

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

CHARTER COMMUNICATIONS )  
HOLDING COMPANY, LLC, and )  
CHARTER COMMUNICATIONS )  
OPERATING, LLC, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
DIRECTV, INC., )  
 )  
Defendant. )

Case No.

**JURY TRIAL DEMANDED**

**VERIFIED COMPLAINT**

COME NOW Plaintiffs Charter Communications Holding Company, LLC and Charter Communications Operating, LLC (collectively, "Charter") and in support of this Verified Complaint against Defendant DirecTV, Inc. ("DirecTV"), state the following:

**NATURE OF ACTION**

1. Charter is the third-largest publicly-held cable operator in the United States, with operations in 27 states, approximately 5.5 million residential and commercial customers, and approximately 16,500 employees. Charter is a thriving and growing business, which generates significant positive cash flow before debt service and has achieved upward, favorable trends as an operating enterprise. In the past three years, Charter has increased *pro forma* annualized revenue from approximately \$5.4 billion to approximately \$6.5 billion, and *pro forma* annualized adjusted Earnings Before Interest, Taxes, Depreciation, and Amortization ("EBITDA") from \$1.9 billion to approximately \$2.3 billion.

2. Over the past several months, recognizing the recent deteriorating capital market conditions and its significant debt load, Charter embarked on a plan to de-leverage its balance sheet to improve its already-strong competitive position. To do so, Charter negotiated a financial restructuring with key bondholder constituencies and agreed upon a consensual, pre-arranged plan of reorganization (the “Plan”) under Chapter 11 of the Bankruptcy Code. The Plan provides for the canceling of approximately \$8 billion in debt, the raising of approximately \$3 billion of capital and debt financing, and the continuation of Charter’s business in the ordinary course with trade creditors receiving payment in full – 100 cents on the dollar. Due to the consensual nature of the Plan, Charter’s time in bankruptcy should be brief and will have no impact on its ability to service its customers.

3. Despite these publicly-known facts surrounding Charter’s bankruptcy filing, Charter competitor, Defendant DirecTV, has attempted to exploit the fact that Charter filed for bankruptcy to create a misimpression among Charter’s actual and potential customers that Charter is liquidating and that Charter’s services will end or be substantially impaired. This is blatantly false. Recently, DirecTV launched a national advertising campaign specifically targeted at Charter’s customers and prospective customers designed to create a false impression that Charter’s Chapter 11 bankruptcy filing will adversely affect Charter’s customers. For example, some of DirecTV’s ads assert that there is “no way” Charter can continue to provide “the latest technology, more channels in HD or new exclusive programming” – even though Charter is continuing to do so. In addition, a number of ads claim that Charter’s customers must be “saved” from Charter’s bankruptcy, and depict DirecTV as their life-preserver or fire extinguisher – clearly implying the outright falsehood that Charter’s customers should switch to DirecTV’s competing service, because Charter is a figurative “sinking ship” or “going up in

flames,” *i.e.*, that it will go out of business. In the context of a pre-arranged, consensual bankruptcy such as Charter’s – where there is no plan for liquidation, the business is growing, the bankruptcy case is moving forward at precedent-setting speed (Charter has already received Bankruptcy Court approval of its Disclosure Statement in support of the Plan and the hearing date has been set), and all the relief required to continue business as usual has been granted, with trade creditors being paid in full – DirecTV’s ads are literally false, grossly misleading, cause consumer confusion, and are likely to deceive Charter’s current and prospective customers.

4. DirecTV’s false advertising campaign constitutes false advertising under the Lanham Act, 15 U.S.C. § 1125(a), tortious interference with Charter’s contracts, tortious interference with Charter’s prospective business relationships, injurious falsehood, defamation, and violations of various state consumer fraud and deceptive business practices laws. Pursuant to the Lanham Act, Charter seeks a permanent injunction, compensatory damages, enhanced damages, and attorneys fees. In addition, to prevent immediate irreparable injury, Charter seeks a temporary restraining order and a preliminary injunction to put an immediate stop to this campaign of deceptive and false advertising.

5. DirecTV is a repeat offender of the Lanham Act. Three different courts in two cases have found DirecTV guilty of false advertising in the last two years. *Time Warner Cable, Inc. v. DirecTV, Inc.*, 475 F. Supp.2d 299 (S.D.N.Y. 2007); *Time Warner Cable, Inc. v. DirecTV, Inc.*, 497 F.3d 144 (2d Cir. 2007); *DirecTV, Inc. v. Comcast of Illinois III, Inc.*, No. 07 C 2568, 2007 WL 2808235, at \*2 (N.D. Ill. Aug. 15, 2007).

### **THE PARTIES**

6. Charter Communications Holding Company, LLC is a Delaware company with its principal place of business in this district at 12405 Powerscourt Drive, St. Louis, Missouri.

7. Charter Communications Operating, LLC is a Delaware company with its principal place of business in this district at 12405 Powerscourt Drive, St. Louis, Missouri.

8. Charter Communications Holding Company, LLC and Charter Communications Operating, LLC are, among other things, in the business of operating broadband communication businesses in the United States with approximately 5.5 million customers as of December 31, 2008.

9. Charter's businesses have offered and continue to offer residential and commercial customers traditional cable video programming (basic and digital), high-speed Internet services and telephone services, advanced broadband services such as High Definition television ("HD"), Charter OnDemand™ ("On Demand"), and digital video recorder ("DVR") service, and other media services to customers throughout the United States. Charter sells its cable video programming, high-speed Internet, telephone, and advanced broadband services primarily on a subscription basis.

10. DirecTV is a Delaware corporation with its principal place of business at 2230 East Imperial Highway, El Segundo, California.

11. DirecTV is a registered foreign corporation in the State of Missouri.

12. DirecTV is in the business of providing digital television programming directly to its customers' homes or businesses throughout the United States. DirecTV regularly transacts business in this district.

13. Charter and DirecTV are direct competitors for customers within this district and in various other locations throughout the United States.

### **JURISDICTION AND VENUE**

14. This Court has subject matter jurisdiction pursuant to 15 U.S.C. § 1121(a), 28 U.S.C. § 1331, and 28 U.S.C. § 1367.

15. This Court's exercise of personal jurisdiction over DirecTV is proper because DirecTV regularly does business in the State of Missouri, DirecTV is registered as a foreign corporation in the State of Missouri, and DirecTV has engaged in and continues to engage in the advertising campaign at issue within the State of Missouri.

16. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) in that a substantial part of the events giving rise to the claims occurred in this jurisdiction because the false and deceptive advertising took place, in part, in this district, and 28 U.S.C. § 1391(b)(1) in that Defendant is subject to personal jurisdiction in this district.

### **JURY TRIAL DEMANDED**

17. Plaintiffs hereby demand trial by jury on all counts and all issues triable by jury.

### **FACTUAL BACKGROUND COMMON TO ALL ALLEGATIONS**

#### **Charter's Financial Restructuring and Voluntary Chapter 11 Bankruptcy Petition**

18. On February 12, 2009, Charter and its subsidiaries announced that they had reached an agreement-in-principle with certain of Charter's debt holders on the terms of a financial restructuring to reduce Charter's debt by approximately \$8 billion and raise approximately \$3 billion of capital and debt financing.

19. To implement the restructuring, on March 27, 2009, Charter and its subsidiaries filed a voluntary bankruptcy petition pursuant to Chapter 11 of the Bankruptcy Code (11 U.S.C. § 1101, *et seq.*) in the United States Bankruptcy Court for the Southern District of New York,

Case No. 09-11435-jmp. Charter's pre-arranged bankruptcy was designed to allow Charter to continue operating as usual while it develops and implements a balance sheet restructuring that will leave intact both Charter's operations and the senior portion of its capital structure.

