writing signed by . . . the party against whom the amendment, modification or waiver is sought to be enforced." See Exhibit A to the 1996 RDA, Terms and Conditions ¶ 10.

September 13, 1996 Letter Notice

15. On or about September 13, 1996, just eight (8) months after the Dealers executed the 1996 RDA, Respondents sent all Dealers a letter in which Respondents unilaterally changed the terms of the 1996 RDA. See Exhibit C. In the September 13, 1996 letter, DIRECTV informed its Dealers that, beginning in 30 days, "all [prepaid programming commissions] paid on sales . . . would be subject to a prorated charge-back."²

16. The September 13, 1996 letter improperly attempted to amend or modify the terms of the 1996 RDA despite the fact that the 1996 RDA prohibited either party to the agreement from amending or modifying the contract without the other party's written consent.

¹ Incremental bonuses were calculated as follows: if a Dealer signed up 26-75 new customers, he or she would receive an additional 1% of total sales volume; for 76-90 new customers, 2%; for 91-180 new customers, 3%; and for more than 180 new customers, 4%.

² Charge-backs had the effect of reducing Dealers' commissions.

July 8, 1997 Letter Amendments

17. On or about July 8, 1997, DIRECTV sent another letter to all Dealers that again improperly attempted to unilaterally amend or modify the 1996 RDA. The July 8, 1997 letter lowered the amount Dealers would receive for activation commissions from \$220.00 to \$100.00. See Exhibit D. The July 8, 1997 letter also changed the termination clause to allow Respondents to terminate a Dealer with just thirty (30) days notice.

1998 Sales Agency Agreement

18. In 1998, Respondents presented a new contract, called the "Sales Agency Agreement," to all Dealers.

19. The Sales Agency Agreement provided that Dealers would be entitled to activating commissions of \$220 for each installation and activation, as they had been originally under the 1996 RDA, but it dramatically reduced the amount of residual commissions to which Dealers were entitled, to \$1.30 per month for customers activated prior to March 29, 1998 and .50 cents per month for customers activated after March 29, 1998. Previously, under the 1996 RDA, Dealers had been receiving residual commissions of four to eight percent (4% to 8%), including incremental bonuses, as stated in paragraph 11 above. A copy of the Sales Agency Agreement is attached as Exhibit E.

1999 Amendments to 1998 Sales Agency Agreement

20. Respondents subsequently amended the Sales Agency Agreement by changing the Continuing Service Fee Schedule (the "Amendment."). A copy of the Amendment is attached as Exhibit F. The Amendment increased the residual fee for Dealers on their pre-March 29, 1998 customers from \$1.30 to \$2.00, but only if the Dealers: (i) agreed not to sell satellite services for any

company other than DIRECTV and United States Satellite Broadcasting,³ and (ii) brought in and signed up at least 300 new DIRECTV subscribers per quarter.

21. Shortly thereafter, in a letter dated August 1999, Respondents agreed to pay an additional commission to Dealers ranging from ten dollars (\$10.00) to twenty dollars (\$20.00) (depending on the number of monthly subscribers) for each activation of a new DIRECTV residential subscriber. See Exhibit G. According to Respondents letter, no charge-backs would be assessed against these "additional" commissions.

22. At or around the same time, Respondents began assessing excessive and incorrect charge-backs against Dealers. For example, Respondents erroneously imposed charge-backs against numerous Dealers' accounts on the ground that certain customers had discontinued their DIRECTV service when those customers had not in fact discontinued their service.

23. Respondents' excessive and wrongful charge-backs cost Dealers millions of dollars in lost commissions. Claimants have requested that Respondents account for the charge-backs, but Respondents have refused to provide an adequate accounting or other information necessary for Claimants to determine the purpose or justification for many charge-backs. In some cases, Respondents imposed charge-backs equal to or exceeding the amount of commissions, including activation commissions, the Dealers earned.

ARBITRATION OF CLAIMS

24. This case has been litigated in Oklahoma State Court since May 18, 2001. However, pursuant to the 1996 RDA and the 1998 Sales Agency Agreement, all disputes and claims

³ United States Satellite Broadcasting was a competitor that Hughes acquired in May 1999.

between Dealers and DIRECTV are subject to binding arbitration in Los Angeles, California, in accordance with the rules of the American Arbitration Association. See Exhibit A to the 1996 RDA, Terms and Conditions ¶ 8, the Sales Agency Agreement ¶ 18.12 (attached as Exhibits A and E). In addition, the parties were directed by the District Court of Oklahoma County, State of Oklahoma, to litigate their claims via arbitration in Los Angeles.