20. The Plan provides for Charter's trade creditors to be paid in full. To that end, Charter sought and obtained authorization from the Bankruptcy Court to continue to pay its trade creditors in the ordinary course of business. As of March 31, 2009, Charter had approximately \$836 million of cash on hand, and was producing more than \$2.3 billion of positive adjusted *pro forma* EBITDA on an annualized basis. Bankruptcy Court approvals and substantial available resources have permitted Charter to continue its operations without disruption during its bankruptcy, as it will throughout that process. Moreover, Charter is planning a quick exit from bankruptcy. In line with that intention, Charter obtained Bankruptcy Court approval of the Disclosure Statement with respect to the Plan on May 5, 2009. A hearing to confirm the Plan is currently scheduled for July 20, 2009. Due to the consensual nature of the Plan, Charter's time in bankruptcy should be brief and will have no impact on its ability to service its customers.

21. In fact, since the bankruptcy filing, Charter continues to operate business "as usual" and to provide its customers with the latest technology, such as more HD channels, new exclusive programming, higher speed Internet access services, and all services that were available pre-filing. Charter is and remains committed to serving its customers and bringing its customers the latest innovations in home entertainment and broadband service. Over the past year, for example, Charter has increased its HD offerings and will continue adding more channels in HD. Charter currently offers approximately 30 HD channels in a majority of its markets and will launch additional HD channels in other areas later this spring and summer.

Charter's plans to increase its HD offerings continue forward and have not been slowed by the financial restructuring.

22. Charter's free content and HD content have grown over time and continue to grow. Charter's bankruptcy has not affected that growth.

23. Charter is currently trialing "switched digital technology" or "SDV" in three markets and is in the process of implementing SDV in additional markets. This technology allows Charter to free-up additional bandwidth to launch new HD channels and while the technology requires a substantial financial commitment and investment, Charter's bankruptcy proceeding has not impeded these plans and, in fact, will facilitate implementation of this technology once Charter emerges from bankruptcy.

24. Charter continues to offer and upgrade its On Demand service. On Demand is a technology that allows the customer to view certain programming and movies at the customer's convenience, rather than at the time the programming or movie airs.

25. Since filing its bankruptcy petition, Charter launched NBC Primetime On Demand, and will expand its Primetime On Demand content going forward. This offering, which allows Charter customers to order certain NBC programs at their convenience for free, adds more value to Charter's video service. Charter will expand its Primetime On Demand offerings to include other content providers.

26. Charter offers theatrical movies through its On Demand service. Since March 27, 2009, Charter has continued to add new releases and other popular movies to On Demand in the same manner it did prior to the initiation of its bankruptcy proceeding.

27. Since the bankruptcy filing, 254 movies have been released on Charter On Demand (that count includes new release movies, library titles, and independent and foreign

movies) with six of them being released on the same day those movies were first available on DVD. Charter presently offers more than 6000 movies and television shows through Charter On Demand.

28. Charter is investing in a new interactive program guide, making it easier for customers to access and view television programming. This project continues forward and has not been delayed or cancelled because of the financial restructuring. Charter has created and continues to plan and implement initiatives to offer the latest technology, add more HD channels, and provide new exclusive programming. Charter's bankruptcy has not affected those plans.

29. Charter has launched telephone service to additional markets and faster speed Internet services during its bankruptcy. For example, Charter recently launched 60 Megabits per second ("Mbps") Internet access, one of the fastest in the United States, utilizing recently announced "DOCSIS 3.0" technology. Charter's infrastructure has the capacity to support even higher speeds as demand and usage grows.

30. Charter has created and continues to plan and implement initiatives to develop and offer new services and improved technology now and in the future.

31. Charter has created and continues to plan and implement initiatives to offer the latest technology, add more HD channels, and provide new exclusive programming.

32. Charter's services and offerings to its customers and prospective customers have not been and will not be diminished or adversely impacted during the reorganization.

### **DirecTV's False Advertising Campaign**

33. Despite the above publicly-available facts regarding the consensual nature of Charter's bankruptcy and the continuation of its operations as usual, DirecTV has attempted to exploit the fact of a "bankruptcy" filing to mislead Charter's actual and potential customers into

thinking that Charter is going out-of-business or that Charter's services to its customers will be impaired. In particular, DirecTV's advertisements falsely state that Charter will not be able to provide services due to Charter's bankruptcy and that customers need to be "saved" by DirecTV from Charter's bankruptcy. As detailed below, DirecTV has made false and deceptive claims regarding the impact of Charter's financial restructuring on Charter's ability to serve its customers through at least five separate means: (1) direct mailings to Charter customers, (2) print advertising, (3) billboard advertising, (4) radio advertising, and (5) personal solicitation.

34. There may be other DirecTV advertisements exploiting Charter's bankruptcy in a false and misleading way. Charter will seek all such advertisements published or aired by or on behalf of DirecTV in discovery.

**(1) DirecTV's False and Deceptive Direct Mailings**

35. DirecTV has recently sent and continues to send direct mail advertisements to Charter's customers in this District and throughout the nation. The direct mailings consistently state as follows:

Dear [Charter Customer]:

It's official: Charter has filed for bankruptcy. As they focus on their problems, *there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming.* But DIRECTV will.

....

So instead of wondering how cable's problems will affect you, just switch to DIRECTV....

See Direct Mailings attached hereto and incorporated herein as Exhibit 1 (emphasis added).

36. DirecTV is mailing this advertisement to current Charter customers in at least the following states: Connecticut, Louisiana, Michigan, Missouri, South Carolina, and Wisconsin. *Id.*

37. Many of DirecTV's direct mail ads are enclosed in envelopes that do not readily identify DirecTV as the sender. Rather, in an apparent effort to make the mailer appear official, DirecTV makes the following text visible through an opening in the envelope immediately above the recipients' name and address: "**Important information about the television service in [Charter customer's city].**" See Exhibit 2 (emphasis in original).

38. A true and accurate redacted copy of the first page of DirecTV's direct mail ad sent to Charter's customers follows, and true and accurate redacted copies of the entire advertisement are filed herewith as Exhibit 1.



2230 East Imperial Hwy.  
El Segundo, CA 90245

Important information about the television service in  
O Fallon

**REDACTED**

O Fallon, MO **REDACTED**

Dear **REDACTED**

It's official: Charter has filed for bankruptcy. As they focus on their problems, there's no way they'll be able to bring you the latest technology, more channels in HD and new exclusive programming. But DIRECTV will. So make the popular choice—join over 18 million families who have made the FREE and EASY switch to DIRECTV.

**Lock in your price for one full year and save \$21 a month.\***

Get over 150 channels for only \$34.99 a month.\* You'll get all your local channels\* and **3 FREE months of SHOWTIME®**. **Switching is FREE and EASY**, with no equipment to buy, no start-up costs and **FREE Professional Installation**. Plus, ask how to get a **FREE DIRECTV HD-DVR Receiver** upgrade.†

**Enjoy the best in HD,† sports and technology:**

- **DIRECTV has the most channels in HD—now over 130!†**
- **NCAA® MEGA MARCH MADNESS,® NFL SUNDAY TICKET™** and **FREE NASCAR HotPass™**—only on DIRECTV‡
- **DIRECTV® DVR Scheduler**—set your home DVR from any cell phone or computer‡
- **100% digital picture** on every channel and **Dolby® Digital 5.1** surround sound‡
- **Worry-free 99.9% signal reliability**

**Get help while you can—get DIRECTV**

DIRECTV has been ranked #1 in customer satisfaction over cable 8 years running.†† So instead of wondering how cable's problems will affect you, just switch to DIRECTV. Call **1-877-912-3291** now to start getting more entertainment for your money. †† Among the largest national cable & satellite TV providers. 2008 American Customer Satisfaction Index. University of Michigan Business School.

Sincerely,

*Michael Rogers*

Michael Rogers, V.P. Marketing

**P.S. Why settle for less? Now's your chance to leave cable and get the best in TV with DIRECTV.**

**Switch now! 1-877-912-3291 or directv.com**

Offers and 27769 & are based on approved credit; credit card req'd. New customer's only. (Lease req'd. Must maintain programming. DVR service &/or HD Access.) Lease fee of \$5/mo. for 2nd & eq. add'l receiver. Collector/Custom installation extra. \$19.95 handling & delivery fee may apply. See add'l terms on back of letter. \*Price & savings reflected include a \$10 bill credit/mo. for 12 consecutive mos. after online or mail-in rebate, plus an add'l \$2 bill credit/mo. for 12 consecutive mos. when you register on directv.com prior to rebate redemption. Valid e-mail address & consent to receive e-mails req'd. †† See directv.com for details. ‡ See directv.com for details. © 2009 DIRECTV, Inc. All rights reserved.

**More TV. Less money.**  
Upgrade to DIRECTV now and get:

Over 150 channels for just **\$34.99** mo. ~~\$55.99~~

**FOR 12 MONTHS\***  
The CHOICE™ package

Plus, for a limited time, get all this:

**3 MONTHS FREE**

28 premium movie channels  
\$108 value!

**HBO** **starz** **SHOWTIME**  
7 Channels 12 Channels 9 Channels

With activation of CHOICE EXTRA™ programming or higher.†



**FREE**

**DIRECTV® HD DVR**  
Receiver upgrade  
Ask how\*  
\$199 value!



**FREE**

**Professional Installation**  
in up to 4 rooms

Want to keep it simple?

**\$29.99** mo.

**EVERYDAY LOW PRICE**  
The FAMILY™ package

30100657456

**(2) DirecTV's False and Deceptive Print Advertisements**

39. A print advertisement (“the life-preserver ad”) published by DirecTV or on its behalf states:

With Charter Cable filing for bankruptcy, now’s the time to save yourself.

Get help while you can. Get DIRECTV. It’s official. Charter Cable has filed for bankruptcy. And now that they’re going to be focused on trying to “restructure” their finances, *do you really think they’ll be able to bring you the latest technology, more channels in HD or new exclusive programming? Probably not. So instead of waiting for Charter’s bankruptcy to affect you, just switch to DIRECTV, America’s #1 satellite provider.*

Exhibit 3 (emphasis added).

40. The life-preserver ad misleadingly depicts DirecTV as a life-preserver that will “save” the customers from Charter’s bankruptcy.

41. A true and accurate copy of the life-preserver print advertisement that was published in the April 5, 2009 edition of the Reno Gazette-Journal follows and is filed herewith as Exhibit 3.



With Charter Cable filing for bankruptcy, now's the time to save yourself.

Get help while you can. Get DIRECTV. It's official. Charter Cable has filed for bankruptcy. And now that they're going to be focused on trying to "restructure" their finances, do you really think they'll be able to bring you the latest technology, more channels in HD or new exclusive programming? Probably not. So instead of waiting for Charter's bankruptcy to affect you, just switch to DIRECTV, America's #1 satellite provider.

LOCK IN YOUR PRICE AND SAVE \$21 PER MONTH FOR ONE FULL YEAR.