CLASS ACTION ALLEGATIONS

25. Claimants bring this action on behalf of themselves and the Class defined in paragraph 3.

26. Claimants allege, upon information and belief, that the Class includes hundreds if not thousands of DIRECTV Dealers dispersed throughout the country. With such a large number of Class Members, the Class is so numerous that joinder of all Class Members is impracticable. While the exact number and identities of individual Class Members is unknown at this time, the identity of Class Members can be ascertained from Respondents' books and records, including computer databases.

27. The members of the Class share a common legal grievance against Respondents. As described in this Statement of Claim, the Class Members have suffered damages arising out of the Respondents' failure to properly compensate them. Questions of law and fact are common to the Class and predominate over any questions affecting only individual Class Members. The questions of law and fact that are common to the Class include whether:

- i. Respondents breached the 1996 RDA by failing to pay Claimants and the Class the appropriate amount of activation, residual, maintenance and volume commissions;

- ii. Respondents breached the 1996 RDA when they unilaterally modified and amended the 1996 RDA by the September 13, 1996 and July 8, 1997 letters;
- iii. Respondents breached the 1996 RDA and other contracts with Claimants and the Class when they failed to pay lifetime commissions;
- iv. Respondents breached the 1996 RDA by improperly imposing charge-backs;
- v. Respondents breached the 1998 Sales Agency Agreement by failing to pay Claimants and the Class the appropriate amount of activation, residual, maintenance and volume commissions;
- vi. Respondents breached the 1998 Sales Agency Agreement by improperly imposing charge-backs;
- vii. Respondents unlawfully converted commissions owed to Claimants and the Class;
- viii. Respondents engaged in unfair business practices; and
- ix. Respondents violated California's antitrust laws.

28. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. A class action presents few management difficulties, conserves the resources of the parties and the arbitration system, and protects the rights of the Class Members. Absent a class-wide arbitration, thousands of individual arbitrations will be required. The prosecution of separate arbitrations by individual members of the Class will be unduly time consuming, is likely to lead to repetitious arbitrations of the numerous common questions of fact and law, and lead to inconsistent or varying adjudications that would establish incompatible standards of conduct for Respondents. Claimants do not anticipate that there will any unusual difficulties in the management of this litigation as a class action arbitration.

FIRST CAUSE OF ACTION
(Breach of Contract)

29. The 1996 RDA constitutes a valid, binding and legally enforceable contract. Under the terms of the 1996 RDA, Respondents were required to make certain payments to Claimants and the Class, in a timely manner, for activation, residual, maintenance and volume commissions. Respondents breached the contract by failing to make the required payments, by improperly attempting to modify and amend the terms of the contract and by unilaterally enforcing the modifications. As a result of Respondents' breach of the contract, Claimants and the Class have been damaged.

30. The Sales Agency Agreement constitutes a valid, binding and legally enforceable contract. Under the terms of the Sales Agency Agreement, Respondents were required to make certain payments to Claimants and the Class, in a timely manner, for activation, residual, maintenance and volume commissions. Respondents breached the contract by failing to make the required commissions payments, by improperly attempting to modify and amend the terms of the contract and by unilaterally enforcing the modifications. As a result of Respondents' breach of the contract, Claimants and the Class have been damaged.

SECOND CAUSE OF ACTION
(Breach of the Covenant of Good Faith and Fair Dealing)

31. Inherent in every contract is the duty to act with good faith with the counter party in all matters related to the contract and in its performance or enforcement. Good faith means honesty in fact in the conduct or transaction at issue. Respondents' breached the duty of good faith and fair dealing with Claimants and the Class by: terminating Dealers in order to avoid paying residual commissions; modifying contracts to avoid having to properly compensate Dealers;

improperly imposing charge-backs; and failing to pay Claimants and the Class the amounts to which they are entitled. As a result of Respondents' breach of the covenant of good faith and fair dealing, Claimants and the Class have been damaged.

THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty and Accounting)

32. Respondents owed Claimants and the Class the fiduciary duties of loyalty, honesty and due care. In breach of their duties of loyalty, honesty and due care, Respondents: (i) failed to pay Claimants and the Class the amounts due them under the various agreements; (ii) improperly withheld certain funds owed and payable to Claimants and the Class as a result of the sale, installation, activation and maintenance of DIRECTV services and products; and (iii) failed to honestly and accurately apprise Claimants and the Class about the true status of their customers' accounts so that Claimants could determine the appropriateness of any charge-backs. As a result of Respondents' breach of fiduciary duties, Claimants and the Class have been damaged. Claimants demand an accounting for all subscriptions originated by Claimants, for all commissions or other fees to which they are entitled, and for any and all charge-backs imposed on them.

FOURTH CAUSE OF ACTION
(Conversion)

33. Under the contracts that Claimants and the Class entered into with Respondents, Claimants and the Class are entitled to activation, residual, maintenance and volume commissions on a monthly basis. Respondents have converted those funds and held them for their own use either by their failure to pay the appropriate commissions or by wrongful charge-backs to Dealers' accounts. Respondents currently possess funds belonging to Claimants and the Class. As

a result of Respondents' conversion of Dealer's commissions, Claimants and the Class have been damaged.

FIFTH CAUSE OF ACTION
(Antitrust - Unfair Competition
Cal. Bus. & Prof. § 16700 et. seq.)

34. Dealers were told by Respondents, through both direct statements and threats, that if they worked or attempted to work as a satellite provider for any company other than DIRECTV, Respondents would terminate their ability to sell DIRECTV products and services. Dealers who failed to heed the Respondents' warnings were either terminated as a DIRECTV dealer or threatened with termination. Claimants and the Class, many of whom offered DIRECTV as just one of the products and services of their own businesses, did not have any freedom in the selection of products and services to offer through their stores, even though they were independently owned and operated. In short, any person or entity who wished to serve as a DIRECTV Dealer was prohibited from selling the products and services of other satellite providers.

35. Respondents consciously and intentionally attempted to, and succeeded at, limiting competition by forcing their Dealers to carry and sell only DIRECTV products and services. Respondents' conduct and actions constitute violations of California's antitrust laws. As a direct and proximate result of Respondents' unlawful conduct, Claimants and the Class have been damaged.

SIXTH CAUSE OF ACTION
(Unfair Business Practices
Cal. Bus. & Prof. § 17200 et. seq.)

36. Respondents' actions constituted unfair business practices in contravention of Section 17200 et seq. of California's Business and Professions Code. Under California law, "unfair" means an act that offends public policy, and/or is immoral, unethical, oppressive, or

unscrupulous and which causes substantial injuries to others even if it does not violate a specific law. Respondents' actions were unfair in that they wrongfully terminated Dealers to avoid paying commissions, improperly levied charge-backs, unjustly refused to pay Dealers the amounts they were owed under the various contracts, and unlawfully converted Dealers' commissions. Respondents' unfair conduct constitutes a business practice. Claimants and the Class were damaged by Respondents' unfair business practice and are entitled to restitution, disgorgement of profits and other equitable relief.

PRAYER FOR RELIEF

WHEREFORE, Claimants pray for an award and judgment against Respondents:

- A. certifying this action as a class action;
- B. compensating Claimants and the other members of the Class for damages they suffered as a result of Respondents' conduct;
- C. disgorging all monies received by Respondents in connection with their failure to properly compensate Claimants and the Class;
- D. for pre- and post-judgment interest;
- E. for costs and disbursements incurred in connection with this arbitration, including reasonable attorneys' and experts' fees;
- F. compensating named Claimants Cable Connection, TV Options, Swartzel Electric, and Orbital Satellite an amount to be determined as a result of their efforts in bringing this arbitration; and,

G. for such other and further relief as is deemed just and proper.

Date: March 11, 2004

BEATIE AND OSBORN LLP

Daniel A. Osborn (CSB No. 132472)
521 Fifth Avenue, 34th Floor
New York, New York 10175
Telephone: (212) 888-9000
Facsimile: (212) 888-9664

-and-

Miles L. Mitzner
MITZNER LAW FIRM, P.L.L.C.
2701 Coltrane Place, Suite Six
Edmond, Oklahoma 73034
Telephone: (405) 844-7600
Facsimile: (405) 844-8585

-and-

Larry Derryberry
Robert N. Naifeh, Jr.
J. Eric Turner
DERRYBERRY, QUIGLEY, SOLOMON
& NAIFEH
4800 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105
Telephone: (405) 528-6569
Facsimile: (405) 528-6462

ATTORNEYS FOR CLAIMANTS