**\$34.99** <sup>1</sup> <sup>2009</sup>  
The CHOICE Package

THE TV PACKAGE THAT BEATS CABLE

- OVER 160 Digital Channels
- PREMIUM CHANNELS FREE 3 MONTHS
- FREE** <sup>3</sup> <sup>4</sup> <sup>5</sup> <sup>6</sup> <sup>7</sup> <sup>8</sup> <sup>9</sup> <sup>10</sup> <sup>11</sup> <sup>12</sup> <sup>13</sup> <sup>14</sup> <sup>15</sup> <sup>16</sup> <sup>17</sup> <sup>18</sup> <sup>19</sup> <sup>20</sup> <sup>21</sup> <sup>22</sup> <sup>23</sup> <sup>24</sup> <sup>25</sup> <sup>26</sup> <sup>27</sup> <sup>28</sup> <sup>29</sup> <sup>30</sup> <sup>31</sup> <sup>32</sup> <sup>33</sup> <sup>34</sup> <sup>35</sup> <sup>36</sup> <sup>37</sup> <sup>38</sup> <sup>39</sup> <sup>40</sup> <sup>41</sup> <sup>42</sup> <sup>43</sup> <sup>44</sup> <sup>45</sup> <sup>46</sup> <sup>47</sup> <sup>48</sup> <sup>49</sup> <sup>50</sup> <sup>51</sup> <sup>52</sup> <sup>53</sup> <sup>54</sup> <sup>55</sup> <sup>56</sup> <sup>57</sup> <sup>58</sup> <sup>59</sup> <sup>60</sup> <sup>61</sup> <sup>62</sup> <sup>63</sup> <sup>64</sup> <sup>65</sup> <sup>66</sup> <sup>67</sup> <sup>68</sup> <sup>69</sup> <sup>70</sup> <sup>71</sup> <sup>72</sup> <sup>73</sup> 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<sup>472</sup> <sup>473</sup> <sup>474</sup> <sup>475</sup> <sup>476</sup> <sup>477</sup> <sup>478</sup> <sup>479</sup> <sup>480</sup> <sup>481</sup> <sup>482</sup> <sup>483</sup> <sup>484</sup> <sup>485</sup> <sup>486</sup> <sup>487</sup> <sup>488</sup> <sup>489</sup> <sup>490</sup> <sup>491</sup> <sup>492</sup> <sup>493</sup> <sup>494</sup> <sup>495</sup> <sup>496</sup> <sup>497</sup> <sup>498</sup> <sup>499</sup> <sup>500</sup> <sup>501</sup> <sup>502</sup> <sup>503</sup> <sup>504</sup> <sup>505</sup> <sup>506</sup> <sup>507</sup> <sup>508</sup> <sup>509</sup> <sup>510</sup> <sup>511</sup> <sup>512</sup> <sup>513</sup> <sup>514</sup> <sup>515</sup> <sup>516</sup> <sup>517</sup> <sup>518</sup> <sup>519</sup> <sup>520</sup> <sup>521</sup> <sup>522</sup> <sup>523</sup> <sup>524</sup> <sup>525</sup> <sup>526</sup> <sup>527</sup> <sup>528</sup> <sup>529</sup> <sup>530</sup> <sup>531</sup> <sup>532</sup> <sup>533</sup> <sup>534</sup> <sup>535</sup> <sup>536</sup> <sup>537</sup> 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<sup>802</sup> <sup>803</sup> <sup>804</sup> <sup>805</sup> <sup>806</sup> <sup>807</sup> <sup>808</sup> <sup>809</sup> <sup>810</sup> <sup>811</sup> <sup>812</sup> <sup>813</sup> <sup>814</sup> <sup>815</sup> <sup>816</sup> <sup>817</sup> <sup>818</sup> <sup>819</sup> <sup>820</sup> <sup>821</sup> <sup>822</sup> <sup>823</sup> <sup>824</sup> <sup>825</sup> <sup>826</sup> <sup>827</sup> <sup>828</sup> <sup>829</sup> <sup>830</sup> <sup>831</sup> <sup>832</sup> <sup>833</sup> <sup>834</sup> <sup>835</sup> <sup>836</sup> <sup>837</sup> <sup>838</sup> <sup>839</sup> <sup>840</sup> <sup>841</sup> <sup>842</sup> <sup>843</sup> <sup>844</sup> <sup>845</sup> <sup>846</sup> <sup>847</sup> <sup>848</sup> <sup>849</sup> <sup>850</sup> <sup>851</sup> <sup>852</sup> <sup>853</sup> <sup>854</sup> <sup>855</sup> <sup>856</sup> <sup>857</sup> <sup>858</sup> <sup>859</sup> <sup>860</sup> <sup>861</sup> <sup>862</sup> <sup>863</sup> <sup>864</sup> <sup>865</sup> <sup>866</sup> <sup>867</sup> 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<sup>1000</sup> <sup>1001</sup> <sup>1002</sup> <sup>1003</sup> <sup>1004</sup> <sup>1005</sup> <sup>1006</sup> <sup>1007</sup> <sup>1008</sup> <sup>1009</sup> <sup>1010</sup> <sup>1011</sup> <sup>1012</sup> <sup>1013</sup> <sup>1014</sup> <sup>1015</sup> <sup>1016</sup> <sup>1017</sup> <sup>1018</sup> <sup>1019</sup> <sup>1020</sup> <sup>1021</sup> <sup>1022</sup> <sup>1023</sup> <sup>1024</sup> <sup>1025</sup> <sup>1026</sup> <sup>1027</sup> <sup>1028</sup> <sup>1029</sup> <sup>1030</sup> <sup>1031</sup> <sup>1032</sup> <sup>1033</sup> <sup>1034</sup> <sup>1035</sup> <sup>1036</sup> <sup>1037</sup> <sup>1038</sup> <sup>1039</sup> <sup>1040</sup> <sup>1041</sup> <sup>1042</sup> <sup>1043</sup> <sup>1044</sup> <sup>1045</sup> <sup>1046</sup> <sup>1047</sup> <sup>1048</sup> <sup>1049</sup> <sup>1050</sup> <sup>1051</sup> <sup>1052</sup> <sup>1053</sup> <sup>1054</sup> <sup>1055</sup> <sup>1056</sup> <sup>1057</sup> <sup>1058</sup> <sup>1059</sup> <sup>1060</sup> <sup>1061</sup> 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<sup>1124</sup> <sup>1125</sup> <sup>1126</sup> <sup>1127</sup> <sup>1128</sup> <sup>1129</sup> <sup>1130</sup> <sup>1131</sup> <sup>1132</sup> <sup>1133</sup> <sup>1134</sup> <sup>1135</sup> <sup>1136</sup> <sup>1137</sup> <sup>1138</sup> <sup>1139</sup> <sup>1140</sup> <sup>1141</sup> <sup>1142</sup> <sup>1143</sup> <sup>1144</sup> <sup>1145</sup> <sup>1146</sup> <sup>1147</sup> <sup>1148</sup> <sup>1149</sup> <sup>1150</sup> <sup>1151</sup> <sup>1152</sup> <sup>1153</sup> <sup>1154</sup> <sup>1155</sup> <sup>1156</sup> <sup>1157</sup> <sup>1158</sup> <sup>1159</sup> <sup>1160</sup> <sup>1161</sup> <sup>1162</sup> <sup>1163</sup> <sup>1164</sup> <sup>1165</sup> <sup>1166</sup> <sup>1167</sup> <sup>1168</sup> <sup>1169</sup> <sup>1170</sup> <sup>1171</sup> <sup>1172</sup> <sup>1173</sup> <sup>1174</sup> <sup>1175</sup> <sup>1176</sup> <sup>1177</sup> <sup>1178</sup> <sup>1179</sup> <sup>1180</sup> <sup>1181</sup> <sup>1182</sup> <sup>1183</sup> <sup>1184</sup> <sup>1185</sup> <sup>1186</sup> <sup>1187</sup> <sup>1188</sup> <sup>1189</sup> <sup>1190</sup> <sup>1191</sup> <sup>1192</sup> <sup>1193</sup> <sup>1194</sup> <sup>1195</sup> <sup>1196</sup> <sup>1197</sup> <sup>1198</sup> <sup>1199</sup> <sup>1200</sup> <sup>1201</sup> <sup>1202</sup> <sup>1203</sup> <sup>1204</sup> <sup>1205</sup> <sup>1206</sup> <sup>1207</sup> <sup>1208</sup> <sup>1209</sup> <sup>1210</sup> <sup>1211</sup> <sup>1212</sup> <sup>1213</sup> <sup>1214</sup> <sup>1215</sup> <sup>1216</sup> <sup>1217</sup> <sup>1218</sup> <sup>1219</sup> <sup>1220</sup> <sup>1221</sup> <sup>1222</sup> <sup>1223</sup> <sup>1224</sup> <sup>1225</sup> <sup>1226</sup> <sup>1227</sup> <sup>1228</sup> <sup>1229</sup> <sup>1230</sup> <sup>1231</sup> <sup>1232</sup> <sup>1233</sup> <sup>1234</sup> <sup>1235</sup> <sup>1236</sup> <sup>1237</sup> <sup>1238</sup> <sup>1239</sup> <sup>1240</sup> <sup>1241</sup> <sup>1242</sup> <sup>1243</sup> <sup>1244</sup> <sup>1245</sup> <sup>1246</sup> <sup>1247</sup> <sup>1248</sup> <sup>1249</sup> <sup>1250</sup> <sup>1251</sup> <sup>1252</sup> <sup>1253</sup> <sup>1254</sup> <sup>1255</sup> <sup>1256</sup> <sup>1257</sup> <sup>1258</sup> <sup>1259</sup> <sup>1260</sup> <sup>1261</sup> <sup>1262</sup> <sup>1263</sup> <sup>1264</sup> <sup>1265</sup> <sup>1266</sup> <sup>1267</sup> <sup>1268</sup> <sup>1269</sup> <sup>1270</sup> <sup>1271</sup> <sup>1272</sup> <sup>1273</sup> <sup>1274</sup> <sup>1275</sup> <sup>1276</sup> <sup>1277</sup> <sup>1278</sup> <sup>1279</sup> <sup>1280</sup> <sup>1281</sup> <sup>1282</sup> <sup>1283</sup> <sup>1284</sup> <sup>1285</sup> <sup>1286</sup> <sup>1287</sup> <sup>1288</sup> <sup>1289</sup> <sup>1290</sup> <sup>1291</sup> <sup>1292</sup> <sup>1293</sup> <sup>1294</sup> <sup>1295</sup> <sup>1296</sup> <sup>1297</sup> <sup>1298</sup> <sup>1299</</sup>

42. Another version of DirecTV's life-preserver print ad was published in the April 19, 2009 edition of the Reno Gazette-Journal. A true and accurate copy follows and is filed herewith as Exhibit 4.

WORLD

RENO.GAZETTE-JOURNAL.RGI.COM

SUNDAY, APRIL 19, 2009



**With Charter Cable filing for bankruptcy, now's the time to save yourself.**

**Get help while you can. Get DIRECTV.** It's official. Charter Cable has filed for bankruptcy. And now that they're going to be focused on trying to "restructure" their finances, do you really think they'll have the time to bring you the latest technology, more channels in HD or new exclusive programming? Probably not. So instead of waiting to see how Charter's bankruptcy might affect you, just switch to DIRECTV, America's #1 satellite TV service.



**LOCK IN YOUR PRICE AND SAVE \$21 PER MONTH FOR ONE FULL YEAR.**

**SAVE SOME GREEN \$21 PER MONTH** LOCK IN YOUR PRICE AND SAVE \$21 PER MONTH FOR ONE FULL YEAR.

**\$34.99** Per 12 Months

**The CHOICE Package**

**THE TV PACKAGE THAT BEATS CABLE**

- OVER 150 Digital Channels
- 9 PREMIUM CHANNELS FOR 3 MONTHS
- FREE** **HD** Receiver

**\$39.99** Per 12 Months

**The CHOICE XTRA Package**

**MORE CHANNELS, MOVIES AND SPORTS!**

- OVER 200 Digital Channels
- FREE DVR or HD DVR Receiver Upgrade\*
- 28 PREMIUM CHANNELS FOR 3 MONTHS
- FREE** **HBO** + **Scripps** + **ESPN**

**\$44.99** Per 12 Months

**The PLUS DVR Package**

**WATCH WHAT YOU WANT. WHEN YOU WANT.**

- OVER 200 Digital Channels
- FREE DVR or HD DVR Receiver Upgrade\*
- Monthly DVR Service Included
- 28 PREMIUM CHANNELS FOR 3 MONTHS
- FREE** **HBO** + **Scripps** + **ESPN**

**Free Next-Day Installation • No Equipment to Buy • No Start-Up Costs • 99.9% Digital Signal Reliability**

Offer valid 7/1/09. An approved credit card required. New customers only. Lease required, must maintain programming, DVR and HD Access. Hardware available separately. Lease fee \$5/mo. for second and each additional receiver. \$19.95 handling & delivery fee may apply. All prices reflect a \$16 bill credit for 12 months after online or mail-in rebate, plus an additional \$5 bill credit for 12 months when customer submits rebate online and registers account on directv.com. Void email address required.

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Credit card not required in MA & PA. \*BILL CREDIT PROGRAMMING OFFER: LIMIT ONE PROGRAMMING OFFER PER ACCOUNT. Featured package names and prices: CHOICE \$34.99/mo.; CHOICE XTRA \$39.99/mo.; PLUS DVR \$44.99/mo. To receive full \$21 credit, customer must submit rebate form online and register account on directv.com prior to rebate redemption. Requires valid email address and must agree to receive emails. Upon DIRECTV System activation, customer will receive redemption instructions (included in customer's first DIRECTV bill, a separate mailing, or, in the state of New York, from retailer) and exact copy with the terms of the instructions. Rebate begins 6-8 weeks after receipt of retailer bill or by mail. Timing of promotional price depends on redemption date. Account must be in "good standing" as determined by DIRECTV in its sole discretion, to remain eligible. DIRECTV not responsible for late, lost, illegible, misdirected, incomplete, not or postage-due mail. IF BY THE END OF PROMOTIONAL PRICE PERIOD(S) CUSTOMER DOES NOT CONTACT DIRECTV TO CHANGE SERVICE THEN ALL SERVICES WILL AUTOMATICALLY CONTINUE AT THE PREVAILING RATES IN CLUD \$5/MO. LEASE FEE FOR THE 2ND AND EACH ADDITIONAL RECEIVER. DIRECTV System has a feature which restricts access to channels. In certain markets, programming/pricing may vary. \*\*INSTANT REBATE: Advance equipment instant rebate activation of the CHOICE XTRA package or above; FAMILIAR ULTRA or above; Japoworld; or any qualifying international service bundle, which shall include the PREFERRED CHOICE programming package (valued at \$35.00/mo.). DVR service (\$5/mo. Access fee (\$10/mo.) required for HD DVR lease. LIMIT ONE ADVANCED EQUIPMENT REBATE PER DIRECTV ACCOUNT. INSTALLATION: Standard professional installation only. Custom installation extra. SYSTEM LEASE: Purchase of 24 consecutive 1-yr DIRECTV base programming package (\$29.99/mo. or 10/yr) or qualifying international service bundle required. FAILURE TO ACTIVATE ALL DIRECTV SYSTEM EQUIPMENT IN ACCORDANCE WITH THE EQUIPMENT LEASE ADDENDUM MAY BE IN CHARGE OF \$150 PER RECEIVER NOT ACTIVATED. IF YOU FAIL TO MAINTAIN YOUR PROGRAMMING, DIRECTV MAY CHARGE A PRO-rated FEE OF \$480. RECEIVERS ARE AT ALL TIMES PROPERTY OF DIRECTV AND MUST BE RETURNED UPON CANCELLATION OF SERVICE OR ADDITIONAL FEES MAY APPLY. VISIT directv.com OR CALL 1-800-DIRECTV FOR DETAILS. Programming, pricing, terms and conditions subject to change at any time. Pricing residential. Taxes not included. Account all programming subject to DIRECTV Customer Agreement; copy provided at directv.com/legal and in first bill. ©2009 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, CHOICE, CHOICE XTRA and PLUS DVR are trademarks of DIRECTV, Inc. All other text and service marks are the property of their respective owners.

43. Another version of DirecTV's life-preserver print advertisement was published in the May 3, 2009 edition of the Reno Gazette-Journal. A true and accurate copy follows and is filed herewith as Exhibit 5.

NEWS OF THE WEIRD  
RINO LAZARUS/ALAN WOLFE/ABC



Get help while you can. Get DIRECTV. It's official. Charter Cable was filed for bankruptcy, and now that they're going to be focused on trying to "restructure" their finances, do you really think they'll have the time to bring you the latest technology, more channels in HD or new exclusive programming? Probably not. So instead of waiting to see how Charter's bankruptcy might affect you, just switch to DIRECTV, America's #1 satellite TV service.

**SAVE 21% OFF** LOCK IN YOUR PRICE AND SAVE \$21 PER MONTH FOR THE FULL YEAR.

<p><b>\$34.99</b> <small>PER MONTH</small></p> <p><b>THE TV PACKAGES THAT MAKE CABLE OF OVER 150 Digital Channels</b></p> <p><b>FREE</b> <small>NO EQ. CHARGE</small></p>	<p><b>\$39.99</b> <small>PER MONTH</small></p> <p><b>MOVIE CHANNELS, MOVIES AND SPORTS</b></p> <p><b>OVER 300 Digital Channels</b></p> <p><b>FREE DVR or HD DVR Receiver Upgrade</b></p> <p><b>FREE</b> <small>NO EQ. CHARGE</small></p>	<p><b>\$44.99</b> <small>PER MONTH</small></p> <p><b>WHAT YOU WANT WHEN YOU WANT</b></p> <p><b>OVER 300 Digital Channels</b></p> <p><b>FREE DVR or HD DVR Receiver Upgrade</b></p> <p><b>Monthly DVR Service Included</b></p> <p><b>FREE</b> <small>NO EQ. CHARGE</small></p>
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**No Equipment to Buy - No Start-Up Costs - Free Installation - 99.9% Digital Signal Reliability**

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**DIRECTV**  
SATELLITE TELEVISION

44. Another print advertisement (“the fire extinguisher ad”) published by DirecTV or on its behalf states in part:

Charter Cable filed for bankruptcy. We’ll save the day.

Get help while you can. Get DIRECTV. It’s official. Charter Cable has filed for bankruptcy. And now that they’re going to be focused on trying to “restructure” their finances, *do you really think they’ll be able to bring you the latest technology, more channels in HD or new exclusive programming? Probably not. So instead of waiting to see how Charter’s bankruptcy might affect you, just switch to DIRECTV, America’s #1 satellite TV service.*

Exhibit 6 (emphasis added).

45. The fire extinguisher ad misleadingly depicts DirecTV as a fire extinguisher that will “save” the customers from Charter’s bankruptcy.

46. A true and accurate copy of the print advertisement follows and is filed herewith as Exhibit 6.



**Charter Cable filed for bankruptcy.**

**We'll save the day.**

**Get help while you can. Get DIRECTV.** It's official. Charter Cable has filed for bankruptcy. And now that they're going to be focused on trying to "restructure" their finances, do you really think they'll have the time to bring you the latest technology, more channels in HD or new exclusive programming? Probably not. So instead of waiting to see how Charter's bankruptcy might affect you, just switch to DIRECTV, America's #1 satellite TV service.



**LOCK IN YOUR PRICE AND SAVE \$21 PER MONTH FOR ONE FULL YEAR.**

**\$34.99** per month

The **ONICE**® Package

THE TV PACKAGE THAT BEATS CABLE

- OVER 150 Digital Channels
- 3 PREMIUM CHANNELS FOR 3 MONTHS
- FREE** HD **RETIME** 1 Channel

**\$39.99** per month

MORE CHANNELS, MOVIES AND SPORTS!

- OVER 200 Digital Channels
- FREE DVR or HD DVR Receiver Upgrade
- 28 PREMIUM CHANNELS FOR 3 MONTHS
- FREE** HD **HBO** + HD **SHOWTIME** + HD **ESPN**

**\$44.99** per month

The **PLUS DVR**® Package

WATCH WHAT YOU WANT WHEN YOU WANT

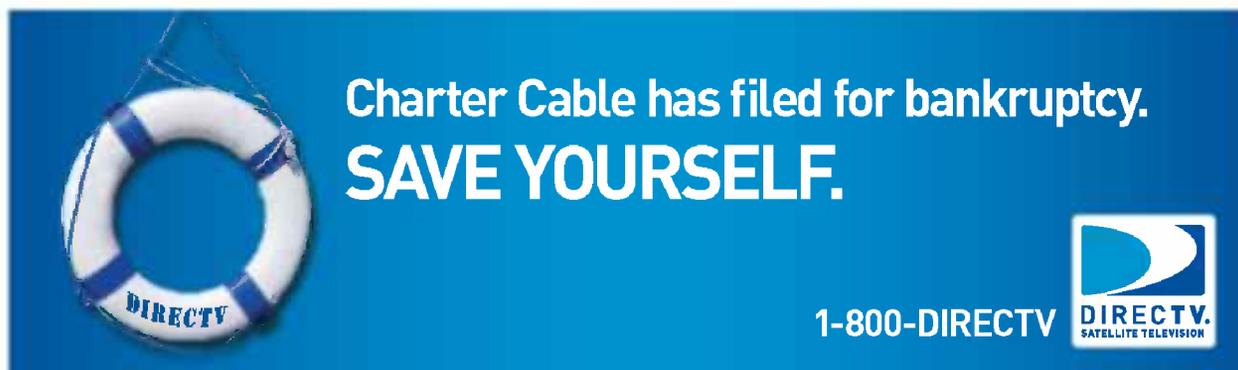
- OVER 200 Digital Channels
- FREE DVR or HD DVR Receiver Upgrade
- Monthly DVR Service Included

**(3) DirecTV's False and Deceptive Billboard Advertisements**

47. A billboard advertisement displayed by DirecTV or on its behalf states, "Charter Cable has filed for bankruptcy. SAVE YOURSELF." Exhibit 7.

48. Billboards with this advertisement are located in, but not limited to, the St. Louis, Missouri area, including two billboards located along Interstate 55 that were recently installed.

49. A true and accurate copy of DirecTV's billboard advertisement follows and is filed herewith as Exhibit 7.

**(4) DirecTV's False and Deceptive Radio Advertisements**

50. One of DirecTV's radio advertisements states in part:

Announcer No. 1: Ok, Charter cable customers, time for some direct talk from DirecTV. *As you may know, Charter has filed for bankruptcy. Uh-oh. And so now you're probably thinking "What does this mean for me? Will I miss my favorite shows? Lose my TV service? What about my HD channels?"* I certainly don't know. But I do know you can avoid Charter's mess completely by switching to DirecTV.... You can save yourself from this hassle.... *So instead of waiting to see how Charter's bankruptcy will affect you, just switch to DirecTV, America's number one satellite TV service....*

Exhibit 8 (emphasis added).

51. Another DirecTV radio ad states in part:

Phone ringing . . .

Charter Customer: Hello.

DirecTV: Hi, it's DirecTV calling....

....

DirecTV: *And did you know Charter just filed for bankruptcy?  
I suggest you avoid this mess altogether and switch to DirecTV....*

Exhibit 9 (emphasis added).

52. Another DirecTV radio ad states in part:

Phone ringing . . .

Charter Customer: Hello.

DirecTV: Hi, it's DirecTV calling.

....

Charter Customer: *And I just heard Charter filed for  
bankruptcy.*

DirecTV: *Yeah, that's not going to help their customer  
service one bit. So just switch to the number one satellite provider  
in the country, DirecTV....*

Exhibit 10 (emphasis added).

53. True and accurate audio recordings of these three radio advertisements are contained on audio compact discs filed herewith as Exhibits 8, 9, and 10.

54. Upon information and belief, DirecTV has caused these radio advertisements to air in the St. Louis, Missouri market and in other locations where Charter does business.

**(5) DirecTV's Personal Solicitation**

55. Upon information and belief, DirecTV employees or sales contractors personally solicit potential customers.

56. The soliciting DirecTV employees or sales contractors ask consumers which company provides their cable service. If the consumer is a Charter customer, the DirecTV employee or contractor informs the consumer of Charter's bankruptcy and provides the consumer with false and deceptive information that Charter's bankruptcy will adversely affect Charter's ability to continue providing services to its customers.

**DirecTV's Ad Campaign Is False, Deceptive, Misleading, and Unsubstantiated**

57. With the intent to sell its goods and services, DirecTV's ad campaign makes statements and conveys messages that are false, deceptive, misleading, and unsubstantiated.

58. Contrary to the depictions in DirecTV's false and misleading advertisements, Charter is not liquidating and is not going out-of-business; their customers do not need to be "saved" by either a life-preserver or a fire extinguisher. Charter is a growing and thriving business, which is on track to emerge from bankruptcy stronger than ever with \$8 billion less of debt and \$3 billion of new investment and refinancing. As a pre-arranged, planned, and consensual Chapter 11 filing, Charter's bankruptcy proceeding will allow Charter to exit bankruptcy quickly and to continue business as usual during and after the proceeding. Indeed, Charter's trade creditors will receive full payment of all amounts owed in the ordinary course.

59. As set forth above in Paragraphs 20 through 32, contrary to the statements in DirecTV's false and misleading advertisements, Charter's bankruptcy filing has not and will not have an adverse effect on Charter's services; Charter continues to provide its customers with the latest technology, more channels in HD, and new exclusive programming.

60. These services, and others, demonstrate that Charter continues to operate not only "as usual" and provide its customers with all services that were available prior to the bankruptcy filings, it is in fact *enhancing* its offerings while in bankruptcy. Charter remains focused on

offering its customers more value through advanced video services, including increased HD offerings and bringing its customers the latest innovations in home entertainment.

**DirecTV's False Ad Campaign Caused and Continues to Cause Consumer Confusion**

61. Since DirecTV began running its ad campaign against Charter, Charter has received customer inquiries revealing customer confusion as a result of the false claims in DirecTV's ads. Those customers are concerned that the information contained in the DirecTV ads indicates that Charter will end operations and will not be able to provide them with service.

62. Several Charter customers have visited Charter offices and called Charter's customer service lines to inquire whether they should terminate their Charter service because they understood DirecTV's direct mailer to mean that Charter will not be able to provide service.

63. Charter has received inquiries from several customers who reference DirecTV's false advertising and ask if the bankruptcy filing will affect Charter's ability to provide technology and programming.

64. Charter's customer service representatives ("CSR") have documented several customer inquiries about the DirecTV advertisements and direct mailers. These customers sought clarification about the ads which led them to believe that Charter was going out of business, ceasing operations, or would be unable to provide them with service. Charter customers have reported receiving phone calls from DirecTV providing similar information to the direct mailers they received.

65. When Charter customers call Charter, the CSR who answers the call sometimes contemporaneously creates notes regarding the nature and details of the call.

66. The following is a redacted example of a CSR's documentation of a call from a Charter customer in Romulus, Michigan:

The following customer who received the letter from DIRECTV advising that they were losing services unless they switched due to Charter's bankruptcy.

Phone Number [REDACTED]; Customer Name: [REDACTED]; Site 500, Romulus MI.

She received letter in the mail from DIRECT TV. This letter was on DIRECT TV letterhead regarding television service in Romulus. It stated Charter has filed for bankruptcy, and you will be losing your services as a result. If you wish to avoid the interruption of service, they can call DIRECT TV to get their services switched.

I have assured customer that is not the case, but there are other people in that market who may be receiving the same mailing. The customer says the wording is very clear that their Charter services will be lost.

67. Another example of the customer confusion caused by DirecTV's ad campaign is a Charter customer in Eunice, Louisiana who visited a Charter office on April 29, 2009 and asked when the office would be closing because she received a flyer from DirecTV stating that Charter would no longer provide her with service.

68. A second Charter customer in Eunice, Louisiana provides another example of the customer confusion caused by DirecTV's ad campaign. During the week of April 27, 2009, this customer informed Charter that she was approached by a DirecTV employee while buying a television from Sam's Club in Lafayette, Louisiana. After learning that this customer's service provider was Charter, the DirecTV employee told her that Charter filed for bankruptcy and would no longer be able to provide her services. The customer then visited the Eunice, Louisiana Charter office and inquired about the false information provided to her by DirecTV.

69. The customer came into the Eunice, Louisiana office and told a Charter employee about her experience with the DirecTV employee at the Sam's Club in Lafayette, Louisiana and asked if it was true that Charter would no longer be able to provide her services because of the bankruptcy.

### **Charter Is Implementing Corrective Advertising as a Result of DirecTV's False Ad Campaign**

70. In response to DirecTV's false advertising campaign, Charter is responding with marketing efforts aimed at correcting DirecTV's false claims. Charter is expending time, money, and resources on corrective marketing as a direct result of DirecTV's false advertisements.

71. As part of Charter's corrective marketing in response to DirecTV's false advertisements, Charter is expending time, money, and resources in educating its customer service representatives ("CSRs") to explain the true effects of Charter's pre-arranged financial restructuring.

72. Charter's education of its CSRs includes instructions to specifically address DirecTV's false ads directed at Charter's financial restructuring.

### **DirecTV's False Ad Campaign May Cause Irreparable Harm to Charter**

73. Nationally, there are a limited number of options for customers seeking a television service provider. Essentially, the customer has the choice between normal "over-the-air" broadcasters, a cable service provider, or a satellite service provider.

74. DirecTV is one of only two national satellite television service providers and has a much larger national market share of viewers than Charter.

75. Charter is the primary national cable television service provider in the St. Louis, Missouri area and in other areas in the United States. Charter and DirecTV directly compete with one another to provide television services to customers throughout the United States, including but not limited to customers located in St. Louis, Missouri.

76. The competition among television service providers for customers is intense in light of the limited number of options for customers and because customers typically subscribe to only one subscription television service provider at a given time.

77. Customers who believe DirecTV's false messages may be lost as a potential customer to Charter. If that customer chooses to switch to a different television service provider, the limited number of options makes it likely that the customer will choose DirecTV.

78. Typically there are startup or installation costs associated with satellite television service including but not limited to a satellite dish and receivers. The customer may have to pay for leasing the satellite equipment, installation of the equipment and may also have to sign a fixed term contract with the satellite television provider. The offers in DirecTV's advertisements are contingent on the customer signing a contract subscribing to DirecTV service for a certain number of years.

#### **DirecTV Refuses to Modify its Conduct**

79. On April 10, 2009, counsel for Charter, Dean Franklin, sent a letter to Vice President and Associate General Counsel for DirecTV, Takehiko Suzuki. The letter informed Mr. Suzuki of the reasons why the DirecTV advertisements are false and why they violate 15 U.S.C. § 1125 along with Charter's state statutory and common law rights. The letter expressed Charter's desire to resolve this matter amicably and requested that DirecTV immediately cease and desist making false claims about Charter and its bankruptcy filing. *See* Letter from D. Franklin to T. Suzuki (Apr. 10, 2009) (attached hereto as Exhibit 11).

80. On April 15, 2009, Mr. Suzuki responded to Mr. Franklin's April 10 letter and stated that DirecTV would address Charter's concerns: "to alleviate any concerns you may have, we are in the process of modifying the print advertising (including the billboard). The new

creative will be in the marketplace in short order. We believe the foregoing addresses your concerns, and as such, we consider this matter closed.” *See* Letter from T. Suzuki to D. Franklin (Apr. 15, 2009) (attached hereto as Exhibit 12).

81. Despite DirecTV’s statements, during the week of April 27, 2009 – after DirecTV received Charter’s cease and desist letter – DirecTV increased its nationwide false advertising campaign directed at Charter’s bankruptcy both in terms of volume and egregiousness.

82. DirecTV’s billboards on Interstate 55 were installed after Charter sent the cease and desist letter to DirecTV and were installed after DirecTV represented to Charter that DirecTV would modify their print and billboard advertisements.

83. Charter became aware of DirecTV’s false and deceptive direct mailers after sending its cease and desist letter to DirecTV.

84. After the receipt of Charter’s cease and desist letter, DirecTV’s ad campaign, including but not limited to the direct mailers, became more explicit with its false statements and messages, asserting that there is “no way” Charter will be able to offer services to customers due to the bankruptcy proceedings.

85. The volume of advertisements in DirecTV’s false advertisement campaign increased since the cease and desist letter was sent, including but not limited to the widespread direct mailing campaign in multiple states around the country and the addition of billboard advertisements along major highways in, but not limited to, the St. Louis, Missouri area.

86. Despite Charter’s efforts to resolve this matter amicably, DirecTV continues to implement its false advertising campaign in at least the following states: Connecticut, Illinois, Louisiana, Michigan, Missouri, Nevada, South Carolina, and Wisconsin.

**Count I – Violation of the Lanham Act, 15 U.S.C. § 1125(a)**

87. Charter incorporates by reference paragraphs 1 through 86 of the Complaint as if fully set forth herein.

88. DirecTV has and continues to make false and misleading statements about Charter's products and services in DirecTV's commercial advertisements in violation of 15 U.S.C. § 1125(a).

89. Individually and collectively, the advertisements described above are false or misleading and deceive, confuse, or are likely to deceive or confuse, a substantial segment of their intended audience in that they falsely portray Charter's bankruptcy as having a detrimental effect on Charter's customers, including, without limitation, through falsely claiming an impact on Charter's customer service, its ability to provide the latest technology, its ability to provide additional HD programming, and its ability to provide new exclusive programming.

90. DirecTV's use of false and misleading statements of fact, false and misleading descriptions of fact, or false and misleading representations of fact in its commercial advertisements and promotions deceive, or are likely to deceive, a substantial segment of their intended audience as to the nature, qualities, and characteristics of Charter's products and services.

91. DirecTV's use of false and misleading statements of fact, false and misleading descriptions of fact, or false and misleading representations of fact in its commercial advertisements and promotions cause confusion, or are likely to cause confusion or mistake, as to a substantial segment of their intended audience as to the nature, qualities, and characteristics of Charter's products and services.

92. DirecTV's use of false and misleading statements of fact, false and misleading descriptions of fact, or false and misleading representations of fact in its commercial advertisements and promotions misrepresent the nature, characteristics, and qualities of Charter's goods, services, or commercial activities.

93. DirecTV's false and misleading statements in its commercial advertising and promotion have been disseminated to the public at large, which includes customers and potential customers of both Charter and DirecTV.

94. Customers have been actually deceived or confused by DirecTV's false and misleading statements.

95. The false and misleading statements described above were made by DirecTV or its authorized agents.

96. DirecTV's advertising is material in that it is likely to influence the purchasing decision of Charter's current or prospective customers.

97. DirecTV's false and misleading statements were, are, and continue to be made in interstate commerce.

98. DirecTV's false and misleading statements were, are, and continue to be undertaken in bad faith.

99. DirecTV's false and misleading statements were, are, and continue to be made intentionally and willfully with a reckless disregard for the rights of Charter.

100. DirecTV's false and misleading advertising has resulted and will continue to result in actual or probable injury to Charter.

101. DirecTV's false and misleading advertising has damaged and will continue to damage Charter's business reputation and goodwill, and it has caused and will continue to cause Charter to incur money damages.

102. DirecTV's false and misleading statements in its commercial advertising have and are likely to continue to injure Charter by causing Charter to lose subscribers and sales, resulting in business losses in an amount to be determined at trial and that are presently unknown to Charter but which are believed to be substantial and are accumulating on an ongoing basis.

103. DirecTV's acts and omissions have caused and are continuing to cause damage to Charter's business reputation and goodwill and were and continue to be conducted knowingly and willfully by DirecTV. Therefore, Charter is entitled to recover (1) DirecTV's profits, (2) actual money damages sustained by Charter, (3) treble damages as provided under 15 U.S.C. § 1117(a), (4) the costs of the action as provided under 15 U.S.C. § 1117(a), and (5) attorneys' fees as a required result of a finding that this is an exceptional case pursuant to 15 U.S.C. § 1117(a).

### **Count II – Tortious Interference With Contract**

104. Charter incorporates by reference paragraphs 1 through 103 of the Complaint as if fully set forth herein.

105. Charter sells its services primarily on a subscription basis and has contractual relationships with its customers.

106. Through its national advertising campaign and its false and misleading statements described above, DirecTV has and continues to intentionally and improperly interfere with contracts between Charter and Charter's customers by inducing or otherwise causing Charter's customers to not perform the contract.

107. DirecTV knew of the contracts between Charter and Charter's customers when DirecTV initiated its false advertising campaign and made the false and misleading statements described above.

108. DirecTV's false advertising campaign and false and misleading statements were directed to Charter's current and prospective customers.

109. DirecTV intentionally and without justification interfered with and continues to interfere with contracts between Charter and Charter's customers by inducing or causing a breach of those contracts.

110. DirecTV's false advertising and false and misleading statements have caused damage to Charter and are likely to continue to result in damage to Charter.

**Count III – Tortious Interference With Business Expectancy  
or Prospective Business Relationships**

111. Charter incorporates by reference paragraphs 1 through 110 of the Complaint as if fully set forth herein.

112. Through its national advertising campaign and its false and misleading statements described above, DirecTV has and continues to interfere with valid business expectancies or prospective business relationships between Charter and Charter's prospective customers by inducing or otherwise causing a breach of the expectancies or relationships.

113. DirecTV's interference with Charter's valid business expectancies or prospective business relationships has been and continues to be intentional, improper, and without justification.

114. DirecTV's false and misleading statements in its commercial advertising and promotion have been disseminated to Charter's prospective customers with whom Charter has valid business expectancies or prospective business relationships.

115. DirecTV knew of the valid business expectancies or prospective business relationships between Charter and Charter's prospective customers when DirecTV initiated its false advertising campaign and made the false and misleading statements described above.

116. DirecTV's false advertising and false and misleading statements have caused damage to Charter and are likely to continue to result in damage to Charter.

#### **Count IV – Injurious Falsehoods**

117. Charter incorporates by reference paragraphs 1 through 116 of the Complaint as if fully set forth herein.

118. DirecTV's publication of false and misleading statements about Charter caused and continues to cause Charter pecuniary loss.

119. DirecTV intended for the publication of its false statements to result in harm to the interests of Charter having a pecuniary value, or DirecTV either recognized or should have recognized that the publication of its false statements were likely to result in harm to the interests of Charter having a pecuniary value.

120. DirecTV knew that its published statements in its commercial advertisements were and continue to be false, or DirecTV acted in reckless disregard of the truth or falsity of its published statements.

121. DirecTV's publication of false and misleading statements in its commercial advertisements were and continue to be substantial factors in bringing about Charter's pecuniary losses.

122. DirecTV's false and misleading statements in its commercial advertising have and are likely to continue to injure Charter by causing Charter to lose subscribers and sales, resulting in business losses in an amount to be determined at trial and that are presently unknown to Charter but which are believed to be substantial and are accumulating on an ongoing basis.

123. DirecTV's false and misleading advertising has caused and will continue to cause Charter to incur monetary damages.

#### **Count V - Defamation**

124. Charter incorporates by reference paragraphs 1 through 123 of the Complaint as if fully set forth herein.

125. Through its national advertising campaign and its publication of false and misleading statements as described above, DirecTV has and continues to defame Charter causing actual harm to Charter's business reputation.

126. DirecTV published its commercial advertisements described above.

127. DirecTV's advertisements identify Charter and include defamatory statements about Charter.

128. DirecTV's advertisements include material, false statements about Charter.

129. DirecTV's ad campaign was implemented with a conscious intent to publish the false and defamatory statements.

130. DirecTV's defamatory and false statements were published with actual malice, and with knowledge that the statements were false.

131. DirecTV's defamatory and false statements were negligently published.

132. DirecTV's defamatory and false statements caused and continue to cause actual reputational harm to Charter.

133. Upon information and belief, DirecTV's defamatory and false publications directly caused and continue to cause the loss of customers or a general diminution in Charter's business.

**Count VI – State Law Consumer Fraud and Deceptive Business Practices Acts**

134. Charter incorporates by reference paragraphs 1 through 133 of the Complaint as if fully set forth herein.

135. DirecTV's conduct described herein is in violation of the Consumer Fraud Acts, Consumer Protection Acts, Deceptive Business Practices Acts, Deceptive Trade Practices Acts, Unfair Business Practices Acts, and Unfair Trade Practices Acts of certain states in which DirecTV implemented and continues to implement its false advertising campaign.

136. DirecTV's conduct constitutes a violation of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. Ann. §42-110, *et seq.*

137. DirecTV's conduct constitutes a violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. Ann. §505/1 *et seq.*

138. DirecTV's conduct constitutes a violation of the Louisiana Unfair Trade Practices Act, La. Rev. St. Ann. §51-1401, *et seq.*

139. DirecTV's conduct constitutes a violation of the Michigan Consumer Protection Act, Mich. Comp. Laws Ann. §§ 445.901-922.

140. DirecTV's conduct constitutes a violation of the Nevada Deceptive Trade Practices Act, Nev. Rev. St. Ann. §41.600.

141. DirecTV's conduct constitutes a violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann., §39-5-10, *et seq.*

142. DirecTV's conduct constitutes a violation of the Wisconsin Deceptive Trade Practices Act, Wis. Stat. Ann. §100.18.

143. The DirecTV false advertising campaign may extend to other states, and those ads may also exploit Charter's bankruptcy in a false and misleading way and violate certain statutes and laws of those other states.

WHEREFORE, Plaintiffs Charter Communications Holding Company, LLC, and Charter Communications Operating, LLC, respectfully request relief as follows:

a. A temporary restraining order and an order that preliminarily and permanently enjoins DirecTV, its officers, agents, servants, employees, attorneys, and all others in active concert or participation with them, from:

1. Disseminating anywhere in the United States the advertisements described in this Complaint, and any other advertisements substantially similar thereto; and

2. Claiming, whether directly or by implication, in any advertisement or promotional communication, regardless of media (including without limitation direct mail, newspaper or other print, billboard, radio, personal solicitation, Internet, and television), that Charter's bankruptcy will impair or otherwise adversely impact Charter's customers; will impair or otherwise adversely impact Charter's ability to continue providing, or provide in the future, cable television service to customers; or will cause Charter to cease operations or go out of business;

b. An order requiring DirecTV to compensate Charter for its corrective advertising;

c. An order awarding Plaintiffs damages from Defendant in an amount to be determined at trial, but no less than: (1) Defendant's profits, (2) Plaintiffs' lost profits, (3) any damages sustained by Plaintiffs, and (4) the costs of the action;

- d. Treble actual damages pursuant to 15 U.S.C. § 1117(a);
- e. A finding pursuant to 15 U.S.C. § 1117(a) that this is an exceptional case and an order awarding Plaintiffs attorneys' fees, expenses, and costs as allowed by law;
- f. Punitive damages;
- g. Special damages;
- h. All remedies available to Plaintiffs pursuant to the various state statutes referenced in Count VI;
- i. Attorneys' fees, expenses, and costs as allowed by law;
- j. Pre-judgment and post-judgment interest; and
- k. Such other and further relief as the Court may deem just and equitable.

Respectfully submitted,

THOMPSON COBURN LLP

/s/ Dean L. Franklin

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Attorneys for Plaintiffs

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and Charter Communications Operating, LLC

VERIFICATION

The undersigned verifies under penalty of perjury that the factual statements set forth in Plaintiffs' Verified Complaint are true and correct, and as to matters that are stated to be on information and belief, the undersigned certifies under penalty of perjury that he verily believes the same to be true.

Executed on May 10, 2009.

  
\_\_\_\_\_  
Ted W. Schremp  
Executive Vice President and Chief Marketing Officer  
Charter Communications